



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MALINDI

APPEAL NO. E017 OF 2021

(Being an appeal from the ruling and orders delivered by Hon. M.L Nabibya, PM, in Mombasa CMELRC No. E056 of 2020)

EDWIN SONGOROH.....1ST APPELLANT

EDSON CONVEYORS LIMITED.....2ND APPELLANT

- VERSUS -

AMONY KOECH YATICH.....1ST RESPONDENT

MORAN AUCTIONEERS.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 16th July, 2021)

RULING

The Appellants have filed the memorandum of appeal on 24.03.2021 through Miller George & Gekonde Advocates for orders:

- 1) The ruling delivered and orders given in Mombasa CMELRC No. EO56 OF 2020 ON 18.03.2021 be set aside in their entirety and the matter be referred back to the Directorate, Occupational Safety and Health Services.
- 2) The attachment commenced vide Proclamation of Attachment of Moveable Property dated 27.01.2021 in Mombasa CMELRC No. EO56 OF 2020 ON 18.03.2021 against the Assets of the Appellant be unconditionally lifted.
- 3) The costs of the Appeal be paid by the respondents in any event.

The respondents have filed a notice of preliminary objection on 16.06.2021 that the appeal be dismissed with costs on the basis that:

- 1) The prayers sought in the appeal are contrary to the provisions of sections 51 and 52 of the Work Injury Benefits Act Cap. 236 Laws of Kenya.
- 2) The appeal has been filed contrary to provisions of Rule 8 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

In conclusive submissions it is stated for the respondents thus, **“19. In conclusion, Your Lordship, it is our submissions that the Appellants’ Appeal is devoid of merit as it seeks an order that cannot be granted by law. It seeks an order beyond the jurisdiction of the Director of Occupational Safety and Health Services and therefore must fail through the lenses of this preliminary objection...”**

The Court has perused the respondents’ submissions and there is no mention of the alleged breach of Rule 8 of the Employment and Labour Relations Court (Procedure) Rules, 2016. The respondents have also submitted on provisions of sections 51 and 52 of the Work Injury Benefits Act, 2007 but which are not mentioned anywhere in the ruling now appealed against and which ruling appears to have been about an execution process.

The Court has considered the respondent’s submissions and fails to find that the preliminary objection as raised amounts to such matters that would make the appeal to collapse without being heard and determined on merits. The Court considers that any relevance of the provisions of the Work Injury Benefits Act, 2007 to the present appeal would be matters the respondent may wish to be considered at full hearing of the appeal if at all they have a bearing on the ruling appealed against. The Court finds that as submitted for the appellants, the preliminary objection lacks merits. Indeed, whether the remedy in the memorandum of appeal is available or not is a matter for determination after hearing the full appeal.

In conclusion the preliminary objection is hereby dismissed with costs in the cause and parties to take steps towards expeditious hearing of the appeal on merits.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 16TH JULY, 2021.

BYRAM ONGAYA

JUDGE