



West Kenya Sugar Company Limited v Keiza (Employment and Labour Relations Appeal E009 of 2021) [2023] KEELRC 322 (KLR) (9 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 322 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS APPEAL E009 OF 2021**

**JW KELI, J
FEBRUARY 9, 2023**

**BETWEEN
WEST KENYA SUGAR COMPANY LIMITED APPELLANT
AND
ELPHAS KISOHOLE KEIZA RESPONDENT**

(ppellant aggrieved by the ruling and order of honourable Nyakundi Principal Magistrate delivered on the October 26, 2020 and decree dated November 21, 2022 in Butali SPMCC No 202 of 2017)

JUDGMENT

1. The appellant aggrieved by the ruling and order of honourable Nyakundi Principal Magistrate delivered on the October 26, 2020 and decree dated November 21, 2022 in Butali SPMCC No 202 of 2017 brought the instant appeal vide memorandum of appeal dated August 25, 2021 and record of appeal received in court on the December 15, 2022 seeking the following orders:-
 - a. The appeal herein be allowed and the order made on May 31, 2021 be set aside in its entirety.
 - b. That this honorable court be pleased to hold that the sub-ordinate court has no jurisdiction to hear and determine work injury benefits claims in line with the Supreme Court decision in Supreme Court Appeal No 4 of 2019 [Law Society of Kenya v The Attorney General and Central Organization of Trade Union\(K\)](#)
 - c. That the plaintiff's/ respondent's suit (Butali SPMCC No 202 of 2017 Eliphas Kisohole Keiza v West Kenya Sugar Company Ltd) be struck out.
 - d. Cost of this appeal be awarded to the appellant.
2. The appeal was premised on the following grounds:-



- i. That the learned trial magistrate erred in law and fact in making the aforementioned decision based on a complete misapprehension of the law.
 - ii. That the learned trial magistrate erred in law and fact by directing that the matter to proceed and fixed the same for hearing on the August 9, 2021 despite having ruled that it had no jurisdiction to hear and determine work injury claims.
 - iii. That the learned trial magistrate decision to order the matter to proceed on hearing is void *ab initio*.
 - iv. That the learned trial magistrate erred in law and fact by failing to strike out the respondent's suit in the subordinate court for want of jurisdiction by virtue of the provisions of section 16 and 23 of the [Work Injury Benefits Act](#)
 - v. That the learned trial magistrate erred in law and fact by failing in making the aforesaid decision without addressing himself to the law from which jurisdiction to handle work injury claims is derived from.
3. The court directed that the appeal be canvassed by way of written submissions. The appellants written submissions drawn by Dennis Onyimbo Onyikwa advocate instructed by M/S Onyinkwa & Co Advocates were dated December 22, 2022 and received in court on the January 5, 2023. The respondent's submissions drawn by Abok Odhiambo & Company Advocates were dated January 13, 2023 and received in court on the January 27, 2023.

Background To The Appeal

4. The respondent filed a suit Butali PMCC Case No 202 of 2017 against the respondent for injuries alleged to have been suffered at the workplace *vide* a plaint dated August 14, 2017 and received by the trial court on even date seeking the following reliefs:-
- a. general damages for past , present and future medical and nursing expenses
 - b. special damages of Kshs 10,000/-.
 - c. costs of this suit
 - d. interest on (a) and (b) above at court rates
 - e. any other of further relief that this honourable court may deem fit and just to grant. (pages 3 &19 of the record are all pleadings by the plaintiff before the lower court)
5. The respondent entered appearance and filed defence (pages 22-35 is the defence case). The court noted there was an interlocutory judgment which was set aside by consent with throw away costs(page 21 of the record). While the suit was pending the respondent filed notice of preliminary objection dated March 18, 2020 as follows:-
- i. That this honourable court has no jurisdiction to entertain, hear and/or determine the matter herein pursuant to the provisions of section 16,23 (1) and 52 of the [Work Injury Benefit Act](#).
 - ii. That this suit having been filed in the year 2017 was filed during the subsistence of the [Work Injury Benefit Act](#) not the Workmen's Compensation Act and/or common law and therefore the operative law herein is the [Work Injury Benefit Act](#) which mandates that litigation related to work injuries should be handled in the first instance by the director of occupation safety and health services and not this honourable court.



