



Aura v Tiir Aluminium Industries Limited (Miscellaneous Application E192 of 2024) [2025] KEELRC 2539 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2539 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E192 OF 2024
BOM MANANI, J
SEPTEMBER 25, 2025**

BETWEEN

PAUL MWALO AURA APPLICANT

AND

TIIR ALUMINIUM INDUSTRIES LIMITED RESPONDENT

RULING

Background

1. The Applicant has moved the court to adopt the award by the Director of Occupational Safety and Health (the Director) as a judgment of the court. He contends that he was employed by the Respondent as a machine operator and suffered an injury as a result of an industrial accident which occurred on 4th January 2023. It is his case that on the fateful day, the machine he was operating crushed his left hand leading to amputation of the arm.
2. The Applicant avers that the Respondent reported the accident to the Director who assessed his (the Applicant's) injury and awarded him 65% permanent incapacity. He further contends that the Director awarded him compensation of Ksh. 1,214,252.31.
3. The Applicant avers that his lawyers who were following up the matter for him realized that the Director had omitted to make provision for the cost of a prosthetic arm in the award. As a result, he contends that he applied to the Director to review the award as provided for under the [Work Injury Benefits Act](#).
4. The Applicant avers that following the appeal, the Director revised the award to Ksh. 1,815,052.00 to cover the prosthetic arm which had been omitted in the first assessment. He avers that although a demand was sent to the Respondent to pay the amount awarded, it did not comply thus necessitating the instant proceedings.



5. When the Respondent was served with the application, it filed a Notice of Preliminary Objection challenging the court's jurisdiction to entertain the matter. According to it, the law does not donate jurisdiction to this court to adopt the Director's award.
6. The Respondent contends that the *Work Injury Benefits Act*, the *Employment Act* and the *Employment and Labour Relations Court Act* do not have provision for enforcement of the Director's awards. As such, it avers that the court has no mandate to adopt the award.
7. Despite the aforesaid objection to the court's jurisdiction, the parties subsequently recorded a consent in the cause through which judgment was entered for the Applicant for Ksh. 1,268,155.00. The parties also agreed that they submit on whether the balance of the award was payable.
8. Based on the aforesaid consent, both the Applicant and Respondent filed submissions stating their respective position on the balance of the award. According to the Applicant, the amount is payable because it is part of the Director's award. On the other hand, the Respondent contends that the amount is not payable because the Director included the sum of Ksh. 600,800.00 in the award to cover future medical expenses for the Applicant after the time for revision of the award had lapsed. Further, the Respondent contends that the Director did not hear it (the Respondent) on this additional sum before it was included in the award.
9. The Respondent contends that future medical expenses are not automatically payable. It contends that for such expense to be included in the Director's award, it must be properly assessed and justified.

Analysis

10. It is true as the Respondent contends that the *Work Injury Benefits Act* is silent regarding enforcement of the Director's award. As such, one may wonder whether the court has jurisdiction to enforce the award.
11. The jurisdiction of the court is donated by, inter alia, *the Constitution*, the *Employment and Labour Relations Act* and the *Employment Act*. Article 162(2) of *the Constitution* provides for the establishment of the court for purposes of determining disputes relating to employment and labour relations. These disputes include enforcement of awards made by the Director under the *Work Injury Benefits Act*.
12. Section 12 of the *Employment and Labour Relations Court Act* grants the court exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution*. This includes applications for enforcement of awards by the Director under the *Work Injury Benefits Act*.
13. Section 86 (initially section 87) of the *Employment Act* empowers the court to entertain any question or difference that may arise from an employment relation. This includes questions relating to enforcement of awards by the Director under the *Work Injury Benefits Act*.
14. Rule 69 of the *Employment and Labour Relations Court (Procedure) Rules, 2024* entitles parties who have had a labour dispute resolved through the alternative justice system to apply to the court for adoption of the award as a decision of the court for purposes of enforcement. This includes awards rendered by the Director under the *Work Injury Benefits Act*.
15. In the case of *Joash Shisia Cheto v Thepot Patrick Charles* [2022] eKLR, this court underscored the fact that the *Employment and Labour Relations Court* has jurisdiction to entertain applications for enforcement of Director's awards under the *Work Injury Benefits Act* despite the silence in that piece of legislation on the subject. This position has since been affirmed by the Court of Appeal in the case of *Charles v Cheto* [2025] KECA 784 (KLR).



