



REPUBLIC OF KENYA



**Nassoro v DM Concrete (K) Limited & another (Cause E003 of 2024)
[2024] KEELRC 1924 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1924 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E003 OF 2024**

**B ONGAYA, J
JULY 26, 2024**

BETWEEN

DZEHA NYANJE NASSORO CLAIMANT

AND

DM CONCRETE (K) LIMITED 1ST RESPONDENT

D. MANJI CONSTRUCTION COMPANY LIMITED 2ND RESPONDENT

JUDGMENT

1. The applicant filed the originating summons dated 01.03.2024 through Fred K. Musyimi & Associates Advocates. The originating summons was under section 87 of the *Employment Act*, Cap 226 Laws of Kenya, section 12 of the *Employment and Labour Relations Act*, 2011, Rules 28 and 31 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 and section 26 of the *Work Injury Benefits Act*, (WIBA), Cap 236 Laws of Kenya.

The applicant prayed for orders as follows:

- a. That the award of the Director of Occupational Safety and Health Services (DOSHS) dated 14th November 2022 be adopted as a judgment of the Court and a decree be accordingly issued for the awarded sum of Kshs. 642,750/=.
- b. That the costs of the application be borne by the respondent.
2. The application was supported by the attached affidavit of the applicant. The applicant stated that while in the course of the respondents' employment, he was involved in an accident on 12th June 2019, sustained injuries on his hand and broke his left thumb. That the accident was reported to the DOSHS, a DOSHS Form-1 duly filled and compensation assessed to him at Kshs. 642,750/=.
3. The applicant's case is that despite a copy of the assessment Form being sent to the respondents followed by a letter of 2nd March 2023 demanding the said payment, they have refused and or neglected



to pay the same and the prescribed 90-day period of payment lapsed. He further noted that the respondents did not prefer an appeal against the assessment of the DOSH within the 60-day period prescribed by WIBA.

4. It was the applicant's case that the injury on his left thumb has caused him inability to undertake certain types of work hence limiting his income. That he is therefore in need of the compensation to provide for his family and that it is in the interest of justice that this Court adopts the assessment of the DOSH as an order of the Court, and, issue a decree as prayed, to pave way for execution. The applicant urged that when there has been no challenge to the award of the Director, this Court's inherent jurisdiction may be invoked to adopt the award of the DOSH as a judgment.
5. In response, the respondents filed grounds of opposition dated 30.05.2024 through G. Mutua Molo & Company Advocates. They opposed the application herein on the following grounds:
 - i. That the Honourable Court does not have any jurisdiction in law to entertain the proceedings herein within the purview of the provisions of the *Work Injury Benefits Act*, Cap 236 Laws of Kenya or at all.
 - ii. That at any rate, there is no enforceable determination of the Director of Occupational Health and Safety Services as contemplated under the law.
 - iii. That in the premises even if the Honourable Court had the jurisdiction to entertain the matter, the claim would be statute time barred by virtue of the provisions of Part XII of the *Employment Act*, Cap 226 Laws of Kenya.
 - iv. That from the applicant's own documents, the claim against the 2nd Respondent is without any factual foundation and is therefore misconceived.
6. The parties filed their respective submissions. The Court has considered the material on record and returns as follows:
 - a. As urged for the 2nd respondent there is no shown reason why the applicant has enjoined the 2nd respondent. The records about the assessment show the employer was the 1st respondent. In absence of any other material the Court returns that only the 1st respondent was properly suited.
 - b. As urged for the applicant the period prescribed under WIBA for objections and then appeals has lapsed. The applicant is entitled to adoption of the award as against the 1st respondent accordingly.
 - c. The respondents urged time barring and want of jurisdiction but no good justification has been shown in those respects.

In conclusion, the matter is hereby determined with orders as follows:

 - a. The award by the Director of Occupational Safety and Health Services (DOSH) dated 14th November 2022 is hereby adopted as a judgment of the Court and a decree accordingly to issue for the awarded sum of Kshs. 642,750/= payable to the applicant by the 1st respondent by 01.09.2024 failing interest to run thereon at Court rates from the date of filing the proceedings until full payment.
 - b. The 1st respondent to pay the applicant's costs of the proceedings and the respondents to bear own costs.



- c. The Deputy Registrar to return the case file to Machakos Sub-Registry forthwith within three days.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 26TH JULY 2024.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

