



Njue v Ondieki (Civil Appeal E006 of 2022) [2024] KEHC 8267 (KLR) (5 July 2024) (Directions)

Neutral citation: [2024] KEHC 8267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E006 OF 2022**

RC RUTTO, J

JULY 5, 2024

BETWEEN

ALEXIUS STEPHENE NJUE APPELLANT

AND

JOSEPH ARISA ONDIEKI RESPONDENT

DIRECTIONS

1. This matter was placed before me on 3rd of June 2024 for mention to confirm compliance on filing of submissions. Counsel for the appellant was present in court and confirmed that all parties had filed their respective submissions and sought a date for judgment. Following this, the court directed that judgment will be delivered on the 5th July 2024.
2. Upon perusal of the record in preparation to write the judgment, I noted that the dispute before court was one where the plaintiff claimed being injured in the cause of his employment. Specifically, paragraph 3 of the plaint states that the plaintiff was an employee of the defendant as a supervisor while the defendant in his defence denies this assertion and puts the plaintiff to strict proof.
3. In addition, the trial court in its judgment set out the issue whether the plaintiff was engaged by the defendant or contractor during the construction. This issue was determined in favour of the claimant that he was engaged by the appellant.
4. In the appeal before this court the appellant forcefully challenges the assertion that the respondent was his employee whereas the respondent is emphatic that he was employed by the appellant.
5. Outrightly the first issue for determination would be the nature of relationship between the appellant and the respondent, whether it was an employer/employee relationship. This conundrum raises the question of jurisdiction of this court to determine this appeal in light of the provisions of Article 162(2) and 165(5)b of the *Constitution* as regard to the jurisdiction of courts of equal status to wit the Employment and Labour Relation Court (ELRC) and the High Court.



6. None of the parties has addressed the question of jurisdiction. It is trite law that jurisdiction is everything (see *Owners of Motor Vessel Lillian S*) and the court can raise it suo moto. As a consequence, therefore given the fundamental issue of the nature of relationship between the parties herein I find that there is need for parties to address this court on the question of jurisdiction.
7. The foregoing being the position I invite parties to make submissions on the question of whether this court has jurisdiction to hear and determine this instant appeal. I therefore defer judgment and give the following directions;
 - a. Parties have 7 days to file a maximum of 3 paged submission on the question of jurisdiction of this court to determine this matter.
 - b. Mention on 15th July 2024 to confirm compliance and further directions.
 - c. In the event parties fail file their respective submissions the court will proceed to determine the issue of jurisdiction.
8. Orders accordingly.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 5TH DAY OF JULY 2024

For Appellants: Mr. Kamunda

For Respondent: Ms. Wangu H/b For Chris Maina

Court Assistant: Peter Wabwire

