



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIVASHA**

**(CORAM: R.MWONGO, J)**

**HIGH COURT CIVIL APPEAL NO 25 OF 2018.**

**AFRICAN HYDROPONICS LIMITED.....APPELLANT**

**VERSUS**

**VIRGINIA WAIRIMU NGUA (Suing as Legal Representative of the Estate of**

**AUGUSTINE MWIHIA KIMANI).....RESPONDENT**

**RULING & DIRECTIONS**

Having heard the submissions of parties and after carefully perusing the pleadings, upon reflection, it is clear to me that I am not in a position to write a judgement on the substantive merits of this matter, for the following reasons and observations:

1. The plaint in the lower court concerns employer employee relations highlighted as follows:

Para 4 plaint: *“Defendant had employed the deceased... to foresee the construction of greenhouses”*

Para 5: The terms of his obligations were *“stipulated under the contract of employment”*

Para 6: Relates to *“express and implied terms of the contract of employment...that the defendant will take...precaution toward safety of its employees”*

Para 7: It was a *“term of the contract that the defendant will pay the deceased based on the amount of work done”*

Para 10: While working with other employees the deceased started constructing the green houses

Para 11: [Deceased] *“slid on the slippery muddy floor of the greenhouse [and on] electric wire thereby electrocuting him”*

Para 13: The accident was due to *“negligence and/or breach of statutory duty of care or breach of contract...”*

2. The “Particulars of Breach” in Paragraphs 13 (a) – (e) of plaint concern:

- a) Working in a hazardous environment.
- b) Work in a risky working environment.
- c) Failure to provide protective gear.
- d) Failure to provide relevant working tools.

3. Equally, the issues for determination identified by the parties in the lower court were as follows:

- a) Issues for determination by plaintiff:

1. Whether Plaintiff was employed by Defendant and what were the terms of employment.
2. Whether deceased was entitled to safe working environment.
3. Whether the death was caused by negligence or breach of statutory duty of care of defendant or his agents.
4. Whether loss/damage suffered was as a result of electrocution.

b) Issues by defendant:

1. Whether deceased was an employee or an independent contractor.
2. Whether defendant owed a statutory duty of care.

4. All these issues point to the fact that the parties' understanding was that the suit involved essentially employment and labour relations issues. None of the issues are within the preview of the mandate or function of the High Court.

5. Parliament, pursuant to **Article 162 (2) (a)** of the **Constitution** 2010 established a court, the Employment and Labour Relations Court, to hear and determine disputes relating to employment relations.

6. **Article 165(5)** of the **Constitution** 2010:, makes specific provision divesting the High Court of jurisdiction in employment matters as follows:

*“The High court shall not have jurisdiction in respect of matters-*

*(a).....*

*(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”*

7. Thus, I do not believe this court is lawfully and properly seized of this matter. It has no jurisdiction to make an appellate determination in respect of matters such as this that wholly and substantively relate to employer employee relations.

8. Accordingly I **direct** as follows:

a) This file HCCA No 25 of 2018 together with the lower court file CMCC No 148 of 2015 shall be placed before the Presiding Judge Employment & Labour Relations Court (ELRC), Nakuru, for consideration and directions on the appeal.

b) The DR, Naivasha, shall confirm to the parties in writing when the files shall have been forwarded to Nakuru ELRC.

c) A mention in Nakuru ELRC shall be on 7<sup>th</sup> July 2020, or such other date as may be notified to the parties in writing by the Nakuru ELRC.

#### **Administrative directions**

9. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Zoom video/tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Deputy Registrar/Executive Officer, Naivasha.

10. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

11. Orders accordingly.

**Dated and Delivered via video-conference at Nairobi this 4<sup>th</sup> Day of June, 2020**

**RICHARD MWONGO**

**JUDGE**

Delivered by video-conference in the presence of:

1. Mr Kaumbi for the Appellant
2. Mr Musungu for the Defendant

### 3. Court Clerk - Quinter Ogutu