



**Karanja (Deceased) v Ndung’u & 3 others (Cause 289 of 2020)
[2024] KEELRC 1130 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1130 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 289 OF 2020
L NDOLO, J
MAY 2, 2024
FORMERLY KIAMBU HCCC NO 17 OF 2018**

BETWEEN

ROBERT KINUTHIA KARANJA (DECEASED) CLAIMANT

AND

SALOME WANGUI NDUNG’U 1ST RESPONDENT

LEAH WANJIRU NDUNG’U 2ND RESPONDENT

CAROLINE WANGUI NDUNG’U 3RD RESPONDENT

KIMUCHU WHOLESALERS 4TH RESPONDENT

RULING

1. This claim was initially filed at the High Court in Kiambu as HCCC No 17 of 2018. By an order made by Meoli J on 15th June 2020, it was transferred to this Court for hearing and disposal.
2. Subsequent to this, the Respondents filed a Notice of Motion dated 10th December 2021, seeking to have the suit struck out, on the ground that the Court lacks jurisdiction to entertain it.
3. The Motion is supported by an affidavit sworn by the 1st Respondent, Salome Wangui Ndung’u and is based on the grounds that:
 - a. This Court does not have primary jurisdiction to hear and determine this suit;
 - b. The claim by the Claimant is before the Director of Occupational Safety and Health Services under the *Work Injury Benefits Act* (WIBA).



4. In her affidavit in support of the Motion, the 1st Respondent depones that steps had been taken to report the accident to the Director of Occupational Safety and Health Services. She adds that the claim has been assessed and is awaiting settlement by the underwriter.
5. In response to the Motion, a replying affidavit sworn by Francis Karanja Githaku has been filed. In this regard, the Court takes notice that the primary Claimant, Robert Kinuthia Karanja is now deceased and an application for substitution dated 22nd November 2023 is pending determination before the Court.
6. In their objection, the Respondents rely on the Supreme Court decision in *Law Society of Kenya v Attorney General & another* [2019] eKLR where it was held that work injury claims arising after enactment of WIBA were to be processed within the procedure set out in the Act.
7. There have however been new developments in this area. Specifically, by Gazette Notice No 5476 dated 28th April 2023, the Hon Chief Justice issued directions directing that all claims with respect to compensation for work related injuries and diseases filed at the Employment and Labour Relations Court, after commencement of WIBA but before the Supreme Court decision, shall proceed to conclusion before the Court.
8. The Court also notes that the primary Claimant having passed on and with the application for substitution still pending determination, there is a real danger of the claim abetting, which would occasion grave injustice.
9. In the circumstances, the Respondents' objection is overruled and their application dated 10th December 2021 is therefore declined with costs in the cause.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF MAY 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Kerubo h/b for Mr. Arati for the Claimant

Mr. Baiya for the Respondents

