



**Good Hope Sacco Limited v Kipteng (Appeal 13 of 2022)
[2022] KEELRC 13432 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13432 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL 13 OF 2022
HS WASILWA, J
DECEMBER 8, 2022**

BETWEEN

GOOD HOPE SACCO LIMITED APPELLANT

AND

NAANYU ANGELINE KIPTENG RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the Principal Magistrates Court at Kilgoris, Honourable Robert M Oanda, in Kilgoris ELRC number 2 of 2018, delivered on 29th July, 2021, where the Respondent herein was the Claimant and the Appellant was the Respondent. The grounds of the Appeal are as follows:-
 - a. That the learned trial Magistrate erred in law and in fact by acting without jurisdiction in the hearing and determination of Employment Cause No. 2 of 2019.
 - b. That despite the Respondent by its statement of defence dated 20 November, 2019 raising the question of jurisdiction of the Court at Kilgoris the learned trial Magistrate erred in law and in fact by opting to soldier on with the matter without determining its jurisdiction to hear the matter.
 - c. That the learned trial Magistrate erred in law and in fact by proceeding to determine the matter and consequently failing to appreciate the question of geographical jurisdiction as raised in the Respondent's Notice of Motion dated 2nd August 2020. The offices of the Respondent in the claim are located in Narok Town and therefore provisions of Section 15 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, were not observed in the suit constituent of claim.
 - d. The learned trial Magistrate erred in law and in fact by proceeding to determine the matter and reaching a decision prejudicial to the Respondent in spite of being informed that the Sacco officials lacked capacity to overrule or set aside a decision by the Commissioner of Societies.



The claim filed in court arose pursuant to decision by the Commissioner of Co-operatives and not any of the Sacco officials.

2. The Appellant sought for the following Orders:-
 - a. This Appeal herein be allowed in totality.
 - b. The Judgement of the Honourable Robert M. Oanda dated 29th July, 2021 be quashed and or nullified and the court do exercise its supervisory role in the matter.
 - c. The Respondent be held liable for the costs of this Appeal.
 - d. Any other or further Orders that the Court may deem fit to issue.
3. The Respondent instead of filling a response to the Appeal, filed an Application; Notice of Motion dated 21st June, 2022, brought pursuant to Rule 3 of the High Court (Practice and procedure) Rules, section 1A, 1B, 3, 3A nad 63(e) of the *Civil Procedure Act*, Order 26 Rule 1,5,6, and Order 51 Rule 1 of the *Civil Procedure Rules*, 2020 and Article 159(2)(d) of *the Constitution* of Kenya, seeking for the following Orders;-
 - a. That this Application be certified as urgent and be heard ex-parte in the first instance.
 - b. That this Honorable court be pleased to order/direct the Appellant to deposit security for costs amounting to ksh.2, 400,000 which includes the garnishee proceedings in the Senior Principal Magistrate's court at Kilgoris before the present appeal is admitted.
 - c. That this Honorable court do issue an order directing the Appellant to Pay the Applicant the full decretal sum of ksh.1, 675, 270.49 with interests that were awarded by the trial court which remains unsettled to date, within the next 7 days of service hereof.
 - d. That this Honorable court be pleased to order that the costs in paragraph 2 above be deposited in the joint names of the Applicant and the Appellant's Advocate in joint interest earning account with Kenya Commercial Bank at Kilgoris Branch.
 - e. That this Honorable court be pleased to issue an order that the Applicant be reinstated forthwith as per the orders issued by the trial court or in alternative pay the Applicant full salaries from the date of judgment until retirement or as this Honorable court may think fit and just before the present appeal is admitted.
 - f. That in default of compliance with order number (2), (3) and (5) hereinabove the appeal be dismissed or struck out with costs.
 - g. That the Applicant be at liberty to apply for further orders and/or directions as the court may deem fit to grant.
 - h. That the costs of this Application to be borne by the Appellant in any event.
 - i. That this Application to be canvassed by way of written submission.
4. The Grounds upon which the application is made are as follows;-
 - a. That the judgement in the lower Court was made in favour of the Respondent where the Court directed for the Respondent to be reinstated to the previous position, however that the Appellant has refused to comply with the Court orders.
 - b. That the Appellant does not have any known assets that can be disposed off in satisfaction of the decretal sum when the Appeal is determined in the Respondent's favour. It is stated that it



is only fair that the Appellant be compelled to deposit the decretal sum in an interest earning account in joint names of the parties' advocates.

