



**Jumbo North (EA) Limited v Kiplimo (Appeal E013 of 2023)
[2024] KEELRC 1677 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1677 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E013 OF 2023
MA ONYANGO, J
JUNE 28, 2024**

BETWEEN

JUMBO NORTH (EA) LIMITED APPELLANT

AND

KELVIN KIPLIMO RESPONDENT

RULING

1. *Vide* an application dated 5th February 2024, the Appellant seeks the following orders:
 - a. That there be stay of proceedings and/or further proceedings and/or any action in Eldoret CMCC No. 575 of 2017 Kelvin Kiplimo v Jumbo North (E.A) Limited pending the hearing and determination of this application inter-partes.
 - b. That there be stay of proceedings and/or further proceedings and/or hearing of this matter and/or taking of any action in Eldoret CMCC No. 575 of 2017 Kelvin Kiplimo v Jumbo North (E.A) Limited pending hearing and determination of this appeal.
 - c. That costs be in the cause.
2. The grounds in support of application are that:
 - a. That the Appellant filed a Notice of Preliminary Objection dated 10th February 2020 challenging the jurisdiction of the Magistrate's Court to hear and determine the claim before it being a work injury claim.
 - b. That the Preliminary Objection was canvassed and the trial Court on 9th May, 2023 delivered its ruling dismissing the Preliminary Objection on the strength of the Chief Justice's Directions on work injury claims gazetted on 24th April, 2023.



- c. That the Appellant/Applicant being aggrieved with the aforementioned ruling filed an appeal to this Honourable Court and an application for stay of proceedings before the trial Court dated 19th June, 2023.
 - d. That the application for stay of proceedings was canvassed and the trial Court on 19th December, 2023 delivered its ruling dismissing the application on grounds that staying the proceedings will amount to staying the Chief Justice's directions on work injury claims hence the instant application.
 - e. That it is the Appellant/Applicant's position that the provisions of the [Work Injury Benefits Act](#) No.13 of 2007 are intact and have not been amended and/or repealed and therefore the Chief Justice's Directions oust the operation of statute and/or did not change the provisions of the statute as to the forum for litigating work injury claims.
 - f. That the Appellant/Applicant stands to suffer loss should the matter in the trial Court proceed before this Honourable Court pronounces itself on the weighty legal issues raised hence the need to grant an order for stay of proceedings of the lower court's matter to await this Court's decision on appeal.
 - g. That the Appellant/Applicant has a right to seek a second opinion before this Honourable Court and such right ought to be allowed to be exercised freely as enshrined in [the Constitution](#), 2010.
 - h. That the Appellant/Applicant stands to be prejudiced should trial court case Eldoret CMCC No. 575 OF 2017 Kelvin Kiplimo Vs Jumbo North (E.A) Limited proceed to full hearing during the pendency of this appeal hence the need to issue an order halting the proceedings in the Subordinate Court until the appeal is determined.
 - i. That the orders sought ought to issue to prevent the ends of justice from being defeated and the appeal from being rendered nugatory.
 - j. That no prejudice will be suffered by the Respondent should the orders sought be granted since the matter in the Subordinate Court is still at its preliminary stage.
 - k. That this Honourable Court has power to hear and determine the instant application in the best interest of justice.
 - l. That considering the circumstances of the matter there is no need for security to be offered as there is no decree in place to be secured.
 - m. That this application is made in good faith and in the interest of justice and fairness.
3. The application is supported by the affidavit of Counsel for the Appellant, Ms Anne Halwenge Odwa sworn on 5th February 2024 which reiterates the contents on the grounds of the application.
 4. The Respondent opposed the application *vide* the Replying Affidavit sworn on 8th February 2024. He submits that the application lacks merit and that it has been made in bad faith. According to the Respondent, the Supreme Court in its decision was emphatic on the legitimate expectation of litigants with pending cases in the subordinate court.
 5. That having invoked the judicial process prevailing at the time of the filing the suit, he has the right to have this matter concluded within the legal regime invoked.



