



**Muthengi v Mombasa Cage Inn Limited (Appeal E006 of 2024)  
[2024] KEELRC 2711 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2711 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
APPEAL E006 OF 2024  
M MBARÚ, J  
OCTOBER 31, 2024**

**BETWEEN**

**NZANGI MUTHENGI ..... APPELLANT**

**AND**

**MOMBASA CAGE INN LIMITED ..... RESPONDENT**

*([Being an appeal from the ruling of Hon. M. S. Kimani delivered  
on 16 February 2024 in Mariakani CMCC No.93 of 2019])*

**JUDGMENT**

1. The appeal relates to the ruling on 16 February 2024 in Mariakani CMCC No.93 of 2019. The appellant seeks that the application dated 6 June 2023 be set aside and directions issued so that the suit can be heard and determined on the merits. Alternatively, the file can be transferred to the Mombasa Chief Magistrate’s Court for its determination on merit.
2. The background to the ruling delivered on 16 February 2024 is from a claim filed by the appellant on 15 April 2019 on the basis that in August 2018, she was employed by the respondent as a waitress at a wage of Ksh.7, 200 per month. On 10 January 2019, while at work, she got injured. She claimed that the accident and work injuries arose from the respondent’s negligence and filed suit claiming damages.
3. In reply, the respondent argued that the appellant did not report any work injury but absconded duty. Her whereabouts were unknown. The cause of action arose in Mombasa, and the suit was wrongly filed at Mariakani; hence, there is no jurisdiction.
4. On 28 November 2020, the learned magistrate directed that the claim should be transferred to the body competent to try it within 120 days, in default of which it shall be struck out.
5. On 21st April 2021, the learned magistrate directed that this being a WIBA matter, it is hereby struck out for want of jurisdiction with no orders on costs.



6. Aggrieved by these orders and directions, the appellant filed an application dated 6 June 2023 seeking that the orders striking out the suit be set aside and the suit be reinstated for determination on the merits.
7. The learned magistrate delivered a ruling dated 16 February 2024, which is the subject of this appeal. The appellant's application was dismissed with costs, and the suit was struck out.

There are two grounds for appeal;

The learned magistrate erred in law and fact by disregarding the appellant's application to reinstate the suit which was dismissed for being WIBA related, despite the Practice Directions issued.

The learned magistrate erred in law and fact by dismissing the appellant's suit on grounds that the court lacked territorial jurisdiction to entertain the suit.

8. Both parties attended and agreed to address the appeal by way of written submissions.
9. The Appellant submitted that he filed suit at Mariakani Law Courts on 15th April 2019 seeking general and special damages for being involved in a work-related accident. The respondent filed objections that that it was a WIBA matter the basis of the same being the Supreme Court's decision in Petition No. 4 of 2019, Law Society of Kenya v the A.G and Another, whereby it was directed that such matters ought to be heard by the Director of Safety and Health, under the labour office.
10. Practice Directives regarding Work Injury were later issued by the Chief Justice via the Kenya Gazette Volume CXXV-No-99 Notice No. 5476. 6. The Directives were that the matters filed before the Supreme Court decision ought to be heard to conclusion in the respective Courts they were filed in since the parties had the legitimate expectation that their suits would be heard to completion on merit. The Appellant filed the Application dated 6th June 2023, seeking to set aside the orders striking out the suit which application was dismissed and unless the appeal is allowed the orders set aside, great injustice will be visited against the appellant. The cause of action arose in Mombasa and the same can be moved to Mombasa Chief Magistrate's court.
11. The respondent submitted that the appellant filed the claim in the wrong court as the claim related to work injury.

### **Determination**

12. The issue before the trial court was a claim filed seeking damages for work injuries alleged to have occurred on 10 January 2019. The claim was filed on 15 April 2019.
13. A work-related injury is regulated under the provisions of the [Work Injury Benefits Act](#) (WIBA). Under the WIBA, all claims should be first addressed by the Director.
14. The learned magistrate in the ruling delivered on 16 February 2024 well addressed the background of WIBA and the various cases by the superior court culminating in the Supreme Court Petition No. 4 of 2019 delivered on 3 December 2019.
15. The Supreme Court held that;

In agreeing with the Court of Appeal, we note that it is not in dispute that prior to the enactment of the Act, litigation relating to work injuries had gone on, and a number of the suits had progressed up to the decree stage; some of which were still being heard; while others were still at the preliminary stage. All such matters were being dealt with under the then-



existing and completely different regimes of law. We thus agree with the Appellate Court that claimants in those pending cases have a legitimate expectation that upon the passage of the Act, their cases would be concluded under the judicial process that they had invoked. However, were it not for such legitimate expectation, WIBA, not being unconstitutional and an even more progressive statute, as we have shown above, we opine that it is best that all matters are finalized under Section 52 aforesaid.

16. For clarity and to ensure access to justice, Practice Directions relating to pending court claims for compensation for work-related injuries and diseases instituted before the Supreme Court decision in *Law Society of Kenya v Attorney General & Another, Petition No. 4 of 2019*; [2019] eKLR were issued by the Chief Justice through Gazette Notice No.5474 of 28 April 2023. Under clause 7(a) of the Practice Directions, the Chief Justice directed as follows;
  - 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.
17. These directions are insightful in this appeal.
18. As outlined above, the appellant filed the claim before the trial court on 19 April 2019 whereas the Supreme Court delivered the judgement on 3 December 2019. The claim before the trial court was hence addressed.
19. The appellant had a legitimate expectation that the case would be heard by the court that was seized of the matter as of 19 April 2019 before the Supreme Court rendered itself and based on the Judgment by the Court of Appeal in Civil Appeal No.133 of 2011.
20. The strikeout of the matter was in error.
21. The cause of action arose at Mombasa, and the file shall be transmitted to the Mombasa Chief Magistrate's Court for a hearing and determination of the merits.
22. Accordingly, the appeal is with merit and is hereby allowed. Mariakani CMCC No.93 of 2019 shall be heard on the merits. The file shall be moved to Mombasa Chief Magistrate's Court for hearing and determination. Each party is to bear its costs for the appeal.
23. Mention before the Chief Magistrate on 14 November 2024 for directions.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 31ST DAY OF OCTOBER 2024.**

**M. MBARŪ**

**JUDGE**

