



REPUBLIC OF KENYA



KENYA LAW
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**Muema v Tenglon Construction Ltd (Cause E186 of 2022)
[2023] KEELRC 787 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 787 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E186 OF 2022
AN MWAURE, J
MARCH 27, 2023**

BETWEEN

DUNCAN MULWA MUEMA CLAIMANT

AND

TENGLON CONSTRUCTION LTD RESPONDENT

RULING

1. The application dated October 17, 2022 is seeking for the following orders.
 - i. That the application be and is hereby certified as urgent deserving priority hearing and ex parte in the first instant.
 - ii. That the court file for Civil Suit No 8062 of 2018 *Dunan Mulwa Muema vs Tenglon Construction Limited* be transferred to this honourable court for hearing and determination.
 - iii. That this application be hear *inter partes* as a matter of urgency on such a date and at such a time as this honourable court may direct
 - iv. That the court be pleased to grant any other orders tht it may deem near in the interest of justice
 - v. That the costs of this application be provided for.
2. The grounds sought by the applicant for transfer of suit to the High Court from the Chief Magistrate’s Court and the reasons given for that application is that the claimant was involved in an accident at the respondent’s place of work due to the negligence of the respondent.
3. He says his right hand was amputated and matter was referred to the Director of Occupational Safety and Health Service. He was awarded Kshs 763,200/- and was dissatisfied with that award.



4. He says he filed suit in the Chief Magistrate's Court Civil Suit No 8062 of 2018 and after a lot of back and forth it transpired the Chief Magistrate had no jurisdiction to hear WIBA cases. He prays the case be transferred to this Court which has jurisdiction.
5. Mr Duncan Mulwa Mwema confirmed the grounds already set out hereunder by his affidavit depend hereto.
6. The respondent by an advocate Anne W Kimani filed a notice of appointment of advocates but never objected to the application. The application is therefore undefended. Civil suit No 8662 of 2018 was filed in Milimani Commercial Courts to appeal the decision of the Directorate of Occupation Safety and Health Services even though the appeal should have been filed in the Employment and Labour Relations Court as the appellate Court for matters from the Directorate of Occupation Safety and Health Services.
7. The *Work Injury Benefits Act* section 54 (2) provide that an objector may within 30 days of the Director's reply being received by him appeal to the Industrial Court against such decision.
8. The appeal from Director's report is to the *Employment and Labour Relations Act* (formerly Industrial Court). The applicant made an error to file the suit in the Chief Magistrates Court and so the court cannot transfer the suit which was wrongly filed in a Court which had no jurisdiction to another court. The applicant's options is to withdraw the suit and file before the right court.
9. The role of this Court in view of the above is only find it is not legal to transfer the suit from the Chief Magistrate's Court and so the application dated October 17, 2022 is dismissed and costs will be in the cause.
10. Orders accordingly.

Dated, Signed and Delivered virtually in Nairobi this 27th day of March, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

