



REPUBLIC OF KENYA



KENYA LAW
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**Onyango v Jumbo Steel Mills Limited (Miscellaneous Case E004 of 2025)
[2025] KEELRC 2467 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2467 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
MISCELLANEOUS CASE E004 OF 2025
K OCHARO, J
SEPTEMBER 18, 2025**

BETWEEN

WYCLIFE NYANGAGA ONYANGO 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, the Assistant Manager - Legal Department, GA Insurance Company Limited.
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 5th February 2025, and that immediately upon receipt of the service, it promptly relayed this to their insurance agent for onward transmission to the insurer M/s GA Insurance Limited to appoint a firm of advocates to handle the matter.
5. Unbeknownst to the Respondent/Applicant, the insurance agent inadvertently failed to pass on 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 heard and granted, and the Director's award, adopted as a judgment of this Court.
6. The Respondent/Applicant only became aware of the proceedings and court order 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 strong response to the Applicant's/Respondent's stated application. It will be significantly prejudiced if the proceedings and orders of 27th February 2025 are not set aside, as they would have been condemned unheard, contrary to the principles 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 present any substantial issue as claimed by the Respondent/Applicant. It mainly contends that he underwent secondary medical examinations, which notably lowered the percentage of his permanent incapacity. However, this is an issue beyond the court's authority to decide, since the Respondent/Applicant did not object to the Director's decision under Section 51 of the *Work Injury Benefits Act*.
10. The Respondent/Applicant has not submitted any of the second medical reports to this Court.

Analysis and Determination

11. This Court notes that the supporting affidavit is sworn by a Legal Officer of GA Insurance Company Limited, which insures the Respondent/Applicant, concerning third-party claims under the *Work Injury Benefits Act*. An authorised employee should have made the facts deposed to in the replying affidavit of the Respondent/Applicant. In my view, the facts presented are essentially hearsay, as the affiant lacked direct knowledge of the matters they discuss.
12. No wonder the affidavit is replete with generalities and lacks sufficient details. For instance, strangely, the alleged insurance agent is not named, and the dates on which 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.
2. There is no dispute that the proceedings and order the Respondent/Applicant seeks to set aside originated from an application for adopting the award of the Director of Occupational Health Services and Safety, as the judgment of this court. The application and the resulting order were both based 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*.



13. 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.
14. Having carefully reviewed the current application, I cannot identify a clear purpose for the orders requested, especially considering section 51 of the *Work Injury Benefits Act* and the fact that the Director's decision was not challenged within the designated timeframe or at all. The Court does not issue orders in a vacuum. Consequently, the orders sought in this application are denied. The application is therefore dismissed with costs.
15. Orders accordingly.

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

SIGNED:

HON. MR. JUSTICE OCHARO KEBIRA

