



Kung'u v Board of National Health Insurance Fund; Ministry of Interior and National Administration & another (Interested Parties) (Cause 1006 of 2023) [2024] KEELRC 2026 (KLR) (2 August 2024) (Ruling)

Neutral citation: [2024] KEELRC 2026 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1006 OF 2023
J RIKA, J
AUGUST 2, 2024**

BETWEEN

JOSEPH MUGAI KUNG'U CLAIMANT

AND

THE BOARD OF NATIONAL HEALTH INSURANCE FUND RESPONDENT

AND

THE MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION INTERESTED PARTY

THE HON. ATTORNEY - GENERAL INTERESTED PARTY

RULING

1. The Claimant is a recipient of an award of the Director of Work Injury, dated 3rd March 2022, for the sum of Kshs. 1,371,600.
2. He presented this Claim, through a Statement of Claim dated 17th November 2023, asking the Court to adopt the award of the Director of Work Injury, as its Judgment.
3. The Respondent and the Interested Parties filed a Notice of Preliminary Objection, dated 14th March 2024, stating that the Court has no jurisdiction, and the Claim should be struck out.
4. The Claimant appears to agree that this Court has no jurisdiction, in his Submissions dated 13th June 2024. He however proposes that the Claim is transferred to the High Court, which he argues to have jurisdiction. He states that the Respondent and the Interested Parties are in agreement, that the High Court has jurisdiction.



The Court Finds: -

5. The starting point, is in the Supreme Court of Kenya decision, Samuel Kama Macharia & Another v. Kenya Commercial Bank Limited & 2 Others [2012] e-KLR, which underscored that a Court's jurisdiction is conferred by *the Constitution* or, by a Statute. When a Court acts outside its constitutional or statutory power, it exercises judicial craft or innovation. This was restated by the Court of Appeal in *Rift Valley Railways Limited v. Hawkins Wagunza Musonye & Another* [2016] e-KLR.
6. The award was made in favour of the Claimant, after he sustained work injury. It was made under the *Work Injury Benefits Act*, 2007. The relevant procedure in the making and payment of awards for work injury, is spelt out under the *Work Injury Benefits Act*.
7. Neither the E&LRC or the High Court, has jurisdiction under the *Work Injury Benefits Act*, to enforce awards of the Director of Work Injury [alternatively called the Director of Occupational Safety & Health Services in the *Act*].
8. The Parties have not pointed out to any provision of the Act, conferring jurisdiction on the E&LRC or the High Court, in enforcing awards of the Director.
9. There is no mention of the High Court anywhere in the *Act*.
10. In *Lameck Nyakundi Anyona v. W.J.J. Kenya Construction Company Limited* [2022] e-KLR, it was held that the jurisdiction of the E&LRC, under the *Work Injury Benefits Act*, is appellate. The Court will only deal with Appeals, filed by Parties who are dissatisfied with the award of the Director. It will not deal with Claims or Miscellaneous Applications, for enforcement of awards of the Director.
11. There is no other written law, brought to the attention of the Court conferring jurisdiction on this Court or the High Court, in enforcement of the awards of the Director.
12. The Court of Appeal in *Attorney-General v. The Law Society of Kenya* [2017] e-KLR, underscored that Section 51 and 52 of the *Work Injury Benefits Act*, create an appellate system, with the E&LRC being the appellate jurisdiction.
13. There is no mention of any Court, being the enforcement mechanism for award of the Director.
14. It is not conceivable that an award should be placed before the High Court for adoption, and still be appealable at the E&LRC.
15. This defect on work injury procedure was deliberately created by the social partners, who authored the *Act*. It was argued by the authors, that the Courts and the Legal Practitioners had to be kept at an arm's length, in work injury claims, to protect the employer-employer relationship, from the ravages of ambulance chasers, which permeates personal injury claims. The small window left for interaction with the Judiciary, was therefore on appeal of the awards of the Director, at the E&LRC. The interaction ends with this appellate procedure.
16. The Claim filed herein fails for want of jurisdiction, and the proposal for transfer to the High Court, is itself without legal foundation.

It is ordered: -

- a. The Claim herein is declined for want of jurisdiction.
- b. No order on the costs.



c. The file is closed.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT
PRACTICE DIRECTIONS, 2020, THIS 2ND DAY OF AUGUST 2024.**

JAMES RIKA

JUDGE

