



**Malongo v Abbysinia Iron & Steel Company Ltd (Appeal
E004 of 2021) [2024] KEELRC 695 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 695 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E004 OF 2021
CN BAARI, J
MARCH 19, 2024**

BETWEEN

KENNEDY ADIKA MALONGO APPELLANT

AND

ABBYSINIA IRON & STEEL COMPANY LTD RESPONDENT

RULING

1. This ruling relates to the Appellant/Applicant's motion dated 27th October, 2023, brought pursuant to Gazette Notice No. 5476 of 28th April, 2023, Order 45 Rules 1 & 2, Order 50 Rules 6 & 7, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 1A, 1B, 3A, 80 & 95 of the Civil Procedure Act Cap. 21 Laws of Kenya. He seeks the following orders: -
 - i. That this Court be pleased to review the judgment herein delivered on 13/10/2023 in light of the Practice Directions issued by the Chief Justice Vide Kenya Gazette Notice No. 5476
 - ii. That the costs of the application be in the cause.
2. The Motion is supported by the grounds on the face thereof and the affidavit of Geoffrey O. Okoth, the Counsel representing the Appellant/Applicant. The crux of the motion is that vide the Kenya Gazette notice No. 5476, the Honourable Chief Justice issued Practice Directions relating to WIBA matters which directions bestowed jurisdiction on the courts before whom such matters were filed and instituted prior to the Supreme Court decision in *Law Society of Kenya v. Attorney General & Another*, Petition no. 4 of 2019.
3. The Appellant/Applicant avers that the practice directions were to the effect that all WIBA matters filed after the commencement of the WIBA Act, but before the Supreme court decision of 3/12/2019, at the Employment and Labour Relations Court or the Magistrates Court shall proceed to conclusion before the said courts.



4. It is the Applicant's position that the directions gave a clear procedure of resolution of long pending work injury compensation claims before the respective courts where they were instituted.
5. The Applicant states that his claim arose on 25/5/2016 and filed before the Magistrate court on 9/4/2019, and hence within the category of matters within the purview of the practice directions.
6. The Applicant further avers that the judgment rendered by this court on 13/10/2022, dismissing the Appellant/Applicant's claim, should be reviewed in line with the Practice Directions of 28th April, 2023.
7. The Respondent opposed the motion vide a replying affidavit sworn by one Achieng Twena on 20th November, 2023. The Respondent states that the Practice Directions upon which this application is premised, do not apply to this matter as the directions do not apply retrospectively to matters already determined.
8. It is the Respondent's assertion that the practice directions are only relevant to pending court claims, which is not the position in this matter having been finalized and determined vide the impugned judgment.
9. The Respondent further argued that a retrospective effect is not to be given to the law unless by express words or necessary implication. It further states that by the wording of the directions, there was a clear and express intention that the said directions would not have a retrospective application for matter that have been finalized and would only be applicable to pending matters.
10. The Respondent avers that the Practice Directions are not intended to revive WIBA claims that have been finalized and/or concluded before 28th April, 2022.
11. The motion was canvassed by way of written submissions and which have been duly considered.

Analysis and Determination

12. The issue for determination is whether the motion meets the threshold for review of the judgment of 13th October, 2022.
13. Section 16 of the *Employment and Labour Relations Court Act* as read with Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016, empowers this court to review its judgments, awards, orders or decrees.
14. Review of a judgment, award, order or decree is possible where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or on account of some mistake or error apparent on the face of the record; or where the judgment or ruling requires clarification; or for any other sufficient reason.
15. The instant application is premised on a Gazette notice, wherein, the Honourable Chief Justice issued Practice Directions relating to WIBA matters, and which directions bestowed jurisdiction on the courts before whom WIBA matters were filed and instituted prior to the Supreme Court decision in *Law Society of Kenya v. Attorney General & Another*, Petition no. 4 of 2019.
16. The directions required that the matters be heard and determined by the Magistrates court or the Employment and Labour Relations Court where the suit was filed.
17. It is not disputed that the Applicants appeal subject of the Judgment of 13th October, 2022, is a Work Injury Benefit Claim (WIBA). The Judgment arose from an appeal against the decision of the



- Magistrates court, where the court declined jurisdiction on WIBA matters and held that parties should have filed their matter before the Director of Occupational Safety and Health Services.
18. This Court upheld the decision of the lower court vide the subject judgment, and also declined jurisdiction.
 19. The decision of the lower court was rendered on 11th December, 2020, while this Court's judgment on that decision was delivered on 13th October, 2022. The *Practice Directions* giving this court, and indeed the lower court jurisdiction to try WIBA matters filed before it were gazetted on 28th April, 2023.
 20. The question then, is whether this court should construe the Practice Directions as having a retrospective application so as to review the decision of 13/10/2022.
 21. The Blacks law dictionary defines retrospective as: -

“Looking back; contemplating what is past.”
 22. In the *Halsbury's Laws of England 4th Edition Volume 44, Paragraph 1433*, the Authors thereof expressed themselves on retrospective application of laws in the following words: -

“It is a principle of legal policy that an amending enactment should be generally presumed to change the relevant law only from the time of the enactments commencement.”
 23. In Kenya, laws come into force on the 14th day after their publication in the Gazette or on the date stipulated in the Act. Laws should generally be forward looking and restrospectivity of the law is an exception rather than the general rule.
 24. Paragraph 7 (a) and (b) of the *Practice Directions* provides thus:

“(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 Court and the Magistrates' Courts shall be delivered by the same Court.

(b) All pending judgments and rulings relating to compensation for work related injuries and diseases before the Employment and Labour Relations Court shall be delivered by the same Court.”
 25. My reading and/or intepretation of the foregoing excepts of the Practice Directions, is that the directions were not meant to have a retrospective application for matters that have been finalized, and would therefore only be applicable to pending matters.
 26. This Court (ELRC) and the Magistrates Court had already rendered their decisions on the matter declining jurisdiction premised on the decision of the Supreme Court in *Law Society of Kenya v. Attorney General & Another*, Petition no. 4 of 2019.
 27. The granting of jursdiction to these courts after the Courts had rendered their decisions, does not in my view amount to a ground for review of the decisions already made.
 28. In the final analysis, I find the motion lacking in merit, and is dismissed with costs to the Respondent.
 29. It is so ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH DAY OF MARCH, 2024.



CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Awuor present or the Applicant

N/A for the Respondent

Arwin - Court Assistant.

