



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bidco Africa Limited v Omido (Civil Appeal E078 of 2021)  
[2025] KEHC 5428 (KLR) (11 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5428 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E078 OF 2021  
DO CHEPKWONY, J  
APRIL 11, 2025**

**BETWEEN**

**BIDCO AFRICA LIMITED ..... APPELLANT**

**AND**

**ERIC AMBASA OMIDO ..... RESPONDENT**

*(An Appeal from the Ruling and Order of the Chief Magistrate's Court at Thika (Honourable Ben M. Ekhubi) Principal Magistrate) dated 15th April, 2021, in CMCC No.527 of 2019)*

**JUDGMENT**

1. This Appeal emanates from the Ruling and Order of Thika CMCC No. 527 of 2018 delivered by Hon Ben M. Ekhubi on 15<sup>th</sup> April, 2021. The Appellant raised the following grounds in the Memorandum of Appeal :
  - a. That the learned trial Magistrate erred in law and in fact in failing to appreciate that the Respondent was in the course of employment with the Appellant when he was allegedly injured in an accident said to have occurred on 25<sup>th</sup> June, 2017.
  - b. That the learned trial Magistrate erred in law and in fact in failing to appreciate that the alleged accident having been said to have occurred on 25<sup>th</sup> June, 2017 raised issues which were within the provisions of *Work Injury Benefits Act*, 2007.
  - c. That the learned trial Magistrate erred in law and in fact when it dismissed the Appellant's Preliminary Objection dated 10<sup>th</sup> December, 2020 and finding that the court had jurisdiction to determine issues falling within the provisions of the *Work Injury Benefits Act*, 2007 and which issues the court had no jurisdiction to determine.
  - d. That the learned trial Magistrate erred in law and in fact in failing to apply proper legal principles and thus arriving at a bad decision.



2. The Appellant therefore seeks the following orders:-
  - a. This court be pleased to set aside the Ruling and order of Hon. Ben M. Ekhubi, Principal Magistrate dated 15<sup>th</sup> April, 2021.
  - b. This court upholds the Appellant's Preliminary Objection dated 10<sup>th</sup> December, 2020 and strikes out the suit in the trial court with costs to the Appellant.
  - c. That this court be pleased to award costs of this appeal and the lower court to the Appellant.
3. This being a first appeal, this Court is reminded of its duty to re-assess and re-analyse the evidence as was stated in the trial court so as to come up with its own conclusion while reminding itself that it did not hear and observe the witnesses as they testified. This was stated in the case of *Selle & Another v Associated Motor Boat Co. Ltd. & Others* [1968]EA 123 in the following terms:-

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hammed Saif v Ali Mohamed Sholan* [1955], 22 E.A.C.A. 270).”

4. The facts of the case before the trial court were that the Respondent was travelling as a lawful passenger in Motor vehicle Registration Number KCK 743W which is owned by the Defendant when it lost control and overturned occasioning him bodily injuries. The Respondent sued the Appellant who also filed a Defence seeking that the suit be dismissed with costs. The Appellant filed Notice of Preliminary Objection dated 10<sup>th</sup> December, 2020 on the basis that the court did not have jurisdiction to entertain the issues claimed in the CMCC No.527 of 2018 as it was a work injury claim under the *Work Injury Benefits Act*, 2007. The Preliminary Objection was canvassed by way of written submissions and in a Ruling delivered on 15<sup>th</sup> April, 2022, the trial Court held that at the time, there were many cases even before the Apex Court which have contradicting Judgments and therefore it would be imprudent to allow the Notice of Preliminary Objection at that time.
5. This Ruling precipitated into the filing of the Appeal herein which the court directed be disposed off by way of written submissions. In the Appellant's Submissions dated 9<sup>th</sup> May, 2022, four issues were raised in line with the grounds set out in the Memorandum of Appeal. The Appellant submitted that the accident occurred when the Respondent was in the course of employment with the Appellant, and although it is not specifically pleaded, it confirms that the Respondent was its employee. It holds that even the trial court confirmed the employment in the Ruling. The Appellant holds that the accident had raised issues which were within the provisions of the *Work Injury Benefits Act* 2007 which the trial Court also confirmed in its Ruling and therefore the Ruling of the court was erroneous.
6. The Appellant has placed reliance on the case of *Law Society of Kenya -vs- Attorney General & Another* [2019]eKLR, which held that all work injury claims that arose after enactment of the *Work Injury Benefits Act* 2007 were to be processed within the procedure set out in the Act and therefore it ousted the original jurisdiction of the court. The Appellant therefore held that the court lacked



jurisdiction to handle the matter and further relied on the case of *Heritage Insurance Co Ltd v David Fikiri Joshua & Another* [2021]eKLR.

