

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E105 OF 2024

GEOFFREY GACOGU

WAMBUGU.....APPELLANT

VERSUS

FLAMINGO HORTICULTURE (K)

LTD.....RESPONDENT

(Being an appeal from the judgment and decree of the Hon. E. Cherop, (Adjudicator) delivered on 16th August 2024 in Naivasha Small Claims Suit No. E435 of 2024)

JUDGMENT

1. The Appellant was a claimant before the Small Claims Court where he sued the Respondent for general damages, special damages of Kshs. 11,675, costs and interest arising from injuries he sustained in a road traffic accident that occurred along Moi South Lake Road on 23rd November 2023.
2. The Appellant's case was that he was a lawful passenger aboard the Respondent's motor vehicle registration number KBQ 986C, when it was involved in a collision with another motor vehicle registration number KBW 704J. The Appellant testified that he was the Respondent's

employee and that he was on his way to work in the Respondent's company vehicle at the time of the accident. He further testified that his employer facilitated his treatment at South Lake Medical Centre as shown in the medical invoices that he tendered in court.

3. In its defence filed on 10th July 2024, the Respondent raised a preliminary jurisdictional issue, asserting that the dispute fell within the statutory framework of **Work Injury Benefits Act, 2007 (WIBA)** and not within the jurisdiction of the Small Claims Court.
4. The trial court agreed with the Respondent's objection and dismissed the suit for want of jurisdiction on the basis that it fell within the exclusive jurisdiction of the **Work Injury Benefits Act, 2007 (WIBA)** and not the Small Claims Court.
5. Dissatisfied with the trial court's decision, the Appellant filed this appeal on the main ground that the learned trial magistrate erred in fact and in law by dismissing the suit as a WIBA matter. The Appellant maintained that the trial court erred in finding an employment relationship that was not pleaded and in dismissing the totality of evidence and submissions.
6. The appeal was canvassed by way of written submissions which I have considered.
7. I find that the following issues fall for determination: -
 - a) Whether the learned trial magistrate erred in holding that the claim fell within the exclusive jurisdiction of the Work Injury Benefits Act,***

2007 (WIBA) and that the Small Claims Court lacked jurisdiction.

- b) **Whether the trial court failed to consider the Appellant's evidence and submissions.**

Jurisdiction

8. **Section 2 of WIBA** defines an "accident" as follows: -

"...an accident arising out of and in the course and scope of an employee's employment and resulting in personal injury."

9. Section 10(5), Work Injury Benefits Act (WIBA) stipulates as follows:

"For the purposes of this Act, the conveyance of an employee to or from the employee's place of employment for the purpose of the employee's employment by means of a vehicle provided by the employer for the purpose of conveying employees is deemed to be in the course of the employee's employment."

10. **Section 16 of WIBA** explicitly bars common law civil claims for employment-related injuries. It states that: -

"No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of an occupational accident or disease resulting in the disablement or

death of such employee against such employee's employer..."

11. The statutory bar to common law civil claims is substantive and jurisdictional. In the oft-cited case of ***Owners of the Motor Vessel Lillian S vs. Caltex Oil (Kenya) Ltd [1989] KLR 1 (CA)*** it was held, inter alia, that: -

"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."

12. In ***Joash Shisia Cheto vs. Thepot Patrick Charles [2022] KEELRC 478 (KLR)*** (Employment and Labour Relations Court), it was held: -

"An employee who suffers an occupational injury or disease may only be compensated under the provisions of WIBA."

13. The constitutional validity of statutory exclusivity under WIBA was confirmed by the Supreme Court in ***Law Society of Kenya vs. Attorney General & another [2019] KESC 16 (KLR)*** where the Court acknowledged that the WIBA framework is a legitimate alternative redress.

14. In ***Juma Nyamawi Ndugo & 5 others vs. Attorney General [2019] KEHC 6739 (KLR)***, the High Court noted

that it not the duty of the regular courts to determine compensation for work injuries as that is the function of the Director under WIBA.

15. And in ***Odhiambo & another vs. Quale Holdings Ltd [2022] KEELRC 13010 (KLR)***, the ELRC reiterated:

“Section 16 of the Work Injury Benefits Act is clear that no action shall lie by an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against the employer, save under the provisions of the Act.”

16. In the instant case, the record shows that the Appellant conceded that he was the Respondent’s employee and that he was being transported to work in a work-provided vehicle at the time of the accident and further, that he was injured in the course of employment. I therefore find that the claim squarely falls within the statutory definition of a WIBA injury.

17. The Small Claims Court is established under the **Small Claims Court Act, 2016**, and has no jurisdiction over employment or work injury disputes which are explicitly reserved for WIBA and the Employment and Labour Relations Court (ELRC).

18. I find that the trial court carefully reviewed pleadings, oral testimony, documentary evidence (including treatment notes and employment admission) and written submissions before arriving at the conclusion that it lacked jurisdiction. It is my finding that there was no misapprehension of evidence as argued and accordingly,

there is no basis to disturb the trial court's finding on jurisdiction.

19. In ***Sagala vs. Sagala (Civil Appeal 9 of 2023)*** [2024] KEHC 5573 (KLR), the High Court stated that: -

“An appellate court will not normally interfere with a trial court’s factual findings unless they were based on no evidence, or the court plainly misapprehended the evidence.”

Failure to Consider Evidence

20. The Appellant further alleged that the trial court ignored his evidence and submissions. I however note that the judgment of the trial court reveals that the learned magistrate carefully reviewed the pleadings, oral testimony, documentary evidence (including treatment notes and employment admission), and written submissions before arriving at the conclusion that the court lacked jurisdiction.
21. There is no indication that the trial court overlooked the evidence; rather, it applied the correct legal framework to the factual matrix and found that the dispute was within WIBA's exclusive purview.

Conclusion

22. Having considered the evidence on record, the pleadings, and submissions of both parties, I find that the trial court correctly determined that the Appellant's claim arose out of and in the course of employment and was therefore

within the exclusive purview of the **Work Injury Benefits Act, 2007 (WIBA)**.

23. Consequently, I dismiss the instant appeal with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

19/03/2026

FOR APPELLANT Ms Kaberenge

FOR RESPONDENT Njoroge for Oponde

COURT ASSISTANT Karani

File closed