



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO 155 OF 2017

APEX STEEL LIMITED.....APPLICANT

VERSUS

EVAN NYANDORO MAUTI.....RESPONDENT

RULING

1. The Applicant's Notice of Motion application dated 11th December 2017 and filed on the same day was brought pursuant to the provisions of Order 42 Rule 6(1) (2) and (3) of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the law. The application sought the following remaining prayers namely:

1. (Spent)

2. (Spent).

3. There be a stay of execution of the judgment and decree of the Lower Court in Mavoko PMCC No 645 of 2014, Evans Nyandoro Mauti v Apex Steel Limited pending the hearing and determination of this appeal.

4. Costs be in the cause.

2. The Applicant's application was supported by the Affidavit of Abraham Ombogo Ondara that was sworn on 11th December, 2017.

3. The applicant's case is that the Learned Trial Magistrate erred in law and fact by holding that an accident occurred and also erred in law and fact in holding that the respondent was injured.

4. It was the Appellant's contention that the Appeal has high chances of success and that if a stay of execution was not granted, it would suffer greatly and the appeal rendered nugatory. It was further averment that the Appellant filed the present application without any delay and was ready to provide security.

5. The Appellant therefore urged this court to grant the order sought in the application.

6. The Respondent opposed the application vide a replying affidavit sworn on 23rd February, 2018.

7. It was the Respondent's Counsel's argument that for the Applicant to be granted the order for stay of execution, it had to demonstrate the following:-

a. Substantial loss may result to the applicant unless the order is made;

b. The application has been made without undue delay;

c. Such security as to cost has been given by the applicant.

8. It was further contended that the Applicant had not demonstrated how it would suffer substantial loss for it has not been demonstrated that the respondent is not a person of means. In this regard, Counsel referred this court to the case of **Masisi Mwita v Damaris Wanjiku Njeri [2016] eKLR**.

9. It was further submitted that the present application was not filed timeously as it was filed on 11.12.2017 which was two (2) months from the date judgment was delivered on 31.10.17. The Respondent proposed that half the decretal amount be released to him as he is entitled to the fruits of his judgement.

10. The Respondent therefore urged this court to dismiss the application with costs.

11. The issue for determination is whether the court has jurisdiction to entertain the appeal.

12. In addressing the application, I find it necessary to examine the issue of jurisdiction *in extenso*.

13. According to the memorandum 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 which ought not to be ignored.

14. 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.”

15. 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.

16. The overriding objective of the Civil Procedure Act and Rules made thereunder is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In the furtherance of this overriding objective, the courts are mandated to ensure the just determination of proceedings, efficient disposal of business of the court, the efficient use of available judicial and administrative resources and the timely disposal of proceedings at a cost affordable by the respective parties.

17. I find that it is not the function of this court to entertain any appeal in disputes relating to work injury. Already the original claim being work injury related, the filing of the appeal in this court in the first place was erroneous. The appeal should have been lodged before the Employment and Labour Relations Court.

18. In the result the application dated 11th December, 2017 is dismissed with costs to the Respondent.

It is so ordered.

Dated, delivered and signed in open Court at Machakos this 25th day of April, 2019.

D. K. KEMEI

JUDGE