



**Barasa v Covec Company Limited (Miscellaneous Application
E021 of 2022) [2023] KEELRC 275 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 275 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E021 OF 2022**

**JW KELI, J
FEBRUARY 2, 2023**

BETWEEN

WYCLIFF BARASA APPLICANT

AND

COVEC COMPANY LIMITED RESPONDENT

RULING

1. The applicant /claimant approached the court *vide* notice of motion dated November 15, 2022 seeking the following orders:-
 - a. That this honourable court be pleased to order that Kakamega MCE&LR No 305 of 2017 be and is hereby transferred from Kakamega Chief Magistrates Court to Bungoma High Court Employment and Labour Relations Court for purposes of determination
 - b. Costs of this application be provided for.
2. The grounds of the application were stated to be :-
 - a. That this matter was filed in Kakamega Law Courts on or about October 5, 2017.
 - b. That the claimant's evidence was taken and his case closed whereby the respondent never entered appearance.
 - c. That the same was pending judgment when the court made a ruling that the same be placed before the Principal Judge for directions .
 - d. It is in the interest of justice that this suit be determined in the Bungoma High Court Employment and Labour Relations court which also has jurisdiction to hear the matter.
3. The respondent did not enter appearance. On the January 16, 2023 when the matter came up for hearing the court ordered that a ruling would ensue based on the pleadings.



Determination.

4. The issue before the court is whether or not the court should grant orders sought to transfer the magistrate court file to this court for determination.
5. The application is brought under section 18 (1)(b) and 3 A of the [Civil Procedure Act](#) and Order L of the [Civil Procedure Rules](#).

The substantive law on transfer of suits under section 18 of the [Civil Procedure Act](#) is as reproduced below:-

Power of High Court to withdraw and transfer case instituted in subordinate court ‘18(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage— (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter— (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (iii) retransfer the same for trial or disposal to the court from which it was withdrawn. (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.’

6. The supporting affidavit by Vivian Shibanda reiterates the grounds outlined above and annexes the pleadings at the lower court and the said order. The order of the Hon H Wandere in Kakamega CMCC No 305 of 2017 dated July 7, 2018 and issued on March 15, 2022 states:-

‘ This matter coming up for judgment before Hon H Wandere on the July 17, 2018.’

It is hereby ordered that:-

1. That this matter be and is hereby placed before the Principal Judge for directions.’
7. The court finds that the said order does not disclose the reason why when a matter was scheduled for judgment it was ordered to be placed before the Judge for directions. The claimant’s advocate informed the court that there was delay in communicating the said order of Hon H Wandere . That this court had jurisdiction to determine the matter.
8. The claim before the lower court was on work injury related claims. The court holds that it lacks original jurisdiction to hear and determine such claims pursuant to the provisions of [work Injury Benefits Act](#) (WIBA) whose preamble reads:- ‘An Act of parliament to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes.’
9. Section 26(1) of WIBA provides for compensation for work injury claims as follows :- ‘A claim for compensation in accordance with this Act shall be lodged by or on behalf of the claimant in the prescribed manner within twelve months after the date of the accident or, in the case of death, within twelve months after the date of death. (2) If a claim for compensation is not lodged in accordance with subsection (1), the claim for compensation may not be considered under this Act, except where the accident concerned has been reported in accordance with section 21’



10. Section 53 of the WIBA defines the role of the Director under the Act to wit:- ‘53.(1)There shall be a Director of Work Injury Benefits who shall be responsible for the management of this Act. (2) The Director of Work Injury Benefits shall perform the following functions— (a) register employers; (b) supervise the implementation of this Act; (c) ensure that all employers insure their employees; (d) receive reports of accidents and carry out investigations into such accidents; and (e) ensure that employees who are injured are compensated in accordance with the provisions this Act. (3) The Director of Work Injury Benefits shall be assisted in the performance of the functions, specified in subsection (1) by such other officers as are necessary, for the proper administration of the Act.’
11. The director under WIBA is defined as Director of Occupational Safety and Health Services.
11. The Supreme Court in *Law Society of Kenya v Attorney General & Another* [2019] eKLR *vide* petition no 4 of 2019 has determined that WIBA is constitutional and that jurisdiction under the Act for work injury claims lay with the Director of Occupational Safety and Health Services. The Supreme Court 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, Petition No 4 of 2019 emphasis provided).
12. The court finds and determines that it lacks original jurisdiction in work injury related claims. The court declines to accept the invitation to have the matter before the magistrate court transferred to its jurisdiction. The application dated November 15, 2022 is dismissed. The magistrate court is ordered to proceed and dispose the claim before it with finality.
13. No order as to costs.
14. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 2ND FEBRUARY 2023.

J. W. KELI,

JUDGE.

In the presence of :-

Court Assistant: Brenda Wesonga

Claimant/Applicant:-Applicant

Respondent: Absent

