



REPUBLIC OF KENYA



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Shree Ganesh Enterprises Ltd & another v Mung'aya (Employment and Labour Relations Appeal E018, E015, E016, E017, E019 & E020 of 2021 (Consolidated)) [2022] KEELRC 13254 (KLR) (17 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13254 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

**EMPLOYMENT AND LABOUR RELATIONS APPEAL E018,
E015, E016, E017, E019 & E020 OF 2021 (CONSOLIDATED)**

JW KELI, J

NOVEMBER 17, 2022

BETWEEN

SHREE GANESH ENTERPRISES LTD 1ST APPELLANT

JOHN MAKUTO MACHANI 2ND APPELLANT

AND

BONIFACE MUNG'AYA RESPONDENT

JUDGMENT

1. The Respondent filed a suit WEBUYE SPMC CIVIL SUIT NO. 5 OF 2017 against the Appellant for injuries said to have been sustained at the workplace vide a Complaint dated 17th January, 2017 and received by the trial court on even date seeking the following reliefs:-
 - a. General damages
 - b. Special damages of Kshs. 7,100/-
 - c. Costs of this suit
 - d. Interest
 - e. Any other relief that this honourable court may deem fit and just to grant (pages 5-8).



2. The Appellant entered appearance and filed defence (27-39). While the suit was pending the appellant filed notice of preliminary objection dated 28th February, 2020 challenging the jurisdiction of court to entertain the matter on the following grounds: -
 - ‘1. The suit as presently brought against the defendants contravenes the provisions of section 16 and 53 of the *Work Injury Benefits Act*, 2007, Laws of Kenya.’
3. The Defendant/Appellant’s submissions dated 23rd July, 2021 on the objection at the trial court were filed on the 28th July, 2021 (pages 42-50).
4. The court on perusal of the record of appeal did not find the submissions by the Claimant. The ruling by the trial court stated that the parties filed their written submissions on the objection. In the pursuit of substantial justice the court perused the trial court file and found submissions by the claimant dated 12th March 2020 and supplementary submissions dated 8th April 2020 on the preliminary objection by the Defendants.
5. The Preliminary Objection as canvassed by way of the filed written submissions and the trial court delivered its Ruling on the 28th September 2021 (pages 56-58). It is the said Ruling that is challenged vide the instant appeal.
6. The Appellant being aggrieved by the Ruling of Hon. N. Barasa (PM) In WebuyeCMCC No.5 of 2017 between Boniface Mung’aya v Shree Ganesh Enterprises Limited and another delivered on the 28th September 2021 which ruling applied to preliminary objection filed in a series of civil cases numbers 6-10 of 2017 filed the instant Memorandum of Appeal dated 15th October 2021 seeking to challenge the Ruling of the trial court on the following grounds:-
 - a. That the learned trial Magistrate erred in law and fact in dismissing the Appellants Preliminary Objection on jurisdiction.
 - b. That the learned trial Magistrate erred in law and fact in failing to correctly interpret the provisions of Sections 16 and 58 of the *Work Injury Benefits Act*, 2007 Laws of Kenya hence an erroneous decision.
 - c. That the learned trial Magistrate erred in law and fact in failing to appreciate, interpret and apply the provisions of Sections 16 and 58 of the *Work Injury Benefits Act*, 2007 hence an erroneous decision.
 - d. That the learned trial Magistrate erred in law and fact in failing to hold and/or find that the decision of the Court of Appeal in Attorney General v Law Society of Kenya & Another (2017)eKLR delivered on the 17th November, 2017 was binding and thus could not hold otherwise.
 - e. That the learned trial Magistrate erred in law and fact in failing to hold that the Supreme Court decision delivered on the 3rd December.2019 in Petition 4 of 2019 was binding, directive and final with regard to *Work Injury Benefits Act*, 2007 Laws of Kenya.
 - f. That the learned trial Magistrate erred in law and fact in failing to consider, appreciate and apply the finding of the Court of Appeal and Supreme Court with regard to jurisdiction hence an erroneous and unfounded decision in law.
 - g. That the learned trial Magistrate erred in law and fact in failing to appreciate and interpret the Court of Appeal and Supreme Court decisions correctly hence an erroneous decision.



- h. That the learned trial Magistrate erred in law and fact in failing to hold that the Court lacked jurisdiction to entertain Work Injury claims and thus an erroneous decision not founded and/or backed with the law.
 - i. That the learned trial Magistrate erred in law and fact in failing to find and hold that the Respondent instituted the suit in the wrong forum and thus the court had no jurisdiction to handle it.
 - j. That the learned trial Magistrate erred in law and fact in misinterpreting the Supreme Court decision with regard to the legitimate expectation of the Respondent taking into account the law in force at the time of institution of the suit.
 - k. That the learned trial Magistrate erred in law and fact in failing to consider the Appellant's submissions and the authorities supplied to court hence an erroneous decision.
 - l. That the learned trial Magistrate erred in law and fact in misdirecting itself with regard to the Supreme Court decision delivered on the 3rd December, 2019 hence an erroneous decision in the circumstances.
7. The Court gave directions that the instant appeal be canvassed by way of written submissions. The parties complied.

