

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL CASE NO. 74 OF 2014

MENENGAI OIL REFINERIES LTD.....APPELLANT

VERSUS

MICHAEL WAKOBA WAMALWA.....RESPONDENT

(Being an appeal from the judgment of the Resident Magistrate Honourable M. Otindo in Nakuru CMCC NO. 286 of 2013 delivered on the 27th May, 2014)

DIRECTIONS.

This appeal arose from the judgment of the trial court in Nakuru CMCC NO. 286 OF 2013 delivered on the 27/5/2014.

The appellant was aggrieved by the said judgment in that it was found to have been 80% liable in negligence and awarded general damages to the respondent in the sum of ksh. 300,000/= and special damages of ksh. 5000/=, less contributory negligence, leaving a sum of kshs. 245,000/=to the respondent.

I have considered the pleadings in the trial court case. Without a doubt, the parties' relationship at the material times was one of employer-employee arising from a contract of employment between the parties.

In the circumstances, the matter does not lie with the High Court in either its original or appellate jurisdiction.

Article 162 (2) of the Constitution creates the Employment & Labour relations court, to hear and determine disputes relating to (a) employment and labour relations.

Section 12 of the Employment and Labour Relations Court Act, 2011 gives exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with **Article 162 (2) of the Constitution**, including disputes relating to or arising out of employment between an employer and the employee. Having found that the dispute in this appeal arises out of such relationship, I find it a fit case for transfer to the ELR court for hearing and determination of the appeal. It is so transferred. Upon a new appeal number being allocated to the appeal, the parties shall mention the matter before the judge for further directions on the progression of the appeal

It is so ordered and direct

Delivered, Signed and Dated electronically at Nairobi this 20th day of MAY 2020.

J.N. MULWA

HIGH COURT JUDGE.