



IN THE COURT OF APPEAL

AT KISUMU

[CORAM: KIAGE, SICHALE & KANTAL, JJ.]

CRIMINAL APPEAL NO. 23 OF 2016

BETWEEN

INEA MUGWANGA alias BODO....APPELLANT

AND

REPUBLIC..... RESPONDENT

(An appeal from the Judgment of the High Court of Kenya at Kakamega (Chitembwe & Wasilwa, JJ) dated 11th December, 2013 in **HCCRA NO. 12 OF 2013**)

JUDGMENT OF THE COURT

The central issue in this appeal is whether **Chitembwe & Wasilwa, JJ.** were properly seised of the appellant's first appeal at the High Court.

On **25th November, 2020** when this appeal came up for hearing via video link, learned counsel **Mr. Ogotu** holding brief for **Mr. Odumbe** for the appellant relied on the appellant's written submissions dated **9th September, 2020**. However, in his oral submissions before us, he urged us to remit the matter to the High Court for rehearing, an issue not raised in the Memorandum of Appeal and /or in the appellant's written submissions, on the basis that **Wasilwa, J** is a Judge of the Employment and Labour Relations Court (ELRC) and hence was not suited to hear the appeal.

Mr. Kakoi, the learned State Counsel for the respondent was of a similar view.

The issue of whether a Judge of Employment & Labour Relations Court (ELRC) or Environment and Land Court (ELC) has jurisdiction to hear and determine a criminal appeal was settled in the Supreme Court decision of **Republic vs. Karisa Chengo & Another, Petition No. 5 of 2015** where it stated:

“[79] It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of the Constitution, which prohibits the High Court from exercising jurisdiction in respect of matters “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)”.

[80] In this case, it therefore also follows that Angote, J., appointed as a Judge of the Environment and Land Court, and not of the High Court, had no jurisdiction to determine criminal appeals. Consequently, we concur with the Court of Appeal that Gazette Notice No. 13601 of 4th October, 2013, by which the former Chief Justice empanelled him to sit and determine the criminal appeals in question, was unlawful and unconstitutional.

(c) Fair Trial and Fundamental Rights (Legal Representation)”

This Court in **Benjamin Kemboi Kipkore vs. Republic [2018]** whilst applying the above jurisprudence held as follows:

“Pursuant to the Judgment of the Supreme Court in the Karisa Chengo case, the court which heard and determined the appeal in the High Court that gave rise to the decision subject of the appeal now before us was not competent. And thus the proceedings and the judgment under appeal were a nullity”.

In line with the above position, the 1st appellate court as constituted did not have the requisite jurisdiction to entertain the appeal as **Wasilwa, J** was a Judge of the ELRC. The proceedings therein were a nullity and we declare them as much.

Accordingly, we allow the appeal and order that it be remitted to the High court sitting in Kakamega for hearing of the appeal *de novo* by Judges of the Court other than **Chitembwe, J**. The matter shall be mentioned before the Resident Judge at Kakamega within fourteen (14) days hereof with a view to directions being given for its expedite re-hearing.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

P.O. KIAGE

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR