Jumbo North (EA) Limited v Angwenyi (Civil Appeal E005 of 2021) [2024] KEHC 7449 (KLR) (21 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7449 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E005 OF 2021

JRA WANANDA, J

JUNE 21, 2024

BETWEEN

JUMBO NORTH (EA) LIMITED .... APPELLANT

AND

WALTER SURE ANGWENYI .... RESPONDENT

JUDGMENT

1. The Appellant was aggrieved by the Ruling delivered on 29/01/2021 in Eldoret Chief Magistrates Court Civil Case No. 1056 of 2016, dismissing a Preliminary Objection challenging the jurisdiction of the said Court in view of the provisions of Section 16 and 58 of the Work Injuries and Benefits Act, 2007. It is that Ruling that gave rise to this appeal.

2. I took over this Appeal in March 2023 after it had already been pending in this Court since 8/02/2021 when it was filed. The matter is about the Works Injury & Benefits Act, 2007 otherwise commonly referred as WIBA. Ordinarily therefore, the matter would have been heard and determined by the Employment & Labour Relations Court in light of the provisions of Article 162(2) of *the Constitution* and also Section 12(1) of the Employment & Labour Relations Court Act. The matter was filed before this Court because the suit the subject of this Appeal was filed at the lower Court as a civil suit and accordingly, the lower Court rendered its decision while sitting as a civil Court. That was before the Magistrates Courts were conferred with the jurisdiction to sit as Employment & Labour Courts. The Appeal therefore at that time lay to this Court. Both parties were unanimous that this Court could hear this Appela.

3. Coming back to the merits of the matter, by the Plaint filed on 30/9/2016, the Respondent pleaded that on or about 10/1/2015, he was lawfully on duty working when tongs he was using broke and he fell down as a result of which he sustained injuries and suffered loss and damage. He attributed the occurrence of the incident to the Appellant's negligence and breach of duty, particularly, the failure to provide him with the relevant protective gear.

4. In response, the Appellant filed its Defence dated 14/10/2016, denying the Respondent's allegations. The Appellant, in the alternative, blamed the Respondent for negligence. Further, the Appellant filed the Notice of Preliminary Objection dated 10/2/2019 as aforesaid. The Preliminary Objection was no doubt triggered by the Court of Appeal decision delivered on 17/11/2017 in the case of Attorney General v Law Society of Kenya & another [2017] eKLR. As aforesaid, the lower Court dismissed the Preliminary Objection and ordered that the matter proceeds to full hearing.

5. Aggrieved by the said decision, the Appellant on 8/2/2021, filed the lengthy Memorandum of Appeal citing the following grounds:

   i. That the learned trial Magistrate erred in law and fact in dismissing the Appellant's Preliminary Objection on jurisdiction.

   ii. That the learned trial Magistrate erred in law and fact in failing to correctly interpret the provisions of Sections 16 and 58 of the *Work Injury Benefits Act*, 2007 Laws of Kenya hence an erroneous decision.

   iii. That the learned trial Magistrate erred in law and fact in failing to appreciate, interpret and apply the provisions of Sections 16 and 58 of the *Work Injury Benefits Act*,2007 hence an erroneous decision.

   iv. That the learned trial Magistrate erred in law and fact in failing to hold and/or find that the decision of the Court of Appeal in Attorney General v Law Society of Kenya & another [2017] eKLR delivered on the 17th November, 2017 was binding and thus could not hold otherwise.

   v. That the learned trial Magistrate erred in law and fact in failing to hold that the Supreme Court decision delivered on the 3rd December, 2019 in Petition 4 of 2019 was binding, directive and final with regard to *Work Injury Benefits Act*, 2007 Laws of Kenya.

   vi. That the learned trial Magistrate erred in law and fact in failing to consider, appreciate and apply the finding of the Court of Appeal and Supreme Court with regard to jurisdiction hence an erroneous and unfounded decision in law.

   vii. That the learned trial Magistrate erred in law and fact in failing to appreciate and interpret the Court of Appeal and Supreme Court decisions correctly hence an erroneous decision.

   viii. That the learned trial Magistrate erred in law and fact in failing to hold that the Court lacked jurisdiction to entertain work injury claims and thus an erroneous decision not founded and/or backed with the law.

   ix. That the learned trial Magistrate erred in law and fact in failing to find and hold that the Respondent instituted the suit in the wrong forum and thus the Court had no jurisdiction to handle it.

   x. That the learned trial Magistrate erred in law and fact in misinterpreting the Supreme Court decision with regard to the legitimate expectation of the Respondent taking into account the law in force at the time of institution of the suit.

   xi. That the learned trial Magistrate erred in law and fact in failing to consider the Appellant's submissions and the authorities supplied to Court hence an erroneous decision.

   xii. That the learned trial Magistrate erred in law and fact in misdirecting itself with regard to the Supreme Court decision delivered on the 3rd December, 2019 hence an erroneous decision in the circumstances.

