



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL APPEAL NO. 173 OF 2013**

**SHAYONA TIMBER LTD..... APPELLANT**

**VERSUS**

**WYCLIFFE AVUKUSI MASAMBU.....RESPONDENT**

*(Being an appeal from the Chief Magistrate's Court at Nakuru the Honourable J.R.Aganyo Resident Magistrate) delivered on 6<sup>th</sup> September, 2013 in Nakuru CMCC No. 1303 of 2010)*

**RULING/DIRECTIONS**

1. The appeal hereof arose from the judgment of the trial court delivered on the 6<sup>th</sup> September 2013 in **Nakuru CMCC NO. 1303 of 2010.**

I have considered the cause of action as stated in the plaint dated the 13<sup>th</sup> November 2010.

The plaintiff now the Respondent alleges to have been an employee of the appellant and while performing duties as assigned was injured.

He blamed the appellant for the injuries and sought compensation in terms of general and special damages for breach of contract of employment and negligence.

2. From the above short background, it is evident that the cause of action relates to employer-employee dispute.

3. **Article 162(2) (a) of the Constitution of Kenya 2010** established a special court to determine all disputes arising from employment and Industrial disputes in furtherance and securing good employment and labour relations in Kenya. This is the Employment and Labour Relations Court. The said court has original and appellate jurisdiction over the said disputes arising from decisions of the Registrar of Trade Unions and any other court local tribunal or commission as prescribed under any written law.

**Section 12 of the Employment and Labour Relations Court Act** states the jurisdiction of the court.

4. It is therefore evident that this appeal ought to be heard and determined in the Employment and Labour Relations Court under its appellate jurisdiction. The High Court has no jurisdiction and once it released that fact, it is obligated to down its tools as anything done by a court without the necessary jurisdiction is nullity.

5. That realization came to me when I was preparing to determine the appeal after parties had taken directions and filed that respective written submissions on the appeal after the parties had taken directions and filed their respective written submissions on the appeal.

I shall therefore transfer the appeal for determination to the Employment and Labour Relations Court.

Parties are directed to mention the appeal before the Honourable Judge of the Employment and Labour Relations Court to take fresh directions on the appeal, parties having their submissions as to

whether to adopt their said submissions or to file fresh submission, or as the court may determine.

6. The appeal is hereby transferred to the Employment and Labour Relations Court (ELRC) for further directions as stated above.

**Date, Signed and Delivered this 11<sup>th</sup> Day of May 2017**

**J.N. MULWA**

**JUDGE**