

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

APPEAL NO. 13 OF 2024

(FORMERLY)

(MILIMANI CIVIL APPEAL NO. 13 OF 2020)

TECHNO-PLAST LIMITED

APPELLANT

VERSUS

CHRISTOPHER BARASA WANJALA

RESPONDENT

(Being an appeal from the Ruling of Honourable E. Wanjala (Ms) Senior Resident Magistrate delivered on 3rd September 2020 in respect of the Appellant's Notice of Motion Application filed on 14th February 2020 filed in CMCC 10221 OF 2018 before the Employment and Labour Relations Court Milimani Commercial Courts, Nairobi)

JUDGMENT

1. Through the Memorandum of Appeal dated 1st November 2020, the Appellant appeals against the ruling delivered by Honourable E. Wanjala (Ms) Senior Resident Magistrate.

2. The Appeal was based on the grounds that:

- i. The Learned Magistrate erred in fact and law by failing to appreciate that section 16 as read with Section 23 (1) of the Work Injury Benefits Act 2007 confers powers of adjudication of any claim for compensation*

arising from injury or death in the workplace upon the Director of Occupational Safety and expressly bars institution of court proceedings by the aggrieved employee.

ii. The Learned Magistrate erred in both fact and law by misinterpreting the principle of legitimate expectation and holding that it applied to all claims that were already filed before the Magistrates court.

iii. The Learned Magistrate erred in both law and fact by disregarding the fact that the superior courts i.e the Court of Appeal in Civil Appeal No.133 of 2011 and Supreme Court in Civil Appeal No. 133 of 2019 were clear that the principle of legitimate expectation in work injury claims applied to the claims that were pending in court prior to the enactment of the Work Injury Benefits Act 2007.

iv. The Learned Magistrate erred in both law and fact by holding that the Magistrates court has jurisdiction to hear and determine work injury claims.

v. The Learned Magistrate erred in both law and fact by basing her ruling on irrelevant considerations.

3. The Appellant prayed that the subordinate court ruling of 3rd September be set aside as a whole and substituted with an order allowing the Appellant's application of 6th February 2020 in its entirety and therefore striking out the Plaintiff and the suit in its entirety with costs of both the appeal and the lower court proceedings.

4. The Appeal was disposed of by written submissions.

APPELLANTS SUBMISSIONS

5. The Appellant's Advocates Muchui & Co. Advocates filed written submissions dated 11th February 2025. Counsel relied on the case of **Mbogo v Shah [1968] EA page 93**, on which a superior court will interfere with the decision of the inferior court. Counsel further submitted that the appeal arose from work injury that occurred on 7th March 2015. That the Appellant filed a notice of motion dated 1st February, 2020 seeking to strike out the plaint for the reason that the magistrate lacked jurisdiction to hear work injury matters after enactment of the WIBA which was enacted in 2015 and came to effect in 2008 hence the matter filed 10 years after the Act came into force.
6. On the issue of whether the court has jurisdiction, counsel submitted that while this appeal was pending hearing and determination, the Hon. Chief Justice published in the Kenya Gazette notice No.5477 some practice directions relating to pending court claims for compensation of work related injuries.
7. Counsel submitted that the net effect of this gazette notice was 'conferring jurisdiction' upon Magistrate courts. However, with great deference to the Hon. Chief Justice, it is trite that jurisdiction is donated to the courts by the Constitution and/or the statute which created them.
8. Counsel relied on the Supreme Court's decision in the matter of **Interim Independent Electoral Commission [2011] eKLR**

