



**Singh & another v Diето (Employment and Labour Relations Appeal
9 of 2022) [2022] KEELRC 1632 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1632 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS APPEAL 9 OF 2022**

**JW KELI, J
MAY 26, 2022**

BETWEEN

SURJIT SINGH 1ST APPLICANT

MALKIT SINGH 2ND APPLICANT

AND

SIMON OCHIENG DIETO RESPONDENT

RULING

1. The Ruling is on the Notice of Motion Application by applicant/appellant dated April 6, 2022 seeking the following orders:-
 - a. The motion be certified as extremely urgent and be heard *ex parte* in the first instance to avoid hardship to the Applicants.
 - b. A stay of proceedings be issued staying Bungoma CMCC NO. 194 of 2018 Simon Ochieng Diето -vs- Surjit Singh & Malkit Singh till this motion is heard and determined.
 - c. A stay of proceedings be issued staying Bungoma Cc No. 194 of 2018 Simon Ochieng Diето -vs Surjit Singh & Malkit Singh pending hearing and determination of this appeal.
 - d. Vacation Practice Rules be applied due to the urgency of the matter.
 - e. Costs of this motion be granted.
2. The Application is grounded on supporting affidavit of Surjit Singh and the following grounds:-
 - a. The applicants raised a preliminary objection the court's jurisdiction in Bungoma CMCC NO. 194 of 2018 Simon Ochieng Diето -vs- Surjit Singh & Malkit Singh.
 - b. The trial court rendered a ruling saying it had no Jurisdiction.



- c. The trial court again at one occasion rendered a second ruling stating that it had jurisdiction something that offends the doctrine of functions officio as two rulings have been delivered by the same court on same issue.
 - d. The applicant filed Appeal and despite being informed of the appeal the trial court proceeded and is about to render judgment.
3. The applicants state it is in the interest of justice for this application to be allowed. That the intended appeal will be rendered nugatory if application is not allowed. That the Applicants will suffer irreparable harm, injury and injustice if they are condemned unheard.
 4. The Application is opposed. The Respondent filed grounds of opposition dated May 2, 2022 against the application on grounds that, the application is frivolous, vexatious and abuse of the process of court, the Appeal has nil chances of success due to the fact that the Magistrate's court has jurisdiction to try and determine the suit, the application is filed inordinately too late, litigation has to come to an end, the Appellants have approached the court with unclean hands.
 5. On the April 22, 2022 the court granted prayer No. 2 Prayers No. s 1 and 4 are spent.
 6. The court directed that the Application be canvassed by way of written submissions. The applicants as at time of writing this ruling or issuing ruling date had not filed submissions on their application. The respondent filed in court their submissions to the Application on the May 6, 2022.
 7. On the April 4, 2022, the court received order of transfer of the Appeal from the High court to this court. The court still notes error in address of court as Environment and Labour Relations court but finds that is a procedural technicality curable under article 159(2) (d) that Justice shall be administered without regard to procedural technicalities.
 8. The applicant has not annexed the impugned decisions of the trial court. It is thus not possible to determine at this stage if the appeal is likely to succeed. The respondent submits the appeal nil chances of success since the Hon. Magistrate at that court has jurisdiction to entertain the suit. The court finds that it has to consider the impugned decisions of the court and determine two findings.
 - a. Whether the Magistrate's court issued two contradictory decisions on the question of jurisdiction and,
 - b. Whether the Magistrate's court has jurisdiction on the claim.
 9. The Court granted orders in the first instance staying the lower court proceedings pending this ruling. The court finds that on the basis of the alleged 2 contradictory decisions on the question of jurisdiction there is merit in the application. The submissions by the Respondent are relevant to the merit of appeal. The court is not in a position to decide on the likelihood of success of the appeal as neither party has produced the impugned decisions of the trial court.
 10. The court finds and determines it is in the interest of justice, that an appeal having been received at the superior court on January 12, 2022 the trial court should have downed tools and await outcome of the appeal. In stating so the court is mindful of the interest of the Claimant to get timely justice consistent with the natural justice principle that justice delayed is justice denied.
 11. The Notice of motion dated April 6, 2022 is allowed in the following terms:-



- a. A stay of proceedings be issued staying **Bungoma CMCC NO. 194 of 2018 Simon Ochieng Dieto -vs- Surjit Singh & Malkit Singh** pending hearing and determination of the intended Appeal.
- b. The Applicants to file their record of Appeal within 30 days of this Ruling together with submissions on merit of appeal.
- c. Failure to file record of appeal within 30 days, together with submissions on the appeal, the stay in (b) above shall stand vacated.
- d. Costs in the Cause.

It is so ordered.

RULING DATED , SIGNED AND DELIVERED IN BUNGOMA IN OPEN COURT THIS 26TH DAY OF MAY, 2022.

J. W KELI,

JUDGE.

IN THE PRESENCE OF :-

Court Assistant: Brenda

APPELLANT:- Ms. Ogina

RESPONDENT:-Ms. Natwati h/b Bw'onchiri

