

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

APPEAL NO. E002 OF 2021

SISIBO TEA FACTORY LIMITED

APPELLANT

VERSUS

ONESMUS KIPTOO

KIMAIYO.....RESPONDENT

*(Being an appeal from the Ruling of Honourable B. K. Kiptoo,
Senior Resident Magistrate delivered on 13th April 2021 in
Eldoret CMCC No. 735 of 2018)*

JUDGMENT

1. The Appellant filed Eldoret CMCC No. 735 of 2018 against the Respondent, vide a Complaint dated 5th July 2018 seeking compensation for injuries he alleged to have sustained while within the scope of his employment with the Respondent.
2. The Respondent entered appearance and filed a Defence denying the claim. While the suit was still pending, the Respondent raised a Notice of Preliminary Objection dated 29th February 2020, contending that the court lacked jurisdiction to entertain the matter as the suit contravened

the provisions of Sections 16 and 58 of the Work Injury Benefits Act.

3. The application was canvassed by way of written submissions and on 13th April 2021, the trial court in its ruling dismissed the Preliminary Objection and ordered that the matter proceeds to full hearing.
4. The Appellant being dissatisfied with the ruling of the Trial Magistrate, filed the instant appeal vide its Memorandum of Appeal dated 21st April 2021 citing the following grounds:
 - i. That the learned trial magistrate erred in law and fact in dismissing the Appellant's Preliminary Objection on jurisdiction
 - ii. That the learned trial Magistrate erred in law and fact in failing to correctly interpret the provisions of Sections 16 and 58 of the Work Injury Benefits Act, 2007 Laws of Kenya hence an erroneous decision.
 - iii. That the learned trial Magistrate erred in law and fact in failing to appreciate, interpret and apply the provisions of Sections 16 and 58 of the Work Injury Benefits Act, 2007 hence an erroneous decision.

- iv. That the learned trial Magistrate erred in law and fact in failing to hold and/or find that the decision of the Court of Appeal in ***Attorney General v Law Society of Kenya & another [2017] eKLR*** delivered on the 17 November, 2017 was binding and thus could not hold otherwise.
- v. That the learned trial Magistrate erred in law and fact in failing to hold that the Supreme Court decision delivered on the 3rd December, 2019 in Petition 4 of 2019 was binding, directive and final with regard to Work Injury Benefits Act 2007 Laws of Kenya.
- vi. That the learned trial Magistrate erred in law and fact in failing to consider, appreciate and apply the findings of the Court of Appeal and Supreme Court with regard to jurisdiction hence an erroneous and unfounded decision in law.
- vii. That the learned trial Magistrate erred in law and fact in failing to appreciate and interpret the Court of Appeal and Supreme Court decisions correctly hence an erroneous decision.

- viii. That the learned trial Magistrate erred in law and fact in failing to hold that the Court lacked jurisdiction to entertain work injury claims and thus an erroneous decision not founded and/or backed with the law.
- ix. That the learned trial Magistrate erred in law and fact in failing to find and hold that the Respondent instituted the suit in the wrong forum and thus the Court had no jurisdiction to handle it.
- x. That the learned trial Magistrate erred in law and fact in misinterpreting the Supreme Court decision with regard to the legitimate expectation of the Respondent taking into account the law in force at the time of institution of the suit.
- xi. That the learned trial Magistrate erred in law and fact in failing to consider the Appellant's submissions and the authorities supplied to court hence an erroneous decision.
- xii. That the learned trial Magistrate erred in law and fact in misdirecting itself with regard to the Supreme Court decision delivered on the 3rd December, 2019 hence an erroneous decision in the circumstances.

5. The Appellant prayed for an order setting aside the whole of the Subordinate Court's decision and/or ruling delivered on the 13th April, 2021 and in lieu thereof, an order striking out the suit for want of jurisdiction with costs to the Appellant both in the Subordinate Court and in the Appeal.
6. When the Appeal came up for hearing, the court directed the parties to dispose of the Appeal by way of written submissions. The Appellant filed its submissions on 3rd March 2025. The Respondent's submissions were filed on 3rd February 2025.

Appellant's Submissions

7. The Appellant submitted on the following two issues:
 - i. Whether the subordinate court had jurisdiction to handle work injury claims such as the instant one,
 - ii. Whether the court's ruling disallowing the preliminary objection was justified in light of the law stated and the authorities cited.
8. The Appellant submitted that the Respondent's claim arose out of the alleged injuries he sustained in the course of employment and that at the time of filing suit, the

substantive law governing work related claims was and still is the Work Injury Benefits Act.

9. According to the Appellant, under section 52 of the Work Injury Benefits Act, the jurisdiction of the Court to handle work injury claims is limited to only appeals from the decision of the Director of Occupational Safety and Health Service and which appeals ought to be filed before the Employment and Labour Relations Court.
10. The Appellant maintained that this position was re-emphasised by the Supreme Court decision in **PETITION NO, 4 OF 2019** which settled the issue as to the correct forum with regard to work injury claims by upholding the Court of Appeal decision that found Sections 4, 16, 21(1), 23(1), 25(1) and (3), 52(1) and (2) and 58(2) of the Work Injury Benefits Act, 2007 to be constitutional and proceeded to dismiss the Petition.
11. The Appellant argued that the Court of Appeal decision: **Attorney General Versus Law Society of Kenya and Another (2017) eKLR** was rendered on 17/11/2017 and was never stayed even during the pendency of the appeal filed before the Supreme Court. That as at the time this suit

was filed the legal regime that was in force was clear that this Court did not have jurisdiction to entertain this claim at the first instance.

