



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CIVIL APPEAL NO. 27 OF 2015

KENYA POWER AND LIGHTING COMPANY LTD.....APPELLANT

VERSUS

ESTHER WAMBUI NJANJA (Suing as the Legal Representative of the

Estate of Master Mutugi Kirimi Gichuki.....RESPONDENT

DIRECTIONS ON THE APPEAL

1. The Appellant, Kenya Power and Lighting and Company Limited was dissatisfied with the trial court’s judgment delivered in favour of the Respondent on the 8.7.2015.

A perusal of the pleadings and the judgment speak to the fact that the Respondent (deceased), was an employee of the Appellant and while in the course of his employment at his assigned place of work was electrocuted and died instantly.

2. As a result, the Respondent through his legal representative the Respondent filed the lower court suit (Principal Magistrate’s Court at Baricho, Civil Case No. 5 of 2014) seeking compensation against the Appellant for negligence under the Law Reform Act and the Fatal Accident’s Act.

The suit was heard and judgment delivered in favour of the Respondent on the 8.7.2015. This judgment is the subject of this Appeal.

3. From the onset, there is no doubt that the original claim arises from an employment and labour relationship.

The first Appellate Court that ought to hear and determine the appeal is the court with the requisite jurisdiction on Employment and Labour matters - **Motor Vessel “Lillian S” V. Caltex Oil (K) Ltd. (1989) KLRL**.

A court’s jurisdiction flows from the **Constitution Article 165 and Statute**. It cannot abrogate itself such jurisdiction.

4. The **Employment and Labour Relations Court Act, Chapter 234 B** established the Employment and Labour Relations Court in 2011 to deal with such matters, pursuant to **Article 162 (2) of the Constitution**. **Section 12** states the court’s jurisdiction, thus (a) **disputes relating to or arising out of employment between an employer and an employee, among others**.

Thus, the court with the requisite jurisdiction on appeal from a Magistrate’s Court is the Employment and Labour Relations Court, not the High Court.

5. To that extent then, I find and hold that this Appeal is not properly before the High Court and ought to be Re-directed to the court with jurisdiction, the Employment and Labour Relations Court at Nyeri.

An order of transfer of this Appeal to the above cited court is hereby issued by this court for necessary action. The Deputy Registrar of this court is directed to act on these orders.

Orders Accordingly.

Dated and Signed this.....day of.....2021

J. N. MULWA

JUDGE

DATED AND DELIVERED AT KERUGOYA ON THE 18TH DAY OF NOVEMBER 2021

R. M. MWONGO

JUDGE