



**Lusaka v Lachlan Kenya Limited (Miscellaneous Cause  
E265 of 2023) [2024] KEELRC 2062 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2062 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CAUSE E265 OF 2023  
NZIOKI WA MAKAU, J  
JULY 18, 2024**

**BETWEEN**

**KIM JACKSON DANIEL LUSAKA ..... APPLICANT**

**AND**

**LACHLAN KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The dispute herein relates to an alleged work injury. The Applicant filed the Miscellaneous Cause on 10<sup>th</sup> November 2023 seeking to enforce the decision of the Director of Occupational Safety and Health consequent to the claim made to him by the Applicant. The application before me is the one dated 7<sup>th</sup> May 2024 by the Respondent. The application seeks to stay the proceedings filed herein. The application is supported by the affidavit of Mr. Donald Mavividze. It is asserted that the claim before the Director was mischievous as the Applicant is alleged not to have suffered the injuries at the workplace.
2. The Applicant in his reply is opposed to stay and asserts that the office of Director is now functus officio having discharged his responsibility by granting the award he did which is subject of the enforcement. The Applicant asserts the motion by the Respondent is not for grant.
3. The matter is novel as this is the first time I am coming across a stay application pending a referral to the Director of Occupational Safety and Health. The [Work Injury Benefits Act](#) 2007 has been the punching bag when it comes to work injury matters. Under section 51(1) of the Act, any person aggrieved by a decision of the Director on any matter under the Act may within sixty days of such decision, lodge an objection with the Director against such decision. The manner of making the objection is prescribed to be in writing. This provision sets a time limit to make any objection prescribing sixty days. Further in the Act at section 54, there is provision that any person who in connection with a claim for compensation under the Act makes or causes to be made any statement which is false in any material respect, knowing it to be false, commits an offence. The action asserted to be subject of the



challenge is alleged to be falsification of material aspects of the claim. This places the allegations made within the purview of section 54. In my considered view, there is no time limit prescribed for when this action can be taken by the Director or a Court enforcing the provisions of WIBA. As the challenge has already been lodged before the Director, it is in the interests of justice that the objection be dealt with by the Director after which there can be intervention by this Court should the parties be minded to raise it before court. The Court therefore grants a stay of proceedings herein to permit the ventilation of the objection before the Director. Parties be at liberty to apply. Costs of the motion will abide the outcome in the Miscellaneous Cause.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2024**

**NZIOKI WA MAKAU**

**JUDGE**

