



Lion’s Court Inn (K) Limited v Wambugu (Employment and Labour Relations Appeal E018 of 2023) [2024] KEELRC 2192 (KLR) (12 September 2024) (Judgment)

Neutral citation: [2024] KEELRC 2192 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E018 OF 2023
ON MAKAU, J
SEPTEMBER 12, 2024**

BETWEEN

LION’S COURT INN (K) LIMITED APPELLANT

AND

WINNIE WAHITO WAMBUGU RESPONDENT

(Being an appeal against the Judgment and Decree of Hon. B.Mararo Senior Principal Magistrate delivered on 3rd October, 2023 in Nanyuki MCELRC No.1 of 202)

JUDGMENT

Introduction

1. This appeal concerns compensation for work related injury. The respondent was awarded Kshs.511,532.00 by the County Occupational Safety & Health Officer (COSHO) on 20th May 2019. The award was never challenged but on 21st November 2019, the parties herein executed form DOSH/ WIBA 5A, titled: “Form Of Agreement As To Work Injury Benefits To Be Paid By The Employer To The Injured Employee”. In the said, it was agreed that the appellant would pay the respondent Kshs.280,640 in discharge of the liability of the employer to pay compensation under the Act in respect of the injury to the employee. On the same day the respondent was paid the agreed sum and a certificate of payment was issued.
2. Thereafter, the respondent filed a suit claiming damages for unlawful termination plus the outstanding balance of the award in respect of the Work injury aforesaid being Kshs.230,892. She also sought to recover Kshs.611,000 being conveyance costs due to the said Work Injury.
3. The appellant denied the claim for termination and averred that the respondent had absconded duty. It further pleaded that the claim for work injury was fully settled and the suit was in fact statute barred. Trial court considered the pleadings, evidence and dismissed the claim for unlawful termination and conveyance expenses but allowed the claim for outstanding balance of the work injury claim.



4. The appellant was aggrieved and brought this appeal seeking that the impugned judgment be set aside and the suit be dismissed with costs. The appeal stands on the following grounds: -
 - a. That the Honourable trial court erred in fact by holding that the Respondent did not dispute the claim of Kshs.230,000 being part of the award made to the claimant by the County Occupational Safety and Health Officer despite the fact that this monetary claim was expressly denied in the statement of Response and disproved in the evidence adduced on behalf of the Respondent.
 - b. That the Honourable trial court erred in law by permitting the claimant to renege on the Respondent's exhibit DEXH 2 being an agreement dated 21/11/2019 executed by both parties and which discharged the Respondent from liability upon payment of Kshs.280,640/-.
 - c. That the Honourable trial court erred in law by permitting the claimant to enforce a claim, and/or an award made, under the Work Injury Benefits Act, 2007 by way of a statement of claim before a Magistrates Court.
 - d. That the Honourable trial court erred in law and fact by awarding interest on costs without stating the grounds for condemning the Respondent with interest on costs.

Submissions

5. It was submitted for the appellant that the trial court erred in fact by awarding the said Kshs.230,000 yet both parties had produced a copy of an agreement by which the parties unequivocally set the compensation at Kshs.280,640 all inclusive and the same was fully paid. Further that, the respondent accepted the said payment and discharged the appellant for further liability under WIBA.
6. It urged that the trial court overlooked the said evidence in awarding the claim for Kshs.230,000 and therefore the appeal ought to be allowed and the respondent suit dismissed with costs.
7. On the other hand, it was submitted for the respondent that while agreement exempted the appellant for liability, it did not reflect the legal and lawful award dated 20th May 2019. It was therefore urged that the appellant only made a partial payment of the award by Director and the trial court was right in awarding Kshs.230,892.
8. As regards the procedure followed in suing for the outstanding balance of award, it was submitted that respondent only prayed for enforcement of the award made by DOSH. For emphasis, reliance was placed on the case of *Joash Shisia Cheto v Thepot Patrick Charles* (2022) eKLR where it was held that there is no clear mechanism for enforcing DOSH awards and therefore a party can do so before this court or the lower court. Therefore, it was urged that the trial court had the jurisdiction to adopt and enforce the award herein and even to award interest thereon.
9. Finally, it was submitted that the trial court erred in law and fact by dismissing the respondents claim for unlawful dismissal and prayed for award of Kshs.414,926.20 inclusive of terminal dues.

