



**West Kenya Sugar Co Ltd v Joshua (Employment and Labour Relations Appeal E008 of 2021) [2022] KEELRC 13186 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13186 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E008 OF 2021**

**JW KELI, J  
NOVEMBER 10, 2022**

**BETWEEN**

**WEST KENYA SUGAR CO. LTD ..... APPELLANT**

**AND**

**SHIUNDU MUNGANYI JOSHUA ..... RESPONDENT**

**RULING**

1. The respondent filed a suit Webuye CMC Case No 212 of 017 against the appellant for injuries said to have been sustained at the workplace vide a plaint dated 3<sup>rd</sup> November 2017 and received by the trial court on even date seeking the following reliefs:-
  - a. Damages
  - b. Special damages of Kshs 10,000.
  - c. Costs of this suit
  - d. Interest on a, b and c above at court rates
  - e. Any other or further relief that this Honourable Court may deem fit and just to grant.
2. The appellant filed defence and denied admission of jurisdiction. While the suit was pending the appellant filed notice of preliminary objection dated 10<sup>th</sup> March 2020 challenging the competence of the suit and/or the proceeding of the matter before the trial court on the following grounds :-
  - i. That this honourable court has no jurisdiction to entertain, hear and/or determine the matter herein pursuant to the provisions of section 16,23 (1) and 52 of the [Work Injury Benefit Act](#).
  - ii. That this suit having been filed in the year 2017 was filed during the subsistence of the Work Injury Benefit Act not the Workmen's Compensation Act and/or common law and therefore the operative law herein is the Work Injury Benefit Act which mandates that litigation related



to work injuries should be handled in the first instance by the Director of Occupation Safety and Health Services and not this honourable court.

Note : The defendant at the hearing of the preliminary objection rely on the decision made by the Supreme Court in Supreme Court Appeal No 4 of 2019 Law Society of Kenya v Attorney General and Central Organisation of Trade Union (K)(Page 91)

3. The applicant's/appellant's submissions dated 18<sup>th</sup> March 2021 on the objection at the trial court were filed on the 23<sup>rd</sup> March 2021(pages 99-102)
4. The plaintiff's/respondent's written submissions on the preliminary objection were dated 11<sup>th</sup> February 2021 and filed in court on the 31<sup>st</sup> May 2021 (pages 92-98)
5. The preliminary objection was canvassed by way of the filed written submissions and the trial court delivered its Ruling on the 14<sup>th</sup> July 2021. The court found the said ruling was not placed in the appeal record and at the pages indicated for the ruling in the Index of the record were blank (pages 103-104). The record having not been challenged the court in pursuit of substantive justice referred to the trial court and was not able to trace the impugned ruling hence no judgment could be written on the appeal. It is the said ruling that is challenged vide the instant appeal.
6. The court finds and determines, for the reason of failing to file in the record of appeal the ruling of which the appellant seeks the appeal court to decide on, there is no judgment by the court. The record of appeal dated 20<sup>th</sup> May 2022 together with the supplementary record of the Appeal dated 11<sup>th</sup> August 2022 is held to be incompetent for lack of the challenged ruling of the trial court and is struck off with costs to the respondent.
7. It is so ordered.

**DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 10TH NOVEMBER 2022.**

**J. W. KELI,**

**JUDGE.**

**In The Presence Of:-**

**Court Assistant : Brenda Wesonga**

**For Appellant : Ms Nyambuto**

**For Respondent:- Mulama holding brief for Abok**