7. The Appellant holds that since the accident occurred on 25<sup>th</sup> June, 2017, *Work Injury Benefits Act* 2007 was already in operation and therefore the trial court erred in law and fact in dismissing the Preliminary Objection and finding that it had jurisdiction. The Appellant contends that the trial Court relied on bad principles thereby arriving at a bad decision and hence the Appeal should be allowed and the Ruling be set aside.
8. In the Respondent's submissions dated 19<sup>th</sup> September, 2022, the Respondent submits that the claim arose from *Traffic Act* and the Highway Code of Kenya. He holds that the claim is purely seeking general damages, special damages for a road traffic accident case which occurred on 25<sup>th</sup> June, 2017 involving the Appellant's motor vehicle but the claim has nothing to do with the provisions of *Work Injury Benefits Act* 2007.
9. The Respondent has relied on Section 10 (2) of the *Work Injury Benefits Act* 2007 which provides as follows:-

“ An employer is liable to pay compensation in accordance with the provisions of this Act to an employee that is injured while at work.”
10. According to the Respondent the accident did not occur while at the place of work but on Thika-Garissa road and therefore the claim falls outside the provisions of *Work Injury Benefits Act*. He further argues that the relationship of employer- employee should not be a deterrent factor for one to pursue claims outside *Work Injury Benefits Act* as parties herein are distinct and separate from each other. The Respondent holds that the Appellant was sued in the claim as the registered owner of Motor vehicle Registration Number KCK 743W and not in his capacity as employer and the Respondent was not on duty at the time of the accident nor was he at his place of work. The Respondent therefore urges the court to dismiss the Appeal with costs.

### Determination

11. In considering this appeal, this Court has read through and analysed the original record of proceedings of the trial Court, the impugned ruling alongside the submissions filed by either party and cited statute and case law in support of their respective cases and find that the issue for determination is:-
  - a. Whether the trial Court erred in finding that the court had jurisdiction to handle issues falling within the provision of the *Work Injury Benefits Act*, 2007.
  - b. Whether the trial Magistrate erred in failing to apply proper legal principles and arrived at a wrong decision.
12. It is trite that there were many conflicting judgments of the courts over the years relating to claims brought under this *Work Injury Benefits Act* and which courts should handle them. However the Chief Justice in the Practice Directions issued through Gazette Notice No.5476 dated 24<sup>th</sup> April 2023 and provided directions that:-
  - a. Claims Filed after Commencement of *Work Injury Benefits Act* but before the Supreme Court decision. Taking into account that High Court vide its Judgment dated 4<sup>th</sup> March, 2009 in *Law Society of Kenya v Attorney General & Another* [2009] eKLR declared some of the provisions in *Work Injury Benefits Act* including Sections 16, 23(1) and 52, which prescribe the procedure for lodging claims under the Act unconstitutional. Consequently, the said



declaration of nullity created a legitimate expectation that Claimants could directly lodge claims for compensation for work related injuries and diseases in court. As such, litigants cannot be penalized for relying on the declaration of nullity, as appreciated by the Supreme Court in *Attorney-General and 2 Others v Ndi and 79 Others; Prof. Rosalind Dixon and 7 Others (Amicus Curiae) (Petition 12, 11 and 13 of 2021 (Consolidated))* [2022] KESC 8 (KLR) to lodge their claims in court.

- b. Therefore:-
- i. All claims with respect to compensation for work related injuries and diseases filed after the commencement of *Work Injury Benefits Act* and before the Supreme Court decision at the Employment and Labour Relations Courts or the Magistrates' Courts shall proceed until conclusion before the said courts.
  - ii. All pending Judgments and rulings relating to compensation for work related injuries and diseases before the Employment and Labour Relations Court and the Magistrates' Courts shall be delivered by the same court.
13. In this case the cause of action arose in 25<sup>th</sup> June, 2017 and the suit was filed on 29<sup>th</sup> June, 2018. The Court of Appeal decision which overturned the decision of the High Court was delivered on 17<sup>th</sup> November, 2017 and the Supreme Court decision was delivered on 3<sup>rd</sup> December, 2019. Based on the above practice directions, the instant case which was filed before the Supreme Court decision is to proceed until conclusion before the trial court.
14. The court therefore finds that the trial court indeed had jurisdiction to handle the matter and was thus justified to dismiss the Notice of Preliminary Objection. The file to be returned to Thika Magistrate Court for the case to proceed.

It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 11<sup>TH</sup> DAY OF APRIL, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Moiri holding brief for Mr. Mwaniki counsel for Applicant

M/S Kiogora counsel for Respondent

Court Assistant - Martin