6. It is his contention that the Applicant has not shown that there are exceptional circumstances to warrant further orders of stay of proceedings in this matter which has been pending determination on merits since the year 2017.
7. Accordingly, the Respondent contends that the application for stay of proceedings is intended to merely embarrass and delay the determination of the matter pending before the subordinate court and other industrial matters pending before the courts.
8. He avers that this matter is partly heard and has been in court since 2017 against the tenets of Article 159(2)(b) of *the Constitution*.
9. In the end, the Respondent urged the court to dismiss the instant application with costs.
10. The application was disposed of by way of written submissions pursuant to the directions of the court issued on 22nd February 2024. The Appellant's submissions were filed on 31st March 2024 while the Respondent's submissions were filed on 29th February 2024.

Determination

11. I have carefully considered the application together with the grounds on the face thereof and the affidavit in support of the same. I have further considered the Replying affidavit and the submissions made by counsel for the parties.
12. The issue for determination is whether the Appellant has satisfied the court that it has reasons justifying the grant of orders sought in its application.
13. The Appeal before this court was filed by the Appellant vide a Memorandum of Appeal dated 8th June 2023 seeking that the ruling of the trial court dismissing the Appellant's preliminary objection dated 14th February 2020 be set aside and in lieu thereof the court declares that the suit herein was filed in the wrong forum.
14. Before that appeal was heard, the Appellant filed the instant application seeking for stay of proceedings in the trial court.
15. The issue of the jurisdiction of the Magistrate's courts to hear and determine *WIBA* matters arose following the decision of the Court of Appeal in Nairobi Civil Appeal No. 133 of 2011 *Law Society of Kenya v Attorney General and Another* (2017) eKLR delivered on November 17, 2017. The decision was confirmed by the Supreme Court in Supreme Court Petition No. 4 of 2019 *Law Society of Kenya v Attorney General and Another* in its judgment delivered on 3rd December 2019.
16. After the two decisions of the Court of Appeal as confirmed by the Supreme Court there was confusion on the status of suits filed after the decision of the High Court in respect of which the appeals were filed, but before the date of determination of the appeals in the Court of Appeal and Supreme Court.
17. To resolve the apparent confusion, the Chief Justice issued Practice Directions through *Gazette Notice No. 5476* dated 24th April 2023 which directions read in part:

Claims Filed after Commencement of *WIBA* but before the Supreme Court decision

7. Taking into account that High Court *vide* its judgment dated 4th March, 2009 in *Law Society of Kenya v. Attorney General & Another* (2009) eKLR declared some of the provisions in *WIBA* including Sections 16, 23(1) and 52, which prescribe the procedure for lodging claims under the *Act* unconstitutional.



Consequently, the said declaration of nullity created a legitimate expectation that Claimants could directly lodge claims for compensation for work related injuries and diseases in court. As such, litigants cannot be penalized for relying on the declaration of nullity, as appreciated by the Supreme Court in *Attorney-General and 2 Others v Ndi and 79 Others; Prof. Rosalind Dixon and 7 Others (Amicus Curiae) (Petition 12, 11 and 13 of 2021 (Consolidated))* [2022] KESC 8 (KLR) to lodge their claims in court.

Therefore,

- (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 Courts or the Magistrates' Courts shall proceed until conclusion before the said courts.
- (b) All pending judgments and rulings relating to compensation for work related injuries and diseases before the Employment and Labour Relations Court and the Magistrates' Courts shall be delivered by the same court.

18. The Respondent in his Replying affidavit stated that he lodged his claim on 26th May 2017. Based on the above practice directions, the instant case which was filed before the Supreme Court decision is to proceed to its conclusion before the trial court.
19. Consequently, I find no merit in the application herein and accordingly dismiss the same.
20. In view of the fact that the ruling herein also resolved the issue in the appeal, the appellant is advised to consider withdrawing the same as the issues in the appeal have substantially been dealt with in the ruling.
21. The Respondent is awarded costs of the application.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28TH DAY OF JUNE, 2024

MAUREEN ONYANGO

JUDGE