Hearing of the Appeal

6. The appeal was canvassed by way written submissions. Pursuant to directions given, the Appellant filed its Submissions on 23/1/2023 through Messrs Nyairo & Co. Advocates while the Respondent filed his on 25/9/2023 through Messrs Onkangi, Onkangi & Associates. The Appellant also filed Further Submissions on 16/8/2023.

Appellant's Submissions

7. Counsel for the Appellant submitted that during the pendency of the suit, the Court of Appeal in the said case of Attorney General vs Law Society of Kenya (supra), declared that the *Work Injury Benefits Act* 2007 is consistent with *the Constitution* and that the correct forum to litigate work injury claims is before the Director of Occupational Safety and Health Services (hereinafter referred to as "the Director"). She added that on 3/12/2019, the Supreme Court in Petition No. 4 of 2019, upheld the Court of Appeal decision. On the foregoing basis, Counsel submitted that the Magistrates Courts have no jurisdiction to hear and determine work injury claims and the decision of the trial Magistrate to dismiss the Preliminary Objection was wrong and ought to be set aside. On jurisdiction, Counsel referred to the oft-cited Court of Appeal decision in Owners of Motor vessel "Lillian S vs. Caltex Oil (Kenya) Limited (1989) eKLR

8. She then submitted that the claim in the lower Court was instituted on 30/12/2016 after the *Work Injury Benefits Act*, 2007 came into force, and that the said Act provides for a structure and/or framework on how to seek redress for work injury claims. She cited Sections 16, 22, 23 and 58 thereof and submitted that these sections provide explicitly the forum for work injury claims and which confer power upon the Director to handle such claims. On similar instances where a statute has established a forum within which cases are to be handled, she cited the case of Republic vs. Independent Electoral and Boundaries Commission, Ex-parte National Supper Alliance (NASA) Kenya & 6 Others.

9. Counsel maintained that the trial Court erred in dismissing the Preliminary Objection since the Act is clear on the matter a position that was supported by the Supreme Court in Petition No. 4 of 2019 which dealt with this issue exhaustively in paragraph 85 and 88 of its Judgment. Counsel further argued that the Court of Appeal decision is by law binding upon the Courts under it and that the trial Magistrate having failed to abide by the said decision erred in law. She cited the principles of stare decisis and judicial precedence and cited the case of John Nyamawi Ndungo & 4 Others Vs Attorney General & Mombasa Law Society and also the case of Jasbir Singh Rai & 3 Others Vs Tarlocham Sigh Rai & 4 Others (2013) eKLR.

10. She argued that the correct position is that those litigants who instituted suits before the Work Injuries Benefits Act, 2007, under the repealed statute have legitimate expectation to have their matters concluded under that regime before the *Work Injury Benefits Act*, 2007 came into force. She cited the case of Shree Ganesh Enterprises and another Vs Boniface Mung'aya (Bungoma ELRC Appeal No. E018 of 2021) and reiterated that the Court is not the first port of call when it comes to work injury claims.

Respondent's Submissions

11. Counsel for the Respondent argued that as much as they agree that the *Work Injury Benefits Act*, 2007 (WIBA) provides that work injury claims should first be lodged before the Director and that the Courts should only be invoked at the appeal level when litigants are dissatisfied by the decisions of the Director, the Act has been subject of litigation pertaining to its constitutionality to both the former and current Constitution, which litigation has seen the High Court, Court of Appeal

and Supreme Court render judgements regarding decisions, that this prolonged litigation created confusion as to the Act's application bearing in mind that it became operational under the former Constitution and on record were employment compensation matters that had been filed under the Workmen's Compensation Act, Cap 236 (repealed). Counsel added that to cure this legal conundrum, on 28/04/2023, the Honourable Chief Justice issued Practice Directions relating to pending Court claims regarding compensation for work related injuries and diseases instituted prior to the Supreme Court decision in *Law Society of Kenya vs. Attorney General and another, Petition No. 4 of 2019*; (2019) eKLR.

