REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL APPEAL NO.41 OF 2016

OGEMBO TEA FACTORY CO. LTD.....APPELLANT

VERSUS

JOHN MOSERA OBIERO.....RESPONDENT

RULING

1. I have considered the pleadings in the respondent's suit in the lower court CMCC No. 48 of 2010. The respondent at paragraph 3 of his plaint avers that he was employed by the defendant/appellant as a general worker. He avers that it was a term of the said contract of employment and or it was the duty of the defendant to take all reasonable precautions for the safety of the plaintiff while he was engaged upon his work not to expose the plaintiff to risk of injury which the defendant knew or ought to have known to provide and maintain adequate and suitable measures for the safety of the plaintiff and to provide and maintain a safe system of work. The claim is over the contract the respondent had with the appellant and injuries sustained whilst in the said employment. In my view this court (High Court) lacks the jurisdiction to determine the issues raised on the duty of care of the employer and alleged injuries whilst within the employment of the appellant.

2. Under **Article 169(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.*

This court therefore lacks the jurisdiction to determine this appeal. I set aside my proceedings dated the 4th July 2018 and transfer the matter to the Employment and Labour Relations Court at Kisumu for hearing and determination.

Dated signed and delivered this 7th day of November 2018

R.E.OUGO

JUDGE

In the presence of;

Appellant **Absent**

Mr. Kimaiyo h/b Mr. Omwoyo **For the Respondent**

Mr. Omwoyo **Court/clerk**