Determination

Issues for determination.

- 8. The Appellant in their written submissions drawn by Nyairo & Company Advocates challenge the Ruling of the trial court primarily for finding it had jurisdiction over work injury claims and for failing to uphold the decisions of Court of Appeal and Supreme Court on WIBA jurisdiction and opined that the issue for determination is whether or not the subordinate court has jurisdiction to hear and determine matters related to injuries sustained in the course of employment.
- 9. The Respondent in their written submissions drawn by Omundi Bw'ochiri and Company Advocates addressed jurisdiction of the court, access to justice and legitimate expectation.
- 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 issue for determination is whether the 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.

SUBDIVISION - Whether the appeal is merited

Appellant's submissions

- 12. The Appellant submits that the main issue for determination is whether the trial court has jurisdiction over injuries sustained in the course of employment. The appellant submits that the Magistrate court has no such jurisdiction and its decision on their preliminary objection ought to be set aside. The



appellant submits that jurisdiction is everything and relies on the landmark case on jurisdiction by Court of Appeal in Owners of Motor Vessel 'Lilian S' v Caltex Oil (Kenya) limited (1989) e KLR.

13. The Appellant submits that it was not in dispute that the Plaintiff's claim was a work injury claim. That the claim was instituted on 17th January 2017 after the Work Injury Benefits Act (WIBA) came into effect. That the Act provides for framework for redress of work injury claims under section 22 and 23. That WIBA confers powers to handle such claims under sections 22, 23 and 58 of the Act on the Director of Occupational Safety and Health (the Director). The Appellant submits that WIBA provided for the forum to handle work injury claims and relies on the decision of Republic v Independent Electoral and Boundaries Commission, Ex parte National Super Alliance (NASA) Kenya and Others on exhaustion of available remedies where the court upheld the decision of the Court of Appeal in National Assembly v Karume (1992) e KLR 21 where the court held:- 'where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed'
14. The Appellant submits that the jurisdiction under WIBA was exhaustively dealt with by the Supreme Court in Petition No. 4 of 2019 under paragraph 85.
15. The appellant submits that the suit was instituted vide plaint dated 17th January 2017 way after the Act came into force. That the Court of Appeal pronounced WIBA as constitutional in decision dated 17th November 2017 and they filed their preliminary objection on basis of the law and the Supreme Court's decision. That the Court of Appeal decision was binding on the Magistrate who failed to abide by the same hence erred in law. That the trial court was alerted of the law and the Supreme Court decision before delivery of decision on 28th September 2021.
16. That the Supreme Court settled the dust as to the correct forum of institution work injury claims and further made it clear that the High Court decision in John Nyamawi Ndungo & 4 others v Attorney General and Mombasa Law Society Constitutional Petition No. 196 of 2018 added to the confusion over WIBA as stated as follows:- '[91] The present Appeal was straight-forward and we have settled the questions placed before us for determination. However, before we conclude we must take note of a matter that was brought to our attention at the hearing of this Appeal. While this matter was before us awaiting determination, E.K. Ogola J, on 10th June 2019, in the High Court of Kenya at Mombasa, rendered a decision in the case of Juma Nyamawi Ndungo & 5 others v Attorney General; Mombasa Law Society (Interested Party), Constitutional Petition No. 196 of 2018 [2019] eKLR. Broadly, some of the issues for determination in that matter included whether the WIBA was unconstitutional in light of the Constitution 2010. [91] We are greatly dismayed that the learned Judge did not take judicial notice of the pendency of this Appeal although he was aware of it. As a matter of fact, he stated so in his judgment that an appeal had been preferred to us against the decision of the Court of Appeal to the apex court on matters whose determination may well have been binding on him. The learned judge ought to have held his horses and acknowledge the hierarchy of the courts and await for this court to pronounce itself before rendering himself, if at all. As we perceive it, his judgment has created unnecessary confusion in the application of WIBA and cannot be allowed to stand as it may [may or is]" also be contrary to this Judgement. The findings and Orders expressed in that judgment must therefore be read in the context of the decision of the Court of Appeal and our finding and Orders in this appeal. That is all there is to say on that matter.'" (emphasis by the appellant)
17. The Appellant submits that the trial court was bound by decision of the Supreme Court under the doctrine of stare decisis and as per the provisions of Article 163(7) of the Constitution of Kenya 2010 which provides that all courts other than the Supreme Court are bound by the decisions of the Supreme Court and to buttress this submission further relies on the decision of the Supreme Court



in *Jasbir Singh Rai & 3 others v Tarlocham Singh vs Rai & 4 others* (2013) where the court held that adherence to precedent should be the rule and not the exception.

