



China Road and Bridge Corp (Kenya) v Mwangangi (Employment and Labour Relations Appeal E098 of 2021) [2024] KEELRC 2254 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2254 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E098 OF 2021
BOM MANANI, J
SEPTEMBER 19, 2024**

**BETWEEN
CHINA ROAD AND BRIDGE CORP (KENYA) APPELLANT
AND
PATRICK MAUNDU MWANGANGI RESPONDENT**

RULING

Background

1. The Respondent/Applicant instituted proceedings before the Magistrate’s Court seeking compensation from the Appellant for injuries he allegedly sustained whilst at the workplace. In response, the Appellant objected to the court’s jurisdiction to hear the case on the ground that the matter ought to have been lodged before the Director of Occupational Safety and Health Services as decreed by the *Work Injury Benefits Act*.
2. The trial court disagreed with the Appellant’s objection. As such, the suit was sustained.
3. Unhappy with the holding, the Appellant moved to this court to challenge the decision. In a judgment that was delivered on 27th April 2023, this court agreed with the Appellant’s view that the trial court did not have jurisdiction to entertain the suit.
4. As such, this court reversed the trial court’s holding. In place of the trial court’s decision, the court allowed the Appellant’s objection with the consequence that the cause before the Magistrate’s court was struck out for want of jurisdiction.
5. The Respondent/Applicant has now filed the instant application seeking the following orders:-
 - a. That the court reviews and sets aside its judgment of 27th April 2023 by which it upheld the Appellant’s preliminary objection on the basis of which the suit before the trial court was struck out for want of jurisdiction.



- b. That the court reinstates the suit before the trial court for hearing and determination.
 - c. That costs for the application be in the cause.
6. The basis for the application is that after the court's judgment, the Chief Justice issued practice directions which require that all claims for personal injury at work and occupational diseases which are pending before courts be finalized by the courts. In the Respondent's/Applicant's view, the said directions breathed life into the now dismissed cause. As such, the matter ought to be reinstated and heard on the merits.
 7. The Respondent/Applicant contends that the practice directions are a new matter which was not within his knowledge at the time the impugned decision was made. As such, they provide a valid reason for the request to review the decision.
 8. The application is opposed. The Appellant has filed a replying affidavit in which it contends that the impugned ruling is not affected by the directions which the Respondent/Applicant seeks to invoke.

Analysis

9. The application is said to be brought pursuant to the provisions of sections 1A, 1B and 3A of the Civil Procedure Act, Order 45 of the Civil Procedure Rules and all other enabling provisions of law. Proceedings before the Employment and Labour Relations Court (the ELRC) are governed by the Employment and Labour Relations Court (Procedure) Rules, 2016 (ELRC rules). The Civil Procedure Act and Civil Procedure Rules do not apply to proceedings before the court (the ELRC) except as permitted by the ELRC rules (Johnson Kazungu v Kenya Marine and Fisheries Research Institute [2021] eKLR).
10. Rule 33 of the ELRC rules entitles a party to proceedings before the ELRC to apply for review of the court's decision. As such, the instant application ought to have been brought under this rule as opposed to Order 45 of the Civil Procedure Rules.
11. I would have struck out the application for this reason. However, I note that in addition to the inapplicable provisions of statute which the Respondent/Applicant has cited, he indicates that he also relies on "all other enabling provisions of law". For this reason, I will consider the application as competent and decide it on the merits.
12. The impugned ruling was delivered on 27th April 2023. On the other hand, the practice directions which informed the filing of the application were published on 28th April 2023, a day after the aforesaid ruling was delivered.
13. The question that arises is whether the directions were intended to apply retrospectively to reopen matters which had been finalized at the time that they were published in the Kenya Gazette. This matter has been considered in a number of rulings by the court.
14. In Adel v Abbysinia Iron & Steel Company Ltd (Appeal E003 of 2021) [2024] KEELRC 694 (KLR) (19 March 2024) (Ruling), the court observed as follows regarding the prospective nature of the directions:-

".....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."
15. A similar finding was made in Malongo v Abbysinia Iron & Steel Company Ltd (Appeal E004 of 2021) [2024] KEELRC 695 (KLR) (19 March 2024) (Ruling). In the case, the court stated that legal



instruments are presumed to be forward looking. As such the practice directions could not be applied retrospectively to reopen closed matters as there was no express intention from the instrument that they were intended to have retrospective application.

16. In *Maisha Mabati Mills Ltd v Ondari & another (Employment and Labour Relations)* Appeal 152 of 2022) [2024] KEELRC 236 (KLR) (15 February 2024) (Ruling), the court underscored the fact that the directions were intended to be forward looking and not retrospective. As such, they could not be invoked to reopen closed disputes. The court rendered itself on the issue as follows:-

“The law is presumed to have prospective as opposed to retroactive application. Ordinarily, statutory instruments are presumed not to have retrospective application unless a contrary intention is expressed in them.”

17. The instant application does not meet the parameters for review. The Respondent/Applicant does not suggest that there is an error on the face of the impugned ruling to warrant its review. He does not suggest that there is an important matter which was in existence at the time of hearing the appeal but which the parties were prevented from bringing to the court’s attention despite the exercise of due diligence. He does not suggest that the court’s decision requires clarification.
18. The publication of the practice directions by the Chief Justice on 28th April 2023 is not sufficient reason to allow the application since the said directions were not intended to have retrospective application. As such, they cannot be invoked to justify a request to reopen the court’s decision which was rendered on 27th April 2023.
19. Having regard to the foregoing, it is clear to my mind that the application for review, in so far as it seeks to invoke the aforesaid practice directions retrospectively, is misconceived. As such, it stands for dismissal.

Determination

20. The upshot is that the application is devoid of merit.
21. Accordingly, it is dismissed with costs to the Appellant.

DATED, SIGNED AND DELIVERED ON THE 19TH DAY OF SEPTEMBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Appellant

.....for the Respondent/Applicant

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

