



Imbugwa v Kapchorua Tea Company Limited (Employment and Labour Relations Appeal E042 of 2022) [2025] KEELRC 123 (KLR) (23 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 123 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E042 OF 2022**

**MA ONYANGO, J
JANUARY 23, 2025**

BETWEEN

DONALD IMBUGWA APPELLANT

AND

KAPCHORUA TEA COMPANY LIMITED RESPONDENT

(Being an appeal from the Ruling of the Honourable Principal Magistrate D. Ocharo delivered on 28th September, 2022 in Kapsabet PMELRC No. 4 of 2020)

JUDGMENT

1. The Appellant filed a suit Kapsabet PMELRC No. 4 of 2020 against the Respondent, seeking compensation for injuries he sustained while within the scope of his employment with the Respondent vide a Complaint dated 16th October 2015.
2. The Respondent entered appearance and filed a Defence denying the claim. While the suit was still pending, the Respondent filed an application dated 11th March 2022 seeking for orders that the court strikes out the suit for lack of jurisdiction.
3. The application was canvassed by way of written submissions and on 28th September 2022, the trial court in its ruling allowed the application holding that pursuant to the Supreme Court Petition No. 4 of 2020, the trial court had no jurisdiction to handle the suit.
4. The Appellant being dissatisfied with the ruling of the Trial Magistrate, filed the instant appeal vide his Memorandum of Appeal dated 21st October 2022 citing the following grounds:
 - i. The learned Magistrate erred in law and in fact in finding that the Court did not have Jurisdiction to hear and determine the suit and hence Appellant's suit was struck out.
 - ii. The learned Magistrate erred in law and in fact in dismissing the suit for lack of jurisdiction.



- iii. The learned Magistrate erred in law and in fact by failing to consider that the suit herein was filed on 23rd October, 2015 when the High court had suspended the application of work Injuries Benefits Act vide Nairobi High court petition 185 of 2008(LSK V Attorney General.)
 - iv. The learned Magistrate erred in law and in fact in finding that the court did not have Jurisdiction to hear and determine the plaintiff suit against the Respondent being in mind that the suit was filed on 12th November, 2015 and so far the law allows matters filed between 22nd May, 2008 and 17th November, 2018 to continue being handled by the Hon Judges and Magistrate.
 - v. The learned Magistrate erred in law and in fact in failing to appreciate that litigants that filed their suit with courts from 22nd May 2008 to 3rd December 2019 are entitled to successfully assert legitimate expectation in having claims heard to a conclusion before the courts they had lodged.
 - vi. The learned Magistrate erred in law and in fact in failing to appreciate that refusing the Appellant matter proceed in court on grounds that all claims lodged with courts after 2nd June 2008 should not be entertained because of jurisdiction would be antithetical to right to access justice since the litigants who moved the court after 22nd May 2008 did so on the assurance of judge declared law that they could present their disputes.
 - vii. The learned magistrate misdirected itself in law and fact in not considering the Appellant's submissions and authorities in defence of the preliminary objection in its entirety.
 - viii. The learned magistrate erred in law and in fact in holding that it does not have jurisdiction to entertain the suit.
5. The Appellant is therefore seeking for orders that:
- a. This appeal be allowed
 - b. The ruling of the Honourable D. Ocharo, Senior Resident Magistrate delivered on 28th September 2022 in the Principle Magistrate Court at Kapsabet Cause No. 4 of 2020 be set aside and/or varied and the lower court suit to proceed from where it had reached.
 - c. The costs of this appeal be borne by the Respondent
 - d. This Honourable court makes such and further orders as it deems fit and just to meet the ends of justice.
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 his submissions on 10th November 2023. The Respondent's submissions were filed on 7th November 2023.

Appellant's Submissions

7. The Appellant submitted on the following two issues:
- i. Whether the trial magistrate erred in law and fact in finding that the court lacked jurisdiction to hear and determine the suit and what is the current legal position in as far as the cases filed between 22nd May 2008 and 17th November 2018 is concerned
 - ii. Whether the Appellants are entitled to costs and interests arising from the suit



8. On the first issue, the Appellant submitted that the trial court misapprehended the facts alleging that the suit was filed in 2020 whereas the suit was filed on 23rd October 2015. According to the Appellant, the suit cannot be struck out as the current position of the law allows matters filed between 22nd May 2008 and 17th November 2018 to proceed before the court where the suit was filed. In support of this position, the Appellant placed reliance on Gazette Notice Number 5476 of 24th April 2023 by the Chief Justice allowing all work injury related claims filed between the years 2008 and 2018 to continue being heard and determined in the respective courts the matters were lodged.
9. The Appellant further relied on Nairobi Civil Appeal No. 133 of 2011, the Hon. Attorney General v The Law Society of Kenya and Central Organization of Trade Unions; Kisumu ELRC Appeal No. 4 of 2019 *West Kenya Sugar Company Limited v Titto Lucheli Tangele and Petition No. 4 of 2019* Law Society of Kenya v Attorney General & Another.
10. With regard to the second issue, the Appellant while citing the case of Morgan Air Cargo Limited vs Evrest Enterprises Limited (2014) eKLR, submitted that costs follow the event save where good reason warrants an alternative order as to costs.
11. Further, it is the Appellant's submission that he was injured during the course of duty and he is thus entitled to be compensated by the Respondent as a result of the Respondent's negligence.
12. In the end, the court was urged to make a finding that the trial court had jurisdiction to hear and determine the suit and to allow the appeal with costs.