12. Counsel submitted that Rule 3 of the Practice Directions provides that the Directions shall apply to the Employment and Labour Relations Court and Magistrates appointed and gazetted by the Chief Justice pursuant to section 29 (3) and (4) of the Employment and *Labour Relations Act*, 2011 to preside over cases involving employment and labour relations. Counsel argued that this in itself establishes that the trial Court had jurisdiction to hear and determine work injury matters, contrary to the Appellant's assertion. Counsel added that the Practice Directions categorized work injuries claims into two, namely, (i) claims filed after commencement of WIBA but before the Supreme Court decision and (ii) claims filed after the Supreme Court decision. He submitted that the claim herein was filed after commencement of WIBA but before the Supreme Court decision. He then referred to Rule 7(a) of the Practice Rules which provides that claims with respect to compensation for work related injuries and diseases filed after the commencement of WIBA and before the Supreme Court decision shall proceed until conclusion before the said Courts and Rule 7(b) which provides that pending judgments and rulings relating to compensation for work related injuries and diseases shall be delivered by the same Court.

13. Counsel submitted that in view of the foregoing, this appeal ought to be dismissed to pave way for the trial Court to determine the claim and render its judgement according to the said directive. He added that by this Court directing so, it will in turn enable the attainment of the objective the Practice Directions as provided in Rule 4 thereof. He also cited Article 159 of *the Constitution*. According to Counsel, the Respondent has a valid claim yet the Appellant is keen on delaying the wheels of justice by filing numerous applications like this appeal, and that as such, Counsel urged this Court to act in the spirit of the foregoing constitutional provision and dismiss the appeal. He further submitted that the overriding objective of the *Civil Procedure Act* as captured in Sections 1A and 1B thereof is to facilitate the "just, expeditious, proportionate and affordable resolution of disputes".

Appellant's Further Submissions

14. In the Further Submissions, Counsel for the Appellant contended that the Practice Directions issued by the Chief Justice do not apply to the instant appeal, that the Directions do not supersede the law of the land and/or statute, that having been filed against the law applicable, namely, *Work Injury Benefits Act*, as at 2016, the appeal ought to be allowed purely on the legal position of jurisdiction.

15. She further submitted that the Practice Directions have categorized work injury claims into three, namely, (i) matters filed before the commencement of the WIBA, (ii) matters filed after the commencement of the WIBA but before the Supreme Court decision; and (iii) matters filed after the Supreme Court decision.

16. Regarding Direction (iii) above, i.e., that matters filed after the commencement of WIBA but before the Supreme Court decision should proceed before the Courts until conclusion, Counsel submitted that this Direction (iii) does not apply to the instant appeal because the appeal was filed before the Chief Justice's Directions were issued since the appeal was filed on 8/2/2021 while the said Directions were gazetted on 24/4/2023. Counsel also argued that the law does not act retrospectively hence the

Directions would only have applied if the instant appeal was filed after the Directions were gazetted which is not the case herein.

17. Counsel also argued that the Directions relate to suits pending before the Magistrates' Courts and that this is a High Court matter on appeal. She further argued that the Directions that were issued with regard to matters on appeal are in regard to those appeals emanating from the Director filed after the Supreme Court decision and not appeals emanating from the Magistrates' Courts and that the High Court is a Court of record and it is duty bound to set the record straight with regard to the law and/or legal position. She cited the case of Said Hemed Said v Emmanuel Karisa Maitha & Another Mombasa HCEP No. 1 of 1998 in which, she stated, the Court cited the earlier case of John Mwangi v Francis Mwangi Njuguna Civil Application No. 96 of 1997 and Hutchunson Maurices [1950]1 KB 574.

Determination

18. The question in this Appeal is "whether the trial Court had jurisdiction to hear and determine the suit before it in light of the provisions of Sections 16 and 58 of the *Work Injury Benefits Act*, 2007" and therefore "whether the trial Court acted correctly in dismissing the Preliminary Objection challenging its jurisdiction".

19. From the onset, I must mention that jurisdiction is everything and without which a Court must down its tools as was held in the celebrated case of Owners of Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd in which the Court held as follows:

> " 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 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"

20. Coming to the matters arising herein, Section 16 of WIBA provides as follows;

> " No action shall lie by an employee or and 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."

21. Section 58 then provides that:

> " (1) Any regulation or other instrument made or issued under the Workmen's Compensation Act and having effect before the commencement of this Act shall continue to have effect as if such regulation or other instrument were made or issued under this Act.
>
> (2) Any claim in respect of an accident or disease occurring before the commencement of this Act shall be deemed to have been lodged under this Act."

