



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CIVIL APPEAL NO 129 OF 2013**

**DUNCAN MUTINDA KITHOKA.....APPELLANT**

**VERSUS**

**ATHI STORES LIMITED.....RESPONDENT**

**RULING**

1. The Appeal that was filed vide memorandum of appeal dated 28<sup>th</sup> June, 2013 and filed on the same day seeks that the ruling dated 12<sup>th</sup> June, 2013 by the Hon A. A. Adowo be set aside.
2. The appeal was canvassed vide submissions, however in light of my reasoning below, I find it unnecessary to consider them.
3. Having looked at the pleadings on record in the trial court, I find it necessary to examine the issue of jurisdiction and hence the issue for determination is whether this court has jurisdiction to entertain the appeal.
4. According to the memorandum of appeal, and the pleadings in the trial court that are on the record of appeal, it is not contested that the dispute relates to a work injury and there have been considerable developments with regard to the law that governs such disputes that shall guide me in this ruling.
5. The guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine the suit, then the suit would be deemed a nullity as per the decision of Nyarangi J A in the case of **Owners Of Motor Vessel "Lilian S" Vs Caltex Oil (K) Ltd [1989] KLR 1** that:-

***“Jurisdiction is everything without which a court of law has no power to make one more step where a court of law has no jurisdiction as there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction.”***

6. In the case of **Law Society of Kenya v Attorney General & Another (2009) eKLR**, Section 16 of the Work Injury Benefits Act that barred actions for recovery of damages for occupational accident except as provided for by the Act was declared unconstitutional by J.B Ojwang J (as he then was). The consequence thereof is that appeals in relation to work injuries are handled by the Employment and Labour Relations Court and it is patently clear from the interpretations of this case that this court had no jurisdiction to entertain the appeal in the first place. This was observed in the case of **Saidi Mohammed v Diamond Industries Ltd (2018) eKLR** where the court observed that the Employment and Labour Relations Court has appellate jurisdiction in disputes relating to work injury.
7. In light of the foregoing authorities, I find that it is not the function of this court to entertain any appeal in disputes relating to work injury. It would have been just, convenient and fair to let the case now pending judgement before this court to be transferred to the Employment and Labour Relations Court. However I have no such powers to transfer the suit because this court is not clothed with the jurisdiction to entertain the appeal in the first place.
8. In the result the appeal herein is dismissed with costs to the Respondent for lack of jurisdiction.

It is so ordered.

Dated and delivered at **Machakos** this 26<sup>th</sup> day of **April, 2019**.

**D.K. KEMEI**

**JUDGE**