



REPUBLIC OF KENYA



KENYA LAW
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Rotich v Kenya Power and Lighting Company PLC & another (Civil Suit E001 of 2022) [2023] KEHC 25997 (KLR) (28 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL SUIT E001 OF 2022
RL KORIR, J
NOVEMBER 28, 2023**

BETWEEN

JOSEAH KIPNGENO ROTICH PLAINTIFF

AND

KENYA POWER AND LIGHTING COMPANY PLC 1ST DEFENDANT

ESIKO KENYA ENTERPRISES LIMITED 2ND DEFENDANT

RULING

1. Through a Complaint dated 21st January 2022, the Plaintiff sued the Defendants for general and special damages arising out of a work place accident where the Plaintiff was electrocuted while working for the Defendants. It was the Plaintiff's case that the Defendants acted negligently when they switched on the electricity when he was still doing connections.
2. The 1st Defendant entered appearance and filed their Defence dated 18th February 2022, in which they denied that they were negligent and further attributed the Plaintiff's injuries to his own negligence.
3. Subsequently the Defendants, through their advocates, Kitwa & Partners filed a Notice of Preliminary Objection dated 28th November 2022. The Preliminary Objection was based on the following grounds:-
 - i. That this Honourable Court does not have jurisdiction to hear and determine this matter pursuant to the provisions of section 52 of the *Work Injury Benefits Act*, 2007 and the Supreme Court's Judgment in Supreme Court Petition No, 4 of 2019.
 - ii. That the Plaintiff's suit amounts to an abuse of the court process and ought to be struck out with costs to the Defendant.
4. The matter came up for directions on 19/6/2023 when the court granted leave to the Plaintiff's Counsel to either withdraw the suit as per his request or to respond to the Preliminary Objection. In



the later event, the court further directed the parties to file submissions in respect of the Preliminary Objection.

The Defendants' Written Submissions.

5. The Defendants submitted that their Preliminary Objection raised a point of law as it raised the issue of this court's jurisdiction to hear and determine the matter.
6. It was the Defendants' submission that this court did not have jurisdiction to determine the matter. That section 16 as read with section 23 (1) of the [Work Injury Benefits Act](#) confers the power of adjudication of any claim from compensation arising from injury or death in the work place upon the Director of Occupational Safety and Health Services and that section 21 of the [Work Injury Benefits Act](#) 2007 barred institution of court proceedings by an aggrieved party save for an appeal to this court.
7. The Defendants submitted that jurisdiction in such matters was provided for in [Law Society of Kenya vs Attorney General & another](#) (2019) eKLR where the Supreme Court upheld the Court of Appeal decision that work related injury claims should be instituted with the Director of Occupational Safety and Health Services. That this court neither had the original or appellate jurisdiction to deal with such matters.
8. It was the Defendants' submission that the [Work Injury Benefits Act](#) had given directions and proper procedure that are to be followed. That the Plaintiff chose to abuse the said procedure by filing his suit in a court that lacked jurisdiction.
9. The Plaintiff/Respondent failed to respond to the Preliminary Objection and did not file his written submissions either. There is also no record that he had withdrawn the suit as he had earlier intimated.
10. I have considered the Preliminary Objection dated 28th November 2022 and the Defendants/Applicants' written submissions dated 29th March 2022. The only issue for my determination was whether this court has the jurisdiction to hear and determine the present suit.
11. It is trite law that a court must have jurisdiction to hear and determine a suit or an Application from the very beginning. Without it, the court has no option other than to down its tools. The Supreme Court in the case of [R vs Karisa Chengo](#) (2017) eKLR, held:-

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or 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. Further, in [Samuel Kamau Macharia & another vs Kenya Commercial Bank Limited & 2 others](#) (2012) eKLR, the Supreme Court held that:-

“A Court's jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by [the Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”



13. The *Work Injury Benefits Act* No. 13 of 2007 (hereinafter referred to as WIBA) is defined as an Act of Parliament that provides for compensation to employees for work related injuries and diseases contracted in the course of their employment.

14. The Act states that the compensation for injuries sustained by a person in the course of their employment shall be done in accordance to the provisions of the Act. Section 16 of the WIBA provides:

No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.

15. The Act also provides the procedure for obtaining compensation in the event of a work related injury or death. Section 21 of the WIBA provides: -

Written or verbal notice of any accident provided for in section 22 which occurs during employment shall be given by or on behalf of the employee concerned to the employer and a copy of the written notice or a notice of the verbal notice shall be sent to the Director within twenty-four hours of its occurrence in the case of a fatal accident.

16. Section 22 of the WIBA provides: -

- (1) Subject to the provisions of this section, an employer shall report an accident to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.
- (2) For the purposes of this section, an accident includes any injury reported by an employee, to his employer, if the employee when reporting the injury, alleges that it arose out of and in the course of his employment and irrespective of the fact that the employer is of the opinion that the alleged accident did not so arise out of and in the course of employment.....

