



**Muia v Kenya Trucks and Tractors Limited (Cause E372 of 2021)
[2023] KEELRC 460 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 460 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E372 OF 2021
BOM MANANI, J
FEBRUARY 23, 2023**

BETWEEN

JOSEPH MUTHINI MUIA CLAIMANT

AND

KENYA TRUCKS AND TRACTORS LIMITED RESPONDENT

RULING

1. This is a suit for compensation for injuries allegedly occasioned to the Claimant whilst on duty within the Respondent's premises. The Claimant alleges that he suffered burns when a hot steel bar fell onto his hand as he went about his work at the Respondent's premises.
2. According to the Claimant, the Respondent did not report the accident to the Director of Occupational Safety and Health (the Director) as required under the *Work Injury Benefits Act* (WIBA). Further, although the Claimant took the initiative to notify the Director of the accident, there has been no action on the matter from the Director's office prompting this action for compensation.
3. The Respondent has denied the occurrence of the accident. Importantly, the Respondent has disputed this court's jurisdiction to entertain the claim.

Preliminary Objection

4. Together with its defense, the Respondent filed a Notice of Preliminary Objection to the competence of the suit. The objection centers on the court's jurisdiction to entertain the case in view of the decision by the Supreme Court in *Law Society of Kenya v Attorney General & another* (2019) eKLR.
5. According to the Respondent, this being a work injury claim, it is required, in the first instance, to be processed at the Director's office under the WIBA. The matter can only escalate to this court by way of an appeal under section 52 (2) of the WIBA. Put differently, the Employment and Labour Relations Court has no primary or original jurisdiction over the dispute.



Analysis and Determination

6. The Claimant is alleged to have suffered injury at the workplace on August 1, 2019. This is during the currency of the WIBA.
7. Section 16 of the Act provides as follows:-

“No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee’s employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.”
8. Simply put, the law requires that any work injury claim be processed as prescribed under the WIBA. Under Parts IV, V, VI and VII of the Act, the procedure and mode of compensation for claims arising from work injuries and occupational diseases is set out. The law requires that any such claims be brought to the attention of the Director. The Director is then required to process the claim as provided for under the Act. Thereafter, the employer is to pay the monetary compensation as assessed by the Director.
9. Under section 51 of the Act, where any of the parties is aggrieved by the recommendation of the Director, he may within sixty (60) days of the decision, lodge an objection with the Director’s office (in writing). The Director is required to process the objection and render his decision within fourteen (14) days of receipt of the objection.
10. Where either of the parties is aggrieved by the Director’s decision on the objection, he may within thirty (30) days of the decision, lodge an appeal with the Employment and Labour Relations Court. The court is then to process the appeal as it would, any other appeal.
11. The contention of the Respondent is that the Claimant has omitted to process the current claim in the manner set out above. That instead of pursuing the claim through the Director’s office, the Claimant has purported to invoke the court’s original jurisdiction to adjudicate on the dispute. In the Respondent’s view, the court has no original jurisdiction to determine the matter.
12. The Claimant has argued that because the Director has failed to act on his complaint, this court ought to intervene and adjudicate on the matter. That the Director’s inaction on the Claimant’s complaint amounts to a decision which is appealable under section 52 (2) of the WIBA.
13. I do not agree with the position taken by the Claimant on the issue. In my view, the failure of the Director to pronounce himself on the Claimant’s complaint does not constitute a positive decision capable of triggering the appeal process contemplated under section 52 (2) of the WIBA. The law contemplates a positive decision of the Director rendered in writing (see Elrc Cause No E693 of 2021 *Ezekiel Ombaso Onchieku China Communications Construction Company Limited* (unreported)).
14. To the extent that the Claimant has moved the court under section 52 (2) of the WIBA in the absence of a decision by the Director, the case is incompetent for want of jurisdiction as pronounced by the Supreme Court in *Law Society of Kenya v Attorney General & another* (2019) eKLR. It is amenable to be struck out.
15. The Claimant argues that the consequence of holding that the court has no jurisdiction to entertain the action is to render him remediless. I do not think so. As suggested in Elrc Cause No E693 of 2021 *Ezekiel Ombaso Onchieku China Communications Construction Company Limited* (unreported), where a public officer fails to discharge a statutory duty, the aggrieved party has the option of invoking the court’s Judicial Review powers to compel such officer to discharge the duty.



Determination

16. In view of the analysis in the preceding section of this decision, this court has no original jurisdiction to entertain the current claim. Consequently, the action is struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 23RD DAY OF FEBRUARY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

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

