



Batian Flowers Limited v Thiane (Employment and Labour Relations Appeal 1A of 2022) [2023] KEELRC 2270 (KLR) (29 September 2023) (Judgment)

Neutral citation: [2023] KEELRC 2270 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS APPEAL 1A OF 2022
ON MAKAU, J
SEPTEMBER 29, 2023**

BETWEEN

BATIAN FLOWERS LIMITED APPELLANT

AND

FREDRICK KINYUA THIANE RESPONDENT

(Being an appeal of the judgment and decree of the Chief Magistrate's Court at Meru before Hon. E.A MBICHA P.M delivered on 11th May 2022 in Civil Suit no. E417 OF 2021)

JUDGMENT

1. The respondent was employed by the appellant as a general worker on or about February 19, 2016 and on July 3, 2016, he suffered bodily injuries when he fell from a height while working on a green house. He was treated and later brought suit for compensation against the appellant on October 18, 2021.
2. The appellant filed defence objecting to the jurisdiction of the court to entertain the suit and averred that the matter ought to be adjudicated before the Director Occupational Health and Safety under section 16 and 23 of the Work Injury Benefit Act (WIBA). It further pleaded that, the accident had already been reported as required by the Occupational Health and Safety Act, compensation assessed at Kshs 38,071, and payment done by the insurance.
3. The court went on to determine the suit by a judgment delivered on May 11, 2022 in which he found that the appellant was 100% liable for the accident and awarded the respondent Kshs 5,629,224 being general as well as special damages.
4. The appellant was aggrieved and brought this appeal raising the following grounds-;
 - a. That the learned trial magistrate erred in law by hearing and determining a work injury and benefits claim contrary to the provisions of section 16 and 23 of the Work Injury and Benefit Act.



- b. That the learned magistrate erred in law and fact and or applied wrong principles and parameters by determining a matter which the court had no jurisdiction to hear and determine.
 - c. That the learned magistrate failed to consider the appellant's evidence and/or misapprehended the law in arriving at a decision on the compensation amount.
 - d. That the learned magistrate erred in law and fact and/or applied wrong principles and parameters by failing to rule on and or consider the appellant's issue of jurisdiction raised in its pleadings.
 - e. That the learned magistrate erred in law and fact and or applied wrong principles and/or failed to consider the evidence adduced by the respondent appellant in awarding the plaintiff/respondent Kshs 5,629,224 as compensation or any amount thereof.
 - f. That the learned magistrate erred in law and/or applied the wrong principles in awarding the plaintiff/respondent costs.
5. The appeal seeks for the following orders:-
- (a) The judgment of the Hon E Mbicha be set aside in its entirety.
 - (b) This appeal be and is hereby allowed with costs to the appellant, the judgment of the Chief Magistrate's court be reviewed and the respondent's claim be dismissed in its entirety with costs.
 - (c) This honourable court be pleased to review the judgment of the learned magistrate to disallow and/or dismiss the plaintiff's respondent's claim for liability at 100%.
 - (d) This honourable court be pleased to review the judgment of the learned magistrate to disallow and/or dismiss the plaintiff's/respondent's claim for compensation.
 - (e) Any other orders as the honourable court may deem fit and just.

Submissions

6. The applicant submitted that the trial court lacked jurisdiction to determine the suit for work injury claims and as such the judgment was a nullity. It cited section 16 of the [WIBA](#) as the basis of its submissions contending that it raised the issue of jurisdiction but the trial court ignored it. It reiterated that under section 16 of the [WIBA](#), work injury claims are by command of the law to be adjudicated before the Director of Occupational Safety and Health.
7. For emphasis reliance was placed on the decision of the Supreme Court on the case of [Attorney General Vs Law Society of Kenya & another](#) [2017] eKLR where the court upheld the decision of the Court of Appeal that the jurisdiction to adjudicate on [WIBA](#) claims lies with the Director under section 16 of the [WIBA](#). Further reliance was placed on the case of [Manuchar Kenya Ltd Vs Denis Odhiambo Oliete](#) [2020] eKLR where Ndolo J held that all work injury claims were to be processed within the procedure set out in the [WIBA](#) as the original jurisdiction of the courts was ousted. Further reliance was placed on [Saidi Mohamed Vs Diamond Industries Ltd](#) [2018] eKLR where Rika J held that this court only enjoys unlimited appellate jurisdiction over [WIBA](#) claims.
8. The appellant further submitted that the issue of jurisdiction can be raised at any stage of the proceedings even on appeal. For emphasis, it relied on the case of [Constantine Joseph Advocates LLP Vs Attorney General](#) [2022] eKLR.



