



**Republic v Nairobi County Occupational Safety and Health Services Officer
(Directorate of Occupational Safety and Health Services); Kole (Exparte
Applicant); Vimit Converters Limited (Interested Party) (Judicial Review
Application E039 of 2023) [2024] KEELRC 2056 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2056 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E039 OF 2023**

B ONGAYA, J

JULY 26, 2024

**IN THE MATTER OF: AN APPLICATION FOR
JUDICIAL REVIEW ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF: ARTICLES 10, 20, 23, 43(1)
AND 47 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF: SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF: SECTIONS 8 & 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF: ORDERS 53 OF THE CIVIL PROCEDURE RULES

AND

**IN THE MATTER OF: COMPENSATION TO THE APPLICANT FOR INJURIES
SUSTAINED AT THE WORKPLACE UNDER THE INJURY BENEFITS ACT (2007)**

BETWEEN

REPUBLIC APPLICANT

AND

**NAIROBI COUNTY OCCUPATIONAL SAFETY AND HEALTH SERVICES
OFFICER (DIRECTORATE OF OCCUPATIONAL SAFETY AND HEALTH
SERVICES) RESPONDENT**

AND



ANDREW MUSENJELI KOLE EXPARTE APPLICANT

AND

VIMIT CONVERTERS LIMITED INTERESTED PARTY

JUDGMENT

1. The applicant filed the Notice of Motion dated 19.04.2024 through Bryan Khaemba, Kamau Kamau & Co. Advocates under order 53 rule 3 of the Civil Procedure Rules, 2010, Section 8 and 9 of the Law Reform Act and all other enabling provisions of law seeking the following orders:
 - i. That this Honourable Court be pleased to issue an order of Mandamus to compel the respondent herein to make an award to the ex-parte applicant under the Work Injury Benefits Act, 2007 based on the notice of 27th April, 2023 as filed by Vimit Converters Limited (the employer) within twenty-one (21) days hereof.
 - ii. That the cost of this application be borne by the respondent.
2. The application was based upon the ex parte applicant's statutory statement and verifying affidavit and annexures thereto filed together with the application for leave to file the instant application both sworn on 07.11.2023. The ex parte applicant's case is as follows:
 - a. That he has been a bona fide employee for the interested party (hereafter 'the employer') for six years where he served as a machine operator.
 - b. That on or about the 10.02.2023, while discharging his duties he got into an accident and suffered serious injuries to which he was permanently incapacitated to a degree of 45%.
 - c. That in line with the provisions of the Work Injury Benefits Act, his employer was alerted and in turn filed a notice of the occupational accident to the Directorate of occupational safety and health services, the respondent herein.
 - d. That since the matter was reported to the respondent's office on 27.04.2023, it has done little to nothing to address the situation.
 - e. That after the accident, the employer stopped paying him and is hence unable to work at all to sustain himself and his family being the sole breadwinner.
 - f. That despite various correspondences with the respondent, no action has been taken.
3. The respondent did not enter appearance nor file any responses.
4. The interested party entered appearance on 03.05.2024 and subsequently filed grounds of opposition dated 28.05.2024 on the following grounds:
 - a. That the interested party ought not to have been joined as such in this suit.
 - b. That under Work Injury Benefits Act, 2007 sections 21 and 22, it is the legal duty of the employer (interested party) to notify the Directorate of the occupational safety and health services (the respondent) over occupational accidents. In this regard, the interested party properly notified the respondent on 27.04.2023.



- c. That upon notification, the directorate (respondent) is bound to make inquiries over the matter and make or refuse an award pursuant to section 23, 14 and 13 of the [Work Injury Benefits Act, 2007](#) respectively.
 - d. That the respondent has not made or refused an award as per provisions of [Work Injury Benefits Act, 2007](#).
 - e. That it's the interested party's position that they complied with the law in notifying the respondent over the occupational accident and thus, cannot be blamed in whatever manner by the applicant since the jurisdiction to make or refuse an award is legally vested on respondent.
 - f. That in the foregoing, the proper parties to this suit should have been the applicant and the respondent.
 - g. That it is fair and just to dismiss the application with costs.
5. The ex parte applicant and the interested party filed their written submissions. The court has considered both cases and all material on record and returns as follows:
- a. There is no dispute that the interested party had employed the applicant when the occupational injury accrued.
 - b. The accident or injury was reported to the respondent who despite reminders by the applicant has failed to perform the statutory duty to assess and award compensation.
 - c. The Court finds that the applicant has satisfied the criteria for grant of mandamus.
- In conclusion, judgment is hereby entered for the applicant against the respondent for:
1. The order of Mandamus hereby issued to compel the respondent herein to make an award to the ex-parte applicant under the [Work Injury Benefits Act, 2007](#) based on the notice of 27th April 2023 as filed by Vimit Converters Limited (the employer) and to do so by 01.09.2024.
 2. The respondent to pay the applicant's costs of the application.

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

BYRAM ONGAYA

PRINCIPAL JUDGE

