



Kyalo v DPL Festive Limited & another (Miscellaneous Cause E034 of 2025) [2025] KEELRC 2441 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2441 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E034 OF 2025
S RADIDO, J
SEPTEMBER 18, 2025**

BETWEEN

NZUVA KYALO APPLICANT

AND

DPL FESTIVE LIMITED 1ST RESPONDENT

APA INSURANCE LIMITED 2ND RESPONDENT

RULING

1. For determination is a Motion dated 14 February 2025 by Nzuva Kyalo (the applicant) seeking orders:
 - i. ...
 - ii. That the Court do adopt the assessment by the Director of Occupational Health and Safety in Claim Reference No. WIBA/NRB/08506/2023 of Kshs 874,422/- as an order of the Court.
 - iii. That the Court do issue a decree in favour of the applicant against the Respondents for the said amount of Kshs 874,422/-.
 - iv. That the Court do issue such other orders as it deems necessary to issue to serve the interests of justice herein.
 - v. That the costs hereof be paid by the Respondents.
2. The grounds in support of the Motion were that the applicant had been injured in the course of work on 18 February 2022; the Director of Occupational Safety and Health had assessed compensation at Kshs 874,422/- on 10 July 2024, and the Respondents were notified of the award but had neglected to pay.
3. The Court gave directions on the Motion on 17 February 2025 and 12 March 2025, and the applicant filed his submissions on 6 March 2025.



4. In the submissions, the applicant asserted that the Court had the power to enforce the award by the Director of Occupational Safety and Health and that the Respondents had no lawful reason to withhold payment (*Lagat v Kenya Ordnance Factories Corporation (2024) eKLR*; *Richard Akama Nyambane v ICG Maltauro Spa (2020) eKLR* and *Law Society of Kenya v Attorney General & Ar (2019) eKLR*).
5. The Respondents caused two replying affidavits sworn by their Legal Officers to be filed on 13 March 2025. The Respondents filed their submissions on 17 March 2025.
6. In the first affidavit, APA Insurance Ltd denied any contractual or legal nexus with the applicant in respect to the action.
7. The Legal Officer of DPL Festive Ltd admitted in her affidavit that the applicant was involved in a road accident on 18 February 2022; a report was made to the Director of Occupational Safety and Health; the Director assessed the injury without permanent incapacity and awarded compensation at Kshs 202,038/-; the applicant was paid full salary while away on sick leave and was not entitled to the compensation of Kshs 202,038/-; the applicant served another notification dated 10 July 2024 with compensation of Kshs 874,422/-; DPL Festive Ltd sent the applicant for a second medical opinion which revealed permanent disability of 5%; APA Insurance thereafter lodged an appeal with the Director but the appeal was rejected on 7 October 2024, and that the documents leading to the award of Kshs 874,422/- and the award were forgeries.
8. The Legal Officer filed a further affidavit on 15 March 2025 to place before the Court a correct exhibit.
9. The Respondents urged in their submissions that the 2nd Respondent was merely an insurer and that the award could only be enforced against the 1st Respondent employer, and that it had forwarded to the 1st Respondent a settlement cheque for Kshs 364,665/-.
10. Because of the inconsistent evidence/records placed before the Court, the Court issued a summons to the Director, Occupational Safety and Health on 15 May 2025 to appear and give evidence.
11. An Assistant Director, Occupational Safety and Health, Dr Mithanga, appeared in Court on 26 May 2025 and was examined under oath by the parties.
12. The Director disowned the Demand for Payment (DOSH Form 4) dated 10 July 2024 and testified that the electronic signature therein was lifted and impressed on the Form. The Director confirmed that the genuine DOSH Form 4 is the one dated 20 July 2024, which assessed the applicant's permanent disablement at 0% and awarded Kshs 202,038/46.
13. The Court has considered the Motion, affidavits, evidence of the Assistant Director and submissions.
14. The parties have placed before the Court Two Demands for Payment of Work Injury Benefit.
15. The first Demand dated 20 July 2024 has 0% permanent disablement with an assessment of Kshs 202,038/46/-.
16. The second demand is dated 10 July 2024, and it shows that the applicant sustained 20% permanent disablement with benefit assessed at Kshs 672,384/-.
17. Both demands were assessed by James Mithanga, an Assistant Director, Occupational Safety and Health.
18. Dr Mithanga disowned the Demand dated 10 July 2024 and relied on by the applicant. The Demand was a forgery. The applicant must have been behind the forgery or complicit in the forgery.



19. It is regrettable that forged documents are slowly being used by employees to claim awards under the *Work Injury Benefits Act*. This developing practice was prevalent in road traffic accident injury claims.
20. The applicant's action, being based on a forged document purported to have come from the office of the Director, Occupational Safety and Health, cannot be the foundation of an adoption by this Court.

Orders

21. The Motion dated 14 February 2025 is dismissed with costs to the 1st Respondent, which the applicant must meet before he can bring any further action against the Respondent.
22. The costs to be subjected to taxation with a subject value of Kshs 874,422/-.

DELIVERED VIRTUALLY, DATED AND SIGNED IN ISIOLO ON THIS 18TH DAY OF SEPTEMBER 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For applicant Florence Mwangangi & Co. Advocates

For Respondents Ochieng K. & Associates

Court Assistant Wangu

