



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISC. CAUSE NO. E056 OF 2021

OGUTU KEBASO.....CLAIMANT/APPLICANT

VERSUS

NYANKOBA TEA FACTORY COMPANY LIMITED.....RESPONDENT

RULING

1. This ruling relates to a Notice of Motion application dated the 9th of August, 2021, brought pursuant to the provisions of *Section 12 of the Employment and Labour Relations Court Act, Sections 16, 37 and 51 of the Work Injury Benefits Act and Rule 28 of the Employment and Labour Relations Court (Procedure) Rules, 2016.*

2. The applicant seeks the following orders:

- i) That this Honourable court be pleased to adopt the assessment of the Kisii County Occupational Safety and Health Officer report made in Work Injury Benefits Act Claim Reference No. KSI/11112762 made on 7th July, 2017 as a judgment of this court
- ii) That Judgment be entered for the applicant against the Respondent for Kshs. 500,000/=, being the sum assessed by the Kisii County Occupational Safety and Health Officer under the Work Injury Benefits Act on 7th July, 2017 in Claim Reference No. KSI/11112762.
- iii) That this Honourable court be pleased to award interest on the amount from the date of assessment until payment in full.
- iv) That this Honourable court be pleased to award any other relief this court may deem fit to grant
- v) That costs of this application be borne by the Respondent.

3. The application is supported by an Affidavit dated 9th August, 2021 and filed in court on 24th August, 2021, sworn by Ogotu Kebaso, the applicant herein. He deposed that he was an employee of the Respondent from the year 2001 to 2nd August, 2019.

4. The applicant's case is that he sustained injuries at the Respondent's premises while in the course of duty as an employee of the Respondent and that the Respondent lodged a notice by employer of an occupational accident/disease of an employee with the Kisii County Occupational Safety and Health Officer.

5. The applicant's further case is that Kisii County Occupational Safety and Health Officer assessed compensation due to him under the Work Injury Benefits Act at Kshs. 500,000/=. He states that the Respondent was issued with a demand for payment which the Respondent declined and/or neglected to pay leading him to institute suit against it, being Case No. Keroka PMCC No. 121 of 2019.

6. The applicant states that during the pendency of his case at the Keroka Magistrates court, the Supreme court divested the Magistrate Courts of jurisdiction over suits arising from injury sustained in the course of employment in the 2019 case of *Law Society of Kenya v The Attorney General & Another*, hence the filing of the current suit.

7. It is the applicant's assertion that the Respondent did not appeal against the assessment having received both the assessment and the demand for payment.

8. The Respondent did not file a reply to the instant application and neither did it appear in court on the hearing date. The applicant filed an Affidavit of Service sworn by one George Osanda Osino, Advocate as evidence that the Respondent was served with both the application herein and a hearing notice and was thus aware that the application was coming for hearing.

Determination

9. The application was brought pursuant to the provisions of *Section 12 of the Employment and Labour Relations Court Act, Sections 16, 37 and 51 of the Work Injury Benefits Act and Rule 28 of the Employment and Labour Relations Court (Procedure) Rules, 2016.*

10. A look at these provisions, is clear that none of them directly points an applicant in the way in which to approach the court in the type of application such as the one before this court. The court however has original jurisdiction on matters of WIBA pursuant to *Section 12(1)(a) of the Employment and Labour Relations Act*, which provides as follows:

“Section 12 –

The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

(a) disputes relating to or arising out of employment between an employer and an employee.”

11. The application before court arises out of an employment relationship and is a dispute between an employer and an employee and hence properly within the jurisdiction of this court.

12. The evidence before this court is that the Respondent reported the injury to the Kisii County Occupational Safety and Health Officer who assessed the damage to the applicant and served the Respondent with the assessment report as well as the demand for payment of the amount of the assessment which was served by the applicant.

13. It is evident that the Respondent did not appeal against the assessment (***See Hadisha Engineering Co. Ltd & Another vs. Benson Chege Karori [2015] eKLR***) and neither has it challenged the instant application as evidenced by the return of service filed before court.

14. The court finds the application merited and adopt the assessment of the Kisii County Occupational Safety and Health Officer report made in Work Injury Benefits Act, being Claim Reference No. KSI/11112762 made on 7th July, 2017 as a judgment of this court.

15. The court enters judgment for the applicant against the Respondent for Kshs.500,000/=, being the sum assessed by the Kisii County Occupational Safety and Health Officer under the Work Injury Benefits Act on 7th July, 2017 in Claim Reference No. KSI/11112762.

16. The applicant is awarded interest on the amount from the date of this ruling until payment in full.

17. The applicant is also awarded costs of this application.

18. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 7TH DAY OF OCTOBER, 2021.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. R. Odhiambo holding brief Mr. Osino for the Claimant/Applicant

N/A for the Respondent

Court Assistant - Christine