



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 776 OF 2010

BISANSIO OPOLO EKODOI AND

SALOME ASIO EMODO (Suing as Administrator &

legal representative of the estate of the late

VITALIS EBUKORO ETYKORO CLAIMANT

VERUS

WELLS FARGO LIMITED RESPONDENT

Mr. Ogunde for Respondent / Applicant

Mr. Makhoha for Claimant / Respondent

RULING

1. The Respondent filed a Notice of Motion seeking an order in the following terms:
 1. that the Claimant's suit against the Respondent be struck out with costs.
 2. that in the alternative to prayer 1 above, the Claimant's suit against the Respondent be transferred to a Court with competent jurisdiction.
2. The Application is grounded on the following allegations;
 1. that the Claim does not relate to a dispute between an employer and an employee and therefore the Court lacks jurisdiction to entertain the matter.

Memorandum of Claim

3. The Claimants Bisansio Opolo Ekodoi and Salome Asio Emodo are suing as Administrator and Legal Representatives of the Estate of the late Vitalis Ebukoro Etyakoro, a former employee of the Respondent Wells Fargo Company Limited.

4. On 10th January 2007, the deceased while guarding cash in transit on behalf of the Respondent was killed when the Respondent's motor vehicle was ambushed and shot at by gangsters. The deceased suffered death as a result thereof.

5. The claim is founded on the deceased Employment Contract and the relief sought is as follows;

1. Terminal benefits arising from the employment as follows;

- a. one month's salary in lieu of notice Kshs.7,094/=;
- b. Service gratuity for 9 completed years of service Kshs.38,308/=; and
- c. payment of damages arising from alleged negligent conduct by the Respondent whose particulars as enumerated in the statement of claim include:

a. Failure to provide a safe and convenient working environment for the deceased while on duty with the Respondent leading to death in the cause of his employment.

6. The Respondent submits that it is not contemplated that dependants of employees would approach the Industrial Court to claim reliefs under the **Law Reform Act Cap 26 Laws of Kenya** and the **Fatal Accident's Act Cap 32 Laws of Kenya**.

7. Reliance is made on the provisions of **Article 162(2)** of the **Constitution** which reads:

“Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating from;

a. ***employment and Labour Relations;***”

Emphasis mine

as read with **Section 12** of the **Industrial Court Act** under which the jurisdiction of the Industrial Court is defined as follows:

“12 The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of the”

13. It is clear from **Article 162(2)** that the Industrial Court has jurisdiction to deal with all matters related to Employment and Labour. This is equally well brought out in **Section 12** of the **Industrial Court Act, 2011**.

14. A careful consideration of the cause of action and reliefs sought clearly shows that the cause of action and the reliefs sought are intimately connected to the employment of the deceased employee.

15. The **Law Reform Act**, merely comes into play to empower the dependants of the deceased employee to claim on behalf of their deceased benefactor who was an employee of the Respondent.

Nothing in the **Industrial Court Act** and in particular **Section 12(2)** prevent a representative action to be brought on behalf of an employee who is either dead or incapacitated to bring a suit against the employer or former employer. That is why the **Law Reform Act**, comes into play, not only at the Industrial Court but in any other Court which has jurisdiction to entertain a matter where the Plaintiff or Claimant is either dead or incapacitated to institute the suit.

16. The Court is not persuaded at all by the decision in **Titus Omamu Mwanzo and two others Vs. Oil Company Limited [2014] e KLR**. To the contrary, the Court is of the view that the decision was made *impercurium*.

17. The Decision of **Nzioki Makau J. in Seven Seas Technologies Limited Vs. Eric Chege [2014] e KLR** is apt on this matter when it said:

“can a Court split a cause of action into various parts depending on what portions the

Claimant or Respondent is challenging? Would a dispute relating to an employee's housing and the employers building and land be referred to the Environment and Land Court if the employee and employer are tussling over termination of employment and the unpaid rent, illegal occupation by the staff member and likes or would such a suit be transferred to the Commercial Division? I think not. There has to be a purposive interpretation of the Constitution."

18. With regard to whether this Court has authority to transfer a matter to a Court of Competent jurisdiction where it finds that it does not have jurisdiction to entertain the matter, the decision of the Court of Appeal in the case of:

Professor Daniel N. Mugendi Vs. Kenyatta University and 3 others Civil Appeal No. 6 of 2012.

has resolved this issue when it decided as follows;

"And in order to do justice in the event where the High Court, the Industrial Court or the Environment and Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well acquainted with the appropriate forum for each kind of claim. However parties should not file "mixed grill" causes in any court they fancy. This will only delay dispensation of justice".

19. The decisions of the High Court which stated earlier that the Court had to down its tools and dismiss the matter are no longer good law.

20. In the present matter this is however besides the point since this Court has jurisdiction to hear and determine this matter.

The Application is dismissed with costs.

Dated and Delivered at Nairobi this 27th day of June, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE