



**Masira v Acme Containers Limited (Cause E165 of 2022)
[2023] KEELRC 370 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 370 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E165 OF 2022
L NDOLO, J
FEBRUARY 16, 2023**

BETWEEN

PHILIP MORENDI MASIRA CLAIMANT

AND

ACME CONTAINERS LIMITED RESPONDENT

RULING

1. By a Memorandum of Claim/Appeal dated March 9, 2022, the claimant seeks judgment against the respondent as follows:
 - a. A declaration that the respondent is bound to compensate the claimant in full for injuries suffered and the attendant short and long term effects of the injuries at appropriate percentage as shall be found and declared by the court;
 - b. An order directing the respondent to pay compensatory damages under the Work Injury Benefits Act and common law as shall be assessed by the court;
 - c. An order directing the respondent to pay the claimant costs of the suit.
2. The respondent filed a response dated May 26, 2022 by which it gave notice of a preliminary objection based on section 90 of the Employment Act and section 51 of the Work Injury Benefits Act.
3. The objection was urged by way of written submissions.
4. The respondent submits that the court has no jurisdiction to entertain this case, which consists of a primary claim under the Work Injury Benefits Act.
5. On his part, the claimant submits that because the director of occupational safety and health did not act on his claim, then this court ought to assume jurisdiction over the matter.



6. Section 52(2) of the *Work Injury Benefits Act* provides for appeals to this court, from decisions of the director of occupational safety and health. The claimant asserts that the director's inaction is in fact a decision and that his claim before the court ought to be treated as an appeal within the meaning of section 52(2) of WIBA.
7. While this is an ingenious argument, I find no legal basis for it. Pursuant to the decision of the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] eKLR this court was divested of jurisdiction to deal with original claims under WIBA.
8. The claimant states that in light of inaction by the director, then he has been left without a remedy. I do not think so; as held by Manani J in *Ezekiel Ombaso Onchieku v China Communications Construction Company Limited* (Cause No E693 of 2021) a party who is aggrieved the director's inaction has recourse, under judicial review proceedings, to seek orders compelling the director to act.
9. This avenue remains open to the claimant and the present proceedings cannot be sustained before this court. In light of this, I will not address the second limb of the respondent's preliminary objection, being limitation of action.
10. Ultimately, I uphold the respondent's preliminary objection and proceed to strike out the claimant's claim.
11. Each party will bear their own costs.
12. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF FEBRUARY 2023

LINNET NDOLO

JUDGE

Appearance:

Ms Alividza h/b Mr Namada for the claimant

Mr Kiplagat for the respondent

