



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL APPEAL NO. 499 OF 2014

DEVKI STEEL MILLS LTDAPPELLANT/RESPONDENT

VERSUS

ROBERT APUTO MARIATI.....RESPONDENT/APPLICANT

RULING

1. The application dated 8th September, 2015 seeks orders that the appeal herein be struck out with costs to the Respondent.
2. The application is based on the grounds stated in the application and is supported by the affidavit sworn by the Applicant's counsel. It is stated that on 30th October, 2014, this court granted the Respondent leave to appeal on condition that the sum of Ksh.200,000/= was paid to the Applicant and the sum of Ksh.300,000/= deposited in a joint interest earning bank account in the names of the counsels for both parties within 14 days. In default the leave to appeal to stand discharged. It is further stated that the Respondent has not complied with the said orders and therefore there is no competent appeal before this court.
3. It is further contended that the dispute between the parties herein is between an employer and an employee and the Employment and Labour Relations Court has exclusive jurisdiction to hear the appeal herein. That this court therefore has no jurisdiction to entertain the appeal.
4. The application is opposed. It is stated in the replying affidavit that the sum of Ksh. 500,000/= was deposited in court after the Applicant's counsel failed to respond to the letter dated 3rd November, 2014 from the Respondent's counsel requesting him to meet and open a bank account within 14 days as ordered by the court. The Applicant is also alleged to have attempted to execute the decree of the lower court when stay of execution orders had been issued herein.
5. During the hearing of the application the parties opted to file written submissions. I have duly considered the same.
6. I will first deal with the issue of jurisdiction. The Court of Appeal stated in the case of **The Owners of Motor Vessel "Lillian s" v Caltex Oil Kenya Ltd [1989] KLR 1** thus:-

“Jurisdiction is everything. Without it, a court has no power to make one step, where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and 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.”

7. The dispute herein relates to an injury sustained in the course of duty. The suit is based on an employer and employee relationship. The Employment and Labour Relations Court has exclusive jurisdiction to hear the suit. The Employment and Labour Relations Court Act was enacted **“to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.”**

8. Section 12 of Employment and Labour Relations Court Act defines the jurisdiction of Employment and Labour Relations Court as follows:

“exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations”

9. Section 87 of the Employment Act Cap 226 also provides for work injury disputes to be lodged before the Employment and Labour Relations Court as the only court which can determine such disputes.

10. Turning to the issue of the alleged non-compliance with the court orders herein dated 30th October, 2014, it is clear that the said orders were to be complied with within 14 days. The sum of Ksh.500,000/= was deposited in court on 30th September, 2014. This was a period of 30 days as opposed to the 14 days given by the court. The Respondent did not come back for the extension of the 14 days period nor seek orders for the deposit of the money in court. The Applicant has not in his affidavit evidence stated whether the aforesaid letter was received in his office nor explained why there was no reply to the same. However, it was the Respondent's duty to return to this court within the 14 days if indeed there was no co-operation by the Applicant. There is also no explanation why the sum of Ksh.200,000/= was deposited in court instead of the said money being paid to the Applicant. It is now the Respondent's obligation to apply for the release of the money deposited in court and comply with the court's orders herein.

11. The original suit was filed at the CM's court Thika and the appeal was subsequently filed before this court. The Employment and Labour Relations Court Act came into force on 30th August, 2011. During the transition period, it would serve the wider interest of justice to transfer the suit to the court with competent jurisdiction for determination on merits.

12. On whether this court has jurisdiction to transfer this case to the Employment and Labour Relations Court, this court is bound by the position taken by the Court of Appeal in the case of **David N Mugendi v Kenyatta University & 3 others [2013]eKLR** which was quoted in the case of **Ernest Kevin Luchidio v Attorney General & 2 others [2015] eKLR** which was relied on by the defence. The Court of Appeal stated as follows:

“.....in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant's petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”

13. The orders for the deposit of the money complained about were made by this court. As observed above, the Appellant has not complied with the same. Be as it may, I order that the Respondent do pay the sum of Ksh.200,000/= to the Applicant and the balance of Ksh. 300,000/= be deposited in a joint interest earning bank account in the names of the counsels for the parties herein within 30 days from the date hereof. Upon compliance with the orders herein, the file stands transferred to Employment and Labour Relations Court. If there is no compliance the application herein stands allowed. Costs of the application to the Applicant.

Dated, signed and delivered at Nairobi this 25th day of July, 2016

B. THURANIRA JADEN

JUDGE