



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL APPEAL NO. 160 OF 2016**

**PERFECT SCAN LIMITED..... APPELLANT**

**VERSUS**

**HARRISON KAHINDI SAID..... RESPONDENT**

*(Being an appeal from the whole Judgment of the Honourable H. Nyakweba (SPM) delivered on 18.10.2016 in SRMCC No. 1873 of 2015)*

**RULING**

1. This is an appeal from the Judgment of the Honorable **A.W. Mwangi** delivered on 29.9.2010 in SRMCC No. 1873 of 2015 at Mombasa.
2. When the appeal was to be canvassed by way of highlighting written submissions on the 3.10. 2019, the court had a chance to peruse the trial court record and the Memorandum of Appeal which revealed that the dispute before the trial court was a work injury claim and directed the counsel to address the court on the issue of jurisdiction. Consequently, the issue for determination in this ruling is whether this court has jurisdiction to determine the appeal.
3. According to the pleadings filed and Record of appeal, it is clear that the appeal is in respect of a dispute relating to a work injury claim as set out at paragraph 3 & 5 of the Plaint dated 25.9.2015.

**Analysis and determination**

4. Jurisdiction is everything and whether this court has or lacks jurisdiction to entertain the matter is a matter of the law that must be dealt with before all else. In **Owners of the Motor Vessel "Lilian S" vs. Caltex Oil (Kenya) Limited [1989] KLR 1**, Nyarangi, JA expressed himself as follows:

***"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."***

5. The starting point must however be the constitutional provision at Articles 162(2) & 165(5) which I consider to oust the jurisdiction of the High Court from entertaining disputes reserved for the **Employment and Labour Relations Court**
6. Under Article 162(2) of the Constitution as read with section 12(1) of the Employment and Labour Relations Act, 2011, the ELRC has exclusive jurisdiction to hear appeals from court and tribunals on Labour and employment disputes. The issue of jurisdiction of the ELRC vis-à-vis the High Court in relation to disputes between employer and employee was dealt with by the Supreme Court in ***Republic vs Karisa Chengo & Others, Supreme Court Petition No. 5 of 2015 [2017]eKLR*** where it held as follows:

***"[52] From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either Environment and Land Court or Employment and Labour Relations Court is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the Environment and Land Court and Employment and Labour Relations Court, it should, by the same token, be inferred that the Environment and Land Court and Employment and Labour Relations Court too cannot hear matters reserved to the jurisdiction of the High Court."***

7. From the foregoing, this court has no hesitation that work injury claim is an employment underpinned matter and is a reserve of the exclusive jurisdiction of the Employment and Labour Relations Court and not the high court. It is a reserve for that court because the entire claim was grounded upon alleged breach of contract leading to the injury pleaded. Accordingly, I decline jurisdiction to hear this Appeal and therefore order that the same be transferred to the Employment and Labour Relations Court, Mombasa, for hearing and determination.
8. Costs shall abide the outcome of the appeal because the issue was raised at the instance of the court and both parties took the common stand that the court is vested with jurisdiction.

**Dated and delivered at Mombasa this 8<sup>TH</sup> day of May, 2020.**

**P.J.O. OTIENO**

**JUDGE**