



REPUBLIC OF KENYA



KENYA LAW
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**Simiyu v Younshen Developers Co. Limited (Civil Appeal E1124 of 2023)
[2025] KEHC 11277 (KLR) (Civ) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1124 OF 2023

JM NANG'EA, J

JULY 18, 2025

BETWEEN

EMMANUEL WEKESA SIMIYU APPELLANT

AND

YOUNSHEN DEVELOPERS CO. LIMITED RESPONDENT

(Being an appeal against the ruling and order of the Chief Magistrate's Court at Nairobi Milimani Commercial Courts (Hon. Wendy Micheni - CM) delivered on 13th October 2023 in CMCC NO. 5900 of 2017)

JUDGMENT

Grounds of Appeal

1. This Appeal challenges the said Honourable Magistrate's ruling dated 13th October 2023 by which the Respondent's Notice of Motion application dated 19th January 2023 seeking *inter alia* an order setting aside *ex-parte* judgement entered on 18th June 2018 and stay of execution of the ensuing decree was allowed. Aggrieved by that decision, the Appellant lodged this appeal on grounds that the court has condensed into two as hereunder:
 1. That the Learned Magistrate misdirected herself in fact and in law by holding that the application was merited and thus allowing it.
 2. That the Learned Magistrate erred in law and fact by failing to apply relevant legal principles in exercising her discretion .



Brief Background to the Appeal

2. The Appellant sued the Respondent in the lower court for *inter alia* general and special damages over alleged injury he sustained in the course of his employment with the Respondent. The Appellant attributed the injury to negligence by the Respondent, particulars of which are set out in the suit.
3. The Respondent is said to have failed to enter appearance and/or file defence within the period prescribed by the law. Hearing of the suit was subsequently conducted in the absence of the Respondent and judgement was entered against it in the sum of Kshs. 8, 782,474/= being general and special damages. The Appellant was further granted the costs of the suit.
4. After entry of the judgement, the Appellant applied to the Director of Occupational Safety & Health Services for compensation pursuant to the law. After assessment of his claim, he was compensated in the sum of Kshs. 1,945,732.80 paid out in two instalments. Thereafter the Appellant commenced execution of the lower court's judgement, which the Respondent laments to amount to unjust enrichment.
5. In allowing the application, the learned trial magistrate noted that although the Respondent did not exhibit triable issues in the form of a draft defence meriting hearing of the suit *inter-partes*, the court considered the fact that the Appellant has received compensation for his injuries through the above stated Public body . For that reason, the trial court allowed the application.

Guiding Principles

6. It is trite that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle vs. Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd vs. Oakdale Commodities Ltd* (1997) eKLR. The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In re-considering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time."

Brief Analysis and Determination

7. Learned Counsel for the parties filed written submissions on the Appeal. I will not, however, determine the appeal on merits for the reason that, *suo motu*, the court finds and holds that it is bereft of jurisdiction. Appeals from determination of civil suits between employers and employees like work injury claims filed in the lower courts are lodged before the Employment and Labour Relations Court which is a court with the status of this court by dint of Article 162 (2) of the *Constitution* of Kenya 2010. Pursuant to Article 162 (3) of the *Constitution* Parliament has enacted the *Employment & Labour Relations Act* that creates the said special Employment & Labour Relations Court which



has exclusive jurisdiction, including appellate jurisdiction, to determine disputes pitting employers and their employees. This constitutional and legal position was underscored by the Supreme Court in Petition No. 5 of 2015 *Republic vs Chengo & 3 Others* {2017} KESC 15 (KLR) (26 May 2017) (Judgement).

8. It is trite that once a court determines that it has no jurisdiction in a matter it will not take any further step in the matter (see case law in *Motor Vessel Lillian 'S' vs Caltex Oil Corporation*).
9. This court is therefore without jurisdiction to entertain the Appeal. It ought to have been preferred to the Employment and Labour Relations Court pursuant to the *Constitution* and the law.
10. In the result, this Appeal is struck out with costs to the Respondent.

JUDGEMENT DELIVERED VIRTUALLY THIS 18TH DAY OF JULY 2025

J. M. NANG'EA

JUDGE

In the presence of;

The Appellant's advocate, Mr Muthoka

The Respondent's advocate, Absent

The Court Assistant, Jeniffer