Note : The defendant at the hearing of the preliminary objection rely on the decision made by the Supreme Court in Supreme Court Appeal No 4 of 2019 *Law Society of Kenya v Attorney General and Central Organisation of Trade Union (K)*

6. It would appear that the appellant had been sued in several matters where the said notice of preliminary objection was also filed.
7. The trial court considered the notice of preliminary objection by the respondent /appellant and delivered its ruling dated October 26, 2020 under Butali SPMCC Suit No 160 of 2018 Anzala Ronald Lidunga v West Kenya Sugar Limited and ordered that the said ruling to apply to all work injury claims where the firm of Onyikwa appears for the defendant (pages 49-52 of the record). It is the said ruling that is challenged *vide* the instant appeal *vide* the grounds outlined above.

Determination

Issues for determination.

8. The appellant in their written submissions identified the following issues for determination:-
 - a. Whether the learned trial magistrate had jurisdiction to hear and determine the lower court suit(ground2&3)
 - b. Whether the respondent had legitimate expectation
 - c. Whether the learned trial magistrate completely misapprehended the law (ground 1-5)
 - d. Whether this suit should be struck out for want of jurisdiction.
9. The respondent in his written submissions identified the following as issues for determination in the appeal:-
 - a. Whether the trial magistrate court properly applied itself on the issue of jurisdiction.
 - b. Whether the instant appeal is merited.
10. The court having read the impugned ruling, the memorandum of appeal and the having considered the submissions by the parties is of the considered opinion that the issues for determination are as follows:-
 - a. Whether the learnt trial court magistrate misapprehended the law in her ruling
 - b. Whether the instant appeal is merited.
11. The court sitting on appeal from trial court is guided by the settled law that it must reconsider the evidence, re-evaluate the evidence itself and draw its own conclusions bearing in mind it has neither seen or heard the witnesses and should make allowance for that fact. See *Selle & another v Associated Motor Boat Co Ltd & others* (1948)EA123. In the instance appeal, the impugned ruling is on matters of law so the court will re-evaluate the law and authorities relied on in determining the preliminary objection by the trial court.

Whether the learnt trial court magistrate misapprehended the law in her ruling

12. The trial court ruling subject of the instant appeal was delivered by Hon ZJ Nyakundi on October 26, 2020. The trial court upon consideration of the preliminary objection by the appellant / respondent at the last two paragraphs of its ruling stated: ‘it is my considered opinion that the Supreme Court decision in petition No 4 of 2019 has a gap as what would happen to matters that were filed after the



commencement date of the WIBA and before delivery of its decisions bearing in mind that most of these claims have been overtaken by events in the light of section 22 and 23 of the WIBA. As to whether the court should strike out all matters that were filed after commencement of WIBA as I down my tools for lack of jurisdiction , I have no powers to strike out any matter”