22. I had occasion to determine an almost similar matter, namely, Eldoret High Court Civil Appeal No. E121 of 2021 - Elisha Otieno Owaa v Western Steel Mills, in which I delivered a Judgment on 1/12/2023. Coincidentally, the same firm of Nyairo & Co. Advocates was also involved in that case.

23. In this instant Appeal, it is not in dispute that the suit was filed on 30/9/2016. It is also not disputed that by that date, WIBA had already come into force on 2/06/2008. Under WIBA, the primary or original jurisdiction to handle matters concerning compensation to employees for industrial or workplace injuries was divested from the Courts and bestowed upon the Director of Occupational Safety and Health Services (hereinafter referred to as "the Director"). The Courts were only left with appellate jurisdiction.

24. The constitutionality of the said provisions was then challenged at the High Court in Law Society of Kenya –Versus- Attorney General & Another, Petition 185 of 2008 at Mombasa [2009] eKLR in which on 4/03/2009, Ojwang J, (as he then was) ruled that the provisions were unconstitutional and struck them out. This decision was however reversed by the Court of Appeal 8 years later in the case of Attorney General v Law Society of Kenya & another [2017] eKLR and those impugned provisions of WIBA therefore reinstated. The decision was delivered on 17/11/2017 and which then reinstated the impugned provisions that had been struck out by the High Court. With reference to Section 16 WIBA, the Court of Appeal ruled as follows:

> " The section is to the effect that no employee or his dependants can institute a Court action against the employer to claim damages in respect of work-related accident or disease resulting in the disablement or death of such employee. The recourse provided for such an employee or his dependant is to notify the Director . . . Section 16 as read with Section 23(1) confer powers of adjudication of any claim for compensation arising from injury or death in the workplace upon the Director and expressly bars institution of Court proceedings by the aggrieved employee."

25. This position left in limbo the fate of numerous industrial accident suits that were filed after the High Court decision delivered on 4/03/2009 and before the Court of Appeal decision delivered on 17/11/2017. What then was the position regarding such cases?

26. To answer the above question, since as aforesaid the Supreme Court subsequently on 3/12/2019 in *Law Society of Kenya vs. Attorney General and another, Petition No. 4 of 2019*, upheld the decision of the Court of Appeal, it is important to recite what the Supreme Court stated. At paragraph 85 of the decision, the Court held as follows:

> " In agreeing with the Court of Appeal, we note that it is not in dispute that prior to the enactment of the Act, litigation relating to work-injuries had gone on and a number of the suits had progressed up to decree stage; some of which were still being heard; while others were still at the preliminary stage. All such matters were being dealt with under the then existing and completely different regimes of law. We thus agree with the Appellate Court that claimants in those pending cases have legitimate expectation that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked. However, were it not for such legitimate expectation, WIBA, not being unconstitutional and an even more progressive statute, as we have shown above, we opine that it is best that all matters are finalized under Section 52 aforesaid.

27. From the above passage, it is clear that all pending industrial accident cases that had already been filed in Court before the enactment of WIBA were all to proceed before the Courts where they had been filed. But what about suits that were, as herein, filed after the High Court had, on 4/03/2009, struck out the provisions of WIBA which had ousted the jurisdiction of the Courts to handle work injury claims?

28. In this case, WIBA having come into force on 2/06/2008, the suit the subject of this Appeal was filed on 30/09/2016, 7 years after the High Court had on 4/03/2009 struck out the provisions of WIBA which had ousted the jurisdiction of the Courts to handle work injury claims and about 14 months before the Court of Appeal subsequently on 17/11/2017, reversed the decision of the High Court. As at the time of filing the suit therefore, the judicial position, pursuant to the High Court decision, was that Courts had jurisdiction to handle industrial accident cases. What then was the fate of suits filed after WIBA had already come into force thus ousting jurisdiction of the Courts and after the relevant provisions thereof were struck out by the High Court and jurisdiction of the Courts restored and thereafter, while the suit was still pending in Court, the Court of Appeal reversed the decision of the High Court and again reinstated jurisdiction of the Courts?

29. In answering the above question, I again refer to the Supreme Court decision in which even after declaring that all industrial accident cases must be filed before the Director, and being alive to the confusion brought out by the situations such as the one recounted above, it went ahead and guided that parties who had pending cases before the Courts during the subject period had a legitimate expectation that their suits were validly before the Courts. In my view, it is this spirit set out in the Supreme Court decision that any Court determining the rights of parties arising out the confusion referred to above ought to be guided.

