

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL SUIT NO. 5 OF 2017

WAFULA BARASA KHAEMBA.....1ST PLAINTIFF

LUKA MULONGO WECHULI.....2ND PLAINTIFF

GEOFFREY LUKALAMU LIVOI.....3RD PLAINTIFF

VERSUS

WEST KENYA SUGAR CO. LTD.....DEFENDANT

RULING

The plaintiffs sued the defendant by way of plaint dated 19th June, 2017 describing themselves as the defendant's employees who were injured in the course of employment when the defendant's tractor driven by the 1st defendant got a tyre burst while transporting the defendant's sugarcane along Kitale-Kamukuywa road. The 2nd and 3rd defendants were employed as sugar cane loaders.

Upon the tractor's tyre bursting, the plaintiffs sustained injuries and are seeking general and special damages as well as costs and interest for pain and suffering.

The defendant filed its defence denying ever employing the 2nd and 3rd defendants and attributed the occurrence of the accident to the defendants' negligence. The defendant also denied the jurisdiction of the court.

The defendant subsequently filed a Preliminary Objection dated 18th March, 2020 in terms;

1. This court has no jurisdiction to entertain, hear and or determine the matter herein pursuant to the provisions of Section 16, 23(1) and 52 of the Work Injury Benefits Act.

2. The suit having been filed in the year 2017 was filed during the subsistence of the Work Injury Benefits Act and not the Workmen's Compensation Act and/or common law and therefore the operative law herein is the Work Injury Benefits Act which mandates that litigation related to work injuries should be handled in the first instance by the Director of Occupation Safety and Health Services and not the honourable court.

The Preliminary Objection was disposed of by way of written submissions. The plaintiffs did not file theirs despite being given time.

The sole issue arising here is that of jurisdiction. Whether the suit as filed ought to proceed to hearing before this court or be struck out for want of jurisdiction. It is trite law that jurisdiction is everything. Without it, the court ought not to take any further step. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR* where Nyarangi JA held;

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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

Having considered the provisions of Sections 16, 23 and 52 of the Work Injury benefits Act, the defendant's submissions as well as the case law cited, the court is of the considered view that the interest of justice will be better served if this matter is transferred to the Employment and Labour relations Court for disposal.

For the foregoing reasons, this matter is hereby transferred to the Bungoma Employment and Labour Relations Court for hearing and final determination. There shall be no order as to costs.

DATED AT BUNGOMA THIS 3RD DAY OF NOVEMBER, 2021

S. N. RIECHI

JUDGE