Appellants Submissions

13. The appellant submits that the learnt trial magistrate grossly misdirected himself by holding that he had no jurisdiction to hear and determine and later on concluding that he had no jurisdiction to strike out the lower court suit. That the conclusion that he had no power to strike out the suit was misleading and only leaves the parties herein stuck in limbo.
14. That the honourable magistrate in his ruling recognised the holding of the Supreme Court in petition No 4 of 2019 *Law Society of Kenya v Attorney General and another*. That specifically the Hon magistrate cited paragraphs 85 of the judgment where the Supreme Court held that matters that were filed pre-WIBA were to be heard and determined by the magistrates whilst matters that were filed post-WIBA were to be heard and determined by the director of occupational safety and health services.
15. The appellant submits that as per the Kenya gazette notice dated January 10, 2007 on filing of proceedings before the proper court the Chief Justice directed that, “where suits are already filed in the wrong court, the court should exercise its authority under order vii rule 9 of the *Civil Procedure Rules* to return the plaint to be presented to the court in which the suit should have been instituted, without prejudice to any other powers that it may possess under the law to strike out the pleadings as an abuse of the process of the court.”
16. The appellant submits that the lower court having found the suit was filed in the wrong forum, the trial magistrate ought to have done the right thing , that is, to invoke his jurisdiction and proceed to strike out the lower court suit for want of jurisdiction.
17. To buttress the foregoing submissions the appellant cited the authority of the court in Mombasa ELRC Civil Appeal No 21 of 2019 *Heritage Insurance Company Limited V David Fikiri Joshua & another* 2021 e KLR where the court upheld the appellant’s preliminary objection and held that the magistrate’s court had no jurisdiction to hear and determine the matter. That the court struck out the 1st respondent’s plaint. That the court in that case relied on the Court of Appeal No 133 of 2011 *Attorney General v Law Society of Kenya and another* as affirmed by the Supreme Court in petition No 4 of 2019 2011 *Attorney General v Law Society of Kenya and another* and stated that WIBA having been declared constitutional by the two superior courts, it was good law and binding retrospectively from the date of its commencement.
18. That the trial magistrate ought to have taken judicial notice of the above and held that the lower court suit was wrongly filed and that the correct forum was before the director of occupation safety and health services and hence the learned magistrate should have struck out the suit for want of jurisdiction. That the learnt magistrate completely failed to acknowledge the fact that the plaintiff/ respondent filed the suit during the subsistence of the WIBA and that it therefore ought to have been heard and determined in accordance with section 16,23 and 52 of WIBA which has not been repealed.
19. The appellant on whether the Supreme Court decision in petition No 4 of 2019 2011 *Attorney General v Law Society of Kenya and another* created a gap as to what would happen to matters filed post WIBA , the appellant submits that the trial magistrate completely misapprehended the law as the Supreme Court judges in the decision were clear that matters that were filed pre WIBA were to be heard and determined by the magistrates whereas matters that were filed post WIBA were to be heard and determined according to the WIBA.



Respondent's Submissions On The Issue

20. The respondent submits that in the ruling dated October 26, 2020 on the notice of preliminary objection the learnt magistrate proceeded to dismiss the preliminary objection. That the learnt magistrate properly applied itself on the issue of jurisdiction and properly found itself clothed with the same to enable it hear and determine the claim . That the appellant is forum shopping, looking for and actively devising means to defeat the respondent's cause of action which they submit it is properly before the trial court.
21. The respondent then proceeds to submit on jurisdiction and largely relied on the decision of the court in ELRC Kisumu Appeal No 4 of 2019 *West Kenya Sugar v Tito Luchele Tangale* which held that the parties who had their cases pending in court before the delivery of the decision of the Supreme Court Petition No 4 of 2019 2011 *Attorney General v Law Society of Kenya and another* had legitimate expectation that their matters would be concluded by the court as there was no stay of the High Court declaration that WIBA was unconstitutional. The respondent further submits that they lodged the suit before the Magistrate Court in 2017 and as such substantive issues have since arisen since the filing of the suit and which issues ought to be determined by the trial court and to buttress this position rely on the decision in *Kiplagat Korir v Dennis Kingeno Mutai* (2006) e KLR where the High Court at Kericho(Kimaru J as he then was) held that broader issues of substantial justice precluded the court from determining the case on technicalities without considering its merits and further relies on the provisions of the *Constitution* article 159(2)(d). Justice Kimaru further held that the appellant was estopped from raising the issue of jurisdiction at the magistrate trial court at the stage of the appeal.
22. The respondent further submits that articles 48 and 159 of the *Constitution* guarantee access to justice and the defendants contention in its preliminary objection would be antithetical to the respondent right to access justice.
23. The respondent further submits that work injury disputes are usually in the context of compensation for injuries sustained by a claimant at work or during the course of employment and as such ought to be determined by the subordinate courts in the first instance since such claims bear close proximity to running down cases. To buttress this submission the respondent relies on the decision in *Juma Nyamawi Ndungo & 5 others v Attorney General ;Mombasa Law Society* (2019)e KLR where Ogola J held that the director WIBA had no powers to assess damages.

Court Decision

24. The court on reading the submissions of the parties as summarized above on the first issue found there was no meeting of minds on the ratio decidendi in the ruling by the trial magistrate court delivered on the October 26, 2020. The trial court upon consideration of the preliminary objection by the appellant / respondent at the last two paragraphs of its ruling stated: 'It is my considered opinion that the supreme court decision in petition No 4 of 2019 has a gap as what would happen to matters that were filed after the commencement date of the WIBA and before delivery of its decisions bearing in mind that most of these claims have been overtaken by events in the light of section 22 and 23 of the WIBA. As to whether the court should strike out all matters that were filed after commencement of WIBA as I down my tools for lack of jurisdiction , I have no powers to strike out any matter''
25. The *ratio decidendi* of the ruling was that the learnt magistrate held she had no jurisdiction and downed her tools in view of the Supreme Court decision holding WIBA was constitutional. The learnt trial magistrate further held she had no powers to strike out the suit.



