



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**MISC CAUSE NO. 41 OF 2020**

**VIRGINIA WANGARI MUITA (suing as the legal representative of the estate of Philip Mwangi  
(deceased) on her behalf and behalf of the dependents of the estate)..... APPLICANT**

**V**

**NYORO CONSTRUCTION CO LTD.....RESPONDENT**

**RULING**

1. Veronica Wangari Muita (applicant) commenced Milimani Chief Magistrates Cause No. 594 of 2019 against Nyoro Construction Company Ltd (Respondent) and she stated the Issues in Dispute as

- a) Refusal by the Respondent to pay the Claimant the amount awarded by the Director of Occupational Health and Safety.
- b) Breach of the provisions of the Work Injury Benefits Act.

2. However, on 11 March 2020, the applicant applied to this Court seeking orders

1. ...

2. THAT this Honourable Court be pleased to order that MC ELRC CAUSE NO. 594 OF 2019 currently pending before the Magistrates Court at Milimani be transferred for hearing and determination in this Court.

3. THAT the Honourable Court be pleased to make any further orders and directions it may deem fit.

4. THAT the costs of this application be provided for.

3. On 11 March 2020, the Court directed that the application be served upon the Respondent.

4. As a result, the Respondent filed its Grounds of Opposition dated 20 May 2020.

5. The applicant thereafter filed her submissions on 21 June 2020 while the Respondent's submissions were not on file by time preparation of this Ruling.

6. The primary reason(s) advanced by the applicant in support of the transfer order was that the Magistrates Court did not have jurisdiction under the Work Injury Benefits Act to enforce an award of compensation by the Director of Occupational Safety and Health Services and therefore she erroneously filed the suit before a Court without jurisdiction.

7. To buttress her case, the applicant relied on *Bedford Micheni Bundi v Peritus Logistics Ltd* (2020) eKLR and *Virginia Wangari Muita v Nyoro Construction Ltd* (2020) eKLR (the decisions appear to have taken inconsistent positions on the jurisdiction question).

8. In opposing the application, the Respondent contended that this Court lacked the jurisdiction to grant the orders sought because the suit before the Magistrates Court had been dismissed in Nairobi ELRC Appeal No. 36 of 2019, *Virginia Wangari Muita v Nyoro Construction*.

9. The Respondent further contended that the application was unmerited and an abuse of the court process as the suit was incompetent *ab*

*initio.*

10. The Court has considered all the material placed before it including the case-law cited.

#### **Existence of suit/proceedings before the Magistrates Court**

11. This Court has perused the judgment on Appeal in Appeal No. 36 of 2019, *Virginia Wangari Muita v Nyoro Construction Co. Ltd.*

12. Nowhere in the judgment did the Court make a finding or a holding dismissing and/or finding invalid the suit and/or proceedings before the Magistrates Court.

13. What the Court did was to hold that since there were no provisions on proper procedures to use to approach the Court in the enforcement of awards by the Director of Occupational Safety and Health Services, a party could move the Court through a Miscellaneous Application or a Memorandum of Claim.

14. The Court further held that because the applicant therein had raised questions beyond enforcement of the Director's assessment of compensation, the only option was to allow the suit to go to full trial and not through a summary procedure.

15. This Court consequently finds that there still exist valid proceedings before the Magistrates Court which should be prosecuted to its logical end.

#### **Jurisdiction**

16. On the primary question of whether the Magistrates Courts have jurisdiction over disputes arising under the Work Injury Benefits Act (including enforcement of compensation awards), this Court in the *Bedford Micheni Bundi's* case concluded that although the jurisdiction belonged to this Court at the first instance, it had been delegated to Magistrates of the rank of Senior Resident Magistrate and above by the Chief Justice through Gazette Notice No. 6024 of 2018. The delegation has not been challenged successfully, to the knowledge of this Court.

17. The Court notes that in *Virginia Wangari Muita* appeal judgment, the Court while finding jurisdiction reposed in the Employment and Labour Relations Court did not advert to the delegated jurisdiction as provided for in section 29(3) & (4) of the Employment and Labour Relations Court Act.

18. That, in the view of the Court, is a relevant distinguishing consideration.

19. None of the parties presented any authority to make the Court hold otherwise and in the circumstances, the Court finds no reason to order for the transfer of the suit before the Magistrates Court. The suit should be prosecuted to its logical end where it was filed.

20. The application dated 11 March 2020 is found without merit and is dismissed with costs to the Respondent.

**Delivered through Microsoft teams, signed and dated in Nairobi on this 6<sup>th</sup> day of August 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant Mr. Njuguna instructed by Benson Njuguna & Co. Advocates

For Respondent Ms. Njoroge instructed by R.M. Mutiso & Co. Advocates

Court Assistant Judy Maina