



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NUMBER 153 OF 2018

DEVKI STEEL MILLS LIMITED.....APPELLANT

VERSUS

VINCENT SAKWA MALONGO.....RESPONDENT

(Being an Appeal from the Judgement delivered on 30th June

2017 by Honourable Kassan in Mavoko PMCC Number 753 of 2015)

BETWEEN

VINCENT SAKWA MALONGO.....PLAINTIFF

VERSUS

DEVKI STEEL MILLS LIMITED.....DEFENDANT

RULING

1. This appeal arises out of an accident that allegedly occurred on 30th April, 2015 at the Appellant's premises where the Respondent alleges to have been working in the course of his employment. According to the Respondent, while in the course of duty of carrying metal rods, he sustained a deep cut on the right leg. It was his case that the accident was caused by the negligence and/or breach of statutory duty on the part of the Appellant, its directors and/or supervisors He therefore sought compensation in the form of general damages, special damages in the sum of Kshs. 3000.00, interest and costs of the suit.

2. After hearing the parties, the learned trial magistrate in his judgement found for the Respondent on liability at 80:20 % and proceeded to assess the quantum of damages by awarding the Respondent general damages in the sum of Kshs. 130,000.00, special damages of Kshs 3,000, costs and interests.

3. Aggrieved by the said decision, the Appellant lodged this appeal which was expressly stated to have been filed in the

Employment and Labour Court at Machakos. However, for reasons unknown to this Court, the matter was filed in the High Court registry.

4. In **Juma Nyamawi Ndungo & 5 Others vs. Attorney General; Mombasa Law Society (Interested Party) [2019] eKLR** the Court clarified that disputes relating to or arising from the employment relationship between an employee and an employer are to be heard by the Employment and Labour Relations Court (ELRC). In the case of **Saidi Mohammed vs. Diamond Industries Ltd (2018) eKLR** the court observed that the Employment and Labour Relations Court has appellate jurisdiction in disputes relating to work injury. In **Elizabeth Njeri Nderi & Another vs. Highway Carriers Limited [2019] eKLR** the Court of Appeal while allowing an appeal arising from the provisions of the *Work Injury Benefits Act* held that now that the appellate court is the Employment and Labour Relations Court (hereinafter referred to as “the ELRC”), the case should be remitted to that court.

5. The consequence thereof is that appeals in relation to work injuries are handled by the Employment and Labour Relations Court.

6. Although the Respondent also pleaded that his injuries were caused by the negligence on the part of the Respondent, in my view this matter substantially falls within the jurisdiction of the ELRC.

7. In this case, it is clear that the intention of the appellant was to have the appeal heard by the ELRC. Accordingly, the order which commends itself to me and which I hereby make is that further proceedings in this appeal will be undertaken by the ELRC since the said Court is a Court of equal status as the High Court and is empowered to grant the reliefs sought herein.

8. The costs will be in the cause. Orders accordingly.

RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 14TH DAY OF APRIL, 2021.

G. V. ODUNGA

JUDGE

Delivered in the presence of:

Mr Muruiki for the Appellant

CA Geoffrey



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