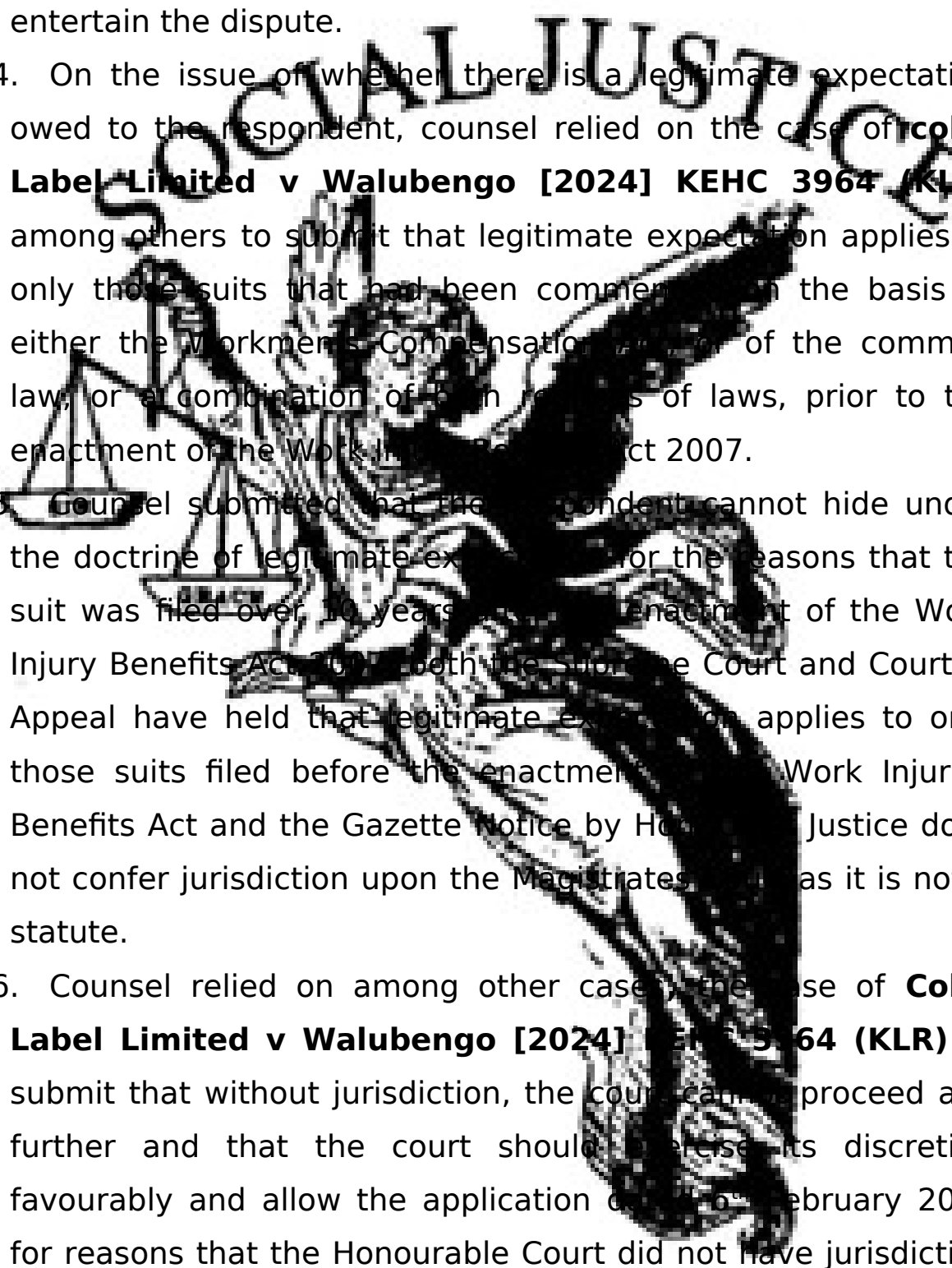
to submit that in any litigation, jurisdiction is central and a court of law cannot validly take any step without jurisdiction. The Supreme Court in its determination relied on the **Court of Appeal case of Owner of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR1**, which establishes that jurisdiction flows from the law and the recipient court is to apply the same, with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the crafty of interpretation, or by way of its leavours to discern or interpret the intentions of the legislature where the wording of legislation is clear and there is no ambiguity.

9. Counsel relied on the **Supreme Court Petition No. 33 of 2018, Sammy Ndungu V. Attorney General and 3 others [2019] eKLR** among other cases to submit that where the Constitution or any other law establishes an organ, with a clear mandate for the resolution of a given class of disputes, no other body can lawfully usurp such power or can it append such organ from the pedestal of execution of its mandate and in a case where a statute confers exclusive jurisdiction on the relevant body to determine the relevant matter, the body must act under the statute and not outside it.
10. On the issue of whether the Learned Magistrate erred by failing to appreciate that section 16 as read with Section 23 (1) of the Work Injury Benefits Act 2007 confers powers of adjudication of any claim for compensation arising from injury or death in the workplace upon the Director of Occupational

Safety and expressly bars institution of court proceedings by the aggrieved employee, counsel relied on the **Work Injuries Act part IV** to submit that the Director of Occupational Safety has sole and exclusive jurisdiction in all claims arising of injuries sustained in the workplace.

