



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

APPEAL NO. 12 OF 2016

CLINT NJOROGE KIMANI.....1ST APPELLANT

JIANGXI ZHONGMEI ENGINEERING

CONSTRUCTION COMPANY LIMITED.....2ND APPELLANT

VERSUS

STEPHEN MUTHII KIMIRITU.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 16th June, 2017)

RULING

The memorandum of appeal was filed on 07.11.2016 through Wangai Nyuthe & Company Advocates. The appellants prayed for order that:

- a. The appeal be allowed.
- b. The ruling of the Principal Magistrate, Marsabit Law Courts, delivered on the 31.10.2016 in the Principal Magistrate's Court Civil suit No. 16 of 2015, Stephen Muthii Kimiritu –Versus- Clint Njoroge Kimani & Jiangxi Zhongmei Engineering Construction Limited, against the Appellants be set aside.
- c. The ex-parte interlocutory judgment on liability entered in default of appearance, the subsequent ex-parte proceedings, final judgment and decree entered on 20.06.2016 in Marsabit Law Courts, delivered on the 31.10.2016 in the Principal Magistrate's Court Civil suit No. 16 of 2015, Stephen Muthii Kimiritu –Versus- Clint Njoroge Kimani & Jiangxi Zhongmei Engineering Construction Limited, and all consequential orders therefrom be set aside and the appellants be granted leave to defend the original suit and enter appearance and file and serve their statement of defence in the said original suit.
- d. Marsabit Principal Magistrate's Court Civil suit No. 16 of 2015, Stephen Muthii Kimiritu – Versus- Clint Njoroge Kimani & Jiangxi Zhongmei Engineering Construction Limited be referred back to Marsabit Principal Magistrate's Court for retrial on merits afresh.
- e. Costs of the appeal be awarded to the appellant.

The respondent opposed the appeal by filing the notice of preliminary objection on 10.11.2016 through Alfred Kitheka & Company Advocates. It was stated that the appeal herein be struck out on the following grounds:

1. That the Honourable Court does not have, under the law, the requisite jurisdiction to hear and determine the appeal herein.
2. The Court's jurisdiction is limited to issues relating to employment and labour relations as per Article 162 (2) (a) of the Constitution of Kenya, 2010 and the Court cannot therefore adjudicate on other disputes other than those specified in the law.
3. That the appeal arises out of a civil claim for damages payable for injuries suffered in a road traffic accident and the same therefore falls outside the Court's jurisdiction.
4. The matter in dispute is outside section 12 (5) of the Employment and Labour Relations Court Act, 2011.
5. The appeal offends Article 162(2) of the Constitution as read with section 12(5) of the Employment and Labour Relations Court Act, 2011.

The court has perused the plaint and the defence in the said Marsabit Principal Magistrate's Court Civil suit No. 16 of 2015, Stephen Muthii Kimiritu –Versus- Clint Njoroge Kimani & Jiangxi Zhongmei Engineering Construction Limited. The pleadings do not suggest that the matters in dispute arise as a result of a contract of employment between the parties. It is the appellants' case that the cause of action arose at a time when the respondent was an employee of the 2nd appellant but it is not said that the cause of action evolved and revolved about the contract of employment between the 2nd appellant and the respondent. As such the court returns that there is no dispute between an employer and employee or related to the employment relationship and therefore, the court lacks jurisdiction in the matter. It was not urged or suggested for the parties that the appeal could be transferred to the court with appropriate jurisdiction. Accordingly, the appeal is amenable to being struck out with costs. While making the finding, the court has considered that the issue of jurisdiction had not been raised for the appellants before the trial court by way of a defence or otherwise. The court returns that it was misconceived for the appellants to belatedly invoke this court's jurisdiction on appeal and seek to take the suit for retrial before the same trial court but which, following the appellants' submissions, the trial court would have then lacked the jurisdiction.

In conclusion, the preliminary objection dated 17.11.2016 and filed on 18.11.2016 is hereby upheld and the appeal is hereby struck out and the appellants to pay the respondent's costs of the appeal proceedings.

Signed, dated and delivered in court at Nyeri this **Friday, 16th June, 2017.**

BYRAM ONGAYA

JUDGE