



**Jamada v Devan Logistics Limited (Appeal 23 of 2020)  
[2024] KEELRC 1473 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1473 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL 23 OF 2020  
M MBARŪ, J  
MARCH 14, 2024**

**BETWEEN**

**HAMISI ALI JAMADA ..... APPELLANT**

**AND**

**DEVAN LOGISTICS LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment [ruling] of Hon. Nabibya delivered  
on 24 July 2020 in Mombasa SRMCC Cause No.2241 of 2015)*

**JUDGMENT**

1. The background to this appeal is a claim filed by the appellant in Mombasa SPMCC No. 2241 of 2015 on the grounds that he was employed by the respondent as a casual labourer but on 8 August 2014, while in the course of his duties, he got injured. His supervisor had instructed him to offload 50kg bags of wheat flour from a lorry to the warehouse. While in the process, he slipped and fell breaking his right hand and deep cut on his right hand. He suffered deep cuts on the right side of his face. He has suffered injury, loss, and damage. The appellant claimed that the accident and injury suffered resulted from negligence, recklessness, and carelessness and in the respondent breaching of its duty to his safety. As an employee of the respondent, he was not provided with safety gear to enable him to attend to his duties. He blamed the respondent for exposing him to injury. He claimed that as a result of the work injury, he fractures his right hand, and cuts to the face and right hand. He incurred loss for treatment at Kshs. 2,000 and claimed the following;
  - a) General damages;
  - b) Special damages at Kshs. 2,000;
  - c) Costs.



2. The matter proceeded by way of formal proof. The respondent did not enter an appearance or file any response or attend the hearing.
3. The learned magistrate served the matter for judgment on 24 July 2020. Instead, a ruling was delivered and declined jurisdiction. The reasons given were that, following the Supreme Court judgment in *Law Society of Kenya v Attorney General & Another* Petition No. 4 of 209 any claim relating to work injury should be filed following the *Work Injury Benefits Act*, 2008. A claim therefore filed after the WIBA ought to commence before the Director and an appeal to the ELRC Court.
4. Aggrieved by the ruling of the trial court, the appellant filed this appeal on the grounds that;
  - a) The learned magistrate erred in law and fact by converting the judgment into a ruling.
  - b) The learned magistrate erred in law and fact by striking out the suit without giving the appellant an opportunity to submit to the law.
  - c) The learned magistrate erred in law and fact in failing to adhere to the rules of natural justice.
  - d) The learned magistrate erred in law and fact in failing to appreciate that the respondent had deliberately withheld primary evidence from the court.
  - e) The learned magistrate erred in law and fact by failing to consider the appellant's written submissions.
  - f) The learned magistrate erred in law and fact in failing to assess damages.
  - g) The learned magistrate erred in law and fact by failing to award costs.
  - h) The learned magistrate erred in law and fact by failing to adhere to the constitutional provision for fair hearing.
5. The appellant is seeking that the ruling of the lower court be set aside and the matter be taken back before another court and judgment be written and be granted costs.
6. The appellant filed written submissions in support of the appeal. There was a violation of the rules of natural justice when the trial magistrate failed to invite parties to address the issue of jurisdiction before converting the due judgment into a ruling and declined jurisdiction. Articles 27, 47, and 50 of *the Constitution* give parties a right to the rule of law, fair administrative action, and the right to be heard before a decision is taken as held in *Phoenix E. A. Assurance Co. Ltd v S. M. Thiga t/a Newspaper Service* [2019] eKLR.
7. By failing to assess the damages due to the appellant, the trial court failed in its mandate. In the case of Beja Mbetsa *Katana v Tarmal Wire Products Limited Civil Appeal No.20 of 2020* the court held that under the doctrine of legitimate expectation, the Practice Direction by the Chief Justice published on 28 April 2023 was in tandem with Article 48 of *the Constitution* on the right to access justice. Parties were allowed to proceed for a hearing before the forum where they had filed their claims. The Practice Directions were to facilitate justice and not impede justice.
8. Failing to assess damages for the appellant denied him access to justice. The Supreme Court in the case of *Law Society of Kenya v Attorney General & Another* held that WIBA was constitutional but parties who had filed claims pending the judgment therefrom had a legitimate expectation to be heard where they filed their claims. To decline jurisdiction and fail to address damages due to the appellant was in error.