30. My interpretation of this general spirit is that all industrial cases instituted in the wrong fora (Courts) during the period between the date of the enactment of WIBA on 2/06/2008 and the date of the Supreme Court decision on 3/12/2019 should all be allowed to remain in the Courts up to their determination. I do not therefore find any justification to penalize the Respondent for instituting its suit at the Magistrate's Court, rather than before the Director of Occupational, Safety and Health Services. By dint of the High Court decision (Ojuang J, as he then was), the suit was properly filed in that Court.

31. I am also persuaded by the findings of Radido J, in West Kenya Sugar Co. Ltd v Tito Lucheli Tangale[2021] eKLR where, faced with a similar situation, he held as follows;

> "
>
> " 42. Therefore, in this Court's view, those citizens or employees who lodged their claims with the Courts from 22 May 2008 when the High Court issued stay orders to 4 March 2009 when a final declaration of inconsistency was made were acting on the strength of the law.
>
> ....
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> 46. In the Court's respectful view, bar any stay orders, all claims which were lodged with the Courts from 22 May 2008 to 3 December 2019 being claims underpinned by judge-made or judge declared law were validly within the jurisdiction of the Courts.
>
> Access to justice
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> 47. The judicial part of the state is not the only arbiter and/or adjudicator of justice. Article 48 of *the Constitution* now recognises access to justice, but it has not limited the dispensation of the right to the Courts since Article 159(2)(c) requires the promotion of alternative dispute resolution.
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> 48. In light of this, in this Court's view, subscribing to the position taken by the Appellant that all claims lodged with the Courts after 2 June 2008 should

not be entertained because of jurisdiction would be antithetical to the right to access justice since the litigants who moved the Court after 22 May 2008 did so on the assurance of judge declared law that they could present their disputes to the Courts.

49. The Court says so because the employees who moved the Court on the strength of judge declared law would be met with an insurmountable plea of limitation because section 26 of the *Work Injury Benefits Act* has prescribed time within which an accident should be reported to the Director of Occupational Safety and Health.

50. Sending these Claimants from the seat of justice under these circumstances would, therefore, be a source of great injustice for reasons beyond their control.

Legitimate expectation

51. The doctrine of legitimate expectation has its roots in administrative law. In this jurisdiction, it emerged with the establishment of a permanent Constitution Court in the 1990s. It is now well entrenched in the jurisprudence of the Country.

52. The Court of Appeal and the Supreme Court invoked the doctrine to give life and therefore render justice to the Claimants who had lodged their work-injury claims with the Courts prior to the coming into effect of the *Work Injury Benefits Act*.

53. In the view of this Court, these litigants who filed their disputes with the Courts from 22 May 2008 to 3 December 2019 on the firm belief that the judge declared law was the valid law in place then, are entitled to successfully assert legitimate expectation in having the claims heard to a conclusion before the Courts where they had been lodged."

32. Radido J reiterated the above position in his decision in the subsequent case of Linet Osebe Momanyi & another (suing as personal representatives & legal administrators of the estate of Douglas Onsario Mageto) v Kisii County Government [2021] eKLR. The Judge also followed the same logic in several other of his decisions in various subsequent cases.

33. I also cite the decision of O. Makau J in the case of Cyrus Ombuna Machina v Safaricom Limited [2020] eKLR in which he held as follows:

" 12. The claimant has urged the court to spare the claim and refer it to the Director under WIBA. The respondent prays that I dismiss the claim against her. Dismissing the claim without considering its merits would be a miscarriage of justice. I will also not strike it out because as at 2017 when the suit was filed, the law in place allowed him to file the suit in court by dint of the judgment of the High Court in Petition 15 of 2008. I therefore refer the dispute to the Director under WIBA to hear and determine it under the relevant provisions of WIBA."

34. There is also the decision in the case of Gakeri J in the case of Kamande & another (Suing as *Administrators and Personal Representatives of the Estate of Josephat Macharia Muigai - Deceased) v*

ACE Freight Limited (Cause 2204 of 2017) [2022] KEELRC 1275 (KLR) (12 July 2022) (Judgment) in which the following was stated:

"

"59. Without belabouring the point, this suit was commenced on November 6, 2017 before the Court of Appeal pronounced itself in Attorney General v Law Society of Kenya & another (supra) on November 17, 2017. Before this decision, sections 4, 7, 10 (4), 16, 21(i), 23(1), 25(1), (3) 51(1), (2) and 58(2) had been declared unconstitutional by Ojwang J. in High Court Petition 185 of 208.

