



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 70 OF 2018

BILAUM YATOLI.....APPELLANT

VERSUS

MUMIAS SUGAR COMPANY LIMITED.....RESPONDENT

(An appeal arising from the decision of Hon. F Makoyo, SRM, in Butere SPMCCC No. 171 of 2014)

RULING

1. The Constitution 2010, at Article 162(2), establishes a special court to handle disputes that revolve around the employment and labour relations. Article 165(5) of the same Constitution strips the High Court of jurisdiction over such matters.

2. For avoidance of doubt, Article 162(2) states as follows: –

‘Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –

(a) employment and labour relations...

(b) ...’

3. On the other hand, Article 165(5) of the Constitution states as follows: -

‘The High Court shall not have jurisdiction in respect of matters-

(a) falling within the jurisdiction of the courts contemplated in Article 162(2).’

4. In obedience to Article 162(2) of the Constitution, Parliament did, through the Employment and Labour Relations Court Act, No. 20 of 2011, establish such a court, known as the Employment and Labour Relations Court. The jurisdiction of the Employment and Labour Relations Court is set out in section 12 of the Employment and Labour Relations Court Act. The said court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to employment and labour relations.

5. For avoidance of doubt the provisions of section 12 relevant to the dispute at hand read as follows:

“(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it 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) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer ...

(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders –

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) An award of damages in any circumstances contemplated under this Act or any written law;

(vii) ...

(viii) ...”

6. In the plaint filed at the trial court, it was averred that the parties to the dispute were in an employee-employer relationship, and the cause of action accrued within the context of the said relationship. It was further alleged that the accident the subject of the dispute was occasioned by breach of the duty that the respondent owed the applicant under statute or as a consequence of breach of the terms of the employment contract between them. A witness statement filed at the trial court by the respondent conceded that employer-employee relationship and the respondent presented a witness at the trial who stated that the appellant worked under his supervision. In the end, in its judgment, the trial court found that it was common ground that the employer-employee relationship existed and proceeded to award damages. The appeal turns on that assessment of damages.

7. The dispute herein is squarely located within employment and labour relations. The High Court no longer has jurisdiction over matters revolving around employment and labour relations. That jurisdiction lies with the Employment and Labour Relations Court. I shall accordingly order that the appeal herein be transferred to the Employment and Labour Relations Court at Kisumu for disposal. It is so ordered.

DATED, SIGNED and DELIVERED at KAKAMEGA this 8th DAY OF November, 2019

W. MUSYOKA

JUDGE