



**Said v Bollore Africa Logistics [K] Limited (Cause 669 of 2017)  
[2022] KEELRC 12819 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12819 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 669 OF 2017  
AK NZEI, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**PATRICK MAINA SAID ..... CLAIMANT**

**AND**

**BOLLORE AFRICA LOGISTICS [K] LIMITED ..... RESPONDENT**

**RULING**

1. Vide a Statement of Claim dated August 3, 2017, the claimant sued the respondent seeking to be paid damages for work injuries sustained by him on May 22, 2017.
2. The claimant pleaded that he was, at all material times, employed by the respondent as a casual labourer, and that while the claimant was in the cause of his employment on the aforesaid date, off-loading 50Kg fertilizer bags from a truck to a go-down, some pallets collapsed and fell on the claimant, as a direct result whereof he sustained a serious injury, loss and damage.
3. The claimant further pleaded that the accident was caused by negligence on the part of the respondent.
4. The respondent filed response to the claimant's claim on February 12, 2020 and denied the claimant's claim. Further, the respondent denied this court's jurisdiction.
5. On April 1, 2022, the respondent filed a notice of preliminary objection dated March 31, 2022 and gave notice:-

“that the respondent herein as already pleaded in the defence herein, shall raise a preliminary objection on points of law, to have the case herein struck out with attendant costs for having been lodged in the instant court and which in accordance with the provisions of the Work Injury Benefits Act 2007 (WIBA) is bereft of jurisdiction to hear and determine the same.”



6. On April 4, 2022, I directed counsel for both parties to file written submissions on the Preliminary Objection. Submissions have since been filed, and I have considered the same.

7. It was held as follows in the case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd[1969] E.A 696:-

“so far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if urged as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

8. The respondent has raised a pure point of law, and stated that this Court is without jurisdiction to hear and to determine the suit herein in view of the provisions of the *Work Injury Benefits Act* (WIBA). Section 16 of the Act provides as follows:-

“no action shall lie by any employee or any dependant of an employee for the recovery of damages in respect of any 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 save under the provisions of this Act in respect of such disablement or death.”

9. In view of the forgoing provisions of the statute, this Court cannot entertain the claimant’s suit, and has no jurisdiction to hear and to determine the same. Jurisdiction is everything, and without it a court cannot take one more step in a matter over which it has no jurisdiction. The Court of Appeal (Nyarangi JA) stated as follows in the case of *Owners Of The Motor Vessel “lilian S” -vs- Caltex Oil [kenya] Limited* [1989] eKLR:-

“... I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court ceased of the matter is then obliged to decide the issue straight away on the material before it. 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 a continuation of the proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

10. The summary of the foregoing is that this court has no jurisdiction to hear and to determine the claimant’s case. The suit was filed in a court without jurisdiction, and is hereby struck off with no order as to costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF SEPTEMBER 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical court operations occasioned by the COVID-19 pandemic, this ruling has been delivered via Microsoft Teams online platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI



JUDGE

Appearance:

N/A for Claimant

Mr Ajigo for Respondent