18. The Appellant submits that the trial court misdirected itself in rendering a wrong interpretation as to what legitimate expectation is. That the Supreme Court dealt with the issue under paragraph 85 and 88 of its judgment as follows:- ‘all such matters were being dealt with under the then existing and completely different regimes of law, claimants in those pending cases have legitimate expectation that upon the passage of the Act their case would be concluded under the judicial process which they had invoked.’ That suits instituted under the repealed law before WIBA are the ones with legitimate expectation. The appellant to buttress their submissions relies on the decision of the ELRC Mombasa *Manuchar Kenya limited v Denis Odhiambo Olwete Civil Appeal No. 5 of 2019* where the court held as follows:- ‘The upshot of the decision by the Court of Appeal as confirmed by the Supreme Court is that all work injury claims arising after enactment of WIBA in 2007 were to be processed within the procedure set out in the Act and the original jurisdiction of the court was thus ousted.’

The Respondent’s submissions

19. The Respondent opposes the appeal and relies on the decision of the court in *West Kenya Sugar Co. Ltd v Titus Lucheli Tangale (2021)e KLR* and submits that the court in paragraphs 48 to 50 addressed access to justice and relies on the same. The court in paragraph 48 stated that it was of the view that subscribing to the position taken by the appellant that all claims lodged with the courts after 2nd June 2008 should not be entertained because of jurisdiction would be antithetical to the right of access to justice since the litigants who moved the court after 22nd May 2008 did so on the assurance of judge declared law that they could present their disputes to the courts. Under paragraph 49 of the said decision the court justified its view on ground that the litigants who relied on the judge made law would be met with insurmountable plea of limitation because section 26 of the WIBA has prescribed time within which an accident should be reported to the Director. The court in paragraph 50 stated that sending these claimants from the seat of justice under these circumstances would be a source of great injustice for reasons beyond their control. The Respondent further relies on the decision on legitimate expectation and relies on paragraph 52 to effect that the Court of Appeal and the Supreme Court invoked the doctrine to give life to the claims lodged prior into coming into effect of WIBA and consequently claimants who lodged claims relying on the decision of the High court are entitled to assert legitimate expectation in having their claims heard to conclusion before the courts where they were lodged. The Appellant urges the court to rely on the said decision and dismiss the appeal.

The Court Decision on merit of the Appeal

20. The trial court ruling subject of the instant appeal is dated 28th September 2021 by Hon. N. Barasa (PM) in CMCC Webuye Civil Case No. 5 of 2017 *Boniface Mung’aya -v- Shree Ganesh Enterprises ltd & Another*. The trial court stated that the Preliminary Objection was based on Supreme Court Petition No. 4 of 2019 *Law Society of Kenya V Attorney General and Central Organisation of Trade Union(K)*. The trial court relied on the decision in *West Kenya Sugar -Co. Ltd v Tito Lucheli Tangale(2021)* and held: “ The Honourable judge went ahead to find that all cases which were filed between 22nd May 2008 and 3rd December 2019 in courts are properly before court. This case is such a case. In this courts understanding, the decision of ELRC Court gave interpretation to the Supreme Court decision that this court need not belabour on. This court is bound by the decision of the superior court. The upshot is that this court finds and holds that it has requisite jurisdiction to hear and determine this case on the strength of the cited case of *West Kenya Sugar Co. Ltd vs Tito Luchele Tangale (2021)eKLR*. The preliminary objection is thus dismissed with costs to the plaintiff which shall be in cause.” The court ordered the said decision to apply to the similarly objections raised in series of files in civil cause 6 -10



of 2017 which have been issued with appeal numbers between 15-20 at the court. The decision thus applies to the said appeals respectively.

21. The Court finds that the trial court ruling was based entirely on the decision in *West Kenya Sugar Co. Ltd vs Tito Luche Tangale* (2021) eKLR and was without independent consideration of the decision of the Supreme Court cited by the Appellant on the WIBA constitutionality. The court determines that the trial court erred in law as the appellant had relied on the Supreme Court decision in Appeal No. 4 of 2019 which the trial court should have considered and reached its own conclusion.

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

22. 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 form 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.” The foregoing is indeed a lengthy import of the parts of the judgment of Court of Appeal which the court found necessary for clarity and emphasis purpose.

23. 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:-

“[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).

28. 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)

24. 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 in *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).



