



**Mwanyalo v Jumbo Steel Mills Limited (Employment and Labour Relations
Miscellaneous E006 of 2025) [2025] KEELRC 2501 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2501 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
EMPLOYMENT AND LABOUR RELATIONS MISCELLANEOUS E006 OF 2025
K OCHARO, J
SEPTEMBER 18, 2025**

BETWEEN

PATRICK NYAMBU MWANYALO APPLICANT

AND

JUMBO STEEL MILLS LIMITED RESPONDENT

RULING

1. By a Notice of Motion Application dated 7th March 2025, the Respondent/Applicant seeks the following orders:
 - I. That the application be certified urgent and service thereof be dispensed with in the first instance.
 - II. That pending the hearing and determination of this application inter partes, there be a stay of execution of the Judgment/Decree entered on the 27th day of February 2025.
 - III. That this Honourable Court be pleased to set aside the ex parte proceedings and any consequential orders entered herein against the Respondent/Applicant.
 - IV. That the Respondent/Applicant be granted leave to file its replying affidavit to the application dated 17th February 2025.
 - V. That the costs of this application be provided for.
2. The application is based on the grounds outlined on its face, supported by an affidavit sworn by Symon K. Lariak dated 7th May 2025.
3. The Applicant/Respondent opposed the application through a replying affidavit sworn on 27th May 2025.



The Application

4. The Respondent/Applicant states that it was indeed served with the Applicant's/Respondent's amended application dated 17th February 2025, and that immediately upon receipt of service of the same, it immediately relayed to their insurance agent for onward transmission to the insurer M/s GA Insurance Limited to appoint a firm of advocates to take up the conduct of the matter.
5. Unbeknownst to the Respondent/Applicant, the insurance agent inadvertently failed to relay the application to the insurer, and by the time the Insurer was informed of the existing application, the Applicant's/Respondent's application had been allowed, and the Director's award, adopted as a Judgment of this Court.
6. The Respondent/applicant only came to learn of the above-stated proceedings and order of the Court when it was served with a taxation notice, and bill of costs dated 11th March 2025.
7. The Respondent/Applicant argues that it has a formidable response to the Applicant's/Respondent's stated application. It shall be significantly prejudiced if the proceedings and orders of 27th February 2025 are not set aside as if they will be condemned unheard contrary to the tenets of natural justice.

The Response

8. The Applicant/Respondent states that the Insurer is not a party to these proceedings. The Notice of Motion application is filed as if it were a representative suit. It is therefore defective, as it was initiated by a person who is not a party to these proceedings.
9. The Draft replying affidavit does not raise any formidable issue as alleged by the Respondent/Applicant. It raises a principal ground that he was subjected to secondary medical examinations, which significantly reduced the percentage of his permanent incapacity, an issue that this court cannot determine, as the Respondent/Applicant did not file any objection to the Director's decision under Section 51 of the [Work Injury Benefits Act](#).
10. The Respondent/Applicant hasn't presented to this Court any of the second medical reports.

Analysis and Determination

11. This Court has not lost sight of the fact that the supporting affidavit here is sworn by a Legal Officer of GA Insurance Company Limited, the insurer of the Respondent/Applicant, regarding third-party claims within the scope of the [Work Injury Benefits Act](#). The matters deposed to in the replying affidavit are matters that could only be deposed to appropriately by an employee of the Respondent/ Applicant with their authority. Otherwise, as it stands, the factual issues are mere hearsay, as they are deposed by a person within whose knowledge they cannot be said to be.
12. No wonder the affidavit is replete with generalities and lacks sufficient details. For example, inexplicably, the alleged insurance agent is not named, and the dates when he received the application and forwarded it to the Insurer are not provided. One can only conclude that no agent existed, contrary to the Respondent/Applicant's version.
13. There is no dispute that the proceedings and order that the Respondent/Applicant seeks to set aside flowed from an application for adoption of the award of the Director of Occupational Health Services and Safety, as the Judgment of this Court. The application and the resultant order were both on the premise that the Respondent/Applicant did not object to the award under the stipulations of Section 51 of the [Work Injury Benefits Act](#).



14. When an award or decision has been made by the Director and the period to lodge an objection against the decision has expired, such award or decision can only be challenged through a judicial review application, or if the concerned party has successfully applied to the Court under Section 12 of the Employment and Labour Relations Court and its inherent powers to extend the time within which to object to the award or decision.
15. I have carefully considered the current application and have been unable to decipher a purpose that the orders requested could serve if granted, given the provisions of Section 51 of the *Work Injury Benefits Act* and the fact that the Director's decision was not challenged within the applicable time frame or at all. This Court never gives orders in a vacuum, and as such, the orders sought in the application are hereby declined. The application is dismissed with costs.
16. Orders accordingly.

READ, SIGNED AND DELIVERED THIS 18TH DAY OF SEPTEMBER 2025

SIGNED:

HON. MR. JUSTICE OCHARO KEBIRA

