



**Likweli v Metro Logistics Limited & 3 others (Civil Appeal
448 of 2019) [2023] KEHC 4064 (KLR) (Civ) (8 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 4064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 448 OF 2019

AN ONGERI, J

MAY 8, 2023

BETWEEN

MAKENZI ALUMWAMU LIKWELI APPELLANT

AND

METRO LOGISTICS LIMITED 1ST RESPONDENT

WILSON KIBIWOTT BIRGEN 2ND RESPONDENT

DAMARIS WAMBUI 3RD RESPONDENT

PATRICK MWANGI MWAURA 4TH RESPONDENT

*(Being an appeal from the ruling of Hon. K. I. Orenge (SRM)
in Milimani CMCC no. 6172 of 2017 delivered on 15/3/2019)*

JUDGMENT

1. The 3rd party raised a preliminary objection in CMCC no. 6172 of 2017 on the ground that the trial court did not have jurisdiction to entertain the appellant's claim in the light of the provisions of Section 16 of WIBA Act 2007.
2. The trial court upheld the preliminary objection and the suit was struck out.
3. The appellant has now appealed against the said order striking out this suit on the following grounds:
 - a. That the honorable magistrate erred in fact and in law and totally misapprehended the plaintiff's suit and thereby reached a finding that the claim before him was brought under the Work Injury Benefits Act.



- b. That the honorable magistrate erred in fact and in law and totally misdirected himself in failing to appreciate the intention of the legislature in enacting the provisions of section 17 of the Work Injuries Benefit Act, 2007.
 - c. That the honorable magistrate erred in law and totally misdirected himself and thereby came to a decision that was bereft of any legal basis, when he failed to appreciate that the claim by the plaintiff against the defendant was distinct from the claim by the defendant against the third parties, and the two claims could, if needs be, be tried separately.
 - d. That the honorable court erred in law in totally ignoring the authorities that were cited to him by the plaintiff and the defendants and which were binding upon him.
4. The respondents did not wish to file submissions. The appellant submitted that his suit in the trial court blamed the accident on the defendant's motor vehicle registration number KBU 815s and sought for various damages for breach of duty of care. the appellant claimed that there does not exist an employer-employee relationship between the plaintiff and the defendant and therefore the court totally misapprehended the case and misapplied the law by applying the Work Injury Benefits Act.
 5. The appellant argued that he did not sue the third party, there are no claims against the third party and that the Appellant and the third party are strangers to each other. There was no allegation by the appellant that the accident occurred in the course of employment and his claim was purely one of tort arising from a road traffic accident.
 6. The appellant indicated that the third party lacked the locus to make any application for dismissal because it was not yet determined whether there was any issue for determination between the third party and the defendant. The third party lacked the legal standing to apply for the orders sought in the preliminary objection.
 7. The sole issue for determination is whether the 3rd party had the locus standi to apply for the striking out of the suit.
 8. In the case of *Gladys Nduku Nthuki v Letsbego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR the Court held that;

“Whereas there is nothing inherently objectionable in a person applying to be joined as an interested party in a pending suit, it is doubtful whether such a person joined as an interested party can transform the suit into one in which he becomes the principal claimant and seek substantive reliefs in the suit”.
 9. I find that the suit herein is between the appellant and the respondents and all that a party needs to do in an application to be enjoined as a 3rd party is to demonstrate sufficient interest in the suit and the interest need not be the kind that must succeed at the end of the trial.
 10. The presence of the party enjoined to a suit should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit.
 11. The striking out of the plaint was improper.
 12. I allow the appeal and set aside the order striking out the suit.
 13. The file to proceed to full hearing before any other court other than the Trial court that struck out the suit.
 14. The 3rd Party to pay the Appellant's costs of this Application.



DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
8TH DAY OF MAY, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

.....for the Appellant

.....for the 1st Respondent

..... for the 2nd Respondent

..... for the 3rd Respondent

..... for the 4th Respondent