The Respondent's submissions

13. The Respondent on its part crystalized the grounds in the Appellant's Memorandum of appeal to the following three issues for determination:
 - i. Whether the learned trial magistrate completely misapprehended the law
 - ii. Whether the learned trial magistrate had jurisdiction to determine the matter
 - iii. Whether the Respondent had legitimate expectation
 - iv. The Chief Justice's directive on WIBA matters
14. On the first issue, the Respondent submitted that the trial magistrate in its ruling that it did not have jurisdiction to handle the matter took cognisance of the *Work Injury Benefits Act* which was in force at the time the Appellant filed the suit herein on 23rd October 2015.
15. The Respondent maintained that the trial court did not misapprehend the law in holding that it lacked jurisdiction to hear and determine the lower court suit. In this regard, it is submitted that the Supreme Court in its judgment in Petition No. 4 of 2019 delivered on 13th December 2019 directed that all matters filed pre-WIBA would be heard and determined by the magistrates while the matters that were filed post WIBA would be referred to the Director of Occupational Safety and Health for assessment.
16. On the second issue whether the trial court had jurisdiction to determine the suit before it, the Respondent submitted that the suit before the lower court being a work injury related claim was to be referred to the Director of Occupational Safety and Health to be dispensed with by dint of section 16 of the *Work Injury Benefits Act*.
17. According to the Respondent, WIBA became operational on 2nd June 2008 and the instant suit was filed on 23rd October 2015 during the subsistence of WIBA. In support of this position, the Respondent cited the case of Nandi Tea Estate Limited vs John Mabialo Onyango (2021) eKLR.



18. On the issue whether the Appellant had legitimate expectation, it is the Respondent's submission that litigants who filed their cases before 2nd June 2008 are the ones who had legitimate expectation that their cases would be concluded under the judicial process they had invoked. That cases filed after WIBA came into force were expected to conform to the law in place and that as such, there cannot be a legitimate expectation against the clear provisions of the statute.
19. On the final issue as framed by the Respondent, it is submitted that the Chief Justice directive dated 23rd April 2023 has no legal basis and was not based on a court decision or amendment of WIBA.
20. According to the Respondent, section 5(c) of the *Judicial Service Act* of Kenya gives the Chief Justice the power to exercise general direction and control over the Judiciary but does not give the Chief Justice the authority to disregard clear provisions of the statute. On this basis, the Respondent cited the case of Peter Yegon Kipkulei v Sarah Teriki Kisisem & 6 Others (2016) eKLR.
21. In conclusion, the Respondent submitted that this court has no basis on which to entertain this appeal and prayed that the appeal be struck out and that the court upholds the order made on 28th September 2022 by the trial court.
22. The Respondent also prayed for costs of this appeal.

Determination

23. 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 trial court erred in dismissing the appeal on grounds that it lacked jurisdiction.
24. 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 Petition No. 4 of 2019 *Law Society Of Kenya v Attorney General and Another and Court of Appeal Nairobi Civil Appeal No. 133 of 2011* Law Society of Kenya v Attorney General and (2017) eKLR.
25. The Supreme Court in the case of Law Society of Kenya v Attorney General & another [2019] eKLR pronounced that all work injury claims post entry into force of WIBA were to be referred to the Director for assessment of compensation. The court however clarified that suits pending before court prior to entry into force of WIBA, that is, 2nd June 2008 were to be referred to the Director of WIBA for assessment.
26. The instant suit was filed on the 23rd October 2015. 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. Based on the above practice directions, the instant case which was filed before the Court of Appeal and Supreme Court decisions is to proceed before the trial court.
28. The Respondent's argument that the directive of the Chief Justice dated 23rd April 2023 has no legal basis is misplaced as Practice Directions are intended to aid the efficient and timely disposal of the matters where there is lack of clarity. Section 16 and 17 of the High Court (Organization and Administration) Act 2015 mandates the Chief Justice as the head of the Judiciary to issue practice direction and written guidelines to Judges and Judicial Officers and to oversee the administration and management of the Court to promote the administration of justice in the spirit of Article 159 of the Constitution.
29. In any event, in this case the Chief Justice did not give directions that were contrary or in contradiction with the law. All that the circular did was clarify the position that was already prevailing.
30. It is a principle of the law that any judgment or order of the court is presumed valid and binding until or unless such decision is either set aside, overturned or vacated.
31. In the instant case, the 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. The effect of this decision was that those sections of the law were deemed to have been nullified and therefore of no legal effect so that the position before the enactment of the same was restored. This position prevailed until the date when the Court of Appeal overturned the decision as later confirmed and/or affirmed or upheld by the Supreme Court in their respective judgments. The instant suit was therefore properly before the trial court.
32. Consequently, I allow the Appeal, set aside the orders issued by the trial court on the 28th September 2022 and order the reinstatement of the Appellant's suit for hearing before the trial court. The suit shall be heard before a different trial magistrate other than Hon. D. Ocharo.
33. The Appellant is awarded costs of this Appeal.
34. Orders accordingly.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 23RD DAY OF JANUARY, 2025.

M. ONYANGO

JUDGE

