

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1327 OF 2016

JOSEPH KAGUTHI NJIHIA.....CLAIMANT

VS

MONTY'S WINES AND SPIRITS LTD.....RESPONDENT

RULING

1. On 9th July 2016 the Claimant filed a claim in this Court seeking work injury compensation. Upon being served with the claim, the Respondent gave notice of a preliminary objection on the ground that there was a similar suit pending determination before the Chief Magistrate's Court at Milimani.
2. In a supporting affidavit sworn by Jethro Kibet, Advocate it is deponed that the Claimant had filed CMCC No. 2262 of 2012 which suit was yet to be prosecuted.
3. It is therefore the Respondent's contention that the present suit is an abuse of the court process.
4. In a replying affidavit sworn by the Claimant on 21st October 2016 he depones that CMCC No. 2262 of 2012 is against the Respondent and another party and the claim therein is based on tort.
5. Regarding the case before this Court the Claimant states that he claims compensation arising from an occupational accident and injury.
6. It is therefore the Claimant's position that the two claims are distinct and separate.
7. I have looked at the plaint filed in the Chief Magistrate's Court and the Memorandum of Claim filed in this Court and have formed the opinion that the Claimant's claims in both cases arise from the same cause of action. I therefore agree with the Respondent that the matters raised in this cause are *sub judice* before the Chief Magistrate's Court. In any event, the cause of action having arisen in 2010, a claim in this Court would be statute barred.
8. For the foregoing reasons, the preliminary objection raised by the Respondent is upheld and the Claimant's claim is struck out with no order for costs.
9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF JANUARY 2017

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Mr. Kibet for the Respondent