17. Section 23 of the WIBA provides: -

- (1) After having received notice of an accident or having learned that an employee has been injured in an accident the Director shall make such inquiries as are necessary to decide upon any claim or liability in accordance with this Act.
- (2) An inquiry made under subsection (1) may be conducted concurrently with any other investigation.
- (3) An employer or employee shall, at the request of the Director, furnish such further particulars regarding the accident as the Director may require.....

18. Section 26 of the WIBA provides that: -

- (1) A claim for compensation in accordance with this Act shall be lodged by or on behalf of the claimant in the prescribed manner within twelve months after the date of the accident or, in the case of death, within twelve months after the date of death.
- (2) If a claim for compensation is not lodged in accordance with subsection (1), the claim for compensation may not be considered under this Act, except where the accident concerned has been reported in accordance with section 21.



- (3) If an employer fails to report an accident or to provide information requested by the Director as specified in the request, the Director may—
 - (a) conduct an investigation and recover the cost of the investigation from the employer as a debt due from the employer; or
 - (b) levy a penalty on the employer.
 - (4) An employer or insurer against whom a claim for compensation is lodged by the Director under this section, shall settle the claim within ninety days of the lodging of the claim.
 - (5) The Director shall, within thirty days of receipt of the money claimed under subsection (1), pay the money to the employee who made the claim or his dependants.....
19. Section 51 of the WIBA provides: -
- (1) Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.
 - (2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.
20. Section 52 of the WIBA provides: -
- 1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
 - (2) An objector may, within thirty days of the Director’s reply being received by him, appeal to the Industrial Court against such decision.
21. From the above illustration, it is clear that the *Work Injury Benefits Act* No. 13 of 2007 lays out an elaborate procedure by which a compensation claim can be pursued. The Director of Occupational Safety and Health Services is empowered to determine such claims and award compensation. An aggrieved party has the right of appeal against the Director’s decision by lodging an objection with the Director. A court of law only comes in when an aggrieved party is dissatisfied by the decision of the objection by Director of Occupational Safety and Health Services.
22. The same was aptly captured by the Supreme Court in *Law Society of Kenya vs Attorney General & another* (2019) eKLR, where it held:-
- “.....In doing so, a plain reading of Section 16 of the Act would reveal that its intention is not to limit access to courts but to create a statutory mechanism where any claim by an employee under the Act is subjected, initially, to a process of dispute resolution starting with an investigation and award by the Director aforesaid and thereafter, under Section 52 an appeal mechanism to the then Industrial Court. As we previously stated in *Petition No. 33 of 2018, Sammy Ndungu Waity Vs I.E.B.C. and 3 others* [2019] eKLR;
- “Where *the Constitution* or any other law establishes an organ, with a clear mandate for the resolution of a given genre of disputes, no other body can lawfully usurp such power, nor can it append such organ from the pedestal of execution of its mandate. To hold otherwise, would be to render the



constitutional provision inoperable, a territory into which no judicial tribunal, however daring, would dare to fly.”

We reiterate the above holding and in the present context therefore we further find that Section 16 cannot be read in isolation so as to create the impression that it curtails the right to immediately access the courts, because by looking at the intention of Section 16, the purpose it fulfils is apparent. That purpose is revealed in Section 23 which calls for initial resolution of dispute via the Director and this can be deemed as an alternative dispute resolution mechanism. But what if one is still aggrieved by the decision of the Director? The answer to that question lies in Section 52 of the Act which allows aggrieved parties to seek redress in a court process. In the circumstances, access to justice cannot be said to have been denied.

Having so held, it is evident that by granting the Director authority to make inquiries that are necessary to decide upon any claim or liability in accordance with WIBA, the jurisdiction of the High Court to deal with constitutional questions and violations that may arise from such claims under Article 165 of *the Constitution* 2010 is not ousted at all. Similarly, the appellate mechanism to the Industrial Court, in the circumstances, cannot be legitimately questioned.”

23. The provisions of the *Work Injury Benefits Act* No.13 of 2007 and the decision in *Law Society of Kenya v Attorney General & another* (supra) are quite clear that the process of compensation of work relate injuries are to be followed as provided for in the Act.
24. In the final analysis, there is no evidence to suggest that this matter came before this court as a constitutional claim. Indeed, the case has been introduced by way of Plaint implying original jurisdiction. Such jurisdiction, it at all would rightly belong to the Employment and Labour Relations Court. It is my very clear finding that this court has no jurisdiction to hear and determine this matter and I accordingly down my tools.
25. In the end, I uphold the Preliminary Objection dated 28th November 2022. The Plaintiff’s suit is accordingly struck out. I exercise discretion not to punish the Plaintiff with costs for the misdirection of his Counsel.
26. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF NOVEMBER, 2023

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of;

Mr. Kitiwa for the 1st Defendant/Applicant,

