



**Endmor Steel Millers Ltd v Asunguka (Civil Appeal E680 of 2021)  
[2024] KEHC 8297 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8297 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E680 OF 2021**

**REA OUGO, J**

**JUNE 27, 2024**

**BETWEEN**

**ENDMOR STEEL MILLERS LTD ..... APPELLANT**

**AND**

**PHILIP LIBESE ASUNGUKA ..... RESPONDENT**

*(Being an appeal from the judgment and/or orders of Honourable D.O Mbeja (Mr) SPM delivered on 24th September 2021 in Milimani CMCC No. 7201 of 2016)*

**JUDGMENT**

1. The respondent at the subordinate court filed suit against the appellant alleging that he was employed by the appellant and was injured on 5<sup>th</sup> February 2015 at work while performing his duties. The respondent sought for damages at the subordinate court. The trial magistrate in her judgment awarded Kshs 700,000 as general damages and Kshs 3,000/- as special damages.
2. The appellant dissatisfied with the finding of the subordinate court has preferred this appeal and relied on 7 grounds of appeal. However, before the court considers the merits of the appeal, it must first ask itself whether the matter is properly placed before this court. In the case of *Owners of the Motor Vessel "Lillian S" v. Caltex Oil [Kenya] Limited* [1989] KLR 1, the court held that:  

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more stop. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
3. The respondent sustained injuries at work and his claim should be under the *Work Injury Benefits Act* (WIBA). The Court of Appeal in *Attorney General v Law Society of Kenya & Another* [2017] eKLR



held that under the provisions of WIBA, injuries covered by the Act are subject to adjudication by the Director of Occupational Safety and Health Services, who is explicitly empowered to adjudicate on such matters. Moreover, WIBA expressly prohibits aggrieved employees from initiating court proceedings, except as provided for within the Act itself. The right to seek recourse in courts as a primary option is restricted, with the Employment and Labour Relations Court designated as an appellate court following the Director's decision, as stipulated in section 52(2) of WIBA.

4. The court having considered the provisions of WIBA and the Court of Appeal decision in Attorney General v Law Society of Kenya & Another [2017], this court must down its tools as it is not clothed with the requisite jurisdiction to entertain the appeal before it. Consequently, the appeal is struck out for lack of jurisdiction. Each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 27<sup>TH</sup> DAY OF JUNE 2024**

**R.E. OUGO**

**JUDGE**

In the presence of:

Miss Tuwei -For the Appellant

Miss Kisiangani -For the Respondent; Wilkister/Diana – C/A

