



Kariuki v Agro Processors Intl' (K) Limited alias Agro Fibre Company Limited (Miscellaneous Application E002 of 2024) [2024] KEELRC 2638 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2638 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E002 OF 2024**

**AK NZEI, J
OCTOBER 25, 2024**

BETWEEN

CHRISTOPHER NJAU KARIUKI APPLICANT

AND

AGRO PROCESSORS INTL' (K) LIMITED ALIAS AGRO FIBRE COMPANY LIMITED RESPONDENT

RULING

1. Before me is the Applicant's Notice of Motion dated 15th January, 2024; expressed to be brought under Sections 87 and 90 of the *Employment Act*, 2007 and Rule 17 of the *Employment and Labour Relations Court (Procedure) Rules 2016*. The Applicant seeks the following Orders:-
 - a. That this Court be pleased to adopt as Judgment of this Court the award of the Director of Occupational Safety and Health Services.
 - b. That Judgment be entered for the Applicant against the Respondent for Kshs.220,000/= with interest at 14% per annum from 3rd May, 2021.
 - c. That costs of the application be borne by the Respondent.
2. The application is based on the Applicant's supporting affidavit sworn on 15th January, 2024. It is deponed in the said supporting affidavit:-
 - a. That the Applicant was employed by the Respondent from May 2012 to May 2021, and that during the said period of employment, the Respondent maintained the name Agro Processors INTL' (K) Limited.
 - b. That the Respondent has since changed names to Agro Fibre Company Limited.



- c. That on 29th December, 2020, while in employment, the Applicant had an accident and sustained a fracture in his left limb, was treated and that the matter was reported to the Director of Occupational Safety. That compensation payable to the Applicant was assessed at Kshs.220,000/=.
 - d. That despite being informed of the compensation award payable and a reminder issued to them on 16th November, 2023, the Respondent has refused to pay.
 - e. That the Respondent did not appeal the Director's award within the time set out in law, and is therefore liable to pay.
3. Documents annexed to the supporting affidavit are DOSH Form 1 and a duly filled and signed Form DOSH/WIBA 4. The DOSH/WIBA 4 Form is duly signed and stamped by the Director (the County Occupational Safety and Health Officer). It is this document, dated 16th November, 2022 and addressed to the Respondent, that contains the award of Kshs.220,000/= made by the Director in favour of the Applicant. The Director's decision awarding the aforesaid sum of Kshs.220,000/= is not shown to have been appealed against by the Respondent.
 4. The application is opposed by the Respondent vide grounds of opposition dated 28th January, 2024. The Respondent states in the said grounds of opposition that the application is frivolous, an abuse of the court's process, is incompetent as orders sought cannot be issued in a miscellaneous application, and does not disclose any reasonable cause of action.
 5. The *Work Injury Benefits Act* (WIBA) is silent on how awards of compensation by the Director of Occupational Safety and Health Services (Director) to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not divest this Court of jurisdiction to enforce such awards; and especially where the Director's decision awarding the compensation has not been objected to and the employer has refused to pay the assessed compensation upon demand.
 6. I stated as follows in the case of *Amir Swaleh Omar v Mackezie Maritime (E.A) Limited* (2022) eKLR:-
 17. The *Act* (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.
 18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of *WIBA*, the assessed sum becomes the injured employee's right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director's assessment, and issuance of a decree which can then be executed to realise that right.
 19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim,



which this court can entertain and determine. Article 50(1) of the Constitution of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”

7. Pursuant to Article 162(2)(a) of the Constitution of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations disputes except where that jurisdiction has been expressly ousted by the statute over particular matters specified in that statute. A good example of such statutory provisions is Section 16 of the Work Injury Benefits Act (WIBA) which ousts this Court’s jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 of the said Act (WIBA) mandates the Director to make such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act, while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.

8. Rule 38 of the Employment and Labour Relations Court (Procedure) Rules 2016 (now repealed) provided as follows:-

“Subject to these Rules, the Court may regulate its own procedure.”

9. In view of the fact that the Respondent is not shown to have objected to the Director’s decision, either on liability or on the amount of compensation payable to the Applicant, pursuant to Section 51 of WIBA, and having considered written submissions filed on behalf of both parties herein, it is my finding that the Notice of Motion dated 15th January, 2024 is properly before this Court, and that it is merited.

10. Consequently, the said application is allowed in the following terms:-

- a. The award made by the Director of Occupational Safety and Health Services on 16th November, 2022 in favour of the Applicant herein is hereby adopted as a Judgment of this Court and, accordingly, Judgment is hereby entered for the Applicant against the Respondent for Kshs.220,000/= being the amount of compensation assessed by the Director.
- b. The Applicant is awarded interest at court rates from the date of this Ruling.
- c. A decree shall be drawn and issued, and shall be executed in the manner provided in this Court’s Rules of Procedure.
- d. Each party shall bear its own costs of the application.

11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2024

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE



Appearance:

.....Applicant

.....Respondent

