



**Siku v Kilifi Plantation (Civil Appeal 157 of 2016)  
[2023] KEHC 27584 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 27584 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL 157 OF 2016**

**F WANGARI, J  
APRIL 27, 2023**

**BETWEEN**

**NATHANIEL KAHINDI SIKU ..... APPELLANT**

**AND**

**KILIFI PLANTATION ..... RESPONDENT**

*(Appeal from the decision of Hon. Nyakweba delivered on 26th October,  
2016 in Mombasa in Senior Resident Magistrate Court Case No. 44 of 2011)*

**RULING**

1. This matter was listed for judgment before me. Upon perusing the file. I note that the same raises issues related to [Work Injury Benefits Act](#). There is a dispute as to whether the court allegedly made a decision it should not have made. The issue relates to the judgment of Justice J. B. Ojwang relating the issues of [Work Injury Benefits Act](#), 2007 and the interregnum between that judgment and the subsequent Court of Appeal and Supreme Court decisions.
2. An issue of jurisdiction was raised by the Respondent. This is based on the case of “Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR where Justice Nyarangi, JA, as then he was held as follows: -

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 <http://www.kenyalaw.org> - Page 8/27 Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion



that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance 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 the 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 cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

3. However, the issue of jurisdiction also should be relating to the ability of the magistrate court to handle matters under the Work Injury Benefit Act. The court is supposed to first determine whether the magistrate’s court had jurisdiction to determine the case as they did. However, before such a dispute is determine, the court itself should have jurisdiction to determine that question. The dispute related to work injury is a dispute related to employer-employee relationship. This court is barred by Article 165(5) of *the Constitution* from hearing such disputes.
4. The Jurisdiction of this Court is subscribed in Article 165 of *the Constitution*. The Court has unlimited original jurisdiction in Criminal and Civil Matters. The High Court, under Article 165 3(b) has jurisdiction to determine whether a right of a fundamental freedom in the a Bill of Rights has been violated, infringed or threatened.
5. However, this court does not have jurisdiction, by dint of Article 165 (5) to
  - a. Matters reserved for the exclusive jurisdiction of the Supreme Court.
  - b. Falling within the jurisdiction of Courts contemplated in Article 162(2) of *the Constitution*.
6. Article 162(2) provides that parliament shall establish Courts with status of the High Court to hear and determine disputes relating to; -
  - a. Employment and labour relations and
  - b. The environment and the use and occupation of ad title land.
7. Section 12 of the *Employment and Labour Relations Court Act*, states that the court, has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of that Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including;
  - (a) disputes relating to or arising out of employment between an employer and an employee;
  - (b) disputes between an employer and a trade union;
  - (c) disputes between an employers’ organization and a trade union’s organization;
  - (d) disputes between trade unions;



- (e) disputes between employer organizations;
  - (f) disputes between an employers' organization and a trade union;
  - (g) disputes between a trade union and a member thereof;
  - (h) disputes between an employer's organization or a federation and a member thereof;
  - (i) disputes concerning the registration and election of trade union officials; and (j) disputes relating to the registration and enforcement of collective agreement.
8. Hon Justice D. S. Majanja in *Kenya Red Cross Society v Kennedy Ajami Bende* [2023] eKLR had this to say regarding the jurisdiction of this court to handle matters that are essentially ELRC

“The exclusivity of the jurisdiction of the ELRC vis-à-vis the High Court in relation to disputes between employer and employee was underlined by the Supreme Court in *Republic v Karisa Chengo & Others*, SCK Petition No. 5 of 2015 [2017] eKLR where it held follows:

(52) From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either Environment and Land Court or Employment and Labour Relations Court is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the Environment and Land Court and Employment and Labour Relations Court, it should, by the same token, be inferred that the Environment and Land Court and Employment and Labour Relations Court too cannot hear matters reserved to the jurisdiction of the High Court.”

9. However, I do not agree that this case ought to be struck out. Article 159 of *the Constitution* saves such cases so that we make decisions without regard to technicalities. Noting the twin issues of intersection between the two courts and WIBA matters, I am of the view that this matter is predominantly labour related.
10. Regarding issues of predominance, in the case of *Mohamed Ali Baadi and others v Attorney General & 11 others* [2018] eKLR, the court dealt with the same as follows;
100. The Supreme Court in *Republic vs Karisa Chengo & 2 Others*<sup>[47]</sup> amplified and pertinently held that each of the Superior Courts established by or under *the Constitution* has jurisdiction only over matters exclusively reserved to it by *the Constitution* or by a statute as permitted by *the Constitution*. The holding in this case however, does not resolve the knotted question of which court among the High Court and the two equal status Courts under Article 162(2)(b) should be seized of jurisdiction in controversies in hybrid cases. Hybrid cases are cases where issues cut across the exclusive jurisdiction reserved for each of the three courts. As demonstrated by the issues identified above, this is one such hybrid case.
11. In the circumstance the Employment and Labour Relations Court is best placed to deal with this matter.



## **Determination**

12. I therefore make the following orders: -

- a. The appeal is transferred to the Employment and Labour Relations Court.
- b. The matter be mentioned before the Deputy Registrar on the ELRC court to give a date for direction before the Presiding Judge ELRC Mombasa to give directions.
- c. Costs be in the cause.
- d. The case be closed from The High Court side.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF APRIL, 2023.**

.....

**F. WANGARI**

**JUDGE**

In the presence of;

N/A by Appellant

N/A by Respondent

Guyo, Court Assistant

