



Lachlan Kenya Ltd. v Director of Occupational Safety and Health Services; Lusaka (Interested Party) (Petition E027 of 2025) [2025] KEELRC 2445 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2445 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E027 OF 2025**

S RADIDO, J

SEPTEMBER 18, 2025

**IN THE MATTER OF ARTICLES 10, 20, 22, 23, 47, 48, 50
AND 258 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 4 AND 6 OF THE
FAIR ADMINISTRATIVE ACTION ACT, 2015**

AND

**IN THE MATTER OF SECTIONS 23, 52, 53 AND
54 OF THE WORK INJURY BENEFITS ACT, 2007**

AND

**IN THE MATTER OF SECTION 12 OF THE EMPLOYMENT
AND LABOUR RELATIONS COURT ACT, 2011**

AND

**IN THE MATTER OF RULES 3(4) AND 4 OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

LACHLAN KENYA LTD. PETITIONER

AND

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH
SERVICES RESPONDENT**

AND



JUDGMENT

1. Lachlan Kenya Ltd (the Petitioner) sued the Director of Occupational Safety and Health Services (the Director) on 25 February 2025, asserting that the Director had violated its constitutional rights by failing to investigate allegations of forgery and fraud in respect of a workplace injury claim made by Kim Jackson Daniel Lusaka (the Interested Party).
2. The remedies sought by the Petitioner were:
 - i. A declaration that by issuing the award dated 28th September 2022 without the involvement of the Petitioner, the Respondent's actions violated the Petitioner's right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair contrary to Article 47(1) of *the Constitution* of Kenya.
 - ii. A declaration that the Respondent's failure to notify the Petitioner of the proceedings related to the alleged work injury and require its presence during proceedings that led to the award dated 28th September 2022 violated the Petitioner's right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair guaranteed under Article 47(1) of *the Constitution* of Kenya.
 - iii. A declaration that the Respondent violated the provisions of Article 10(c) of *the Constitution* of Kenya, which provides for good governance, integrity, transparency and accountability by disregarding the evidence of fraud and forgery which was submitted to it by the Petitioner on 12th September 2024.
 - iv. A declaration that the Respondent's failure to conduct investigations into the withholding of material facts and submissions of fraudulent and forged documents in support of a work injury claim is unlawful, unfair and violates section 23 of the *Work Injury Benefits Act*.
 - v. A declaration that the Respondent violated the Petitioner's right under Article 47 of *the Constitution* of Kenya by failing to issue a decision within 14 days of receipt of the Petitioner's objection dated 13th January 2025, received on 15th January 2025.
 - vi. An order quashing the Respondent's decision dated 28th September 2022.
 - vii. An order quashing the Respondent's decision dated 10th December 2024.
 - viii. An order of mandamus compelling the Respondent to issue a formal reply, with reasons, to the Petitioner's objection dated 13th January 2025.
 - ix. An order of mandamus compelling the Respondent to conduct fresh investigations into the Interested Party's work injury claim based on the evidence tendered by the Petitioner.
 - x. An order staying the proceedings and arresting the Ruling in Nairobi ELRC Miscellaneous No. E265 of 2023 pending issuance of a fresh award by the Respondent after conducting fresh investigations into the Interested Party's work injury claim.
 - xi. Costs of this Petition to be borne by the Respondent and Interested Party.
 - xii. Any other relief that this Honourable Court may deem just and expedient in the circumstances.