9. Finally, the appellant submitted that it complied with section 22 of the *WIBA* by notifying the Directors of the respondent's work injury vide Dosh form 1 dated July 5, 2016. Subsequently, a compensation of Kshs 17,658 was assessed after the respondent developed muscular spasm in January, 2022. However, the Director directed the respondent to undergo another assessment by a different doctor, but the respondent ignored and filed suit. Therefore, it submitted that the assessment of compensation by the trial court was a nullity since jurisdiction is everything to a court. He prayed for the award of damages to be set aside entirely.
10. The respondent opposed the appeal and prayed for the same to be dismissed with costs. He submitted that a court of law has jurisdiction to handle a work injury claim where the employer has frustrated, delayed, stalled the compensation process under *WIBA* and/or failed to discharge his obligation under *WIBA* effectively making it impossible for the employee to get compensation under *WIBA*. He cited maxim "equity does not suffer a wrong to be without a remedy."
11. He submitted that DW1 admitted under oath that the respondent had not been paid any cent as compensation by the employer; that the employer never paid for his treatment costs; that the employer never gave him details of his injuries; and that the employer never responded to his demand letter. For the above reasons, he submitted that the jurisdiction of the court was properly invoked.
12. As regards the quantum of damages awarded, the respondent submitted that it was not inordinately high or inordinately low to warrant interference by this court. He submitted that the trial court computed the damages in accordance with the law and the evidence tendered before it.
13. Finally, the respondent submitted that the appeal should be dismissed with costs and the lower court's judgment upheld.

Analysis and Determination

14. The mandate of the first appellate court is to re-evaluate, re-assess and re-analyse the evidence tendered in lower court and make its own independent conclusions on the matter. By so doing the court will determine whether the conclusions reached by the trial court should stand.
15. Having said that, I wish to state that I have gone through the record of appeal carefully. I have also considered the rival submissions filed. The issues that comment themselves for determination are-;
 - a. Whether trial court lacked jurisdiction to determine the respondent's suit.
 - b. Whether the damages awarded should be set aside entirely.
 - c. Who should pay costs of the appeal?

Jurisdiction

16. In the case of *Owners of the Motor Vessel "Lillians S" Vs Caltex Oil (Kenya Ltd)* [1989] eKLR the Court of Appeal held that:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of pending proceedings, pending other evidence. A court of law down tools in respective of the matter before it the moment it holds the opinion that it is without jurisdiction..."

By jurisdiction is meant the authority which a court has to decide matters that are litigated before it..."



17. In the instant appeal, the suit was about work injury claim. The appellant objected to the jurisdiction of the court in its statement of defence and its submissions after the hearing. The claimant maintained that the court had jurisdiction. The court said nothing about its jurisdiction and went straight to the merits of the suit.
18. Section 16 of the WIBA states that-;
- “No action shall lie by an employee or dependant of an employee for the recovery of damages in respect of an 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 under the provisions of this Act in respect of such disablement or death.”
19. The Act provides for a procedure through which compensation can be sought, and then assessed by the Director of Occupational Safety and Health. The Court of Appeal in the case of Attorney General Vs Law Society of Kenya & another [2017] eKLR held that-;
- “Section 16 restricts claims for recovery of any occupational accident or diseased resulting in the disablement or death of an employee to the procedure laid down under the Act. The Director as we observed earlier has enormous adjudication powers from the point a report is filed, award of compensation through to a review of the decision.”
20. The above dispute went to the Supreme Court and the latter upheld the Court of Appeal decision on December 3, 2019. The respondent filed the material suit in October 2021. The trial court was notified of the binding decisions of this Court and the Supreme Court but completely ignored them. This court finds that as at the time when the said suit was filed by the respondent, and also when the trial court (E Mbicha PM) rendered his judgment, the law was that the original jurisdiction of courts of law over work injury claim had been ousted by the express provisions of section 16 of the WIBA.
21. In view of the foregoing, it is obvious that the trial court had no jurisdiction to entertain the respondent’s suit for compensation in respect of his occupational accident. Consequently, I find that the suit and the judgment were incompetent, and a nullity respectively since the trial court acted *ultra vires*.
22. In view of the foregoing, I need not say much. The appeal succeeds and it is allowed to the extent that the entire judgment of the trial court is set aside and substituted therewith an order striking out the respondent’s suit with costs. However, the respondent shall be at liberty to invoke the procedure under the WIBA and pursue his compensation from where he left.

DATED, SIGNED AND DELIVERED AT NYERI THIS 29TH DAY OF SEPTEMBER, 2023

ONESMUS N MAKAU

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 April 2020, this judgment 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.



ONESMUS N MAKAU
JUDGE

