



**Planlink Company Limited v Ochuodho (Miscellaneous Application
088 of 2022) [2023] KEELRC 221 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 221 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 088 OF 2022**

J RIKA, J

JANUARY 31, 2023

BETWEEN

PLANLINK COMPANY LIMITED APPLICANT

AND

JULIUS OUMA OCHUODHO RESPONDENT

RULING

1. Kiambu CMCC No 367 of 2022, is a work injury dispute, between the Parties herein.
2. The Applicant made a Preliminary Objection at the Trial Court, arguing that the Trial Court did not have jurisdiction to hear and determine the matter, under the [Work Injury Benefits Act](#).
3. The Trial Court overruled the Objection.
4. The Applicant sought leave to appeal against the Ruling, which was declined on June 8, 2022.
5. The Applicant therefore filed the Application, amended on June 29, 2022, seeking leave to appeal against the Ruling of the Trial Court, and seeking stay of proceedings of the Trial Court pending hearing and determination of the intended Appeal.
6. The Respondent explains that it was delayed in seeking leave herein, because it made initial Application for leave before the Trial Court. The prescribed time for filing an Appeal lapsed on June 24, 2022.
7. It was agreed by the Parties, that the Application would be prosecuted through Written Submissions. While the Applicant filed its Submissions dated October 13, 2022, the physical record does not contain Submissions filed by the Respondent.



The Court Finds:-

8. The Preliminary Objection at the Trial Court appears to have been grounded on the weighty subject of jurisdiction, and the *Work Injury Benefits Act*.
9. The Trial Court, like this Court, has been found in a catena of decisions of Superior Courts of Record, not to have primary jurisdiction on *Work Injury Benefits Act*.
10. Primary jurisdiction had been found to reside in the Director of Occupational Safety and Health, with the Employment and Labour Relations Court conferred appellate jurisdiction.
11. There appears to be an arguable Appeal against the Ruling of the Trial Court dismissing Preliminary Objection, and assuming jurisdiction on work injury dispute.
12. Delay in filing the Appeal has adequately been explained in the Supporting Affidavit of Maintenance Manager James Mwangi Thiong'o sworn on June 13, 2022, and the Supplementary Affidavit sworn by the Applicant's Counsel Sophie Chirchir, on June 29, 2022.

It Is Ordered:-

- a. The Applicant is granted leave to file its Appeal against the Ruling in Kiambu CMCC No 367 of 2017, delivered on May 25, 2022.
- b. Proceedings in the said Civil Suit are stayed, pending hearing and determination of the Intended Appeal.
- c. The Appeal to be filed and served upon the Respondent, within 60 days of this Ruling.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

James Rika

Judge

