



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2249 OF 2017

STEPHEN KARIUKI WAIHAKA..... CLAIMANT

v

NAIROBI BOTTLERS LIMITED.....RESPONDENT

RULING

1. The Claimant commenced legal proceedings against the Respondent on 14 November 2017 and he stated the Issue in Dispute as Failure to pay the Claimant his full terminal benefits.
2. Among the prayers sought by the Claimant was the balance of compensation awarded to him on 9 June 2016 by the Director of Occupational Health and Safety under the Work Injury Benefits Act for injuries sustained in the workplace.
3. On 19 September 2019, the Respondent filed a *Notice of Preliminary Objection* in the following terms
 1. The Claim is misconceived, fatally defective and bad in law by virtue of section 16 of the Work Injury Benefits Act, 2007.
 2. This Honourable Court lacks the jurisdiction to hear and determine this Claim.
4. The Court directed that the parties exchange submissions on the preliminary objection and the Claimant filed his submissions on 21 November 2019 while the Respondent filed its submissions on 15 January 2020 (should have been filed by 15 November 2019).
5. The Court has considered the invoked provision of law and the submissions on record.
6. The Director of Occupational Health and Safety assessed the compensation payable to the Claimant. The Claimant now contends that the Respondent only paid part of the compensation and has sued for the unpaid balance among other claims.
7. The cause of action, on that limb of the *Statement of Claim*, in the view of the Court, does not fall under the purview of section 16 of the Work Injury Benefits Act, which prohibits actions for damages for injuries sustained in the workplace but not an action to enforce payment of compensation already assessed by the Director of Occupational Health and Safety.
8. The Claimant's action is an action to enforce payment of the compensation.
9. The Court, therefore, finds the preliminary objection without merit.
10. The Claimant relied extensively on a decision by the High Court, *Juma Nyamwawi Ndungo & 5 Ors v Attorney General* (2019) eKLR.
11. The Court is aware of the sentiments by the Supreme Court in *Law Society of Kenya v the Attorney General & Ar* (2019) eKLR on the legal soundness of the High Court decision.
12. In conclusion, the Court orders as follows
 - (a) The Notice of Preliminary Objection is dismissed with costs to the Claimant.
 - (b) The Respondent to file and serve its witness statements and documents on or before 29 January 2020.
 - (c) Agreed Issues to be filed before 14 February 2020, in default, Issues as proposed by Claimant will be adopted for trial.

(d) Hearing date to be taken in the registry after compliance with these directions.

Delivered, dated and signed in Nairobi on this 17th day of January 2020.

Radido Stephen

Judge

Appearances

For Claimant Njeri Ngunjiri Advocates

For Respondent Kiragu Wathuta & Co. Advocates

Court Assistant Judy Maina