



**Villa Care Management Limited v Kengen Retirements  
Benefits Scheme (Miscellaneous Application 260 of 2019)  
[2025] KEHC 6294 (KLR) (Commercial and Tax) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6294 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 260 OF 2019  
JWW MONG'ARE, J  
MAY 14, 2025**

**BETWEEN**

**VILLA CARE MANAGEMENT LIMITED ..... APPLICANT**

**AND**

**KENGEN RETIREMENTS BENEFITS SCHEME ..... RESPONDENT**

**RULING**

1. Before this Honourable Court is the Applicant's Notice of Preliminary Objection dated 14<sup>th</sup> October 2024 and it seeks the following orders:-
  1. That this Honourable Court lacks jurisdiction to hear and determine the Respondent's alien Chamber Summons Memorandum of Appeal dated 1<sup>st</sup> March 2024 as drawn and filed and there is no procedure known in law by which the High Court may be moved in such a manner;
  2. That an Order made by the Deputy Registrar of the High Court is an order of the High Court and therefore the decision of a Deputy Registrar is not available for appeal at the High Court as this Honourable Court lacks jurisdiction to hear appeals from itself;
  3. That the appeal herein filed by way of an alien Chamber Summons Memorandum of Appeal dated 1<sup>st</sup> March 2024 is misconceived, incompetent, bad in law and filed in abuse of Court process and this Honourable being without the requisite jurisdiction to determine it, be obliged to strike out the same with costs to the Applicant.
2. The Notice is opposed and both parties have filed written submissions upon the directions of this court which I have carefully considered. The Applicant has urged the Court to find that it lacks the requisite jurisdiction to determine the motion filed by the Respondent before this court in a document



titled “Chamber Summons (Memorandum of Appeal)” filed on 1<sup>st</sup> March 2024 pursuant to a decision rendered by the Deputy Registrar.

3. As held by the Court of Appeal in the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR a Court or a Tribunal is called upon at the earliest, to determine a question of jurisdiction where the same has been challenged and where it finds that it has none, then it must take no further action but down its tools. It is therefore important that this court determines the question of jurisdiction.
4. The Respondent in opposing the Preliminary Objection argue that the motion filed by it seeking to challenge the decision of the Deputy Registrar is properly before the court and its title “Chamber Summons (Memorandum of Appeal) cannot be a basis to find that the court is without jurisdiction for want of form. The Respondent has urged the court to ignore this challenge and abide by the tenets of Article 159 of the Constitution that Courts must endeavour to render justice “without due regard to procedural technicalities.”
5. I have looked at the Civil Procedure Act and the Rules. I note that the section 19 provides the mode by which suits are to be commenced. Section 19 of the Civil Procedure Act provides as follows “Institution of Suits 19. Institution of suits Every suit shall be instituted in such manner as may be prescribed by rules.” The rules on the form of an appeal are to be found at Order 42 Rule 1, which provides as follows “1. Form of appeal [Order 42, rule 1](1)Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.(2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively”. It is therefore clear in my mind that the mode in which the court is moved is not a mere technicality as it signals to the Court the intention of a party to obtain certain specific reliefs. The provisions put in the Civil Procedure Act are expected to serve a particular purpose, which is to bring clarity to both the Court and the opposing party(ies) what the party approaching the Court is seeking to achieve and also provide an opportunity to the person being sued to prepare themselves appropriately to respond. I agree with the argument put forward by the Applicant that the document filed by the Respondent and titled Chamber Summons (Memorandum of Appeal) sends mixed signal and is unknown in law. The Civil procedure Act and Rules envisions Chamber Summons as instruments filed by a party seeking an interlocutory relief within an ongoing court case but a memorandum of appeal is a process of initiating a substantive suit on its own, albeit at an appellate level.
6. Turning to the next question by the Applicant as to whether there is a right to appeal a decision of a Deputy Registrar before the High Court, I have looked at the submissions by the parties. I note the argument by the Respondent that the decision being appealed against having been one made by a Deputy Registrar is a decision from a court that is subordinate to the High Court and therefore the High Court has power to hear and determine the intended appeal. On the flipside, the Applicant argues that the Deputy Registrar in making a decision in a matter filed at the High Court exercises delegated authority and the decision therefore is a decision of the High Court and the only opportunity available to a party dissatisfied with such a decision is the one available under section 80 of the Civil Procedure Act and Order 45 of the Rules for an application for review by the Court.
7. The record before me indicates that this matter was filed in the High Court and the said suit was heard and determined by the High Court. The decision upon which the Appeal sought to be filed against is a post judgment decision that was rendered by the Deputy Registrar. Section 10 of the Judicature Act and Order 49 of the Civil Procedure Rules has empowered the Deputy Registrar to handle specific matters within the High Court. The Deputy Registrar’s role is a supporting role to the High Court and when they do sit, they do so to support the work of the High Court and not in their position



as magistrates in the subordinate courts. I therefore agree and I am bound by the Court of Appeal decision in the case of *Nyangweso vs Barasa & 2 others* (Civil Appeal No. E009 of 2020)(2023)eKLR where the Appellate court described the role of a Deputy Registrar as follows:-

“ a Deputy Registrar is an officer in the High Court, and the orders he makes, in that capacity, are not made in the capacity of a Magistrate, but as an officer of the High Court. The decision of a Deputy Registrar is not that of a magistrate’s court, for it is an order of the High Court. His decision, as Deputy Registrar is, therefore not available for appeal at the High Court. It is awkward, to have orders made in proceedings conducted at the High Court, being appealed against at the High court.

What should happen with respect to an order made by a Deputy registrar, where a party is aggrieved by it, is to apply to the Judge, in the cause where the order is made, for a review. Initiating a separate cause, at the High Court, on appeal against that order, is not available, for a judge of the High Court cannot sit on appeal on orders made at the High Court, by another judge or a Deputy Registrar. A decision by a Deputy Registrar, of the High Court, is not available for appeal at the High Court, nor at the Court of Appeal.”

8. I therefore agree with the Applicant that the intended appeal, even if it was found to be properly filed, which it is not, is not filed at the proper forum, and in line with the above finding by the Court of Appeal, the High Court lacks jurisdiction to hear and determine the same. I find therefore the Preliminary Objection is merited and I allow the same. The document filed by the Respondents and titled Chamber Summons (Memorandum of Appeal) is hereby struck out and costs of the Preliminary objection awarded to the Applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14<sup>TH</sup> DAY OF MAY 2025**

.....  
**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

1. Mr. Kariuki for Mr. Gachugi for the Applicant/Objector.
2. Ms. Mwangi Holding Brief Mr. Kiragu the Respondent.
3. Amos - Court Assistant

