



**Obutu v Insight Management Consultant Limited (Cause
608 of 2022) [2024] KEELRC 2101 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2101 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 608 OF 2022**

**J RIKA, J
AUGUST 2, 2024**

BETWEEN

FRANCIS MOSE OBUTU CLAIMANT

AND

INSIGHT MANAGEMENT CONSULTANT LIMITED RESPONDENT

RULING

1. In his Statement of Claim filed on 1st September 2022, the Claimant prays for Judgment, against the Respondent, as follows: -

“ The Claimant prays that this Honourable Court find the Respondent failed to pay him work injury benefits and so make the following orders –
 - a. Work injury benefits as assessed by Dosh at Kshs. 65,989.83. [be granted?].
 - b. Damages at Kshs. 100,000.
 - c. Interest at court rates.
 - d. Costs.”
2. The Respondent filed a Notice of Preliminary Objection, challenging the jurisdiction of the Court, dated 14th November 2023.
3. Parties agreed to have the Objection considered and determined on the strength of their Pleadings and Submissions, the latter which were confirmed to have been filed and exchanged at the last appearance before the Court, on 20th June 2024.



The Court Finds:

4. In this Court's decision, *Lameck Nyakundi Anyona v. W.I.J. Kenya Construction Company Limited* [2022] e-KLR, it was held that the Court does not have jurisdiction in enforcement of awards of the Director, under the *Work Injury Benefits Act* or any other written law.
5. The jurisdiction of the Court, in work injury claims, as held in the Court of Appeal decision, *Attorney-General v. The Law Society of Kenya* [2017] e-KLR, is appellate, under Sections 51 and 52 of the Act.
6. In E&LRC Cause No. 1006 of 2023, *Joseph Muigai Kung'u v. The Board of National Health Insurance Fund [Respondent]; and the Ministry of Interior and Administration & Another [Interested Parties]*, delivered simultaneously with the Ruling herein, the Court held that there is a defect in the enforcement of awards of the Director, under the Act. The defect is a deliberate creation of the social partners who authored the Act, and intended to keep the Civil Courts and the Legal Practitioners at an arm's length, in work injury claims. It was argued that the employer-employee relationship should be jealously protected from ambulance chasers, commonplace in the Judiciary and the Legal Practice. It was an exclusion of necessary stakeholders, that has returned to haunt the social partners. It has become a vivid demonstration of the need to embrace the concept of tripartism-plus, in our employment and labour relations. Near-total blockade of the Judiciary and the Legal Professionals, in drafting and implementing the *Work Injury Benefits Act*, by the tripartite partners, – The Government, Labour and Employers- all on account of an irrational fear of ambulance chasers at the workplace, was self-defeating. The only interaction that exists, between work injury and the Courts, is through appeals from the Director's awards, filed with the E&LRC.
7. The Claimant is asking the Court to exercise judicial craft or innovation, by extending the appellate jurisdiction to enforcement of the Director's award. The appellate jurisdiction cannot conceivably be exercised simultaneously with the enforcement jurisdiction.
8. In the Supreme Court decision *Samuel Kamau Macharia and Another v. Kenya Commercial Bank Limited and 2 Others*, 2012 e-KLR; and Court of Appeal in *Rift Valley Railways Limited v. Hawkins Wagonza Musonye and Another* [2016] e-KLR, it was underscored that Courts can only exercise jurisdiction in accordance with *the Constitution* and the Statute. Assumption of jurisdiction not so conferred, amounts to exercise of judicial craft or innovation.
9. The Court is also persuaded that failure by the Respondent to enforce the award of the Director, cannot be declared by this Court to be in contravention of the right of fair labour practices. At the heart of the dispute is not a practice, but a legal right over which the Court is divested of jurisdiction, to enforce. The Court is simply divested of jurisdiction by the law, to deal with the award of the Director, other than on appeal.

It Is Ordered: -

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

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



