



REPUBLIC OF KENYA



**Washe v Kilifi Plantations Limited (Appeal E016 of 2024)
[2025] KEELRC 626 (KLR) (3 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 626 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E016 OF 2024
K OCHARO, J
MARCH 3, 2025**

BETWEEN

ALEX BARAWA WASHE APPELLANT

AND

KILIFI PLANTATIONS LIMITED RESPONDENT

*(Being an appeal against the ruling of the Senior Principal Magistrate's Court at Kilifi,
Hon. J. M. KITIKU (PM) delivered on 7th November 2023 in KILIFI CMCC No. 340 of 2018)*

JUDGMENT

Introduction

1. By a Memorandum of Appeal dated 29th April 2024, the Appellant challenges the whole ruling of the Learned Principal Magistrate in the above-mentioned cause on the principal grounds that he erred in law and fact;
 - (a) By dismissing the shifting the Appellant's application, which was seeking implementation of the Honourable Chief Justice's directions, that Work Injury related matters filed prior to 3rd December 2019 ought to be heard and concluded on merit, considering that the Appellant's suit falls within the mentioned category.
 - (b) By finding that the Court was functus officio with regard to the issue of jurisdiction for work injury related matters, despite the Practice Directions given asserting the trial Court's jurisdiction.
2. The Appellant consequently seeks that: -
 1. This Appeal be allowed, and the ruling delivered on 7th November 2023 by the trial Court be set aside in its entirety.



2. This Court grants the prayers in the Appellant's application dated 12th May 2023 and further directs that the suit be heard on merit on conclusion.
3. The costs of the appeal awarded to the Appellant.
3. This appeal was canvassed by way of written submissions.

The Proceedings and Ruling of the Trial Court

4. Through a plaint dated 13th September 2018, the Appellant sued the Respondent, seeking general and special damages for injuries sustained in the course of his work while in the employment of the latter.
5. Upon being served with summons to enter appearance, the Respondent did and filed a Statement of Defence.
6. Before the suit could be heard to completion, the trial Court issued orders on 25th March 2021, striking out the suit on the grounds that it lacked jurisdiction to hear and determine the matter.

The Appeal.

7. The Appellant, being aggrieved by the decision of the Trial Court, filed the present Appeal on the grounds set out hereinabove.

Determination

8. The Appeal before this Court emanates from a judgment of the Lower Court. It is now trite that the role of a first Appellate Court is to subject the evidence and material that were placed before the trial court to fresh scrutiny, allowing it to come to its own independent findings and conclusions. This position was aptly elaborated in the case of *Selle vs Associated Motor Boat Co.* (1968] EA 123), where the Court held: -

“An appeal to this Court from a trial by the High Court is by way of retrial, and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it 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, this court is not necessarily bound to follow the trial judge's findings of fact if it appears to it 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 (*Abdul Hameed Saif v Ali Mohamed Sholan* (1955), 22 E.A.C.A. 270)”.

9. In the *German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018 (Consolidated) [2023] KECA 894 (KLR) (24 July 2023) (Judgment), the Court of Appeal held that: -

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is open for reconsideration both on questions of fact and law. The judgment of the appellate court must reflect this court's conscious application of its mind and record findings supported by reasons on all the issues arising along with the contentions put forth and pressed by the parties for decision of this Court. The first appellate court has jurisdiction to reverse or affirm the findings of the trial court. While reversing a finding of fact, the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. A first appellate court is the final



court of fact ordinarily, and therefore, a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. In addition, we bear in mind that we, unlike the ELRC, we did not have the benefit of seeing the witnesses testify. (See Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2EA 212).”

10. I will approach the instant appeal bearing in mind the mandate as aforesaid. Undoubtedly, the Appellant herein, in the lower court matter hereinabove mentioned, sued the Respondent for the various reliefs set out in his pleadings. The Respondent resisted the suit through a Statement of Defence.
11. On 18th February 2021, when the matter was placed before the Learned Trial Magistrate, he slated the same for 25th March 2021 for “directions on jurisdiction.” On this latter date, he stated;
 - “ 1. I have gone through the pleadings herein.
 2. Paragraph 3 of the plaint states that the Plaintiff was at all material times an employee of the Defendant.
 3. This is a work injury benefits claim, and this court has no jurisdiction to hear and determine the matter.
 4. In the absence of Jurisdiction, I dismiss the suit with costs to the Defendant.”
12. Later, through a Notice of Motion application dated 12th May 2023, the Appellant sought:
 - a. That the Lower Court sets aside the orders striking out the suit and reinstate it for determination on merit.
 - b. Costs of the application be in the cause.
13. The application was anchored on the grounds that:
 - a. Following the judgment issued by the Supreme Court case, Petition No,4 of 2019- Law Society of Kenya v the A.G and another, the Court had struck out the matter [CMMCC No. 340 of 2018], pending further directions regarding WIBA matters.
 - b. The Chief Justice had since issued further directions on the same and stated that claims filed prior to the Supreme Court decision issued on 3rd December 2019 ought to proceed to conclusion before the Courts they were filed in.
 - c. The Plaintiff’s [read the Appellant] was among those filed before issuance of the Supreme Court decision.
 - d. With the developments and guidelines given, it was fair and just that the suit be reopened and heard to conclusion on merit.
14. By a replying affidavit that was sworn on the 28th of August 2023, the Respondent opposed the application, stating that:
 - a. At the time the suit was struck out, the Court didn’t have jurisdiction.
 - b. Having been struck out procedurally, it was proper that the suit be allowed to remain closed.
 - c. The law does not allow retrospectivity, and as such, the application was misplaced.



- d. The directions by the Chief Justice were regarding matters that were pending and not those that had been dismissed before the directions.
15. On 7th November 2023, the Learned Trial Magistrate rendered himself on the application. He found it lacking in merit and dismissed the same with costs.
16. I have agonised over this. The Learned Trial Magistrate’s ruling that the Appellant has impugned was delivered on the above-stated date. The appeal herein was lodged on 29th April 2024, five and two-thirds months after the date of the ruling. This is definitely outside of the statutory period for filing an appeal. I have carefully gone through the record of appeal, there isn’t an indication that leave of the Court was sought and granted for the filing of the instant appeal out of time.
17. This Court doesn’t have jurisdiction to consider an appeal filed out of time without leave of the Court. The appeal is hereby dismissed with costs.

DATED SIGNED AND DELIVERED THIS 3RD DAY OF MARCH 2025.

OCHARO KEBIRA

JUDGE.

In the presence of:

.....for the Appellant.

.....for the Respondent

