REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 15 OF 2014

WEST KENYA SUGAR COMPANY LIMITED.....APPELLANT

VERSUS

GODFREY MUKHANGAI SHADRACK.....RESPONDENT

(A*n appeal arising from the judgment and decree of the Hon. ML Nabibya, Senior Resident Magistrate, in Butali SRMCCC No. 58 of 2011 of 13th February 2014)*

RULING

1. The Constitution 2010, at Article 162(2), establishes a special court to handle disputes that revolve around industrial 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; and*
>
> *(b) the environment and the use and occupation of, and title to, land.'*

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) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or*
>
> *(b) 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 17 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, which includes disputes relating to or arising out of employment between an employer and an employee.

5. The pleadings lodged at the lower court disclose that the parties hereto were in an employer and employee relationship at the time material to the dispute at hand. The cause of action is said to have arisen in the course of the said employment. It is alleged in the plaint that the accident the subject of the suit arose on account of a breach of the contract of employment between the two parties or by reason of breach of a statutory duty of care by the employer or a breach of some common law rule governing relations between an employer and an employee. The suit therefore turns on matters that relate to industrial or employment or labour relations.

6. In view of everything said so far, it follows that I, sitting as Judge of the High Court, have no jurisdiction to deal with the appeal placed before me. The dispute in question falls squarely within the mandate of the Employment and Labour Relations Court. I shall accordingly direct that the matter be transferred to the Employment and Labour Relations Court sitting at Kisumu for further directions.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER, 2018

W. MUSYOKA

JUDGE