



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**APPEAL NO. 5 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**CHARLES SIMBA.....APPELLANT**

**VERSUS**

**NATIONAL CEREALS AND PRODUCE BOARD .....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**[Appeal arising from the Judgment and Decree of Hon. ONZERE E.M. SRM in Tamu SRMCC NO. 12 of 2017)**

**RULING**

1. The respondent has raised a preliminary objection against the Appeal filed at the Employment and Labour Relations Court against a judgment of Hon. Onzere delivered at Tamu law courts on 31<sup>st</sup> October 2017. That the E&LRC lacks jurisdiction to entertain or transfer the Appeal to any other court, the subject matter of the case being malicious prosecution over which E&LRC lacks jurisdiction. That the Appeal be struck out with costs.

2. The Appellant has objected to the preliminary objection on the basis that the Appellant filed the appeal on 24<sup>th</sup> November 2017 before Kisumu High Court, being HCCA NO. 78 of 2017. That it is manifestly clear from the stamp affixed to the said Appeal which reads “High Court Civil Registry Kisumu, 24<sup>th</sup> November 2017. Received” that it was filed at the High Court.

3. The presiding judge then, after perusing the said appeal thought that the same should be forwarded to the E&LRC. That the Appeal was erroneously, transferred to the E&LRC without participation of the Appellant. That this being the case, the E&LRC simply needs to take the Appeal back to where it was filed as it was wrongly subsequently designated as E&LRC, Civil Appeal No. 5 of 2018.

**Determination**

4. The court is satisfied that the subject matter of the suit determined by Hon. Onzere E.M. by a judgment delivered on 31<sup>st</sup> October 2017 is malicious prosecution. The subject matter did not comprise mixed grill case which has an element of Employment and labour issues at the same time raising matters of malicious prosecution.

5. From the pleadings and judgment in the Appeal record, this was a pure malicious prosecution case, which belongs to the High Court.

6. Accordingly, the Appeal was transferred by the presiding judge from the High Court to E&LRC in error. The Appellant cannot be punished for an error of the court to which he did not contribute.

7. The Appeal is thus transferred back to the High Court, where it was initially filed as HCC at Kisumu Civil Appeal No. 78 of 2017 for hearing and determination. The Appeal to be mentioned before the presiding judge, High Court Kisumu for directions.

**Ruling Dated, Signed and delivered this 4<sup>th</sup> day of March, 2020**

**Mathews N. Nduma**

**Judge**

**Appearances**

Josiah Abobo and Company for Appellant

J.O. Juma Advocate for the Respondent.

Attorney General Chambers – Kisumu.

Chrispo – Court Clerk