26. The court then finds and determines that the respondents submission that the magistrate’s ruling was that she had jurisdiction to determine the suit was a complete misapprehension of the appeal before the court. The only issue on appeal was whether the magistrate erred by holding she had no power to strike out the suit having held she had no jurisdiction. There was no cross appeal filed.

What was the position of the Court of Appeal and the Supreme Court regarding jurisdiction on work injury claims under WIBA ?

27. The Court of Appeal decision on jurisdiction under WIBA was in *Attorney General v Law Society of Kenya & Another* [2017] eKLR. The court addressed legitimate expectation of litigants already before court as at time of WIBA effective date as follows:-

“We find, from the submissions of the respondents that at the commencement date of the Act there were before the courts, pending determination, several work- related accident claims brought under the repealed *Workmen’s Compensation Act* (cap 236) or the common law. (emphasis given)

With respect, we agree that claimants in those pending case have legitimate expectations that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked.(emphasis given) Indeed as a result of this concern, the learned judge in a ruling on an interlocutory application directed that;

“On the foregoing grounds, I will order that, pending the hearing and determination of the main cause, all pending litigation which had been commenced on the basis of either the *Workmen’s Compensation Act* or of the common law, or of a combination of both regimes of law, shall continue to be prosecuted and, in a proper case, finalized on the basis of the operative law prior to the entry into force of the *Work Injury Benefits Act*, 2007....”(emphasis given)

The legislative practice where a new judicial forum is created to replace an existing system is to finalize all proceedings pending in the previous system before that forum where they were commenced. (emphasis given)For instance upon the establishment of the Employment and Labour Relations Court, section 33 of the *Employment and Labour Relations Act* provided for what would happen to pending claims as follows;

“All proceedings pending before the industrial court shall continue to be heard and shall be determined by that court until the court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar of the judiciary.”

In its original from section 58 (2), though, in our view not inconsistent with the former or current Constitution requires further consideration to ensure smooth transition to the Act from Workmen’s Compensation Act.

Similarly in terms of section 23 of the *Interpretation and General Provisions Act*, it is clear that where a written law partially or wholly repeals another written law, unless a contrary intention appears, the repeal cannot revive anything not in force or existing before the repeal or affect the previous operation of a repealed law in relation to interests, rights and or obligations enshrined under such law.” That a lengthy import of the parts of the judgment of court of appeal which the court found necessary for clarity and emphasis purpose.

28. The Law Society of Kenya aggrieved by the decision of the Court of Appeal appealed to the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] eKLR vide petition No 4 of 2019,



the decision relied on by the appellant at the trial court. The Supreme Court addressed the issue of legitimate expectation by parties already before court in paragraph 85 as follows:-

- a. '[85] 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 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 legitimate expectation that upon the passage of the Act their cases would be concluded under the judicial process which 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"(emphasis given)
29. The court has shown emphasis under the decisions of the Court of Appeal and Supreme Court outlined above to the effect that the legitimate expectation alluded to by the Court of Appeal and upheld by the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] eKLR *vide* petition No 4 of 2019, was with respect to pending litigation as stated by the Justice Ojwang sitting at the High Court while granting interim orders as follows:- "On the foregoing grounds, I will order that, pending the hearing and determination of the main cause, all pending litigation which had been commenced on the basis of either the *Workmen's Compensation Act* or of the common law, or of a combination of both regimes of law, shall continue to be prosecuted and, in a proper case, finalized on the basis of the operative law prior to the entry into force of the *Work Injury Benefits Act, 2007*...."(emphasis given)
30. The Court of Appeal position on the legitimate expectation was in tandem with the High Court interlocutory order by Justice Ojwang (as he then was) above. The Court of Appeal position on the legitimate expectation was limited to pending cases at whatever stage filed under legal regime prior to enactment of WIBA. This Court of Appeal position was upheld by the Supreme Court *Law Society of Kenya v Attorney General & another* [2019] eKLR *vide* petition No. 4 of 2019 which held as follows:- "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 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 legitimate expectation that upon the passage of the Act their cases would be concluded under the judicial process which 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."(para 85, emphasis provided).
31. The court finds that the Supreme Court held that WIBA not being unconstitutional, save for such legitimate expectation with respect to matters filed prior to its enactment, that it was best that all matters be finalised under WIBA Act(emphasis given).
32. Applying the foregoing decisions of the Court of Appeal and Supreme Court which are binding on this court the court finds and determines the law on work injury related claims is that all pending litigation filed prior to the entry into force of WIBA commenced on the basis of either the *Workmen's Compensation Act* or of the common law, or of a combination of both regimes of law are to be finalised on basis of the legitimate expectation that upon the passage of WIBA such cases would be concluded under the judicial process which had been invoked (para 85 of Supreme Court decision supra). Further all other litigation on work injury claims post entry into force of WIBA would proceed before the