16. The foregoing being the case, it is apparent that contrary to the position expressed by the Respondent, this court has jurisdiction to adopt the Director's award. As such, the contention that the court has no jurisdiction to entertain the instant application fails.
17. As was observed in *Joash Shisia Cheto v Thepot Patrick Charles* [2022] eKLR and later affirmed by the Court of Appeal in *Charles v Cheto* [2025] KECA 784 (KLR), this court has no jurisdiction to inquire into the merits of the Director's award at the point of adoption of the award. The court's role at that point is limited to adopting the award as a judgment of the court for purposes of enforcement.
18. If a party wishes to challenge the merits of the award, he ought to do so through the procedure which is provided under sections 51 and 52 of the *Work Injury Benefits Act*. He should first move the Director for review of the award in terms of section 51 of the aforesaid Act. If he is unsatisfied with the Director's decision on review, he may file an appeal to the Employment and Labour Relations Court under section 52 of the Act.
19. It is during the conduct of the proceedings that are contemplated under sections 51 and 52 of the *Work Injury Benefits Act* that the Director and this court may review the merits of the award. If the aggrieved party was unaware of the award and was therefore not able to challenge it within the timeframe that is donated under the *Work Injury Benefits Act*, he may approach the Employment and Labour Relations Court under its Judicial Review jurisdiction but not otherwise to question the propriety of the award (see *Charles v Cheto* [2025] KECA 784 (KLR)).
20. The Respondent submits that the Director's decision to revise the award from Ksh. 1,214,252.31 to Kshs. 1,815,052.00 in order to include a sum of Ksh. 600,800.00 was rendered outside the permissible timeframe and without affording it (the Respondent) an opportunity to be heard. However and as pointed out earlier in this decision, these concerns by the Respondent which question the merits of the Director's decision cannot be the subject of consideration at the point of adoption of the award.
21. If the Respondent wished to have the aforesaid matters considered, it ought to have moved the Director, in the first instance, to review the award under section 51 of the *Work Injury Benefits Act*. If dissatisfied with the Director's decision on review, the Respondent would then have been entitled to file an appeal to the court under section 52 of the Act.
22. Alternatively, it was open to the Respondent to invoke the court's Judicial Review jurisdiction in respect of the aforesaid matters if it was of the view that it was time barred to either apply to the Director to review the decision or appeal to the court. As the record shows, the Respondent did not do so. As such, the court cannot open an inquiry into the two issues.
23. As the documents filed by the Applicant demonstrate, the Director was alive to the fact that the request to review the award was filed outside time. However, he admitted it (the application for review).
24. The Respondent did not challenge the Director's decision to admit the application for review out of time through the Director. Neither did he do so by way of appeal or an application for Judicial Review through this court. As such, the Director's decision to validate the request for review out of time remains unchallenged.

Determination

25. The foregoing being the case, the court arrives at the conclusion that the Respondent's objection to the reviewed award by the Director is without merit. As such, it is rejected.



26. The court therefore adopts the amended award by the Director with the consequence that judgment is hereby entered for the Applicant in the sum of Ksh. 1,815,052.00 as awarded by the Director on 14th June 2024.
27. The court notes that the Respondent has already paid the Applicant Ksh. 1,268,155.00 as per the consent between the parties dated 20th March 2025.
28. Consequently, the Respondent is ordered to pay the Applicant the sum of Ksh. 546,897.00 being the difference between what was awarded by the Director and what it (the Respondent) has already paid to the Applicant.
29. The above sum attracts interest at court rates from the date of this decision.
30. Costs of the application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED ON THE 25TH DAY OF SEPTEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