- c. That the Appellant has filed several applications in various courts including; application dated 3rd August, 2021 seeking for orders for the trial magistrate to disqualify himself from further handling the said case, Application in High Court at Narok serialized as Civil Application number 023 of 2021 seeking stay of proceedings ; ELRC cause number 025 of 2021 filed in this Court, seeking stay of further proceedings in the trial Court's case and Civil Application number 004 of 2022 before this Court seeking leave to appeal out of time. she adds that these litigations have greatly prejudiced her as she cannot enjoy her fruits of judgement.
5. This Application is further supported by the affidavit of Angeline Naanyu Kipteng, the Respondent herein, deposed upon on the 21st June, 2022, which basically reiterated the grounds of the application.
6. In response to the Application , the Respondent filed a replying affidavit deposed upon by Elvis Salaton Ololkipai, the Appellants's Chief Executive Officer, on the 22nd July, 2022. In the said affidavit , the affiant deposed that the application lacks merit in that no evidence has been tabled before Court to suggest that it cannot pay the costs in the event the appeal does not succeed.
7. It is stated that the Respondent has a general good financial standing and is in a position to pay up costs in case the Appeal goes in favour of the Respondent.
8. That the Applicant herein together with 33 others were surcharged for Millions of Money, with the applicant personally liable for Kshs 2,477,586 as indicated by the Commissioner for Cooperative Development for loss and misappropriation of the Appellant's members funds. That a recovery suit is filed in Narok High Court, which is slated for hearing on 11th October, 2022.
9. She avers that the application and the orders sought are prejudicial to the Appellant and prayed for the same to be disallowed.
10. In the supplementary affidavit filed on 17th August, 2022, the affiant deposed that that the application questioned the geographical jurisdiction of the Court and seeking for the trial court's recusal was heard and dismissed vide the ruling of the trial court delivered on 1st October, 2020. That the said ruling was not appealed against and the parties participated in proceedings till Judgement was Delivered.
11. It is averred that contrary to the assertions by the appellant, section 15 of the *Civil procedure Act* provides for a case to be filed not only in the places the Respondent are situated but also in the place the cause of action arose. Accordingly that the cause of action arose in Kilgoris Town as such the suit was rightly filed in Kilgoris Court.
12. It is stated that the trial Court being a principal magistrate is empowered by the Law to hear and determine Employment and Labour Relations cases, a fact that informed their decision to institute their employment claim in the said Court.
13. The affiant states further that the Appeal is fatally defective because it did not comply with Rule 8(4) of the *Employment and Labour Relations Court (Procedure) Rules*, in that the Memorandum of Appeal is not accompanied by the record of Appeal or even the very Judgement the Appellant is appealing against. Further that the Appellant ought to be denied audience for failing to obey this Court's orders issued on 29th July, 2021 and the orders issued absolute on the 13th July, 2022.
14. That since the Appellant has failed to deposit security for costs, the application ought to be allowed as prayed to secure the decretal sum and costs therein. Further that Elvis Ololkipai Salaton has confirmed



in its affidavit that the company is financially stable as such will not have any challenges depositing the security for costs.

15. He avers that the issue of surcharge is pending for determination before Narok High Court under case number Civil case number 002 of 2022, as such is not open for determination before this Court. In conclusion, he urged this Court to compel the Appellant to deposit security for costs in an interest earning account in the joint names of the parties' advocates.
16. Both Application and the Appeal was disposed of by way of written submissions with the Appellant filing on the 22nd September, 2022 and the Respondent filing hers on the 17th August, 2022.

Appellant's Submissions.

17. The Appellant submitted that the Respondent, who was their employee was recommended for dismissal by Commissioner for Cooperative Development together with 33 other employees of the Sacco who had been found culpable of acts that occasioned loss to the Sacco. That it is the Commissioner that actually carried out the termination of the Respondent and therefore the termination was not carried out by them. It is argued that, when the Respondent was aggrieved by that decision they filed employment cause in the Trial Court at Kilgoris, which in the opinion of the Appellant, the Trial Court at Kilgoris lacked Territorial jurisdiction to handle the matter because the Respondent's offices are situated at Narok Town as such the matter ought to have been heard and determined at Narok Magistrates Court.
18. It is submitted that the issue of Jurisdiction was raised by the Appellant in the trial Court but the Court failed to determine the issue of jurisdiction before hearing and subsequently determining the matter.
19. It is submitted that the Decision of the Commissioner of firing the Respondent herein ought to have been appealed as contemplated under section 68 as read with section 69 of the Cooperative *Societies Act* Cap 390 Laws of Kenya, therefore that the move by the Respondent to institute an original claim in the magistrates Court instead of lodging an appeal against the decision of the Commissioner was ill informed and thus the magistrate did not have jurisdiction to hear and determine the dispute raised therein. He added that, acting without jurisdiction nullifies the entire proceedings as was held in the Court of Appeal case of Phoneix of East Africa Company Limited V S.M Thiga t/a Newspaper Services.
20. On whether the trial Court's judgement should be quashed, it was argued that this Court has powers granted to it by Article 165(6) &(7) of *the Constitution* to exercise supervisory jurisdiction over subordinate Courts. He then submitted that since the trial Court acted in excess of its powers to hear and determine the cause, the Court should quashed the decision and the entire proceedings of the trial court. Additionally that the Appellant was not the one that fired the Respondent but the commissioner who was not sued.
21. With regard to costs, the Appellant submitted that costs follow events and urged this Court to allow the appeal with costs to them.