11. Counsel relied on among other cases, the matter in **Petition No.4 of 2019; Law Society of Kenya v Attorney General & another [2019] eKLR** to submit that under the WIBA, sections 16, 23(1) and 52, an employee is subjected initially to a process of dispute resolution starting with an investigation and award by the Director and thereafter an appeal mechanism to the then Industrial Court hence at that point was a claimant or his dependant allowed to approach the court under common law or otherwise.
12. Counsel relied on among other cases, the case of **The Speaker of the National Assembly v Attorney General (2008)** to submit that the courts must exercise restraint and first give an opportunity to the relevant bodies of state to deal with the dispute as provided in the relevant statute and that if the court acts without jurisdiction, the proceedings are a nullity.
13. Counsel relied on the case of **Narok County Council v Trans Mara County Council and another, Civil Appeal No.25 of 2000** to submit that where the law provides for procedure to be followed, the parties are bound to follow the procedure provided by the law before the parties can resort to

a court of law as the court would have no jurisdiction to entertain the dispute.

- 
14. On the issue of whether there is a legitimate expectation owed to the respondent, counsel relied on the case of **Color Label Limited v Walubengo [2024] KEHC 3964 (KLR)** among others to submit that legitimate expectation applies to only those suits that had been commenced on the basis of either the Workmen's Compensation Act or of the common law, or a combination of both, prior to the enactment of the Work Injuries Benefits Act 2007.
15. Counsel submitted that the respondent cannot hide under the doctrine of legitimate expectation for the reasons that the suit was filed over 10 years after the enactment of the Work Injury Benefits Act 2007. Both the Supreme Court and Court of Appeal have held that legitimate expectation applies to only those suits filed before the enactment of the Work Injuries Benefits Act and the Gazette Notice by Hon. Justice does not confer jurisdiction upon the Magistrates as it is not a statute.
16. Counsel relied on among other cases, the case of **Color Label Limited v Walubengo [2024] KEHC 3964 (KLR)** to submit that without jurisdiction, the court cannot proceed any further and that the court should exercise its discretion favourably and allow the application dated 6th February 2020 for reasons that the Honourable Court did not have jurisdiction to hear and determine this matter, being a claim under the

WIBA and as held in the above case, the Gazette Notice by the Hon. Chief Justice does not confer jurisdiction upon the Magistrates court as it is not Statute.

RESPONDENT'S SUBMISSIONS

17. The Respondent on the other hand did not file his submissions or attend court when directions on the delivery of judgment were given.

DISCUSSION.

18. The court has considered the Appeal, the record of appeal and submissions filed by the Appellant herein observes that the appeal revolves around the finding of the trial court where that Court held that it had jurisdiction to entertain the suit having been filed in 2018 citing the doctrine of legitimate expectation as was espoused by supreme court in **Petition No. 4 of 2019, LSK VS AG & Another, 2019 1 KLR.**

19. The court notes that the date of commencement of the WIBA was June 2, 2008 as per Legal Notice No. 60 of May 23, 2008. The judgment of the High Court by Ojwang J was delivered on March 4, 2009 and that of the Court of Appeal was delivered on

November 17, 2017. The judgment of the Supreme Court was delivered on December 3, 2019.

20. The case in the lower court by the Respondent in this appeal was filed in 2018. This therefore means that the case by the Respondent was filed after the WIBA had commenced operation and the High Court had declared various sections of the Act unconstitutional before the case was filed. In addition, the Supreme Court had rendered its judgment in the respective appeal filed therein as at the date of filing of the case.

21. This court notes that the High Court did not give directions on cases that were filed before the decision of the High Court and when it made its decision on the two superior courts directed on matters that had been pending prior to coming into operation of WIBA on June 2, 2008 and directed that such matters should proceed on merits to logical conclusion based on the doctrine of legitimate expectation. This was the same observation in the case of **Omutiti v Olowu & Inc [2023] KEELRC 1974 (KLR)** where it was stated that

The following dates are very important to this appeal and any other matter relating to the issues herein. The date of commencement of the WIBA is June 2, 2008 as per Legal Notice (LN) No 60 of May 23, 2008. The judgment of the High Court was

delivered on March 4, 2009 and that of the Court of Appeal was delivered on November 17, 2017. The judgment of the Supreme Court was delivered on December 1, 2019.

