



**Ken Knit Kenya Limited v Oridi (Civil Appeal E179 of 2022)
[2024] KEHC 10232 (KLR) (19 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E179 OF 2022
RN NYAKUNDI, J
AUGUST 19, 2024**

BETWEEN

KEN KNIT KENYA LIMITED APPELLANT

AND

MOSES IDUKTA ORIDI RESPONDENT

((Being an Appeal from the Judgment/Decree of Hon. E. Kigen Senior Resident Magistrate delivered on 11th November, 2022 in Eldoret CMCC No. 1285 of 2016))

JUDGMENT

1. Through a Memorandum of Appeal dated 22nd November, 2022 and filed on the same date, the Appellant appeals against the Judgment delivered on 11th November, 2022 in Eldoret CMCC No. 1285 of 2016. The Appeal is based on the following grounds:
 - a. That the learned trial magistrate erred and misdirected herself in fact and in law by failing to appreciate that the Court of Appeal decision in Nairobi Civil Appeal No. 133 of 2011 – Attorney General versus Law of Society of Kenya & Another 2017 eKLR, affirmed the Constitutionality of Section 16 of WIBA which provisions ousts the original jurisdiction of courts to hear and determine matters relating to work injury.
 - b. That the learned trial magistrate erred in law and fact in failing to appreciate that the Court of Appeal in Nairobi Civil Appeal No. 133 of 2011 – Attorney General versus Law of Society of Kenya & Another 2017 eKLR did not order that the matters commenced in court before its judgment shall be heard and finalised by the Magistrate’s Court.
 - c. That the learned trial magistrate erred in law and fact in dismissing the Appellant’s Application dated 26th October, 2020 challenging the jurisdiction of the said court to hear and determine WIBA matters



2. The appellant prayed that the appeal be allowed and the Judgment/Decree of the Honorable Court dated 11th November, 2019 be reviewed and/or set aside. Further that the Judgment/Decree of 11th November, 2022 be set aside and submitted with an order striking out the Respondent's suits with costs.
3. The Respondent in opposition to the Appeal filed submissions on 28th May, 2024 in which he submitted that the appeal lacks merit on grounds that the Appellant ought to have raised an appeal on the ruling delivered by the trial court on 26th February, 2021 on a preliminary objection on the question of jurisdiction. The Respondent to this end concluded that the matter is Res judicata.

Summary and Background

4. The Respondent herein filed a suit at the Trial Court on 22nd November, 2016 vide a plaint dated 21st November, 2016 in which he sought reliefs of General damages and Special damages. The suit was anchored on an accident that occurred on the 19th of February, 2016 where the Plaintiff while engaged in his usual employment under the direction, supervision and/or control of the defendant its agent and/or representatives under knitting department and while in the course of doing his work on cutting section on easter man machine, he sustained injuries to the left thumb thus suffered loss and damage to his person for which he holds the defendant vicariously liable.
5. The Appellant herein denied the said claim and instead blamed the Respondent for his negligence during his work.
6. Subsequently, the Appellant filed a notice of Preliminary Objection and a notice of motion dated 16th September, 2020 seeking reliefs that the suit be struck for want of jurisdiction and due legal process. The court heard this application and rendered itself in the following terms:

“I note that the suit herein was filed on 22.11.2016 wherein the court had jurisdiction as per the High Court's decision in petition No. 185 oof 2008.

Guided by the above it is therefore noteworthy that the supreme court gave directions that the matters pending before court and based on the principle of legitimate expectation do proceed through the judicial process. It is therefore my finding that the said application lacks in merit and the same is hereby dismissed with costs.”

7. I take note that the Appellant never challenged the said ruling and the matter proceeded to conclusion, occasioning the impugned judgment delivered on 11th November, 2022. I have equally had sight of the submissions filed at the trial court, which are essentially addressing the question on quantum and liability. I take note that the Appellant at that stage proposed a compensation of Kshs. 60,000/= whereas the Respondent proposed an award of Kshs. 150,000/=. So that then, what one could reasonably assume is that the Appellant at that stage submitted to the court's jurisdiction since I have not seen any appeal on record.
8. The issues now raised on appeal are essentially geared towards ousting the jurisdiction of the trial court's jurisdiction and not the impugned judgment delivered on 11th November, 2022 in my opinion. However, the most significant question I ask myself is where appeals of this nature should lie.

Determination

9. Without a doubt, the specialized courts as per the provisions of Art. 162(1)(2) of *the Constitution* came in to address a growing need for expertise on fairly complex areas of law. Across the globe, labor disputes are characterized by simplicity, informality, flexibility and speed. To this end in our



jurisdiction, Parliament enacted the provisions of Art. 162(3) of *the Constitution* which established the Employment and *Labour Relations Act* No. 20 of 2011. The preamble to the act provides that it is “An act of parliament to establish the employment and labor relations court (ELRC) to hear and determine disputes relating to employment and labor relations and for connected purposes.”

10. The jurisdiction of the courts of equal status is jealously guarded by *the Constitution*. Article 165(5) (b) of *the Constitution* in peremptory terms provides that the High Court shall not have jurisdiction in respect of matters-(b) falling within the jurisdiction of the courts contemplated in article 162(2).
11. In the Case of Republic v Karisa Chengo & 2 others [2017]eKLR where the Supreme Court pronounced itself as follows:-

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”.

12. As for the instant case, the law as it stands as per the *Employment and labour Relations Court Act* no. 2011 Section 12 the jurisdiction of the court is provided for by parliament as follows:

Jurisdiction of the court

- a. The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Art. 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 relation including;
 - i. Disputes relating to or arising out of employment between an employer and a trade union.
 - ii. Dispute between an employer and a trade union.
 - iii. Dispute between an employers’ organization and a trade unions organization.
 - iv. Disputes between trade unions.
 - v. Disputes between employer organizations.
 - vi. Disputes between an employer’s organizations and a trade union.
 - vii. Disputes between a trade union and a member thereof.
 - viii. Disputes between and employer’s organization or a federations and a member thereof.
 - ix. Disputes concerning the registration and election of trade union officials and
 - x. Disputes relating to the registration and enforcement of collective agreements.



13. From the above cited provisions, it is evident that the Employment and Labour Relations Court has both appellate and original jurisdiction to handle the dispute in question as it relates to an employer and an employee.
14. Having said that, I form the opinion that appeals of such a nature, particularly on the Work Injuries Benefits Act and its operation, should lie at the Employment and Labour Relations Court. In my view and as aforementioned, the specialized courts were established to address the growing need of expertise in the various areas of law and there is need to tap into such a skill. Therefore, the ELRC will be better placed to address the issues raised in the appeal and give proper directions on this matter.
15. To this end, given that the matter has taken quite some time before its determination and in the interest of justice, the same shall be placed before the Deputy Registrar on the 17th of September, 2024 for further directions. In this respect, a notice be issued to the parties seized of legal representation to these proceedings.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 19TH DAY OF AUGUST 2024.

R. NYAKUNDI

JUDGE

