



**West Kenya Sugar Company Ltd v Mazuru (Civil Appeal
5 of 2018) [2025] KEHC 5615 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 5 OF 2018
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

WEST KENYA SUGAR COMPANY LTD APPELLANT

AND

DAVID LUTOMA MAZURU RESPONDENT

RULING

1. Through the Notice of Motion dated 18th January 2024, the respondent/applicant moved this court seeking the following orders:
 1. That the appeal herein be struck out having been filed in the wrong court contrary to the mandatory provisions of the Constitution of Kenya.
 2. That the costs of this application and appeal be awarded to the respondent /applicant.
2. The application is based on grounds that in the lower court, parties to the dispute were in an employee-employer relationship, and it follows that any appeal therefrom ought to have been filed at the Employment and Labour Relations Court, and not the High Court.
3. The application is opposed by the appellant vide their replying affidavit sworn on 23rd January, 2024. The respondent states that pursuant to paragraph 5 (C) of the WIBA Practice Directions, claimants like the respondent herein have legitimate expectation that upon the passage of the Act, their cases would be conducted under the judicial process invoked by the plaintiff through the normal civil case.
4. It is further stated that the judicial process invoked by parties from the trial stage was a normal civil suit channel, despite the subsistence of an employment contract and/or a work related injury, rather than through a specialized court; that under the legitimate expectation recognized by the WIBA Practice Directions, that judicial process was to be maintained to the last end including the appellate process.



5. The applicant further avers that the respondent herein neither commenced nor sustained his suit as an employment and labour relations cause in the magistrate's court with jurisdiction to hear an employment matter.

Applicant's Submissions

6. The Applicant's counsel submitted on the following issues:
 - a. Whether the instant appeal has been filed before a court without jurisdiction.
 - b. If the answer to issue 1 is in affirmative, what is the available remedy that recommends itself before this Court.
7. On the first issue the applicant/ respondent contends that the instant appeal having been filed before the High Court instead of the Employment and Labour Relations Court, the appeal is before a court bereft of jurisdiction. That the Employment and Labour Relations Court has been established vide the *Employment and Labour Relations Act* and the subsidiary legislation thereto. It is the counsel submission that it cannot be procedurally and substantively proper to file an appeal on an employment matter before the High Court instead of the Employment and Labour Relations Court. The respondent made reliance in the case of *West Kenya Sugar Co. Limited vs Matayo Ingoshe & Others* (2021) eKLR
8. It was further submitted that jurisdiction is everything and that even if the appellant attempts to file an application seeking to transfer the instant appeal to the relevant court then no further step including transfer of such suit can be undertaken by the concerned court, and that the only remedy that commends itself to this court is to have the appeal struck out with costs to the respondent.
9. The respondent did not file any submissions

Analysis and determination

10. Article 162(2) of the *Constitution* established a special court to handle disputes that revolve around employment and labour relations. Article 165(5) of the same Constitution strips the High Court of jurisdiction over such matters.
11. Article 162(2) states as follows: –

‘Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –

 - (a) employment and labour relations; and
 - (b) ...’
12. On the other hand, Article 165(5) (b), of the *Constitution* directly bars the high court from adjudicating on matters reserved for the said court.

‘The High Court shall not have jurisdiction in respect of matters-

 - (a) ...
 - (b) falling within the jurisdiction of the courts contemplated in Article 162(2).’
13. The jurisdiction of the Employment and Labour Relations Court is set out in section 12 of the *Employment and Labour Relations Court Act*. The said court has exclusive original and appellate



jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to employment and labour relations.

14. It is evident from the pleadings in the lower court that the injury complained of took place in the course of employment . Under paragraph 4 of the plaint , it was the respondent’s plea that there existed an employee/ Employer contract between the parties. Thus the respondent’s submission that the suit proceeded as a “normal suit” which I believe was meant to like it to an injury claim not necessarily relating to employment , flies in the face of his own pleadings.
15. The respondent has sought to rely on the practice directions issued by the chief Justice on 28th April 2023 through Gazette. In brief the Notice was to the effect that all those matters that were in court at the time of the enactment of WIBA would be concluded in the same courts . The same applied to the suits that were filed between the commencement of WIBA and the supreme court decisions of 3rd December 2019.
16. The above directions were published to bring to clarity what ought to happen to the cases that were in court between the enactment of WIBA and the supreme court decision in December 2019. However the directions are silent on what happens to the pending Appeals before the high court.
17. The Appeal herein was filed on 16th January 2018, and the respondent has contended that he had a legitimate expectation that the Appeal will continue and be determined by this court and urges the court to infer that the directions also applied to suits on appellate stage. I decline to make such inference because , it is evident that the directions were for pending suits not appeals. I believe that if the practice directions were meant to apply equally to pending Appeals , the drafters of the rules would have expressly stated so.
18. To make such inference would amount to arrogating this court a jurisdiction which it does not have . It is trite law that jurisdiction can only flow from the Constitution or statute and “a court cannot expand its jurisdiction through judicial craft or innovation” (see Samuel Kamau Macharia vs Kenya commercial Bank (2012) e KLR, cited by the Applicant.)
19. Am in agreement with the Applicant that the Appeal was filed in a court without jurisdiction to determine it . In the circumstances the Appeal is hereby struck off.
20. Each party to meet their own costs.

DATED , SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 29TH DAY OF APRIL 2025

S. CHIRCHIR

JUDGE

In the presence of :

Godwin Luyundi- Court Assistant.