3. The Petitioner's case, as gleaned from the supporting affidavit, was that the Interested Party, then an employee, had alleged to have been involved in an accident on the way to work on 19 September 2022; the Interested Party then lodged a claim for compensation with the Director using forged documents; the Director processed the claim and made an award on 28 September 2022 of Kshs 14,599,468/-; the Interested Party informed the Petitioner's insurers of the injury on 30 September 2022 without involving the Petitioner; the Insurer sent the Interested Party for a second medical examination through a letter dated 15 November 2022; the doctor indicated in his report that the Interested Party's injuries were not solely caused by the accident and there was no permanent disability; the insurer reimbursed the Interested Party certain medical expenses on 25 November 2025; the Interested Party underwent another medical examination at the request of the Insurer and a report was issued on 6 October 2023 confirming the findings of the earlier review; the Insurance informed the Interested Party he could not be compensated and this prompted him to move the Court in Nairobi ELRC Misc Application No. E265 of 2023, *Kim Jackson Daniel Lusaka v Lachlan Kenya Ltd*; upon service of the proceedings, the Petitioner established that the Interested Party had obtained the award through fraudulent/forged records; forensic examination revealed the DOSH 1 used to report the accident/injury and award compensation had a forged signature of the Petitioner's Administrative Assistant and a medical report from AAR Syokimau; Interested Party relied on a Police Abstract obtained after assessment of the award; a report was made to the Police on 3 July 2024; Objections were raised with the Director on 6 May 2024; pending determination of the Objection by the Director, the Petitioner filed proceedings to stay enforcement of the award and the Court directed the Director to determine the objection; on 12 September 2024, the Petitioner's advocate requested the Director to give a formal response to the Objections of 6 May 2024, and consider the concerns on fraud; the Director replied on 10 December 2024 indicating that an objection had not been made as required under section 51(1) of the *Work Injury Benefits Act* warranting a formal response and that no report of fraud had been made; the Petitioner filed a formal objection on 13 January 2025, but no decision was made within 14 days; the Director had failed to conduct investigations as demanded by the *Work Injury Benefits Act* thus violating the Petitioner's right to fair administrative action as envisaged under section 4 of the *Fair Administrative Action Act* and that the Petitioner stood to suffer irreparably.
4. Filed together with the Petition was a Motion dated 24 February 2025, seeking to stay the proceedings in Nairobi Miscellaneous Application No. E265 of 2023, *Kim Jackson Daniel Lusaka v Lachlan Kenya Ltd*.
5. In a Ruling delivered on 12 March 2025, the Court declined to stay the proceedings and dismissed the Motion.
6. On the same day, the Court directed the parties to file and exchange responses and submissions on the Petition.
7. The Director caused to be filed a replying affidavit on 25 March 2025, sworn by a Deputy Director.
8. The Deputy Director set out in the affidavit the procedures for processing a work injury claim and also deponed that the Petitioner reported the injury involving the Interested Party in September 2022; the primary doctor had assessed that the Interested Party had 30% permanent incapacity; compensation was assessed based on the primary doctor's evaluation and a demand dated 29 September 2022 for payment made to the Petitioner; the Petitioner did not raise any objection upon receipt of the demand until 6 May 2024 and 12 September 2024, nearly 2 years after the demand; the letters did not give any explanation why an objection was not made within the prescribed time; the Petitioner did not raise any issue when its Insurers sent the Interested Party for further medical evaluations and that the Insurer



- even reimbursed the Interested Party's medical expenses; the Petitioner was always aware of the accident and that the Petitioner did not lodge an objection as required by the [Work Injury Benefits Act](#).
9. The Interested Party filed his replying affidavit and Notice of Preliminary Objection on 27 March 2025.
 10. In the affidavit, the Interested Party stated that it is the Petitioner which made a report to the Director through an electronic portal maintained by the Directorate; the Petitioner was notified of the assessment of compensation and demand for payment through email on 28 September 2022; the Petitioner's General Manager called him to discuss the award and the next day he got in touch with the Insurers who gave him forms to complete and return; the Petitioner caused him to be reimbursed medical expenses but not compensation forcing him to move the Court; the Petitioner had raised the same issues raised herein in its response to Nairobi Misc Application No. E265 of 2023, and the Court determined the issues in its Ruling therein, and thus the doctrine of res judicata applied.
 11. The Petitioner filed a further affidavit contending that the Petition was not res judicata because it had been filed before the Court delivered a Ruling in Nairobi ELRC Misc Application No. E265 of 2023; it did not report the injury to the Director as it did not have an active account with the Directorate; the Administrative Assistant said to have signed the DOSH Form had disowned the signature in the form; the Objection dated 13 January 2025 had not been considered, and the Director had not involved it before making the award. The Petitioner reiterated earlier depositions as well.
 12. The Petitioner filed its submissions on 29 April 2025, and it set out 4 Issues for adjudication:
 - i. Whether the Petition is res judicata and sub judice?
 - ii. Whether the Interested Party's work injury claim was subjected to the due process as required by the [Work Injury Benefits Act](#) prior to the issuance of the award?
 - iii. Whether the Respondent's actions and omissions violated the Petitioner's rights?
 - iv. Whether the Petitioner is entitled to the reliefs sought?
 13. The Interested Party filed his submissions on 30 April 2025. He raised One Issue:
 - (i) Whether the Petition should be allowed?
 14. The Director filed his submissions on 12 May 2025, and he identified the Issues for determination as:
 - i. Whether due process was followed by the Respondent in issuing the award to the Interested Party, and whether the Petitioner's right to fair administrative action was violated?
 - ii. Whether the Petitioner is entitled to the reliefs sought?
 15. The Court has given due consideration to the Petition, affidavits and submissions and makes the following determinations.