60. In a nutshell, the Claimant had no other forum to litigate the claim and as was held by Radido J. in West Kenya Sugar Co. Ltd v Tito Lucheli Tangale [2021] eKLR, the Court has jurisdiction to hear and determine the suit herein.

61. The Learned Judge was categorical that
"In the view of this Court, these litigants who filed their disputed with the Courts from May 22, 2008 to December 3, 2019 on the firm belief that the judge declared the valid law in place then, are entitled to successfully assert legitimate expectation in having the claim heard to a conclusion before the Courts where they have been lodged."

62. The Court is guided by these sentiments and is in agreement with them.

63. Instructively, the Court of Appeal overturned the decision of the High Court on the unconstitutionality with the various sections of WIBA other than section 7 (in so far as it provides for the Minister's approval or exemption) and Section 10(4).

64. Before this decision, the law was as declared by Ojwang J. and reference of claims to the Director, Occupational Safety and Health Services (DOSHS) could not arise.

65. For the foregoing reasons, it is the finding of the Court that it has jurisdiction to hear and determine the suit herein."

35. I am of course aware of other Court decisions which appear to have advanced a conflicting position. I have in mind for instance, the decision of Keli J, delivered in *West Kenya Sugar Co Ltd v Shirandula (Employment and Labour Relations Appeal E005 of 2021*) [2022] KEELRC 13284 (KLR) (24 November 2022) (Judgment), and also the decision of Gakeri J, in *Kariri Limited v Gisiaina (Appeal E123 of 2021*) [2023] KEELRC 1184 (KLR) (17 May 2023) (Judgment).

36. On my part, I choose to and do follow the reasoning and holding of Radido J and O. Makau J as I find that it best advances the spirit of Article 159(2)(e) of *the Constitution* which obliges the Courts, in exercising judicial authority to be guided by among others, the principle that "the purpose and principles of this Constitution shall be protected and promoted".

37. Regarding the Gazette Notice 5476 issued by the Honourable the Chief Justice in the Kenya Gazette of 28/04/2023, the same was titled "Practice Directions Relating to Pending Court Claims Regarding Compensation for Work Related Injuries and Diseases Instituted Prior to the Supreme Court Decision in *Law Society of Kenya vs Attorney General and Another, Petitioner No. 4 of 2019*; (2019) eKLR".

38. The Directions, at paragraph *4*, provide that the objectives thereof are as follows:

a. Consolidate and standardize practice and procedure in the Employment and Labour Relations Court and the Magistrates Courts in relation to claims for compensation for work related injuries and diseases instituted prior to the Supreme Court decision on 3rd December 2019, which are pending in Courts;

b. Enhance access to justice;

c. Facilitate timely and efficient disposal of cases that were filed prior to the Supreme Court decision; and

d. Ensure uniformity and court experience."

39. The Directions then, at paragraph *7* provide as follows:

> " Claims filed after commencement of WIBA but before the Supreme Court decision
>
> Taking into account that High Court vide its Judgment dated 4th March, 2009 in Law Society of Kenya v, Attorney General & Another (2009) eKLR declared some of the provisions in WIBA including Section 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 the 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 Ndii and 79 others; Prof. Rosalind Dixon and 7 Others .... to lodge their claims in Court. Therefore,
>
> a. All claims with respect to compensation for work related injuries and diseases filed after the commencement of WIBA and before the Supreme Court decision at the Employment and Labour Relations Courts or the Magistrates' Courts shall proceed until completion before the said Courts.
>
> ...."

40. I am satisfied that the quoted passages of the Practice Directions above vindicate my finding that the general spirit of the Supreme Court decision is that all industrial cases instituted before the Courts during the period between the date of the enactment of WIBA on 2/06/2008 and the date of the Supreme Court decision on 3/12/2019 should all be allowed to remain in the Courts up to determination.

41. In the circumstances, I find that this Appeal lacks merit.

Final Orders

42. The upshot of the findings above is that I rule as follows:

i. This Appeal is dismissed in its entirety and the Ruling dated 29/01/2021 delivered in Eldoret CMCC No. 1056 of 2016 is hereby upheld.

ii. The said suit shall proceed to its logical conclusion before the trial Court.

iii. Considering the conflicting decisions of different Courts on the matter determined herein, I am satisfied that the A[ppellant had proper justification to file this Appeal. In the circumstances, I direct that each party bears its own costs of this Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF JUNE 2024

WANANDA J.R. ANURO

....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Delivered in the Presence of:

Ms. Odwa for Appellant

N/A for Respondent