



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

APPEAL NO. 5 OF 2019

(Before Hon. Justice Hellen S. Wasilwa on 20th June, 2019)

LONGTERM VIEW CAPITAL LIMITED.....APPLICANT/APPELLANT

VERSUS

EZRA OKIEGA AYUMA.....RESPONDENT

RULING

1. The Respondent filed a Preliminary Objection dated 5th March, 2019, on the grounds that the Court lacks jurisdiction to hear the appeal or the motion and both should be struck out or dismissed with costs.
2. In response to the Preliminary Objection, the Appellant filed Grounds of Opposition stating that the Court has jurisdiction by virtue of Section 87 of the Employment Act, 2007, over any dispute between an employer and employee. That Section 12(5) of the Employment and Labour Relations Court Act, 2011, gives the Honourable Court jurisdiction to hear appeals from Subordinate Courts touching on labour. Furthermore, that Section 9(b) of the Magistrates Courts Act 2015, donates to the Magistrates powers to hear and determine labour claims subject to set pecuniary jurisdiction.
3. That Court of Appeal in **Attorney General Vs Law Society of Kenya & Another(2017)eKLR** clarified that claims on injuries at work ought to be first heard by the Director of Work Injury Benefits Act before a dissatisfied party can appeal to this Court which position was reiterated by Rika J in **Saidi Mohamed Vs Diamond Industries Limited (2018)eKLR**.
4. The Appellant avers that the Preliminary Objection lacks merit and should be dismissed.

Submissions

5. The Respondent submits that appeals for the Magistrates' Courts lie to the High Court under Section 65 of the Civil Procedure Act and not to this Court which is a special Court with special jurisdiction to hear appeals from the Registrar of Trade Unions and decisions from any other local tribunal, or commission as may be prescribed by law.
6. That Section 52(2) grants the right of appeal to this Court from a decision of the Director of Work Injury Benefits but the Act does not confer jurisdiction to the Magistrates' Court or to the High Court. For that reason the Court should down its tools and condemn the Appellant to bear the costs.
7. The Appellant submits that the dispute herein is a labour dispute and the Court thus has jurisdiction under Section 87(1) of the Employment Act as the Respondent sought damages for injuries allegedly suffered at the work place. Further, that the dispute arose as to the terms of the contract of employment between 2 parties as clearly pleaded by the Respondent in the Pleint.
8. That the lower Court lacked jurisdiction to give the impugned judgment as was held in the case of **Attorney General Vs Law Society & Another (2017) eKLR**. Further, this Court has jurisdiction to hear the appeal as set out under Section 12(5) of the Employment and Labour Relations Court Act, 2011. The Appellant urges the Court to dismiss the Preliminary Objection for want of merit.
9. I have considered the averments pending before me. The issue of this Court's jurisdiction is set out under Article 162(2)(iv) of the Constitution and Section 12(a) of the Employment & Labour Relations Court Act. The jurisdiction of this Court as set under Section 12(1) of the Employment & Labour Relations Court Act No. 20 of 2011 is as follows:-

1. ***"The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in***

accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:-

a) disputes relating to or arising out of employment between an employer and an employee;

b) disputes between an employer and a trade union;

c) disputes between an employers' organisation and a trade unions organisation;

d) disputes between trade unions;

e) disputes between employer organisations;

f) disputes between an employers' organisation and a trade union;

g) disputes between a trade union and a member thereof;

h) disputes between an employer's organisation or a federation and a member thereof;

i) disputes concerning the registration and election of trade union

j) officials; and

k) disputes relating to the registration and enforcement of collective agreements.

10. This Court also hears and determine Appeals from decision of the Registrar of Trade Unions and decision of any other Local Tribunal or Commission as may be prescribed under any written law.

11. The Appeal before me is from the Magistrate's Court. Despite the fact that the Court of Appeal had indicated lack of jurisdiction for Magistrate in the cited case, the Appeal from the Magistrate Court still lies to this Court by virtue of Section 12(1)(a) above as this matter relates to an employment case.

12. I therefore find the Preliminary Objection without merit and I dismiss it accordingly.

13. Costs in the Appeal.

Dated and delivered in open Court this 20th day of June, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Arunga holding brief Nyasimi for Appellant – Present

Respondents – Absent