12. It is the Appellant's submission that the Work Injury Benefits Act, 2007 which, in the hierarchy of laws is supreme, clearly provides that this Court is not the first forum for addressing work injury claims. The Appellant further noted that the Supreme Court, whose decisions are binding on all other courts pursuant to Article 163(7) of the Constitution of Kenya, 2010, affirmed this position by upholding the decision of the Court of Appeal on the subject and dismissing the subsequent petition. The Appellant therefore maintained that the subordinate court lacked jurisdiction to entertain the claim.
13. The Appellant further contended that the Practice Directions issued by the Chief Justice concerning pending court claims for compensation arising from work-related injuries, as set out in Gazette Notice No. 5476, do not apply to this case. The Appellant argued that the Practice Directions came into force on 28th April 2023, whereas the suit was filed earlier, on 19th March 2018, and therefore cannot be applied

retrospectively to a suit that had already been filed in a court lacking jurisdiction.

14. In the end, the Appellant urged the Court to set aside the ruling of the trial court and allow the appeal with costs.

The Respondent's submissions

15. The Respondent on its part crystalized the grounds in the Appellant's Memorandum of appeal to the following two issues for determination:

- i. Whether the learned trial magistrate reached the right conclusion in dismissing the Preliminary Objection raised by the defendant/Appellant
- ii. Who is entitled to costs of the Appeal

16. The Respondent submitted that the decision of the learned trial magistrate was proper and reasonable. The Respondent argued that he filed his suit on 6th July 2018, at a time when the prevailing judicial authority was the High Court's decision in *Petition No. 185 of 2008*, which had declared Sections 4, 7(1) and (2), 10(4), 16, 21(1), 23(1), 25(1) and (3), 52(1) and (2), and 58(2) of the Work Injury Benefits Act to be inconsistent with the provisions of the former Constitution

and, consequently, null and void to the extent of that inconsistency.

17. The Respondent relied on paragraph 85 of the Supreme Court's judgment, which emphasized that claimants with pending cases had a legitimate expectation that their matters would be concluded through the judicial process they had already invoked.
18. It was the Respondent's further submission that the superior courts, in subsequent pronouncements on WIBA matters, affirmed that subordinate courts had jurisdiction to hear and determine cases that were pending before them and allowed the law to apply retrospectively to the extent that WIBA matters filed prior to the Supreme Court decision could be heard and determined.
19. On this basis, the Respondent maintained that the ruling of the trial court was sound and justified, and urged this Court to uphold the same and dismiss the appeal with costs.

Determination

20. Having considered the Memorandum of Appeal and the submissions of the rival parties, I find that the only issue that

falls for this court's determination is whether the learned trial magistrate erred in law and fact in dismissing the Appellant's Preliminary Objection on jurisdiction.

21. The issue of jurisdiction of the Magistrate's courts to hear and determine WIBA matters has exhaustively been addressed by both the Court of Appeal and the Supreme Court decisions in Supreme Court ***Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR)***
22. In its submissions, the Appellant asserted that the trial court lacked jurisdiction to entertain the Respondent's claim, as it arose out of a work-related injury governed by WIBA. The Appellant relied on Sections 16 and 58 of WIBA, which prohibit the filing of work injury claims directly in court at first instance, arguing that the proper procedure is to lodge such claims before the Director of Occupational Safety and Health Services, with an appeal thereafter lying to the Employment and Labour Relations Court (ELRC) pursuant to Section 52 of the Act.
23. The Respondent, on the other hand, contended that the claim was properly before the subordinate court, since at the

time of filing the suit on 6th July 2018, the operative judicial authority was the High Court decision in *Petition No. 185 of 2008*, which had declared certain provisions of WIBA unconstitutional.

24. The Respondent further argued that the learned magistrate's ruling was proper, citing paragraph 85 of the Supreme Court's judgment in ***Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR)***
25. The Supreme Court in the said decision observed: -

“85. 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 suits 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.”

26. Further, the Chief Justice, vide Gazette Notice No. 5476 of 28th April 2023, issued practice directions to wit;

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

7. Taking into account that High Court vide 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,

(a) 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 conclusion before the said courts.

(b) All pending judgments and rulings relating to compensation for work related injuries and diseases before the Employment and Labour Relations Court and the Magistrates' Courts shall be delivered by the same court.

27. From the foregoing, it follows that the Respondent's suit, having been filed on 6th July 2018 prior to the Supreme Court's decision delivered on 3rd December 2019 fell within the category of pending cases contemplated in paragraph 85 of the Supreme Court decision as clarified in the Practice Directions.

28. The Practice Directions make no reference to the period between the decision of the Court of Appeal and the decision of the Supreme Court, but refer to the period between the enactment of WIBA and the decision of the Supreme Court. The Chief Justice expressly stated that **all claims for compensation for work injuries and diseases filed in various courts under the WIBA and before the Supreme Court decision are to proceed to conclusion before the same courts. Consequently, any such pending judgments and rulings before the Employment and Labour Relations Court and Magistrates Court are to be delivered by the same courts.**
29. In view of the foregoing, I find that the learned trial magistrate correctly applied the law and the facts as well as the prevailing judicial pronouncements and the Practice Directions in dismissing the Preliminary Objection filed by the Respondent.
30. Accordingly, this Court finds no merit in the appeal, and the same is hereby dismissed with costs to the Respondent.

31. The file to be returned to the trial court for hearing and determination on merit.

**DATED, DELIVERED AND SIGNED
THIS DAY 13TH OF NOVEMBER, 2025.**

**M. ONYANGO
JUDGE**