



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**APPEAL 2 OF 2016**

**PARBAT SIYANI CONSTRUCTION LIMITED.....APPELLANT**

**VERSUS**

**NASHON ARONYA OKOLA.....RESPONDENT**

**RULING**

1. The respondent herein has objected to the jurisdiction of the court to entertain the present appeal. The respondent contends that the suit in the lower court concerned negligence and that the finding by the lower court that there existed an employer –employee relationship between the appellant and the respondent is a matter of civil nature which belongs to the jurisdiction of the High court as an appellate court.

2. The court has not had the benefit of looking at the pleadings and the record of the lower court to enable it decide if it does indeed lack jurisdiction. However, from the framing of the memorandum of appeal, the court notes that one of the findings of the trial court was that the respondent was an employee of the appellant. If that be so, *ex facie*, the court has jurisdiction to hear that ground of appeal and either uphold or overrule the trial court.

3. The court will therefore not sustain the preliminary objection but direct that the respondent canvasses the same at the hearing of the main appeal. The appeal shall therefore proceed to hearing on merit.

4. It is so ordered.

Dated at Nairobi this 24<sup>th</sup> day of March 2017

**Abuodha J. N.**

**Judge**

Delivered this 24<sup>th</sup> day of March 2017

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**