



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT UASIN GISHU**

**COURT NAME: ELDORET LAW COURT**

**CASE NUMBER: ELRCMISC/E015/2021**

**CITATION: JUMBO NORTH (E.A) LIMITED. VS PATRICK MATIABE NYAANGA**

**RULING**

**ON 2021-10-29 BEFORE HON. JUSTICE J. N. ABUODHA**

1. By a Notice of Motion dated 1st July, 2021 the applicant sought orders among others that:

- (i) THAT there be stay of execution and or giving effect of the ruling of the subordinate court in Eldoret CMCC NO 1160 of 2016 delivered on 29th January, 2021 pending the hearing and determination of this application inter-parties.
- (ii) THAT there be stay of proceedings in Eldoret CMCC No 1160 pending the hearing and determination of this application inter-parties.
- (iii) THAT the Applicant be granted leave to file the attached Memorandum of Appeal out of time from the ruling of Senior Resident Magistrate delivered on 29th January, 2021 in Eldoret CMCC No. 1 of 1160 of 2016.
- (iv) THAT there be stay of proceedings in Eldoret CMCC NO. 1160 of 2016 pending the hearing and determination of the appeal preferred herein.

2. The application was supported by the affidavit of Zacharia Ngaira who deponed on the main that:

- (i) THAT I am the Human Resource Manager of the Applicant herein hence competent to swear this affidavit.
- (ii) THAT the trial court was to deliver its ruling on 18th December, 2020 when the advocates for both parties attended court, however the court informed them that the ruling was not ready and that the same shall be delivered on notice.
- (iii) THAT even since 18th December, 2020 the court has never issued notice for delivery of the ruling.
- (iv) THAT on 24th May, 2021 our advocates on record was served with a mention notice notifying them that Eldoret CMCC No. 1160 of 2016 has been fixed for mention on 19th August, 2021 for purposes of fixing a hearing date.
- (v) THAT on 23rd June, 2021 the Applicant's counsel was shocked to see the matter in the cause list listed for hearing on the very day.
- (vi) THAT upon the matter being called out the Applicant's advocate inquired from the trial court as to when the ruling was delivered, the court informed him that the ruling was delivered on 29th January, 2021 in the absence of both parties and the matter fixed for hearing on 23rd, June, 2021.
- (vii) THAT the Applicant's advocates were not aware of the ruling having been delivered as the same was delivered without notice.
- (viii) THAT the court while delivering the ruling, dismissed the Applicant's preliminary objection dated 5th March, 2020 challenging the jurisdiction of the subordinate court to hear and determine the case in Eldoret CMCC NO. 1160 of 2016 as the suit

contravenes the Provisions of Section 16 and 58 of the Work Injury Benefits Act, 2007, Laws of Kenya.

(ix) THAT the Applicant is aggrieved by the court's ruling that it has jurisdiction and wish to challenge the same on appeal.

3. The respondent though served did not file a response to the application.

4. The Court has carefully reviewed the application, the grounds upon which it has been brought, the supporting affidavit together with the draft Memorandum of Appeal herein and noted that the application seems to turn around the issue of jurisdiction of the subordinate Court to entertain WIBA claims at the first instance or at all.

5. This issue was elaborately addressed by the Court of Appeal and ultimately Supreme Court in the case of Attorney General V Law Society of Kenya & Another.

6. The Supreme Court in its judgement observed in material part 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 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 the claimants in those pending cases have legitimate expectation that upon the passage of the court their cases would be concluded under the judicial process that they invoked.”

7. The Learned Magistrate in her ruling was aware of the decision of the two Superior Courts and indeed elaborately considered them in her ruling and came to the conclusion that the preliminary objection raised by the applicant lacked merit and dismissed the same. I have read in detail the ruling of the Learned Magistrate and I agree with her.

8. This Court is bound by the decisions of the Court of Appeal and Supreme Court. The intended appeal being premised on arguments already advanced before a Court superior to it, is in the Court's humble view, dead on arrival.

10. In the circumstances the Court is not persuaded that the applicant has an arguable appeal with chances of success to warrant the granting of the orders sought in the application.

11. The application is therefore dismissed with costs.

12. It is so ordered.

**DATED AT ELDORET THIS 10TH DAY OF 2021**

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON**

**2021-11-10 16:33:21**

**SIGNED BY: HON. JUSTICE J. N. ABUODHA**

**(ADMINISTER JUSTICE)**

**THE JUDICIARY OF KENYA.**

**ELDORET ELRC EMPLOYMENT AND LABOUR RELATIONS COURT**

**DATE: 2021-11-10 16:33:21**