



**Mitsanze v Insight Management Consultants Limited (Appeal
E013 of 2023) [2024] KEELRC 1426 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1426 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E013 OF 2023
M MBARÚ, J
MARCH 14, 2024**

BETWEEN

KARISA SHOMO MITSANZE APPELLANT

AND

INSIGHT MANAGEMENT CONSULTANTS LIMITED RESPONDENT

*(Being an appeal from the ruling of Hon. J. M. Kituku
delivered on 21st July 2023 in Kilifi CMCC No. 257 of 2018)*

JUDGMENT

1. The appellant filed this appeal against the ruling delivered in Kilifi CMCC No.257 of 2018 delivered on 21st July 2023. The appeal is on two (2) grounds that;
 - a) The learned magistrate erred in law and fact by dismissing the Appellant’s application which was seeking implementation of the Chief Justice’s directions that Work Injury related matters filed before 3 December 2019 ought to be heard and concluded on merit.
 - b) The learned magistrate erred in law and fact by finding that the court was functus officio with regard to issues of jurisdiction for work injury related matters, despite the Practice Directions given asserting the trial court’s jurisdiction.
2. The appellant is seeking that the appeal be allowed the ruling delivered on 21 July 2023 by the trial court be set aside and the prayers sought in the application be allowed. Further, the court directed that the suit be heard on merit.
3. Both parties attended and agreed to address the appeal by way of written submissions. Only the appellant filed written submissions.

4. The appellant submitted that on 24 July 2018, a claim was filed in the trial court seeking general and special damages for work injuries to the appellant while working for the respondent. The respondent filed a response and Notice of Preliminary Objections dated 15 February 2019 challenging the jurisdiction of the court. The trial court in a ruling delivered on 14 August 2019 dismissed the objections on the grounds that there was jurisdiction to hear work injury claims,
5. Before the claim could be heard, on 19 August 2020, the trial court stated that according to the Supreme Court decision, the court lacked jurisdiction and proceeded to dismiss the suit.
6. The appellant filed an application dated 12 May 2023 seeking to have the orders to set aside the suit be reinstated for determination on merit. This was informed by the Practice Directions issued by the Chief Justice through Gazette Notice No.5476 directing that matters filed before the Supreme Court Judgment issued in Petition No. 4 of 2019 – Law Society of Kenya v Attorney General & another ought to be heard to the conclusion in the respective courts they were filed in since the parties had a legitimate expectation that their suits would be heard to completion on the merits.
7. The appellant submitted that having filed suit on 25 July 2018 before the Supreme Court judgment. The respondent objected to the application on the grounds that the Practice Directions cannot apply retrospectively. On 21st July 2023, the trial court held that it was functus officio.
8. The finding of no jurisdiction was in error as the Chief Justice Practice Directions through Notice No.5476 allowed parties who had already filed claims in court to be heard before the forum where the claims were initiated. Article 159(2) calls for undue regard to technicalities and courts are required to address subjective justice. In the case of Telkom Kenya Limited v John Ochanda (Suing on his behalf and behalf of 996 other Former Employees of Telkom Kenya Limited) [2014] eKLR the Court of Appeal held that under the functus officio principles, the law gives finality. A person who is vested with adjudicative powers may, as a general rule, exercise those powers only once concerning the same matter. From the Chief Justice Practice Rules, the trial court was not barred from hearing work injury claims. The court had the requisite jurisdiction to hear and determine the claim before it on merit. The appeal should be allowed, the ruling delivered on 21 July 2023 set aside and the suit reinstated to allow the appellant to be heard on the merits.

Determination

9. This being a first appeal, the court has to re-evaluate the record and arrive at its conclusions.
10. Before the learned magistrate was application dated 12 May 2023 seeking for orders that;

The court be pleased to set aside the orders dismissing the suit and reinstate the same for determination on merits.
11. The trial court had on its motion dismissed the suit for want of jurisdiction on 19 May 2020 on the basis that following the Supreme Court judgment in Petition No. 4 of 2019 – Law Society of Kenya v Attorney General & another, and further, the Chief Justice Practice Directions through Gazette Notice No.5476 of 28 April 2023, the cumulative effect was the matters filed before the said judgment and dismissed, did not benefit from the same. The only matters that could be heard related to those still alive and active as the judgment and practice directions were not retrospective. Hence the trial court was functus officio.
12. In the ordinary practice of law, a suit dismissed for one reason or the other can be reinstated for good cause. Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised in a just manner, as was held in Bilha Ngonyo Isaac v Kembu Farm Ltd & another & another [2018]

eKLR that relied on the case of *Shah v Mbogo & Another* [1967] EA 116 where the court stated on the matter of discretion;

The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.

13. One of the issues that usually confront the courts concerning the dismissal of suits is due to delays and the subsequent applications for reinstatement. Where parties file suits but fail to prosecute them or fail to attend court as required. such impedes access to justice and the need for expeditious conclusion of suits as held in *Mobile Kitale Service Station v Mobil Oil Kenya Limited & another* [2004] eKLR.
14. In this case, the trial court on its motion dismissed the suit because following judgment in Supreme Court judgment in *Petition No. 4 of 2019 – Law Society of Kenya v Attorney General & another*, and further, the Chief Justice Practice Directions through Gazette Notice No.5476 of 28 April 2023 it had no jurisdiction. The court stood *functus officio*.
15. The judgment is giving clarity to the extent that, all matters pending resolution over claims of work injury under the previous legal regime were to be continued under the [*Work Injury Benefits Act* 2007](#). No litigant was to be prejudiced for having filed his claim under the Act. The Act was to be applied in a manner as to protect existing rights and therefore while parties had legitimate expectation to have disputes resolved under the invoked legal regime, the Act was lawful and subject to enforcement.
16. Clarity was built on this judgment through the Chief Justice Practice Directions through Gazette Notice No.5476 of 28 April 2023. The directions underscored the jurisdiction of the courts in claims filed with the courts before the Supreme Court decision.
17. The essence being, Claims filed after the initiation of WIBA but before the Supreme Court decision shall be pursued until conclusion in the Employment and Labour Relations Court or the Magistrates Court. The suits remained where they were filed before the Supreme Court judgment.
18. On 14 August 2019, the trial court made a finding that it had jurisdiction to hear the claim before it. *Suo motto* on 21 July 2023 the trial court directed that it was *functus officio*.
19. The right to reinstate a suit for good cause must be addressed on the merits. The appellant filed suit on 24 July 2018 and was caught in the mix of various decisions of the court. He remained put before the lower court. He cannot be punished for matters beyond his human control.
20. In light of the above, this court finds that the Senior Magistrates Court at Kilifi had the requisite jurisdiction at the material time to entertain the claim advanced by the appellant. To seek to reinstate a suit that had erroneously been dismissed at the court's motion is a matter of justice. A hearing and judgment should be issued by the trial court.
21. Appeal herein is allowed and the order of dismissal of the suit in Kilifi SPMCC No.257 of 2018 is hereby set aside. The matter is hereby returned to the trial court for appropriate directions on the pending judgment.
22. Mention before Kilifi Senior Resident Magistrate on 25 March 2024 for directions.

DELIVERED IN OPEN COURT AT MOMBASA THIS 14 DAY OF MARCH 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... **and**