director WIBA as provided for under the WIBA. The magistrate holding that there was a gap is thus misplaced. It was not the business of the court to argue the case of the litigants.

33. The court then finds, respectfully, that the decision *West Kenya Sugar Co Ltd v Tito Lucheli Tangale* (2021)eKLR holding that all litigants who filed their disputes with the courts from May 22, 2008 to December 3, 2019 on the firm belief that the judge declared law was the valid law in place then, are entitled to successfully assert legitimate expectation in having the claims heard to conclusion before the courts where they had been lodged was not consistent with the holding Supreme Court decision as analysed above which decision is binding on this court . The court is not persuaded with the argument that the High Court declarations having not been stayed by the court or Court of Appeal would continue to be valid law post the pronouncement of the WIBA as constitutional and in view of the glaring guide on the legitimate expectation application scope under paragraph 85 of the Supreme Court decision. The court also finds it is academic to consider the impact of the High Court decision in *Juma Nyamawi Ndungo & 5 others v Attorney General Mombasa Law Society(interested party)*(2019)e KLR which was outrightly condemned by the Supreme Court and found to be rendered out of order and the court will say no more on the same. It would also be moot to consider the argument on the validity of the WIBA in terms of judicial authority to assess damages by the director as submitted by the respondent when the Supreme Court has already pronounced itself that WIBA is constitutional. It is further moot to consider the argument on retrospectivity of the superior courts decisions when the Supreme court in paragraph 85 held that save for such legitimate expectation with respect to matters filed prior to its enactment, that it was best that all matters be finalised under section 52 of *WIBA Act*(emphasis given).
34. The court is persuaded by its colleagues in Mombasa ELRC Civil appeal No 21 of 2019 *Heritage Insurance Company Limited v David Fikiri Joshua and another*(2021)eKLR where the court held that the WIBA having been declared constitutional by the two superior courts the High Court decision could no longer be relied on. A similar holding exists in Mombasa ELRC Civil Appeal No, 18 of 2020 *Perfect Sean Limited v Harrison Kabindi Said*. The decisions of the court are only persuasive whereas in terms of hierarchy the Court of Appeal precedent is superior and the Supreme Court decisions are binding.
35. The respondent submitted that the suit was filed in 2017 and as such substantive issues have arisen since the filing of the suit and which issues ought to be determined by the trial court and to buttress this submissions relied on the decision in *Kiplagat Korir v Dennis Kipngeno Mutai*(2006) e KLR where the court held that broader issues of substantial justice precluded the court from determining the case on technicalities without considering its merits and further relied on the provisions of the *Constitution* article 159(2)(d). On this submission the court finds and determines that jurisdiction is not a procedural technicality. That without jurisdiction the court cannot exercise discretion or take any more steps consistent with the decision of Court of Appeal in decision of Nyarangi JA in *Owners of the Motor Vessel Lilian "S" v Caltex Oil (Kenya) ltd* 1989 eKLR where the court of Appeal stated :-
- “Jurisdiction is everything without it, a court has power to make one more step. A court of law downs tools in respect of the matter before court the moment it holds the opinion that it is without jurisdiction”.
36. In view of the foregoing the binding decision of the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] eKLR *vide* petition No 4 of 2019 on all work injury related claims post entry into force of WIBA lying with director WIBA and only exception on legitimate expectation basis being with respect to litigation pending before court prior to entry in force of WIBA Act that is June 2, 2008, the instant suit having been filed in 2017 was before the wrong forum.



