



**Mohamed v Director of Occupational Safety & Health Services & another (Employment and Labour Relations Cause E129 of 2023) [2024] KEELRC 1731 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1731 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E129 OF 2023**

**AN MWAURE, J**

**JULY 9, 2024**

**BETWEEN**

**ABDIRAHMAN ABDULLUHI MOHAMED ..... PETITIONER**

**AND**

**DIRECTOR OF OCCUPATIONAL SAFETY & HEALTH  
SERVICES ..... 1<sup>ST</sup> RESPONDENT**

**FREEDOM AIRLINE EXPRESS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The petitioner had filed a petition dated 9<sup>th</sup> June 2023 seeking the following orders:
  - i. A declaration be, and is hereby issued that the petitioner is an employee of the 2<sup>nd</sup> respondent hence entitled to right to fair labour practices under the [constitution](#).
  - ii. A declaration be, and is hereby issued that the petitioner has a right to access to justice under article 48 of the [constitution](#) vide the [Work injury Benefits act](#).
  - iii. A declaration be, and is hereby, issued that the respondents have violated and continue to violate the petitioner's right to fair labour practices and right to access to justice under article 48 of the [constitution](#).
  - iv. A declaration be, and is hereby issued that the 2<sup>nd</sup> respondent has violated and continue to violate the [Work Injury Benefits Act](#) by failing and or refusing to report the accident and fill DOSH Form 1.
  - v. A declaration be, and is hereby issued that the 1<sup>st</sup> respondent acts and/or omissions have violated and continue to violate the [Work Injury benefits act](#) by failing and or refusing to inquire and assess the compensation due to the petitioner.



- vi. An order of Mandamus be, and is hereby issued directing the 2<sup>nd</sup> respondent to fill and submit the Accident Notice Form (DOSH Form 1) with the 1<sup>st</sup> respondent forthwith, but not later than 7 days from the delivery of judgment of this Court.
  - vii. An order of Mandamus be and is hereby issue ddirecting the 1<sup>st</sup> respondent to inquire and assess the compensation due to the petitioner upon receipt of the above notice, without any delay but not later than 60 days from the delivery of judgment of this Court, or as the Court may so direct.
  - viii. Damages be awarded to the petitioner for subjecting the petitioner to an unfair administrative action
  - ix. Damages be awarded to the petitioner as against the respondents for violating the petitioner's right to fair labour practices.
  - x. Costs of and incidental to, these proceedings be borne by the 1<sup>st</sup> and 2<sup>nd</sup> respondent.
  - xi. Any other relief that this honourable Court may deem fit and just to grant in the interests of justice and/or that may become apparent and necessary in the course of these proceedings.
2. The Court after lengthy deliberations and giving numerous orders finally received the report from Deputy Director of Occupational Safety and Health Services Mr. Justus Nyakego dated 17<sup>th</sup> May 2024. Mind you this is a case that was brought to Court on 9<sup>th</sup> June 2023. The petitioner sustained the injuries which are the genesis of this suit on 26<sup>th</sup> September 2019.
  3. After filing the report the Deputy Director Mr Justus Nyakego on 22<sup>nd</sup> May 2024 explained to the Court the consideration by the director of Occupational Safety and Health Services in preparing the report. He essentially informed the Court that an injured person is usually entitled to costs of temporary incapacitation, permanent incapacity, medical expenses incurred and future medical expenses.
  4. The 2<sup>nd</sup> respondent at the same time informed the honourable Court they have filed a judicial review at the High Court and so requested the Court for another mention date to avail the outcome of the said judicial review. The referred judicial review is not presented to this Court and the Court is clueless what the same is all about.
  5. Under those circumstances, the Court finds no grounds to delay the award of this very old case and in any event the 2<sup>nd</sup> respondent has not appealed the assessment report of the Director Occupational Safety and Health Services before the Employment Court as is the procedure.
  6. The Court is obliged to adopt the report of the Director of Occupational Safety and Health Services dated 17<sup>th</sup> May 2024 and gives the following awards:
    - i. Work injury compensation kshs 1,958,400/- payable 30 days from today's date.
    - ii. Kshs 209,625 being transport expenses payable 30 days from today's date.
    - iii. Incurred medical expenses kshs 11,750,595/80 payable 30 days from today's date.
    - iv. Future medical expenses kshs 8,000,000/-payable within 6 months from today's date.
    - v. Costs of the petitioner to be borne by the 2<sup>nd</sup> respondent.
    - vi. Any delay in settling any of the above at the given timeliness will attract interest at Court rates from date of default till full payment.



Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9<sup>TH</sup> DAY OF JULY, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

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