



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISC CIVIL APPL NO. 170 OF 2018

APEX STEEL LIMITED.....APPELLANT

VERSUS

ALEXANDER MABIRIA MOGUCHE.....RESPONDENT

RULING

1. This an application seeking leave to appeal from the judgement of Hon C.C. Oluoch delivered on the 28.3.2018 in PMCC No 198 of 2017 at Mavoko.
2. The appeal was canvassed vide submissions. However in light of my reasoning below, I deemed it unnecessary to consider them.
3. Having looked at the draft memorandum of appeal and the submissions in respect of the application, I deemed it necessary to examine the issue of jurisdiction. Hence the issue for determination is whether the court has jurisdiction to determine the application and the appeal.
4. According to the draft memorandum of appeal, it is clear that the appeal is in respect of a dispute relating to a work injury claim. There have been considerable developments with regard to the law that governs such disputes that shall guide me in this ruling.
5. The guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine the suit, then the suit would be deemed a nullity as per the decision of Nyarangi J A in the case of **OWNERS OF MOTOR VESSEL "LILIAN S" v CALTEX OIL (K) LTD [1989] KLR 1** that:-

“Jurisdiction is everything without which a court of law has no power to make one more step where a court of law has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction.”

6. The Employment & Labour Relations Court Act No. 20 of 2011 provides as here below under Section 12 (1):

12. Jurisdiction of the court

(1) the court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to in accordance with Article 162(2) of the constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:-

- (a) disputes relating to or arising out of employment between an employer and an employee;***
- (b) disputes between an employer and a trade union;***
- (c) disputes between an employers' organization and a trade union's organization;***
- (d) disputes between trade unions;***
- (e) disputes between employer organizations;***
- (f) disputes between an employers' organization and a trade union;***

- (g) disputes between a trade union and a member thereof;*
- (h) disputes between an employer's organization or a federation and a member thereof;*
- (i) disputes concerning the registration and election of trade union officials; and*
- (j) disputes relating to the registration and enforcement of collective agreements.*

7. The Employment Act No. 11 of 2007 at Section 87 provides as follows: -

87. Complaint and jurisdiction in cases of dispute between employers and employees

(1) Subject to the provisions of this Act whenever –

- (a) an employer or employee neglects or refuses to fulfill a contract of service; or**
- (b) any question, difference or dispute arises as to the rights or liabilities of either party; or**
- (c) touching any misconduct, neglect or ill-treatment of either party or any injury to the person or property of either party, under any contract of service, the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Industrial Court.**

(2) No court other than the Industrial court shall determine any complaint or suit referred to in subsection (1).

(3) This section shall not apply in a suit where the dispute over a contract of service or any other matter referred to in subsection (1) is similar or secondary to the main issue in dispute.

8. The consequence thereof is that appeals in relation to work injuries are handled by the Employment and Labour Relations Court and it is patently clear from the interpretations of this case that I find that this court had no jurisdiction to entertain the appeal in the first place.

9. In the result this matter is ordered transferred to the **Employment and Labour Relations Court** for hearing and determination.

It is so ordered.

Dated and delivered at **Machakos** this 5th day of **May,2020**.

D. K. Kemei

Judge