REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CIVIL APPEAL NO E030 OF 2020

LADHANI DEVELOPERS LIMITED.....APPELLANT

VERSUS

DAUGLOUS OMWOYO MATAI.....RESPONDENT

(Appeal from the ruling of Hon. A.M Obura, SPM delivered on 26th June 2012

in Nairobi CMCC No 791 of 2017)

JUDGMENT

1. This appeal proceeds from the ruling of **Hon. A.M Obura, SPM** delivered on 26thJune 2012, in *Nairobi CMCC No 791 of 2017*.

2. The subject of the ruling by the learned Magistrate was the Appellant's preliminary objection, challenging the jurisdiction of the trial court to entertain the Respondent's claim.

3. In its notice of preliminary objection dated 2nd March 2020, the Appellant raised a single ground:

> *"THAT the Honourable Court lacks the jurisdiction to hear and determine the instant suit pursuant to the Supreme Court decision in* ***Petition No. 4 of 2019 Law Society of Kenya v The Attorney General & Another****"*

4. In her ruling dated 26th June 2020, the learned trial Magistrate stated thus:

> ***"Presently, there are no practice directions on referral of the pending WIBA disputes before Court to the Director of occupational, Health and Safety Services (sic). Moreover, this suit was filed before the Supreme Court decision hence the Plaintiff has a legitimate expectation of having this dispute heard and concluded before this Court.***
>
> ***In the Premises, I find that the matter is properly before the Court having been filed long before the Supreme Court decision. The preliminary objection is therefore unmerited."***

5. In its Memorandum of Appeal dated 22nd July 2020, the Appellant raises the following grounds of appeal:

> a) That the learned Magistrate erred in law and fact by misconstruing the findings of the Supreme Court in *Petition No 4 of 2019* on the scope and applicability of legitimate expectation with respect to the Respondent's claim;
>
> b) That the learned Magistrate erred in law and fact in failing to appreciate and consider the Appellant's judicial authorities emphasising the importance of jurisdiction prior to hearing a suit;

6. The appeal arises from the interpretation by the learned trial Magistrate of paragraph 85 in the judgment of the Supreme Court in ***Law Society of Kenya v Attorney General & another [2019] eKLR***. This judgment affirmed the earlier decision of the Court of Appeal in ***Attorney General v Law Society of Kenya & another [2017] eKLR***.

7. The said paragraph 85 states the following:

> ***"In agreeing with the Court of Appeal, we note that it is not in dispute that prior to the enactment of the Act, litigation relating to work-injuries had gone on and a number of suits had progressed up to decree stage, some of which were still being heard; while others were still at the preliminary stage. All such matters were being dealt with under the then existing and completely different regimes of law. We thus agree with the Appellate Court that claimants in those pending cases have legitimate expectation that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked. However, were it not for such legitimate expectation, WIBA, not being unconstitutional and an even more progressive statute as we have shown above, we opine that it is best that all matters are finalised under Section 52 aforesaid."***

8. It is a general principle of law that a legal system ought to be coherent and consistent; this is the essence of the doctrine of *stare decisis* which dictates that decisions of a higher court have binding force on courts below. Another legal principle of general application is that judgments by courts ought to speak for themselves and it is not open for a lower court to read into a decision of a higher court. To my mind, this ought to be the approach in interpreting the decision of the Supreme Court in ***Law Society of Kenya v Attorney General & another*** (supra).

9. In her ruling, the learned trial Magistrate suggests that all work injury matters pending before the courts, as at the time the judgment of the Supreme Court was rendered, were saved under the principle of legitimate expectation. I find nothing in the said judgment to support this proposition. On the contrary, only work injury claims arising before enactment of WIBA were saved; the corollary being that claims arising after enactment of WIBA in 2007, are to be processed within the procedure set out in the Act and the original jurisdiction of the courts is, to that extent, ousted.

10. As held by the Court of Appeal in ***Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited [1989] eKLR*** jurisdiction is the authority by which a court decides matters that are litigated before it and without it the court has no basis to make any move, other than to down its tools. This is what the learned trial Magistrate should have done.

11. Pursuant to the foregoing, this Court finds that in overruling the Appellant's preliminary objection, the learned trial Magistrate fell into error by assuming jurisdiction expressly ousted by statute.

12. This appeal therefore succeeds, with the result that the order by the trial Magistrate overruling the Appellant's preliminary objection is set aside and is replaced with an order transferring the Respondent's claim to the Director of Occupational Safety and Health Services.

13. Each party will bear their own costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF APRIL 2022

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JUDGE

Appearance:

Ms. Obwori for the Appellant

Ms. Owino for the Respondent