25. 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 finalized under section 52 of WIBA Act(emphasis given). Sections 52 (1) and (2) of WIBA further provides:-
- “52(1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
- (2) An objector may, within thirty days of the Director’s reply being received by him, appeal to the Industrial Court against such decision.”
26. Applying the foregoing decisions of the Court of Appeal and Supreme Court which are binding on this court, the court finds and determines that 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 as provided for under Section 52 of WIBA.
27. 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 22nd May 2008 to 3rd December 2019 on the firm belief that the judge declared law was the valid law in place then and that they 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. Further the said decision of the court having been overturned by the Court of Appeal on 17th November 2017 it cannot be said the High Court judge made law was still valid upto 3rd December 2019. 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.
28. The Court upholds the decision in *ELRC Mombasa Manuchar Kenya limited v Denis Odhiambo Olwete* Civil Appeal No. 5 of 2019 where the court held as follows:- “The upshot of the decision by the Court of Appeal as confirmed by the Supreme Court is that all work injury claims arising after enactment of WIBA in 2007 were to be processed within the procedure set out in the Act and the original jurisdiction of the court was thus ousted.”
29. On the submissions on access to justice by the respondent as stated in the decision of the court in *West Kenya Sugar Co. Ltd V Titus Lucheli Tangale* (2021)E KLR being the question of sending the claimants from the seat of justice causing injustice for reasons beyond their control and having relied on the judge made law of the High Court, the court holds 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’ -VS- 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” and further authority of the Supreme Court in the decision of Samuel Kamau Macharia & Another V. Kenya Commercial Bank Limited & 2 others, S.C. Civil Application No. 2 of 2011, that a court’s jurisdiction flows from either *the Constitution* or legislation or both; that it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law; and that jurisdiction goes to the very heart of the dispute.

30. In view of the foregoing and 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 2nd June 2008, the instant suit having been filed on the 17th January 2017, the court finds and determines merit in the appeal and finds that the magistrate court erred in holding it had jurisdiction to hear and determine the suit.
31. In this case the court upholds its recent decision delivered on the 3rd November 2022 on a similar issue as the instant appeal being Bungoma ELRC Appeal No. E002 OF 2021 West Kenya Sugar Co. Ltd v Evans Ambule Soita(unreported) 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.
32. On the fate of the pending suit before the trial court, the court is guided by 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 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’ -VS- Caltex Oil (Kenya) ltd 1989 eKLR (supra) to the effect that jurisdiction is everything and without it the court cannot take one more step and the suit filed in the trial court can only be struck off.

Conclusion and disposition

33. The Appeal is held to be with merit and is allowed. The Court orders that the magistrate court has no jurisdiction to hear and determine work injury related claims filed after commencement of *Work Injury Benefits Act*(WIBA).
34. The Ruling of the trial court in Webuye SPMCC No. 5 of 2017 Boniface Mung’aya v Shree Ganesh Enterprises Limited and Another delivered on the 28th September, 2021 is set aside and in its place substituted with an order that the Preliminary Objection dated 28th February 2020 is upheld and the suit dated 17th January 2017 struck off for want of jurisdiction.
35. 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.
36. The ruling of the trial court in Webuye SPMCC No. 5 of 2017 Boniface Mung’aya v Shree Ganesh Enterprises Limited and Another applied in civil cases numbers 6-10 of 2017. Accordingly the judgment in this appeal being Bungoma ELRC Appeal No. E018 of 2021 Shree Ganesh Enterprises



Limited and Another V Boniface Mung'aya applies accordingly to the appeals arising from Civil Magistrate Court Cases Numbers 6-10 of 2017 being:-

- a. ELR Appeal No. E.015 OF 2021 -Shree Ganesh Enterprises ltd & John Makuto Machani -vs Julius Khisa David.
- b. Bungoma ELRC Appeal No. E016 of 2021- Shree Ganesh Enterprises ltd & John Makuto Machani -vs Douglas Wafula Wekesa.
- c. Bungoma ELRC Appeal No. E017 of 2021 – Shree Ganesh Enterprises ltd & John Makuto Machani -vs- Wekesa Simiti Wanjala
- d. Bungoma ELRC Appeal No. E019 of 2021 -Shree Ganesh Enterprises Ltd & John Makuto Machani -vs- Nelson Nyongesa Wanjala.
- e. Bungoma ELRC Appeal No. E020 of 2021 – Shree Ganesh Enterprises Ltd & John Makuto Machani -vs- Moses Kwone.

A. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 17TH NOVEMBER, 2022.

J. W. KELI,

JUDGE.

In The Presence Of:-

Court Assistant : Brenda Wesonga

For Appellant :

For Respondent:- Ms Komora holding brief for Bw'Onchiri

