



REPUBLIC OF KENYA



Devki Steel Mills Ltd v Baraza (Appeal 55 of 2018)
[2022] KEELRC 13414 (KLR) (2 December 2022) (Judgment)

Neutral citation: [2022] KEELRC 13414 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 55 OF 2018
MA ONYANGO & BOM MANANI, JJ
DECEMBER 2, 2022

BETWEEN

DEVKI STEEL MILLS LTD APPELLANT

AND

EVANS MAKOKHA BARAZA RESPONDENT

(Being an appeal from the judgment of the Principal Magistrate in Thika Chief Magistrate's Court case No 162 of 2013 delivered on March 4, 2015)

JUDGMENT

1. This is an appeal from the judgment of the principal magistrate in Thika Chief Magistrate's Court case No 162 of 2013 delivered on March 4, 2015. The case involved an alleged work injury claim by the respondent against the appellant.
2. In the decision, the trial magistrate arrived at the conclusion that the respondent was an employee of the appellant and that he had been injured while in the course of duty. The court also found that the appellant had failed to provide the respondent with protective apparels whilst at work and that this failure substantially contributed to the injury that the respondent suffered. Accordingly, the court apportioned liability between the parties with the appellant shouldering 90% of liability.
3. It is this decision that is the subject of the appeal.

Brief Facts of the Case

4. From the record, the respondent alleged that he was an employee of the appellant. That on July 4, 2012 he got injured when a co-employee wrongly operated a steel cutting machine causing the respondent to be hit on his finger and thumb by a steel bar. The respondent blamed the appellant for failing to provide him with gloves which in his view, would have lessened the degree of the injury.



5. On the other hand the appellant denied that the respondent was its employee. It produced a computer printout demonstrating that the name of the respondent was not in its list of employees. However, the court rejected this evidence for reasons set out in the judgment.

Appeal

6. The appellant was dissatisfied with the trial court's decision. As a result, it filed this appeal. The memorandum of appeal raises 9 grounds of appeal.

Jurisdiction

7. The parties appear to have acquiesced to the trial court's jurisdiction to entertain the case. This is despite the cause of action clearly falling within the purview of the [Work Injury Benefits Act](#) (WIBA).
8. The law is that a court cannot assume jurisdiction over a matter if such jurisdiction is not donated by some rule. Where a court assumes jurisdiction over a matter which it has no jurisdiction to handle, the resultant decision is a nullity irrespective of the parties' position on the issue (see [NK Brothers Limited v David Mulei \[2021\] eKLR](#)). The decision amounts to nothing.
9. Although the parties acquiesced to the issue of jurisdiction, this court is aware that the trial court did not have jurisdiction to entertain the case the cause of action having arisen in 2012 when the [WIBA](#) had come into force (see [Maisha Mabati Mills Ltd V Ondari & Another \(Employment And Labour Relations Appeal 152 Of 2022\) \[2022\] KEELRC 12932 \(KLR\)](#)). Consequently, the court has a duty to take up the issue despite the acquiescence by the parties. This is confirmed by the Court of Appeal in [Isaak Aliaza v Samuel Kisiavuki \[2021\] eKLR](#) where the learned judge observed as follows:-

“Before I delve into the interrogation of the merits of the application, I find it not only prudent but also imperative for me to address a preliminary jurisdictional issue which has arisen in the cause of my appraisal of the record. It is now trite that jurisdiction is a fundamental issue and whenever raised either by the court on its own motion or on application by a party it has to be determined first because in the event the court finds that it has no jurisdiction it has to down tools.”
10. The question of jurisdiction may be raised for the first time in an appeal notwithstanding that it was not an issue before the court of first instance (see [Southern Star Sacco Limited v Vanancio Ntwiga \[2021\] eKLR](#)). It is in this context that this court has opted to address the matter on appeal and *suo moto*.
11. In the decision by the Supreme Court in the case of [Law Society of Kenya v Attorney General & another \[2019\] eKLR](#), the court affirmed an earlier position by the Court of Appeal that the jurisdiction to process work injury and occupational disease claims arising at the workplace after the [WIBA](#) came into operation lies with the office of the Director of Occupational Safety and Health Services. Courts of law have no jurisdiction to entertain these claims in the first instance.
12. In the case of [Maisha Mabati Mills Ltd v Ondari & Another \(supra\)](#), this court has observed that appeals from the aforesaid claims lie with the Employment and Labour Relations Court (ELRC) in terms of section 52(2) of the [WIBA](#). In other words, the ELRC can only entertain appeals from work injury claims if the decisions emanate from the decision by the Director of Occupational Safety and Health Services, not a magistrate's court acting in excess of its jurisdiction.
13. The ripple effect of the foregoing is that neither the trial court had jurisdiction to hear the dispute that gave rise to this appeal nor does this court have jurisdiction to entertain the current appeal. However, in line with article 165(6) of the [Constitution](#), the ELRC has the power to strike out a decision by a



subordinate court over which it has supervisory jurisdiction if the decision has been rendered in excess of the trial court's jurisdiction.

Determination

14. Accordingly and in exercise of the constitutional mandate under article 165(6) of the *Constitution* of Kenya 2010, this court declares the decision by the trial magistrate in Thika CMCC No 162 of 2013 delivered on March 4, 2015 a nullity and incapable of conferring any legal right on the respondent. At the same time, the court declares that this appeal is incompetent for want of jurisdiction. Consequently, the appeal is hereby struck out.

15. Each party shall bear own costs.

DATED AND SIGNED ON THE 30TH DAY OF NOVEMBER 2022

MAUREEN ONYANGO

JUDGE

DELIVERED ON THE 2ND DAY OF DECEMBER 2022

B O M MANANI

JUDGE

