



REPUBLIC OF KENYA



KENYA LAW
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**Sukari Industries Limited v Akina (Suing on her Own Behalf and on
Behalf of the Estate of Felix Omondi Akina - Deceased) (Civil Appeal
E022 of 2021) [2023] KEHC 22758 (KLR) (26 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E022 OF 2021
RPV WENDO, J
SEPTEMBER 26, 2023**

BETWEEN

SUKARI INDUSTRIES LIMITED APPELLANT

AND

**ROSELINE ADHIAMBO AKINA (SUING ON HER OWN BEHALF
AND ON BEHALF OF THE ESTATE OF FELIX OMONDI AKINA -
DECEASED) RESPONDENT**

*(Arising from the judgement and decree of Hon. J.M. Munguti (PM)
dated and delivered on 24/3/2021 in Migori CMCC No 174 of 2019.)*

JUDGMENT

1. This appeal arose from the judgement and decree of Hon. J.M. Munguti (PM) dated and delivered on 24/3/2021 in Migori CMCC No 174 of 2019. The appellant cited 10 grounds of appeal. On 6/7/2023, Mr Odero, Counsel for the appellant told the court that they wished to abandon the issue of jurisdiction of the trial court to hear and determine the suit. Counsel asked the court to make a determination on quantum and liability. Counsel also asked this court to consider Civil Appeal No E027 of 2021 which has similar issues.
2. This court has also considered the practice directions published in the Gazette Notice No 5476 dated 28/4/2023 (the Practice Directions). The practice directions concern the pending compensation of work-related injuries suits filed prior to the Supreme Court Decision Petition No 4 of 2019 *Law Society of Kenya vs Attorney General & Another* (2019) eKLR. Since the appeal from which this suit arose was filed before the decision of the Supreme Court, the trial Magistrate properly handled the matter.
3. The *Work Injury Benefits Act (WIBA Act)* was enacted on December 20, 2007. The claim before the trial court was filed on October 28, 2019 before the Supreme Court delivered its judgement. It was



therefore being litigated under the WIBA Act but before the decision of the Supreme Court and the practice directions are clear that such matters should be heard to their logical conclusion.

4. The claim by the respondent on behalf of the estate of the deceased was that the deceased died in the course of employment. The purpose of the WIBA Act was

“to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes.”

It therefore goes without saying that for a court to address itself on the liability of the employer and/or employee it would be delving into the arena of a work related dispute.

5. Article 162 of the Constitution provides for systems of courts. It provides that Parliament shall establish courts with the status of the High Court. In particular, Article 162 (a) establishes the court which shall hear and determine disputes relating to:-

“employment and labour relations.”

6. The jurisdiction of courts or any competent dispute resolution fora, arises from the Constitution, Statue or both as was held by the Supreme Court in Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others (2012) eKLR.

7. Jurisdiction is the lifeline of any court. In Nyarangi J in Owners of the Motor Vessel “Lilian s” vs Caltex Oil (K) Ltd (1989) KLR held;

“Where the court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given... Jurisdiction is everything. Without it, a court has no power to make one more step. Where the court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

8. Section 52 of the WIBA Act provides that appeals which arise from the decision of the Director under the WIBA Act lie to the then Industrial Court which is now the Employment and Labour Relations Court. Similarly, appeals from the Magistrate’s Courts in which the dispute happened in the course of employment, can only lie in the Employment and Labour Relations Court which is the appellate court for all employment related disputes. Having read through the Supreme Court decision in the Law Society of Kenya (*supra*) and the practice directions, there is nothing to suggest that appeals from such matters should be filed in the High Court. Therefore, this court is divested of jurisdiction to make a determination in this appeal. It cannot arrogate itself powers to deal with liability and quantum.

9. The upshot therefore is that this court is bereft of jurisdiction by dint of the fact that the matters for determination happened in the course of employment. The appeal should have been filed in the Employment and Labour Relations Court. The appeal is hereby struck out with no orders as to costs.

The orders shall apply in HCCA No E027 of 2021.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 26TH DAY OF SEPTEMBER, 2023.

R. WENDOH

JUDGE

Judgement delivered in presence of:-

Mr Odero for the Appellant.



No appearance for the Respondent.

Emma & Phelix - Court Assistants.