Analysis and determination

10. This being a first appeal, my mandate is to re-evaluate the evidence on record and make my own independent conclusions but taking into account the fact that I did not see the witnesses giving



evidence. I am guided by the decision of Court of Appeal in the case of *Selle v Associated Motor Boat Company Ltd* (1968) EA 123 where the court held thus: -

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

11. Having considered the record of appeal and the submissions made on the appeal, the following issues fall for determination: -
 - a. Whether the respondent is estopped from claiming the Kshs.230,000 from the appellant.
 - b. What are the appropriate orders.

Estopped against the claim

12. This appeal turns on an agreement dated 21st November 2019 contained in DOSH/WIBA 5A which states in part as follows: -

“Now it is hereby agreed as follows:

Subject to the right to either the employer or the employee to make appeal to the Industrial Court under section 52, subsection (2) of the *Work Injury Benefit Act* before the execution of this agreement-

- a. As compensation for such injury as aforesaid, the employer will pay to the employee the sum of Kshs.280,640 in discharge of the liability (if any) of the employer under the said *Act*;
 - b. The employee will accept the aforesaid sum of Kshs.280,640 in discharge of liability of the employer to pay compensation under the said Act in respect of the said injury to the employee.”
13. The said agreement was made after the Director had determined the compensation payable to the respondent and communicated the same vide a demand (DOSHS/WIBA 4) on 20th May 2019. The award was Kshs.511,532 payable within 90 days of the demand. The appellant neither paid nor challenged the award. Instead, the parties executed the said agreement for payment of Kshs.280,640 as full settlement and discharge of the appellant from liability to pay compensation under the WIBA.
 14. My understanding of the said agreement was to settle the compensation claim amicably without involving the Director under the Act. The parties agreed on a compensation and the respondent waived and discharged the appellant from liability to compensate her under WIBA. The question that arises is whether the respondent voluntarily executed the agreement or not.
 15. She answered the question during the hearing, by stating that she signed the agreement (Exh.IV) because she needed money. She admitted that she agreed to the payment of Kshs.280,000 and



discharged the appellant from liability. She admitted that the discharge was not qualified. Finally, she agreed that she received the said sum the same day she signed the agreement. (Exh.IV)

16. The respondent did not plead or prove any vitiating factor that could invalidate the said agreement. She consented to the arrangement and voluntarily signed the agreement in the presence of COSHO, who stamped the same. Consequently, I find and hold that the settlement agreement dated 21st November 2019 constituted a binding contract between the parties herein and it fully discharged the appellant from liability to compensate the respondent under the WIBA.
17. I gather support from the case of *Coastal Bottlers Ltd v Kimathi Mithika* (2018) eKLR where the Court of Appeal held that: -

“Whether or not a settlement agreement or discharge voucher bars a party thereto from making further claim depends on the circumstances of each case.

A court faced with such an issue, in our view, should address its mind firstly upon the import of such a discharge/agreement; and secondly whether the same was voluntarily executed by the concerned parties.

Further, a Discharge Voucher is a binding contract and it constituted a full discharge and the Court should not entertain the suit filed after execution of the discharge.”

Appropriate orders

18. In view of the foregoing finding, I agree with the appellant that the award of Kshs.230,000 was not supported by evidence and it must give way. Consequently, I allow the appeal, set aside the impugned judgment and substitute it with an order dismissing the suit all together. However, I will not condemn the respondent to costs because the appellant was the beneficiary from the settlement agreement as the respondent lost a bigger award under the *WIBA*.

DATED, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF SEPTEMBER, 2024.

ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