Res judicata

16. One, the Interested Party commenced proceedings to enforce the award by the Director, and the Petitioner opposed the adoption of the award on the very same grounds now set out in the Petition.
17. The Court considered the Objections and rendered itself in a Ruling delivered on 13 March 2025 as follows:



14. First, the Respondent's Managing Director admitted in his replying affidavit that the applicant informed him on 19 September 2021 that he had been involved in an accident while on the way to work.
15. Under section 21 of the *Work Injury Benefits Act*, the Respondent had a statutory duty to report the accident to the Director, Occupational Safety and Health Services within 24 hours.
.....
20. Third, there is un rebutted evidence before the Court that the Directorate of Occupational Safety and Health Services used an online platform to receive reports of accidents/injuries in the workplace.
21. The Respondent, through its Administrative Officer, reported the accident/injury involving the applicant using the online platform and the same was acknowledged.
22. There is also un rebutted evidence on record that the Directorate of Occupational Safety and Health Services notified the Respondent of the assessment/award through an email based on the online platform on 28 September 2022.
23. Despite contending that the applicant forged the signature of the Respondent's Administrative Assistant in the form reporting the accident/injury, the Respondent did not place before this Court any affidavit from the Administrative Assistant claiming that her signature was forged.
24. Fourth, the Respondent did not deny that the Directorate of Occupational Safety and Health Services operates an online system for reporting and processing injury claims, or explain how and when the applicant would have infiltrated the system.
25. The Respondent, therefore, cannot feign ignorance of the processes by the Directorate culminating in the assessment/award of 28 September 2022.
26. Fifth, the Directorate of Occupational Safety and Health Services notified the Respondent of the assessment and award through email on 28 September 2022, and the said email address is outlined in correspondences from the Respondent placed before the Court.
27. The Respondent did not make an Objection within the prescribed 60 days after notification of the award through email/online platform, and it cannot feign ignorance that an award had been made.
28. Sixth, the Respondent did not place before the Court any admissible evidence that the applicant forged the medical records from AAR Hospital, Syokimau or that the hospital disowned the report.
29. Seventh, the discrepancies in the Police Abstract and DOSH Form 1 on the time of the accident/injury do not detract from the fact that the applicant was involved in an accident and both the Respondent and its insurers were informed promptly by the applicant.
18. The due process and violation of rights concerns raised by the Petitioner were determined by the Court. The Petitioner has now raised them again, albeit with a Constitutional colouring.
19. These concerns are res judicata and an abuse of the court process.



Fair administrative action/due process

20. If the Court were wrong on that conclusion, it would still make the following determinations.
21. Two, the Petitioner was aware of the work injury accident involving the Interested Party on the same day it happened on 19 September 2022.
22. Three, soon after the Director assessed compensation, on or around 8 November 2022, the Petitioner's insurers, Old Mutual Life Assurance Kenya Ltd, paid the Interested Party medical reimbursement of Kshs 236,810/58.
23. Four, on 15 November 2022, the Petitioner's insurers requested the Interested Party to undergo a detailed second assessment by its doctor. The doctors issued a medical report dated 24 November 2022. The report noted that some of the injuries presented by the Interested Party were not as a result of the accident.
24. Five, the Insurers notified the Interested Party on 22 December 2022 that it would be necessary for him to go for another medical evaluation after 3 months.
25. Six, the Petitioner caused the Interested Party to undergo a third medical examination, and a report dated 6 October 2023 was issued. The report reiterated the findings of the second medical examination.
26. Seven, it was only 6 May 2024, that the Petitioner wrote to the Director raising an objection under section 51(1) of the *Work Injury Benefits Act* to the award made on 28 September 2022. The objection also cited section 4 of the *Fair Administrative Action Act*.
27. This was several months after the Petitioner became aware of the award and obviously outside the prescribed 60 days under section 51(1) of the *Work Injury Benefits Act*.
28. Eight, the Court stayed Nairobi Miscellaneous Application No. E265 of 2023 allow the Director to address the Objections raised by the Petitioner.
29. On 12 September 2024, the Petitioner wrote to the Director, imploring him to review its objection thoroughly.
30. In a letter dated 10 December 2024, the Director rejected the Petitioner's Objection on the ground that it was filed outside the prescribed time.
31. The Petitioner's assertions that its right to fair administrative action has been violated are therefore misplaced.
32. Before concluding, the parties may wish to look at the Court of Appeal decision in Charles v Cheto (2025) KECA 784 (KLR) on how to interdict or challenge an injury claim process before the Director of Occupational Safety and Health.
33. From the authority, it appears that the Petitioner was attempting to have another bite at the cherry after realising that the strategies it had deployed to contest the award by the Director were meeting headwinds.

Conclusion and Orders

34. Flowing from the aforesaid, the Court finds the Petition not only as res judicata and an abuse of the court process, but without merit.
35. The Petition is dismissed with costs to the Respondent.



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

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner Ms Tambo instructed by Anne Babu & Co. Advocates

For Respondent Ms Aluoch, State Counsel, Office of the Honourable Attorney General

For Interested Party Ms Ombogo instructed by Ombogo & Co. Advocates

Court Assistant Wangu

