



Mulwa v Board of Management Mbooni Boys High School (Cause 842 of 2015) [2024] KEELRC 906 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 906 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 842 OF 2015**

**L NDOLO, J
APRIL 25, 2024**

BETWEEN

PAUL MUTUKU MULWA CLAIMANT

AND

BOARD OF MANAGEMENT MBOONI BOYS HIGH SCHOOL .. RESPONDENT

RULING

1. On 9th July 2020, Makau J entered judgment in favour of the Claimant in the following terms:
 - a. Notice.....Kshs. 7,600.00
 - b. Compensation.....76,000.00
 - c. Accrued leave.....57,876.90
 - d. Unremitted NSSF deductions.....6,400.00
 - Total.....147,876.90
2. Subsequent to settlement of the decretal sum plus costs, the Claimant filed a Notice of Motion dated 30th October 2023, seeking the following orders:
 - a. That the Court be pleased to review part of the judgment delivered on 9th July 2020, in relation to its lack of jurisdiction to grant reliefs sought under the [Work Injury Benefits Act](#) (WIBA);
 - b. That consequently, the Court be pleased to re-open the suit to allow the Claimant to file submissions on the work injury claim that is yet to be determined.
3. The Motion is supported by the Claimant’s own affidavit and is based on the following grounds:
 - a. That on 19th May 2015, the Claimant instituted suit against the Respondent by filing a Memorandum of Claim dated 18th May 2015;



- b. That the claim as filed, constituted a claim for compensation for unlawful dismissal and other benefits as well as a claim for damages for injuries sustained at work;
 - c. That at the time of lodging the suit, this Court had the jurisdiction to determine both claims, following the High Court decision in *Law Society of Kenya v Attorney General* [2009] eKLR which proscribed the procedure for lodging claims under *WIBA* as unconstitutional;
 - d. That as the matter was still proceeding, the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] eKLR overturned the above High Court decision and directed that the Director of Occupational Safety and Health Services, had primary jurisdiction to determine claims under *WIBA*;
 - e. That subsequent to the Supreme Court decision, this Court delivered its judgment on 9th July 2020 and declared that it had no jurisdiction to entertain claims under *WIBA*;
 - f. That on 28th April 2023, through Gazette Notice No. 5476, the Chief Justice issued directions, directing that all claims with respect to compensation for work related injuries and diseases filed at the Employment and Labour Relations Court, after commencement of *WIBA* but before the Supreme Court decision, shall proceed to conclusion at the said Court;
 - g. That it is on this basis that that the Claimant has now approached the Court, seeking review of order number 2 of the judgment and re-opening of the case to enable him file submissions on the injury claim;
 - h. That the law allows the Court to review its judgment for sufficient cause;
 - i. That the reason for the request for review is justifiable in the circumstances, and qualifies as a sufficient cause in the interest of justice;
 - j. That from the time the Claimant filed his suit, it was his legitimate expectation that the Court would determine his claims and render itself on all the issues raised;
 - k. That it is in the interest of justice that the orders sought be granted.
4. The Respondent filed Grounds of Opposition dated 17th January 2024 stating as follows:
- a. That the Court lacks jurisdiction to entertain the Motion on the ground that entertaining it would amount to sitting on appeal over its own decision;
 - b. That this Court is *functus officio* and cannot therefore re-open a matter where it has already rendered its final decision. Paragraphs 29 and 33 of the judgment delivered on 9th July 2020, referred the claim founded on *WIBA*, to the Director of Occupational Safety and Health Services, and the Claimant should have complied with the judgment of the Court;
 - c. That since this Court is *functus officio*, the practice directions applicable to concluded cases, such as the instant one, where judgment was delivered after the Supreme Court decision, is practice direction number 8 of Gazette Notice No 5476 of 28th April 2023, which provides that all claims with respect to work related injuries and diseases shall commence before the Director of Occupational Safety and Health Services;
 - d. That this matter does not fall under practice direction number 7 since it is not pending in court but is one which was fully determined and the Claimant directed to follow up his claim founded on *WIBA*, before the Director of Occupational Safety and Health Services.



