



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER F6492 OF 2020

BETWEEN

MARGARET WAIRIMU NDUNG’U.....CLAIMANT

VERSUS

SAFARICOM KENYA PLC LIMITED.....RESPONDENT

RULING

1. The Respondent has filed a Notice of Preliminary Objection dated 21st December 2020.
2. Objection is that, by virtue of Section 16 of the Work Injury Benefits Act, 2007, the Court is divested of jurisdiction.
3. The provision is worded as follows: -

‘No action shall lie by an Employee or any Dependant of an Employee for recovery of damages in respect of any occupational accident or disease, resulting in the disablement or death of such Employee, 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.’

4. The Respondent submits that the Claimant was an Employee of the Respondent from 9th August 2010 to 6th February 2018 when she was retired on medical grounds.
5. The Respondent’s position is that the Claim is work-injury related, and therefore to be dealt with primarily by the Director of Work Injury Benefits.
6. The Claimant submits that mention of occupational injury or disease in her Pleadings, is not the substratum of her Claim. The Work Injury Benefits Act, provides for compensation to Employees for work-related injuries and diseases, contracted in the course of employment. The Claimant is not seeking remedies under the Work Injury Benefits Act.
7. Parties agreed that the Preliminary Objection is considered on the strength of their Affidavits and Submissions on record.

The Court Finds: -

8. The Claimant does not seek damages or compensation for any injuries or diseases sustained while in employment. She seeks compensation and damages for what she thinks, is unlawful and unfair termination of employment.
9. Her Claim would fall squarely within the jurisdiction of this Court, or a designated Magistrate’s Court, not the Director of Work Injury Benefits. The Claimant is not seeking work injury benefits; she seeks, in plain language, compensation and damages arising out of what she perceives to have been unlawful and unfair retirement on medical grounds.
10. Her prayers are for compensation for loss of employment, equivalent of 12 months’ salary; damages for unfair labour practice; damages for discrimination; and immediate settlement of her bank loan obligations by the Respondent. These are not remedies falling within the Work Injury Benefits Act, under the docket of the Director of Work Injury Benefits. Nowhere has she asked for compensation or damages, for work injury or disease *per se*. What she has pleaded, is that occupational injury or disease, was not a valid reason in the hand of the Respondent, to justify termination.

11. *The Preliminary Objection is declined with no order on the costs.*

Dated, signed and released to the parties under Ministry of Health and Judiciary Covid-19 Guidelines, at Nairobi this 11th day of June 2021.

James Rika

Judge