37. The court finds that in the recent past it has taken a consistent considered position that the magistrate courts lack jurisdiction over work injury related claims filed post WIBA effective date. The decisions of the court include:- *West Kenya Sugar Co Ltd v Shirandula* (employment and labour relations appeal E005 of 2021) [2022] KEELRC 13284 (KLR) (24 November 2022) (judgment), *West Kenya Sugar Co Ltd v Libuyi* (appeal E013 of 2021) [2022] KEELRC 13244 (KLR) (17 November 2022) (judgment) *West Kenya Sugar Co Ltd v Sakasa* (employment and labour relations appeal E006 of 2021) [2022] KEELRC 13187 (KLR) (10 November 2022) (Judgment) where the court held that the magistrate court had no jurisdiction to hear and determine work injury related claims filed post entry into force of WIBA. Indeed the appellant further cited my decision in Bungoma ELRC appeal No e004 of 2021 between *West Kenya Sugar Co Ltd v Edward Alphew Ambesta* wherein the court found that the work injury suit before the lower court was in the wrongly filed and proceeded to strike out the suit for want of jurisdiction. The court upholds its said decisions to apply in the instant appeal.

Whether The Instant Appeal Is Merited.

38. On the fate of the suit on finding lack of jurisdiction by the Magistrate Court the appellants relied on the decision of Musyoka J in *Mini Bakeries (NRB) limited v Levi Karuz Omedo* (2002)e KLR where the court held: ‘a suit or appeal filed before the court which has no jurisdiction is incompetent and is not available for transfer to the court with jurisdiction. The fate that such suit or appeal should suffer is that of being struck off.’ The court finds that the authority in *Mini Bakeries (NRB) limited* is consistent with the Court of Appeal decision in *Owners of the Motor Vessel Lilian “S” Caltex Oil (Kenya) ltd* 1989 eKLR (supra) to the effect that jurisdiction is everything and without it the court cannot take one more step. The court upholds the decision in *Mini Bakeries (NRB) limited* then finds that the learnt magistrate erred in law in finding she had no power to strike out the suit having found she had no jurisdiction. The suit cannot stand and its only fate is to be struck off. The appeal is thus held to be merited.

Conclusion and disposition

39. The appeal is held to be with merit and is allowed. The court agrees with trial magistrate court that it lacked jurisdiction to hear and determine work injury related claims filed upon commencement of *Work Injury Benefits Act*(WIBA). The court holds that the learnt trial magistrate erred in law in finding she had no power to strike out the suit having held the trial court lacked jurisdiction to determine suit.
40. The ruling of the trial court in Butali SPMCC No 202 of 2017 Elphas Kisohole Keiza v West Kenya Sugar Co Ltd delivered on the October 26, 2020 and decree dated November 21, 2022 is set aside and in its place substituted with an order that the preliminary objection dated March 18, 2021 is upheld and the suit dated August 14, 2017 struck off for want of jurisdiction.
41. The court in order to temper justice with mercy and taking into consideration the conflicting decisions of the court on the jurisdiction on work injury related claims, the court orders each party to bear own costs both in this appeal and in the trial magistrate’s court.
42. The ruling dated October 26, 2020 holding was replicated in Butali SPMCC Civil Suit No 227 of 2018 Wycliffe Mbote Kipanga v West Kenya Sugar Ltd and in Butali SPMCC Civil Suit No 182 of 2018 Sostine Salamba Milimo v West Kenya Sugar Ltd under appeals Nos Bungoma ELRC appeal E011 of 2021 West Kenya Sugar Co Ltd v Wycliffe Mbote Kipanga and Bungoma ELRC appeal E010 of 2021 West Kenya Sugar Co Ltd v Sostine Salamba Milimo respectively.



43. The court holds and orders the instant judgment to apply in determination of the appeals Bungoma ELRC appeal E011 of 2021 West Kenya Sugar Co Ltd v Wycliffe Mbote Kipanga and Bungoma ELRC appeal E010 of 2021 West Kenya Sugar Co Ltd v Sostine Salamba Milimo.

44. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 9TH FEBRUARY 2023.

J. W. KELI,

JUDGE.

In The Presence Of:-

Court Assistant : Brenda Wesonga

For Appellant : Nyabuto

For Respondent:- Absent