5. The power of this Court to review its own decisions is donated by Section 16 of the [Employment and Labour Relations Court Act](#) and Rule 33 of the [Employment and Labour Relations Court \(Procedure\) Rules](#). Rule 33(1) provides as follows:
1. A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling-
 - a. if 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
 - b. on account of some mistake or error apparent on the face of the record; or
 - (c) if the judgment or ruling requires clarification; or
 - (d) for any other sufficient reason.
 6. By his application, the Claimant asks the Court to re-open the suit giving rise to the judgment delivered by Makau J on 9th July 2020. The Claimant grounds his plea on practice directions published by the Hon Chief Justice in Gazette Notice No 5476 of 28th April 2023, by which work injury claims filed in this Court before the [Supreme Court decision in Law Society of Kenya v Attorney General & another](#) [2019] eKLR could continue to determination before the Court.
 7. In opposing the Motion, the Respondent asserts that this Court, having fully rendered itself in the judgment delivered on 9th July 2020, is *functus officio*.
 8. In disagreeing with the Respondent's position on this account, the Claimant relied on the Supreme Court decision in [Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others](#) [2013] eKLR where it was held:

“It is a legal and constitutional obligation of any court, from the basic level to the highest level, to preserve and protect the adjudicatory forum of governance, and to uphold decorum and integrity in the scheme of justice delivery. It follows that the court's jurisdiction, in oversight of the question of conscientious and dignified management of the judicial process, and in safeguarding the scheme of rendering of justice, will not be exhausted until the court is satisfied and it declares as much. Even though, therefore, the court concluded the hearing of the petition by delivery of judgment, its jurisdiction for upholding the dignity of the judicial process, and in relation to the proceedings of the petition, remained uncompromised.”
 9. The Claimant also cited the decision in [Silvanus Kizito v Edith Nkirote Mwiti](#) [2021] eKLR where it was held that:

“The court does not become *functus officio* merely because it has delivered a final decision in civil proceedings. The court retains its power to undertake several actions including but not limited to stay, review, execution proceedings and such other acts and steps towards the closure of the file.”



10. On its part, the Respondent relied on the decision in *Leisure Lodge Ltd v Japhet Asige and another* [2018] eKLR where it was held:

“On the question that this court is *functus officio*, I do find that a trial court retains the duty and jurisdiction to undertake and handle all incidental proceedings even after a final judgment is delivered provided such proceedings do not amount to re-trying the cause but geared towards bringing the litigation to an end.”

11. From the foregoing case law, it is clear that a court does not automatically become *functus officio* by the mere fact that it has rendered judgment in a matter. It is however also clear that the jurisdiction of a trial court after judgment is residual and incidental in nature and it is for the sole purpose of neatly and conclusively wrapping up the proceedings.

12. In the present case, the Claimant asks the Court to re-open a matter that was closed in 2020 and in doing so, the Claimant relies on practice directions published close to three years later. In the judgment delivered on 9th July 2020, the Claimant was given clear directions regarding his work injury claim, over which the Court determined it had no primary jurisdiction. The Claimant appears to have ignored the directions issued by the Court and now wants the same Court to re-open the claim.

13. With respect, this is an abuse of the court process upon which this Court takes a dim view. At any rate, the issue of jurisdiction regarding the work injury claim having been determined by my brother Judge, is beyond my reach. If the Claimant was dissatisfied with the decision made on this issue, he ought to have preferred an appeal at the Court of Appeal.

14. Ultimately, I find and hold that the Claimant’s application dated 30th October 2023 is without merit and proceed to dismiss it.

15. Each party will bear their own costs.

16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF APRIL, 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Mutua for the Claimant

Mr. Munene for the Respondent

