

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CASE NO. 40 OF 2018

(Formerly Nyeri ELRC Case No. 275 of 2011)

MARTIN MUTWIRI NJERU.....CLAIMANT

VERSUS

EQUITY BANK OF KENYA LIMITED.....RESPONDENT

RULING

1. The Claimant suffered injuries when a vehicle rammed into the premises of the Respondent where he worked. He suffered injuries to his chest and spine. At the time the suit was filed, this Court had jurisdiction to deal with matters under the remit of the Work Injury Benefits Act but by the end of it there was no recourse open before the Employment & Labour Relations Court. The Court of Appeal in the case of **Attorney General v Law Society of Kenya & Another [2017] eKLR** has set out the parameters of the applicability of the Work Injury Benefits Act 2007 pursuant to an appeal lodged. In the critical part the decision by the Learned Judges of the Court of Appeal (Waki, Makhandia, Ouko JJA) they held as follows:

Section 16 as read with section 23(1) confer powers of adjudication of any claim for compensation arising from injury or death in the workplace upon the Director and expressly bars institution of court proceedings by the aggrieved employee.

However by section 51(1) any person aggrieved by a decision of the Director may lodge an objection with the Director himself against his own decision. The Director is required to give a written answer, either varying or upholding his decision and giving reasons for the decision. Upon receipt of the answer the “objector” may appeal to the Industrial Court (now Employment and Labour Relations Court) against the decision.

Further in the same decision, the learned Judges of Appeal held:

*It is now well settled on the authority of the Supreme Court in the decision of **Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 others**, S.C. Civil Application No. 2 of 2011, and in a long line of others, that a court’s jurisdiction flows from either the Constitution or legislation or both; that it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law; and that jurisdiction goes to the very heart of the dispute and that it is equally accepted that;*

“.....where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed”.

2. This Court is bound by the decision of the Court of Appeal and must follow it as this is the Appellate Court for all matters from superior courts and on the basis of *stare decisis* I cannot depart from the decision unless the case before me is distinguishable. The Principal Judge of this Court has given directions as to what is to befall matters that were pending before the Magistrates Courts and this Court. They are to be referred to the Director of Occupational Safety and Health Services. It is upon his determination that the matter can be referred to this Court on appeal. I therefore direct the Deputy Registrar of this Court to send the file to the Director of Occupational Safety and Health Services with a request that the matter be dealt with expeditiously granted that the Claimant and Respondent have been waiting for determination for long. I regret the delay occasioned by this but the Court has no discretion in the matter.

It is so ordered.

Dated and delivered at Nyeri this 12th day of July, 2018

Nzioki wa Makau

JUDGE