22. The case in the lower court by the Appellant in this appeal was filed on September 27, 2017. There are two very important aspects of this date. The first one is that the case by the Appellant was filed after the WIBA had commenced operation. Secondly, the High Court had declared various sections of the Act unconstitutional, as alluded to above, before the case was filed. The third angle is that the Court of Appeal and the Supreme Court had not dealt with the respective appeals filed therein as alluded to above as at the date of filing of the case.

23. What has probably caused the confusion that has been witnessed in matters raising the same or similar issues as raised in this appeal is that the Court of Appeal and the Supreme Court did not comment on or give directions on cases that were filed between the decision of the High Court and the decision of the Court of Appeal. The two higher courts directed on matters that had been filed prior to commencement of WIBA on June 2, 2008 and directed that such matters should proceed on merits to logical conclusion based on the doctrine of legitimate expectation.

22. Due to this confusion, the Chief Justice gave practice directions on the WIBA matters vide Kenya Gazette No. 5477 of 28th April, 2023 and provided as follows:

Claims filed after Commencement of WIBA but before the Supreme Court decision

7. Taking into account that High Court in its judgment dated 4th March, 2009 in *Law Society of Kenya v. Attorney General & Another* (2009) eKLR declared some of the provisions in WIBA including Sections 16, 23(1) and 52, which prescribe the procedure for lodging claims under the Act unconstitutional. Consequently, the said declaration of nullity created a legitimate expectation that claimants could directly lodge claims for compensation for work related injuries and diseases in court. As such, litigants cannot be penalized for relying on the declaration of nullity, as appreciated

by the Supreme Court in *Attorney-General and 2 Others v Ndi and 79 Others; Prof. Rosalind Dixon and 7 Others (Amicus Curiae) (Petition 12, 11 and 13 of 2021(Consolidated))* [2022] KESC 8 (KLR) to lodge their claims in court.

Therefore,

- 1. All claims with respect to compensation for work related injuries and diseases filed after the commencement of WIBA and before the Supreme Court Decision at the Employment and Labour Relations Courts or the Magistrates' Courts shall proceed until concluded before the said courts.***

23. This therefore means that by the time the Respondent filed their case at a lower court in 2009, WIBA had commenced and it was before the Supreme Court decision of 2019 that is between 2009-2019 hence within the scope of the Chief Justice addressed.

24. The Appellant's assertion that the Chief Justice cannot confer jurisdiction to the court's against statutes is not sustainable because even the superior court appreciated the doctrine of legitimate expectation such that such cases could only proceed in court. Since the same year the case was filed the only decision in force was the Court of Appeal decision of 2017 which had overturned the High Court decision of 2009 on

unconstitutionality of the said provisions it was only logical to expect the parties to seek redress in court since the Court of Appeal's decision had also been appealed to Supreme Court.

25. The practice directions were made for public interests to solve the big confusion experienced by courts and litigants. It was further intended to improve access to justice and could be defended under article 159 of the Constitution on judicial authority, one which is that the courts shall exercise their authority without undue regard for procedural technicalities and that the purpose and principles of the Constitution shall be protected. Access to justice is one of the fundamental principles of the Constitution which cannot be defeated by giving premium to procedural technicalities that could result in denial of access to justice.

26. The Supreme Court in **Law Society of Kenya v Attorney General & another [2019] eKLR** quoted in concurrence the dictum of the Court of Appeal in this matter as:

"With respect, we agree that claimants in those pending case have legitimate expectations that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked".

27. The Supreme Court went on to state this:

"In agreeing with the Court of Appeal, we note that it is not in dispute that prior to the enactment of the Act, litigation relating to work-injuries had gone on and a number of the cases had progressed up to decree stage; some of which were still being heard, while others were still at the preliminary stage. All such matters were being dealt with under the then existing and completely different regimes of law. We thus agree with the Appellate Court that claimants in those pending

cases have legitimate expectation that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked. However, were it not for such legitimate expectation, WIBA, not being unconstitutional and an even more progressive statute, as we have shown above, we opine that it is best that all matters are finalized under Section 52 aforesaid"

28. The Court is in tandem with the holding of the two superior courts and consequently upholds the ruling by the lower court that it had jurisdiction to entertain the appeal per the directions given by the Chief Justice of such courts

29. **The Appeal is therefore without merit and is hereby dismissed with costs in favour of Respondent.**

30. **It is so ordered.**

Dated at Nairobi this 13th day of October 2025

Delivered virtually this 13th day of October 2025

Abuodha Nelson Jorum

Presiding Judge-Appeals Division

