



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 782 OF 2017

STEPHEN MAINA WANJIRU.....CLAIMANT

v

MUDECON LIMITED.....RESPONDENT

RULING

1. The Claimant instituted legal proceedings against the Respondent on 27 April 2017 alleging that the Respondent was liable in statutory negligence as a result of an injury in the work place on 17 March 2016.
2. On 12 October 2017, the Respondent filed a *Notice of Preliminary Objection* in the following terms

TAKE NOTICE that the Respondent shall raise a preliminary objection at the earliest hearing of this matter on the basis that this Court lacks jurisdiction to hear this matter in view of the Provisions of sections 51 and 52 of the Work Injury Benefits Act Cap 236 Laws of Kenya.
3. On 5 February 2019, the Court directed that the objection be taken on 20 February 2019.
4. The Respondent filed submissions in support of the objection on 18 February 2019 while the Claimant filed his submissions on 18 March 2019.
5. The Court has considered the objection and the submissions.
6. There is material on record to show that the Claimant's compensation under the *Work Injury Benefits Act* was processed and paid.
7. In terms of section 51 and 52 of the *Work Injury Benefits Act*, if the Claimant was dissatisfied, he should have initially preferred an Appeal within 60 days, before approaching this Court.
8. The Respondent also raised *res judicata* and in his response, the Claimant urged that *res judicata* did not arise because he had a common law cause of action separate from the application of the *Work Injury Benefits Act*.
9. In the view of the Court, the Claimant having gone through the process under the Act, and having received compensation cannot approach this Court again seeking general and special damages for the same injuries sustained in the workplace.
10. This Cause is not only incompetent, but an abuse of the Court process. It is dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 29th day of March 2019.

Radido Stephen

Judge

Appearances

For Claimant Ms. Osore instructed by Kaburu Miriti & Co. Advocates

For Respondent Ms. Kawira instructed by Gladys Michuki & Associates, Advocates

