



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISUMU

CIVIL APPEAL NO. 30 OF 2016

BETWEEN

AGA KHAN HOSPITAL.....APPELLANT

AND

HELLEN AKINYI OMONDI.....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. T. Obutu,

PM dated 20th January 2017 at the Chief Magistrates Court

at Kisumu in Civil Case No. 375 of 2014)

RULING

1. Hellen Akinyi Omondi, the respondent, filed suit against the Aga Khan Hospital seeking Kshs. 24,600/- as special damages, general damages for loss of pregnancy and post evacuation complications, exemplary damages for subjecting the plaintiff to unfair labour practices, interest and costs of the suit. The gravamen of her claim is that she lost her unborn child because the appellant breached its statutory duty by making her work notwithstanding her health condition. She also complained that appellant failed to carry out emergency evacuation in good time thereby subjecting her to danger of loss of life and post evacuation trauma.

2. The appellant denied the claim and alleged that the respondent was solely to blame for her misfortune for travelling back to work without first confirming from the doctor that it was safe to travel and failing to see the doctor after her ultra sound on the same date. The appellant also blamed the respondent for attending work in Busia when she knew that she was unwell and that she failed to inform the doctors that she had been involved in a motor cycle accident on 16th July 2013.

3. After hearing the matter, the trial magistrate found the appellant liable and in a judgment delivered on 29th April 2016, the appellant was ordered to pay the respondent Kshs. 700,000/- as general damages. In the judgment, the trial magistrate also stated that;

Throughout my Judgment I have refrained from making any comments regarding the claim on unfair labour practices between the parties. I take the position that the I have no jurisdiction to handle the same. Parties to forward the same to the Employment and Labour Relations Court for determination and/or further directions.

4. As I understand the pleadings, the respondent's claim is twofold; that she was subjected to unfair labour practices by the appellant and that the appellant was negligent in the manner it treated her causing the loss of her baby. Either way, the claim is based on her relationship between her and the appellant as her employer and in ascribing liability the court would have to find that the incident was caused either by the employer's action or the motorbike accident. To a certain extent the trial magistrate was correct to note that part of the claim was subject for determination before the Employment and Labour Relations Court ("ELRC") but did not address whether the claims were in fact severable.

5. The basic claim being one between an employer and employee means that the High Court lacks jurisdiction to entertain this appeal. Under **Article 169(2)** of the Constitution as read with **section 12(1)** of the **Employment and Labour Relations Act, 2011**, the ELRC has exclusive jurisdiction to hear appeals from court and tribunals on labour and employment disputes. The exclusivity of the jurisdiction of the ELRC vis-à-vis the High Court in relation to disputes between employer and employee was recently emphasised by the Supreme Court in **Republic vs Karisa Chengo & Others, Supreme Court Petition No. 5 of 2015 [2017]eKLR** where it held follows:

[52] From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either Environment and Land Court or Employment and Labour Relations Court is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the Environment and Land Court and Employment and Labour Relations Court, it should, by the same token, be inferred that the Environment and Land Court and Employment and Labour Relations Court too cannot hear matters reserved to the jurisdiction of the High Court.

6. From the foregoing, I decline jurisdiction to hear this appeal and transfer it to the Employment and Labour Relations Court at Kisumu for hearing and determination.

DATED and DELIVERED at KISUMU this 30th day of November 2017.

D.S. MAJANJA

JUDGE

Ms Asunah instructed by Staussi & Asunah Advocates for the appellant.

Mr Maganga instructed by L. G. Menezes & Company Advocates for the respondent.