



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

APPEAL NO. 54 OF 2019

BEDFORD MICHENI BUNDI.....APPELLANT

V

PERITUS LOGISTICS LIMITED.....RESPONDENT

(Being an appeal from the Ruling and Order of Senior Resident Magistrate

Hon. P. Muholi in Milimani ELRC CASE NO. 559 OF 2019

delivered on 16th October 2019)

JUDGMENT

1. Bedford Micheni Bundi (Appellant) was employed as a driver by Peritus Logistics Ltd (Respondent) and he got injured in the course of employment on 4 May 2016.
2. A relevant notice/report was made to the Director, Occupational Safety and Health Services and on 14 June 2016, he assessed compensation payable to the Appellant in the sum of Kshs 994,038/-.
3. The Respondent failed to pay the compensation and the Appellant lodged a suit with the Magistrates Court to enforce payment.
4. The Respondent filed a *Statement of Defence* after which the Appellant filed a motion seeking an order(s) adopting the compensation assessed by the Director of Safety and Occupational Health Services and a fine of Kshs 500,000/-.
5. The Respondent opposed the application and after hearing the parties, the trial Court delivered a Ruling on 16 October 2019 declining jurisdiction over any dispute under the Work Injury Benefits Act.
6. The Appellant was not satisfied and on 5 November 2019 he filed a Memorandum of Appeal with this Court contending that
 1. THE Learned Magistrate erred in law by failing to appreciate and find that as an Employment and Labour Relations Court, the Court had the prerequisite jurisdiction to handle employment disputes and enforce a statutory decision made on 14th June 2017 by the Director of Occupational Safety and Health Services under the provisions of the Work Injury Benefit Act.
 2. THE Learned Magistrate erred in law and in fact by failing to adopt and enforce the decision of the Director of Occupational Safety and Health Services made on 14th June 2017.
 3. THE Learned Honourable Magistrate erred in law and in fact in disregarding the Appellant's application, submissions and judicial authorities cited.
 4. THE Learned Honourable Magistrate erred in law and in fact by failing to appreciate that the suit before him was an enforcement suit and the Court had all powers and jurisdiction to enforce a statutory decision made pursuant to the provisions of the Work Injury Benefit Act.
 5. THE Learned Honourable Magistrate erred in law and in fact in misconstruing the authorities cited by the Appellant and therefore arrived at an erroneous decision.

6. THAT the Learned Honourable Magistrate erred in law and in fact by considering extraneous issues that were never contested by the parties.

7. THAT the Learned Honourable Magistrate erred in law and in fact and failed to exercise judicial authority based on any known legal principles.

8. THAT the Learned Honourable Magistrate erred in law and in fact by seeking to prosecute the Respondent's case.

7. When the Appeal came up for directions on 5 February 2020, the Court directed the parties to file and exchange submissions.

8. The Appellant filed his submissions on 25 February 2020 while the Respondent's submissions were not on file by 13 March 2020 as directed.

9. The Appellant condensed the primary issue for this Court's determination into 1, and it is the ever-evolving question whether the Magistrates Court has jurisdiction over disputes under the Work Injury Benefits Act and more expressly, over enforcement in respect of compensation assessments by the Director, Occupational Safety and Health Services.

10. Section 2 of the Work Injury Benefits Act has not defined the *Court* for purposes of the Act.

11. Section 17(1) & (2) of the Act, however, contemplates Court action in respect of negligence by a third party. The Court for purposes of the section is also not defined.

12. Part V and VI of the Act provides for the assessment of compensation by the Director under various circumstances but does not outline the processes to be followed when an employer does not make payment within the set-out timelines.

13. However, section 51 of the Act allows a party who is not satisfied with the decision of the Director (the decision may include assessment of compensation) to object/appeal to the Director, and a further appeal is envisaged under section 52(2) of the Act to the Employment and Labour Relations Court.

14. An enforcement suit, like was filed before the Magistrates Court was (is) not an objection and/or appeal against the decision of the Director.

15. The Act is therefore of no direct assistance.

16. The primary jurisdiction of the Employment and Labour Relations Court is anchored in section 12 of the Employment and Labour Relations Court Act.

17. The Court can also draw on jurisdiction granted by any other written law.

18. An injury in the workplace, like was in contention before the Magistrates Court was anchored on a contract of service. It was alleged that there was negligent and/or statutory breach by the Respondent/employer.

19. Section 87 of the Employment Act, 2007 provides as follows

87.(1) Subject to the provisions of this Act whenever –

(a) an employer or employee neglects or refuses to fulfil a contract of service; or

(b) any question, difference or dispute arises as to the rights or liability of either party; or

(c) *touching any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party, under any contract of service, (Court emphasis)* the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Employment and Labour Relations Court.

2. No Court other than the Employment and Labour Relations Court shall determine any complaint or suit referred to in subsection (1).

20. In the view of the Court, the failure by an employer to pay compensation assessed by the Director of Occupational Safety and Health Services is *neglect or failure to fulfil a contractual* albeit statutory obligation and such conduct or ill treatment falls within the jurisdiction of this Court, at the first instance by dint of section 87(1)(a),(b) & (c) of the Employment Act, 2007 as read with section 12(1)(a) of the Employment and Labour Relations Court Act.

21. Pursuant to section 29(3) & (4) of the Employment and Labour Relations Court Act, the Honourable Chief Justice is clothed with the authority to delegate jurisdiction over certain disputes to Magistrates.

22. In exercise of the authority, the Honourable Chief Justice through Gazette Notice No. 6024 of 22 June 2018 appointed all Magistrates of the rank of Senior Resident Magistrate and above as special Magistrates with jurisdiction over disputes arising from contracts of employment

where the monthly remuneration is less than Kshs 80,000/-, and also in respect to offences under the Work Injury Benefits Act, among other statutes.

23. The import of the delegation, according to the Court means that a Magistrates Court superintended by a Senior Resident Magistrate and above has delegated jurisdiction over enforcement proceedings arising from a compensation assessment by the Director, Occupational Safety and Health Services if the employee's salary is under Kshs 80,000/-.

24. In the case before the trial Court, the records show that the Appellant's monthly salary was Kshs 25,000/-.

25. The Court has looked at the Supreme Court decision *Law Society of Kenya v Attorney General & Ar* (2019) eKLR on the constitutional inconsistency of certain sections of the Work Injury Benefits Act.

26. The Court did not have the benefit of hearing arguments from the parties on its impact(s) on the narrow issue of delegated jurisdiction, examined herein.

27. From the foregoing, the Court holds that the Magistrates Court was in error when it declined jurisdiction.

Conclusion and Orders

28. The Appeal is allowed with an order setting aside the Ruling and Order of the trial Court delivered on 16 October 2019.

29. The application to be placed before a different Magistrate with jurisdiction for hearing afresh.

30. The Appellant to have costs of the Appeal.

Dated, signed and delivered through email in Nairobi on this 24th day of April 2020.

Radido Stephen

Judge

Appearances

For Appellant Kimathi Wanjohi Muli Advocates

For Respondent John Mburu & Co. Advocates

Court Assistant Judy Maina