



**Madison Insurance Co Ltd v Mwanzia & another (Appeal
5 of 2021) [2023] KEELRC 1092 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1092 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL 5 OF 2021**

**AK NZEI, J
APRIL 20, 2023**

BETWEEN

MADISON INSURANCE CO LTD APPELLANT

AND

MULI MWANZIA 1ST RESPONDENT

2. KENYA TEA DEVELOPMENT AGENCY LTD 2ND RESPONDENT

*(Being an Appeal against the whole of the judgment of
the R.M Kitagwa (RM) Court delivered on 23/10/2015)*

RULING

1. I am, in the appeal herein, faced with a novel situation. I say novel situation because vide its Judgment delivered on May 4, 2021 in its Civil Appeal No. 164 of 2015, the High Court sitting at Mombasa (D.O. Chepkwonyi J,) “transferred to this court the said appeal for further directions.” The High Court rendered itself as follows:

“

- “8. It is trite that Jurisdiction is everything and the same can be raised at any time even on appeal as was stated by the Court of Appeal in the case of *Kenya Ports Authority v Modern Holdings [EA] Limited* [2017] eKLR:-

“we have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised ... at any time, in any manner, even for the first time on appeal, or even viva-voce and indeed, even by the court itself; provided only that where the court raised it suo moto, parties are to be accorded opportunity to be heard.”



9. In view of the above, I find that this court has no Jurisdiction to determine the appeal herein and direct that it be transferred to the Employment and Labour Relations Court for further directions.

It is so ordered.”

2. None of the parties herein appears to have either appealed against the said Judgment or even considered moving the High Court for review of its said Judgment. The apparently determined appeal is now before me for Judgment writing. Can there be a Judgment upon a Judgment, on the same matter, by courts of equal status” Nay. This court can only deliver a Ruling stating its position on the appeal.
3. The appeal, shown to have been filed in the High Court vide a Memorandum of Appeal dated November 6, 2015 and filed in the High Court at Mombasa was void on arrival, the same having been an appeal against the Subordinate Court’s Judgement arising from a work injury claim. The appeal was a nullity at its inception and the High Court’s order of transfer, regardless of the stage at which it was made, could not validate or resuscitate it. There is no valid appeal before me, and there is nothing for this court to give directions on. I decline Jurisdiction over the appeal. It was stated as follows in *Macfoy v United Africa Co Ltd* [1961] 3 ALL ER 1169:-

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there, it will collapse ...”

4. The Court of Appeal held as follows in *Phoenix of EA Assurance Company Limited v S M Thiga t/a Newspaper Services* [2019] eKLR:-

“... Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of Jurisdiction. A suit filed devoid of Jurisdiction is dead on arrival and, cannot be remedied. Without Jurisdiction, the court cannot confer Jurisdiction to itself. The Subordinate Court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary Jurisdiction.”

5. In *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tours Travel* [2016] eKLR, the Court of Appeal stated:-

“In numerous decided cases, courts, including this court, have held that it would be illegal for the High Court, in exercise of its powers under S. 18 of the Civil Procedure Act, to transfer a suit filed in a court lacking Jurisdiction to a court with Jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent suit would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent, confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks, parties cannot even seek refuge under the O2 Principle or the overriding objective under the Civil Procedure Act or even article 159 of the Constitution to remedy



the same ... In the same way, a court of law should not, through what can be termed Judicial Craftsmanship, sanctify an otherwise incompetent suit through transfer.”

6. In view of all the foregoing, this court must down its tools; thus putting the life of the appeal file herein to a close; with no orders as to costs.
7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 20TH APRIL 2023

AGNES KITIKU NZEI

JUDGE

Order

This judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....for Appellant

.....for Respondent

