



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**MISC APPLICATION NO. E025 OF 2021**

**GOOD HOPE SACCO LIMITED.....APPLICANT**

**VERSUS**

**NAANYU ANGELINE KIPTENG...RESPONDENT**

**R U L I N G**

1. For this court's determination is the application dated 4<sup>th</sup> October, 2021 filed by the applicant/through the firm of Muigai, Kemei & Associates Advocates, brought pursuant to the provisions of articles 6 & 7 of the Constitution, Order 51 of the Civil Procedure Rules, Article 1A, 1B, 3, 3A & 89 of the Civil Procedure Act. The Applicant prays for the following orders inter alia:

**1. That this Honourable Court in its supervisory role, be pleased to call for file number.2 of 2019 in the Chief Magistrates Court, Employment and Labour Court at Kilgoris.**

**2. That this Honourable Court be pleased to issue orders staying any further proceedings in cause No. 2 of 2019 Employment and Labour Court at Kilgoris; Naanyu Angeline Kipteng Vs Good Hope Sacco Limited.**

**3. That this Honourable Court be pleased to issue any other or further orders that it may deem suitable to serve the course of justice in this matter.**

**4. That costs of this Application be in the cause.**

2. The application is predicated upon the grounds as set out therein and in the supporting affidavit of the applicant's chairman, **Mr. Issac Kilesi** sworn on 4<sup>th</sup> October, 2021 and on the following grounds.

a. That the chief magistrate Court in Kilgoris CMEL No. 2 of 2019 between Naanyu Angeline Kipteng V Good Hope Sacco Limited proceeded to hear and determine the cause before it in excess of its jurisdiction when the cause of action occurred within Narok town therefore that Narok chief magistrates court was better placed to handle the matter.

b. That the issue of jurisdiction was raised before the trial Court but the Court proceeded with hearing to conclusion without determining the issue of territorial jurisdiction raised by the Applicant herein.

c. It is alleged that the cause of action being restriction of ingress and egress of the Respondent and other persons involved in fraud, to the Sacco offices was sanctioned by the commissioner of cooperatives and not them and that they lacked powers to overrule or set aside the said decision.

d. That the trial court determined the cause herein and further taxed the respondent's advocates costs at Kshs. 300,000 without giving them an opportunity to be heard.

e. That there was outright bias in the way in which the claim in the trial court was determined.

3. In opposing the application, the Respondent filed a Replying Affidavit sworn 13<sup>th</sup> October, 2021 based on the following grounds:-

a. That the trial suit number 2 of 2019 Kilgoris Chief Magistrates Court between the parties herein proceeded for hearing and judgment delivered on the 29<sup>th</sup> July, 2021.

b. Prior to hearing of the trial matter, the Applicant had indeed raised the issue of geographical jurisdiction and for recusal of the trial court vide its application of 3<sup>rd</sup> August, 2020, which application was heard and dismissed on the 1<sup>st</sup> October, 2020.

c. That the applicant herein never preferred an appeal on the decision of the court and instead the matter proceeded for pre-trial and late hearing of the main suit was conducted on the 28<sup>th</sup> January, 2021 with the applicants herein closing their case without calling any witnesses or tabling any evidence thus the Respondents case was uncontroverted.

d. A bill of costs dated 2<sup>nd</sup> august, 2021 was served upon the applicant on the 19<sup>th</sup> august, 2021 through their email address; [muigaikemeiandassociates@gmail.com](mailto:muigaikemeiandassociates@gmail.com) with a notice that the taxation was to be carried out on the 23<sup>rd</sup> September, 2021 however that the applicant ignored and the Bill of costs proceeded in their absence.

e. It is averred that if the applicant was dissatisfied with the decision of the Court they ought to have file an appeal and not this application.

f. It was also stated that there is no proceedings capable of being stayed as the matter was concluded and judgment rendered by the trial court.

g. She then stated that the application herein is misconceived an aimed at misleading the court as to what transpired in Court and the same ought to be dismissed.

4. This application was canvassed by way of written submissions. The Respondent filed her submissions on the 3<sup>rd</sup> November, 2021 however the applicant did not file any submissions.

#### **Respondent's submissions**

5. The Respondent submitted from the onset that the application herein should be dismissed for the reason that the same has been brought pursuant to the wrong provisions of the law. It was argued that Article 165(6) & (7) of the constitution gives this Court supervisory powers and not articles 6 and 7 that the applicant relied upon.

6. It was submitted that the situation in which this court can exercise its supervisory were enumerated by justice Mwongo in the case of **Director of Public Prosecution V Perry Mansukh Kansagara & 8 others[2020] eKLR** and the scenario given by the applicant herein does not fall in any of the list.

7. The Respondent then submitted that the applicant has filed this suit as shortcut to appeal as the time in which an appeal ought to have been preferred had already lapsed. The Respondent then urged this Court to dismiss the application herein for lacking merit.

8. I have examined the averments of the parties herein. The application has been brought pursuant to Article 6 and 7 of the constitution, order 51 of the CPC, Section 1A, 1B 3 & 3A, 89 of the CPA Cap 21 Laws of Kenya.

9. Article 6 of the constitution deals with devolution and access to services whereas Article 7 deals with national, official and other language. These articles definitely have nothing to do with supervisory jurisdiction of the High Court. It is apparent then that the application is filed under the wrong provision of the constitution as submitted by the respondent.

10. In any case, Article 165 (6) & (7) of the constitution provides as follows;

**(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.**

**(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.**

11. This supervisory jurisdiction is however in relation to proceedings before the subordinate court.

12. The matter before Kilgoris court however is a matter already determined and Judgment rendered and is therefore not pending.

13. In my view the matter in Kilgoris 2/2019 can only be a subject of appeal and not under an application as hereunder.

14. I therefore find the application not merited and dismiss it accordingly.

**RULING DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF DECEMBER, 2021**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Mary Muigai – the Applicant – present

Respondent – absent

Court Assistant - Fred