



REPUBLIC OF KENYA



**China Henan International Cooperative Group v Kadima (Civil Appeal
E164 of 2024) [2025] KEHC 585 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E164 OF 2024
E OMINDE, J
JANUARY 29, 2025**

BETWEEN

CHINA HENAN INTERNATIONAL COOPERATIVE GROUP APPELLANT

AND

MOSES ODUNGO KADIMA RESPONDENT

RULING

1. What is pending before this court is the Respondents' Preliminary Objection dated 13th September 2024. The brief facts underlying the preliminary objection are that the Respondent was the defendant in Eldoret Chief Magistrates' Court Case No. 960 of 2017, which was instituted vide a plaint dated 04/09/2017. The Respondent sought damages for injuries sustained while under the employment of the Appellant. The trial court delivered judgment in favour of the respondent. Being aggrieved with the judgment and decree, the appellant instituted the present appeal vide a Memorandum of Appeal dated 12/08/2024.
2. The Respondent then raised the Preliminary objection dated 13/09/2024 to the appellant's appeal on a point of law that the Appellants' appeal be struck out on the following ground;
 - i. That this Honourable court lacks jurisdiction to entertain this suit pursuant to Section 52 of the *Work Injury benefits Act*, Cap 236 of the Laws of Kenya and Section 12 of the *Employment and Labour Relations Act* which provide an appeal in such a matter lies to the Employment and Labour Relation Court.
3. In the course of the hearing, Counsel for the Appellant conceded that this Court does not have the jurisdiction to hear and determine this matter as raised in the Preliminary Objection. She therefore prayed that the Court then transfers the matter to the Employment and Labour Relations Court for hearing and determination.



4. Counsel for the Respondent again objected to this Application. His argument was that if the Court did not have the jurisdiction to hear and determine the matter, it equally does not have the jurisdiction to transfer the case as prayed. It was his position that this being the case, the appeal ought to be struck out in its entirety.
5. The Court in finding that since it was common ground as between the parties that the court lacked the requisite jurisdiction to hear and determine the appeal, it directed that each of the parties file at most two-page skeletal submissions on the issue of whether or not the court had the jurisdiction to transfer the case.
6. Both Counsel filed their respective submissions. Counsel for the Appellant relied on the following authorities in submitting that the Court has the jurisdiction to transfer and particularly as between the Equal Status Courts;
 - a. Hon Justice PJ Otieno in *Abdul Majid Mobamed Adan v Nimish Shab T/A Flora Printers* (2017) eKLR
 - b. The Court of Appeal in *Daniel N Mugendi v Kenyatta University & 3 Others* (2012) eKLR
 - c. Court of Appeal in *Kenya Medical Research Institute v Davy Koech* 2018 eKLR
7. Counsel for the Respondent relied on the following authorities in submitting that the Court does not have jurisdiction to transfer;
 - a. Hon Justice DS Majanja (as he then was) in *Alcott Wiz Trading Co, Ltd & 2 others v Jotun (k) Limited* [2023] KEHC 2742 (KLR) (Commercial and Tax)
 - b. The Court of Appeal in *Phoenix of EA Assurance Company Limited v SM Thiga T/A Newspaper Service* NRBCA No. 244 of 2010 [2019] eKLR
 - c. Hon Justice Musyoka in *West Kenya Sugar Co. Limited v Matayo Ingoshe & Others* [2021] eKLR
8. Having considered these authorities in support of the positions taken by each Counsel, I will on my part fall back to the locuss classicus on the issue of the jurisdiction of courts and what it entails. That of course is the case of *Owners of Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd* (1989) eKLR which clearly stated as hereunder;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds that it is without jurisdiction . . . Where a court take it upon itself to exercise jurisdiction which it does not possess, its decision amount to nothing...”
9. In associating myself wholly with the holding above and with the various holdings in the cases cited by Counsel for the Respondent as above outlined on the issue of jurisdiction, then it automatically follows that I am in agreement that the Court does not have the jurisdiction to transfer this case because it did not have the jurisdiction to handle it in the first place or at all.
10. In this regard, I do agree with the holding of the Court of Appeal in the *Phoenix EA Assurance Company Limited* case (*supra*) that the only option that is available to a party who has filed their suit in the wrong court is to withdraw it and file a competent suit in the Court seized of jurisdiction.



11. This is because I am also in agreement with these courts in their holding that a suit filed in the wrong court is incompetent, is a nullity and is dead on arrival and cannot be remedied. This then being the case then, it is my finding that appellant's suit is misconceived and the same is therefore struck out in its entirety with costs to the respondent.

READ DATED AND SIGNED AT ELDORET ON 29TH JANUARY 2025.

E. OMINDE

JUDGE