Respondent's Submissions.

22. The Respondent while submitted on their application of 21st June, 2022 and the Appellant's Appeal of 14th June, 2022 set out four issue for determination namely; whether Kilgoris Court had jurisdiction to hear and determine the suit therein; whether the Respondent was properly before the trial court at Kilgoris; whether there is sufficient cause to support allegation on the subject of surcharge and whether the appellant is entitled to costs.



23. On the first issue, it was submitted that the cause of action being termination of the Respondent's employment occurred in Kilgoris within the jurisdiction of the trial court as such the territorial jurisdiction for filling the suit was proper. In addition, that the Appellant herein raised the issue of jurisdiction in their application of 3rd August, 2020 in the trial Court which was heard and dismissed on 15th October, 2020 and the court maintaining that it has jurisdiction to hear the employment cause.
24. It is submitted further that the trial court being a principal magistrate was granted powers by gazettee notice number 6024 of 10th June, 2018 to preside over employment and labour Relations matter of employees whose earning were less than Kshs 80,000 and since the Respondent at the time earned Kshs 22,188, his claim fell squarely within the pecuniary jurisdiction of the said Court. It was also argued that the allegation that the Respondent was fired by the Commissioner of Cooperative development cannot hold water because the Respondent was an employee of the Appellant and not the Cooperative Development as such any termination can only be instigated by the Appellant, in any case that there is not evidence of any recommendation by the Commissioner to have the Respondent and the 33 others fired.
25. The Respondent took issue with the fact that the Appellant have not filed any record of appeal as directed under Rule 8(4) of the Employment and Labour Relations Court(Procedure) Rules as such that the appeal is fatally defective.
26. On the surcharge issue, it was submitted that the issue is subject of Civil Application number 002 of 2022 filed in Kilgoris Law Courts and Civil case number 002 of 2022 filed at Narok High Court as such the issue is not subject for determination in this Court.
27. On their application, the Respondent argued that the Appellant has failed to obey the Court orders issued by Kilgoris Court when they do not have stay Orders in place. He urged this Court to allow its application that seeks to compel the Appellant to deposit security for costs in an interest earning account in order to secure her interest in the judgement of the Trial Court.
28. It was submitted also that the court had ordered for her reinstatement back to her previous position but the Appellant has frustrated her employment and kept her out of employment without any lawful cause, she thus urged this Court to compel the Appellant to pay her salary from the time of reinstatement to date. She relied on the case of Kanchanben Ramniklal Shah v Shamit Shantilal Shah and 6 others [2010] eKLR.
29. On costs, it was submitted that costs follow event as held in Independent candidate of Kenya V Mutula Kilonzo and 2 others. It was thus argued that the Appeal is not merit and urged this Court to dismiss it with costs to the Respondent.
30. I have examined the averments of the parties herein. The 1st contention by the Respondent was that the Appellant should be compelled by this court to deposit costs for the suit which was never pursued and is therefore overtaken by costs.
31. I will now delve onto the merits of the Appeal as filed. The Appeal is premised on one fact that the trial court lacked geographical jurisdiction to handle the claim but nonetheless proceeded to hear the claim despite protests from the Appellants.
32. What the Appellant filed was a Memorandum of Appeal. there is no record of appeal filed before this court.



33. The proceeding of the lower court are missing. The Appellant proceeded as though all the documentation was in order and sought no direction from the court on how to proceed without documents.
34. It is my finding that the appeal as filed, is defective and there were no records placed before this court upon which the court was to rely on in order to make its determination.
35. I therefore find the appeal lacks merit and I dismiss it accordingly with costs to the Respondents.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 8TH DAY OF DECEMBER, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Angeline for the Respondent – present

Appellants – absent

Court Assistant – Fred

