



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAJIADO**

**CIVIL MISCELLANEOUS CAUSE NO. 56 OF 2017**

**ISINYA ROSES LTD.....APPLICANT**

**VERSUS**

**MERCELINE MONGINA NYAMBANE.....RESPONDENT**

**RULING**

The applicant filed a notice of motion dated 18.12.2017 under the provisions of order 42 Rule 6 of the Civil Procedure Rules, Section 1A, 1B, 3A and 79B of the Civil Procedure Act, Articles 159 (2) (d) of the constitution and all establishing provisions of the law seeking the following reliefs:

- 1. That this application be heard ex-parte and service be dispensed with in the first instance on account of its urgency.**
- 2. That execution of the decree given on 25<sup>th</sup> July, 2017 by Hon. Chesang in Kajiado – PMCC No. 60 of 2016 and all consequential orders and steps be stayed pending the hearing and determination of this application.**
- 3. That the applicant be granted leave to file the appeal out of time**
- 4. That execution of the said decree given on 1<sup>st</sup> august 2017 by Hon. Chesang and all consequential orders and steps be stayed until the intended appeal preferred against the said judgement is heard and determined**
- 5. That costs of this application be provided for**

The Respondent filed a replying affidavit in objection to the application.

**How did the matter before this court arise?**

The Plaintiff who is the respondent in this application had filed suit against the defendant/applicant at the Chief Magistrate Court seeking general and special damages arising out of breach of statutory duty and tort of negligence as an employee of the defendant on or about 16/6/2015. The trial proceeded in earnest and a judgement on the claim was delivered on 2/11/2017 in absence of the parties.

Being dissatisfied with the entire judgement the defendant/applicant filed a notice of appeal before this court. In the interim the defendant sought stay orders of execution pending the hearing and determination of the appeal.

**The question to be decided in this application which is brought under order 42 Rule is whether the court has the jurisdiction to hear the application or the main appeal.**

Section 5 of the Civil Procedure Act provides that:

***“Any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred.”***

The pioneer case in our jurisdiction on the issue of jurisdiction is that of **Owners of Motor vessel Lillian ‘B’ v Caltex Oil Kenya Ltd 1989 KLR**, in which the renowned Nyarangi J.A adopting the words and phrases legally signed in volume 3 I-N page 13 held as follows:

***“By jurisdiction, is meant the authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which***

*the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. If the jurisdiction of an inferior court, or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given. Jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*

A basic doctrine of law is that a party seeking to invoke the jurisdiction of the court has to show from the pleadings and subject matter that the court has the power vested by the law to adjudicate and entertain the claim.

The Supreme Court added clarity to the jurisdiction of courts in the case of **Samuel Kamau Macharia Versus Kenya Commercial Bank Ltd and 2 others 2012 eKLR** where it held as follows:

*“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that much is conferred upon by law.”*

Ultimately, it is trite that either the court has the requisite jurisdiction to entertain the subject matter or whatever it embarks on is a nullity and void abinitio. It is submitted by the respondent that the constitution provisions under Article 162 2(a) as read with Article 165(5) of the ousts the jurisdiction of the High Court to adjudicate and deal with matters arising out of and over employment and labour disputes. Section (1) of the Employment and Labour Relations Act establishes the Employment and Labour relations Court pursuant to Article 162(2) of the Constitution.

Further, section 12 of the Act provides for the jurisdiction of the court to include the following:

- (a) Disputes relating to or arising out of employment between an employer and an employee**
- (b) Disputes between an employer and a trade union**
- (c) Disputes between an employers’ organization and a trade union’s organization**
- (d) Disputes between trade unions**
- (e) Disputes between employer organizations**
- (f) Disputes between an employers’ organization and a trade union**
- (g) Disputes between a trade union and a member thereof**
- (h) Disputes between an employer’s organization or a federation and a member thereof**
- (i) Disputes concerning the registration and election of trade union officials; and**
- (j) Disputes relating to the registration and enforcement of collective agreements.**

The Superior court of Employment and Labour Relations enjoys appellate jurisdiction to hear and determine appeals from:  
(a) the decision of the Registrar of Trade Unions and Any other court, local tribunal or Commission and prescribed under any written law.

The legal battle with regard to the jurisdiction of magistrates to hear and determine employment and labour relations court was addressed by the court of Appeal in the case of **Law Society & 6 Others 2017 eKLR** where the court relying on section 29 of the Industrial Court Act 2011 and subject to the pecuniary limitation under section 7(1) ruled that:

*“The High Court has no jurisdiction in respect of Employment and Labour Relations dispute.”*

There is no dispute that any appeals arising from a subordinate court or tribunal cannot find its way to the High Court where parliament has enacted legislation to give effect as to the jurisdiction of various systems of court provided for in the constitution no party shall by pass that provision to seek redress in a different forum than that prescribed by statute.”

In this context the legislature has established employment and Labour court as well as the procedure which also specifies the jurisdiction of such courts. The law has come into force and from the date of its publication by the relevant Minister the dispute concerning this intended appeal concerns rights and duties under the employment agreement between the appellant and the respondent. The letter and spirit of our constitution is a characteristic of a judicial system all divided and vested into various courts with specific jurisdiction. In this regard the Employment and Labour Relations court and the Environment and Land Court are recognized as superior court with equal states with that of

the High Court.

It is against this background the scope of this appeal according to section 12 of the Act is discontinued for want of jurisdiction. I make no orders as to costs.

**Dated, delivered and signed in open court on 14<sup>th</sup> February, 2018.**

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**R. NYAKUNDI**

**JUDGE**

**Representation:**

Mr. Mwaura for the Applicant

Ms. Musili for the Respondent