9. The High Court in the case of Jonathan Kirenje Babanya v Josmil Marine and Logistics Civil Appeal No. 257 of 2017 and West Kenya Sugar Co. Limited v Tito Lucheli Tanga ELRCA No.4 of 2019 (Kisumu), the court held that following the Supreme Court judgment in the case of Law Society of Kenya v Attorney General & another, the effect was to have all claims filed for work injury addressed under the provisions of WIBA. However, for order and due process, all pending claims before the judgment and which remained before the different courts following the judgment from the High Court and Court of Appeal were to be concluded by these courts.
10. The appellant is therefore entitled to a judgment by the trial court on the merits.
11. This is a first appeal and the court is required to assess the record, re-assess the findings, and make its conclusions. However, take into account that the lower court had the opportunity to hear the parties in evidence as held in *Selle & Another v Associated Motor Boat Co. Ltd. & others* [1968] eKLR.
12. Section 4 of the *Fair Administrative Action Act* emphasizes the provisions of Article 47 of *the Constitution*:
  - (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable, and procedurally fair. (2) Every person has the right to be given written reasons for any administrative action that is taken against him
13. In the case of *James Willy Kingori v Chairman Extra Ordinary Meeting of Michimikuru Factory Ltd & 2 others; Maurice Kobia Dickson (Interested party)* [2022] eKLR the court outlined the purpose of fair administrative action by any public officer which secures the rights to natural justice. The right to be heard before an adverse decision is taken. Therefore, the parameters within which public officers including Judges and Judicial officers should operate a defined in the case of *Judicial Service Commission v Mbalu Mutava & another* [2014] eKLR;
 

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.
14. Hence, a person who is adversely affected by a decision issued by a public body or persons should be informed of the case against him and afforded a fair opportunity to answer it.

In this case, the following facts are not contested;

- a) The appellant filed his claim before the lower court on 19 November 2015 on a claim of work injury on 8 August 2014;
- b) His case was heard on 26 February 2020;
- c) Judgment was reserved for 24 July 2020;
- d) A ruling was delivered on 24 July 2020 and the court declined jurisdiction.



Within this period, the following happened;

On 22 October 2007 the [Work Injury Benefits Act, 2007](#) (WIBA) was given assent taking effect from 20 December 2007;

On 14 April 2008 the Law Society of Kenya filed High Court Petition no. 185 of 2008 challenging the application of WIBA and the court allowed the petition;

The Attorney General appealed to the Court of Appeal in Civil Appeal No 133 of 2011 which set aside the High Court judgment and found WIBA lawful;

The Law Society moved to the Supreme Court in Petition No. 4 of 2019 and the court affirmed the judgment of the Court of Appeal.

15. From 20 December 2007 when WIBA came into force until December 2019 when the Supreme Court delivered its judgment, several claims were filed before different courts. In acknowledging this situation, the Supreme Court recognized the possible challenges and directed in its judgment that;

With respect, we agree that claimants in those pending cases have legitimate expectations that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked. Indeed as a result of this concern, the learned Judge in a ruling on an interlocutory application directed that: On the foregoing grounds, I will order that, pending the hearing and determination of the main cause, all pending litigation which had been commenced on the basis of either the Workmen's Compensation Act... or the common law, or of a combination of both regimes of law, shall continue to be prosecuted and, in a proper case, finalized on the basis of the operative law prior to the entry into force of the [Work Injury Benefits Act, 2007](#)....

16. The learned magistrate well quoted and relied on these findings by the Supreme Court. However, despite the claim before her being filed on 19 November 2015 and caught in between the various suits before the High Court and Supreme Court, proceeded to decline jurisdiction. This is an error.
17. All pending suits before different courts including the trial court (Chief Magistrates Court Mombasa) as of 4 December 2019 had a duty to hear and conclude all matters filed before them. To decline jurisdiction based on the judgment by the Supreme Court in Law Society of Kenya v Attorney General & another was a misreading of the judgment.
18. Indeed, as submitted by the appellant, before the trial court proceeded to deliver its ruling, good practice demanded that parties be invited to address the issue at hand. The question of jurisdiction that resulted in the ruling of the court on 24 July 2020 ought to have benefited from submissions by the parties. To proceed suo motto without giving the appellant a fair chance to make his arguments resulted in injustice.
19. The matter was heard by formal proof and judgment reserved. The matter was mentioned by the Chief Magistrate and head of station who placed the file before the learned magistrate for delivery of judgment. Instead, the learned magistrate proceeded and delivered a ruling declining jurisdiction without reverting to the parties to address the issue.
20. The motions of our judicial system are to allow parties to address the issue at hand and have the opportunity to make representations.

The conversion of the judgment into a ruling was in error.



- 21. The failure to assess damages due to the appellant after taking his evidence was in error. There is no record of what awards would have been issued, the trial court clothed with jurisdiction.
- 22. To this extent, the appeal is with merit. The matter shall be placed before the Chief Magistrate, Mombasa to assign and the due judgment to issue. This being a 2015 matter, the file shall be heard on a priority basis. Place the file before the Chief Magistrate on 21st March 2024 for directions.

**The appellant is awarded costs.**

Delivered in open court at Mombasa this 14 day of March 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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