



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO. 67 OF 2017**

**JOSEPH M. SHIUNDU.....APPELLANT**

**VERSUS**

**FRIDAH L. ONYANGO.....RESPONDENT**

*(An appeal arising from the judgment and decree of the Hon. F. Makoyo,*

*Senior Resident Magistrate (SRM), in Butere PMCCC No. 204 of 2014 of 2<sup>nd</sup> June 2017)*

**JUDGMENT**

1. The Constitution 2010, at Article 162(2), establishes a special court to handle disputes that revolve around industrial and labour relations. Article 165(5) of the same Constitution strips the High Court of jurisdiction over such matters.

2. For avoidance of doubt, Article 162(2) states as follows: –

*‘Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –*

*(a) employment and labour relations; and*

*(b) the environment and the use and occupation of, and title to, land.’*

3. On the other hand, Article 165(5) of the Constitution states as follows: -

*‘The High Court shall not have jurisdiction in respect of matters-*

*(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or*

*(b) falling within the jurisdiction of the courts contemplated in Article 162(2).’*

4. In obedience to Article 162(2) of the Constitution, Parliament did, through the Employment and Labour Relations Court Act, No. 20 of 2011, establish such a court, known as the Employment and Labour Relations Court. The jurisdiction of the Employment and Labour Relations Court is set out in section 17 of the Employment and Labour Relations Court Act. The said court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to employment and labour relations, which includes disputes relating to or arising out of employment between an employer and an employee.

5. The pleadings lodged at the lower court do not disclose that the parties hereto were in an employer and employee relationship at the time material of the dispute at hand. At the oral hearing of the matter on 23<sup>rd</sup> March 2017, however, the appellant testified that he was in the employment of the respondent at the material time of the alleged accident. The accident the subject of the suit allegedly happened while in the course of the said employment while he was driving a motor vehicle belonging to the respondent on the respondent’s instructions. The suit was founded on the ground that the respondent had failed to maintain the vehicle and permitting the appellant to drive it while knowing that it was defective, essentially a pleading to the effect that there was breach of statutory duties to provide a safe working condition. The suit therefore turns on matters that relate to industrial or employment or labour relations. It follows that I, sitting as Judge of the High Court, have no jurisdiction to deal with the appeal placed before me. The dispute in question falls squarely within the mandate of the Employment and Labour Relations Court.

6. I have noted from the plaint that the appellant avoided pleading the fact of the employment relations, ostensibly so as to bring the matter within the jurisdiction of the High Court, and sought to anchor his suit solely on the allegations of negligence on the part of the respondent to maintain the accident vehicle in a safe mechanical condition, permitting the appellant to use it while it was in that condition and failing to warn him of that condition. Liability would have attached on the respondent only upon it being established on a balance of probability that the motor vehicle was not in a sound condition at the time and that the respondent was aware of that fact. I have perused through the evidence adduced at the trial court and I have not encountered any material establishing any material defect on the vehicle at the time. It was not enough for the appellant to allege that the vehicle had defective brakes, he should have adduced documentary evidence by way of presenting a report by a motor vehicle assessor showing that the vehicle had the pre-accident defects alleged.

7. I am not satisfied that the appellant has established that the trial court fell into any error when it concluded that the appellant had not proved that the vehicle had the defects alleged, that the respondent was aware of the said defects and she allowed the appellant to drive the vehicle nevertheless. The appeal is for dismissal and I do hereby dismiss the same with costs.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 10<sup>TH</sup> DAY OF APRIL, 2019**

**W. MUSYOKA**

**JUDGE**