



**Kimathi v Insight Management Consultants Limited (Miscellaneous Application E091 of 2023) [2024] KEELRC 2576 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2576 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E091 OF 2023**

**BOM MANANI, J  
OCTOBER 24, 2024**

**BETWEEN**

**PATRICK KIMATHI ..... APPLICANT**

**AND**

**INSIGHT MANAGEMENT CONSULTANTS LIMITED ..... RESPONDENT**

**RULING**

**Background**

1. The Applicant has filed the instant application seeking orders to enforce the award of the Director of Occupational Safety and Health Services (the Director) which issued on 2<sup>nd</sup> July 2021. He contends that he sustained bodily injury whilst in the service of the Respondent following which the Director assessed the quantum of compensation payable to him at Ksh. 110,942.62.
2. The Applicant contends that notwithstanding the Director's award, the Respondent has neglected to pay the amount. Consequently, he prays that the court adopts the award as its judgment and orders the Respondent to pay the same.
3. The Respondent has opposed the application on the ground that it has been presented under the wrong provisions of law. Because of this, the Respondent contends that the court has no jurisdiction to entertain the motion.

**Analysis**

4. The application was filed pursuant to: Order 51 rule 1 of the Civil Procedure Rules, sections 1A, 1B & 3A of the *Civil Procedure Act*; Gazette Notice 9243 of 5<sup>th</sup> August 2011; and sections 10, 30, 34, 40 & 51 of the *Work Injury Benefits Act*, 2007.
5. The Employment and Labour Relations Court (the ELRC) is a creature of statute established pursuant to section 4 of the *Employment and Labour Relations Court Act* (ELRC Act) as read with



- article 162(2) of the [Constitution](#). Section 23 of the [ELRC Act](#) establishes the Employment and Labour Relations Rules Committee (the Rules Committee).
6. By virtue of section 27 of the [ELRC Act](#), the Chief Justice is mandated to make rules to regulate the practice before the ELRC. She/he discharges this mandate in liaison with the Rules Committee.
  7. Pursuant to the foregoing, the Rules Committee published the [Employment and Labour Relations Court \(Procedure\) Rules](#), 2016 (the ELRC Rules). It is these rules which govern the conduct of proceedings before the ELRC.
  8. It is generally agreed that unless the [ELRC Rules](#) provide otherwise, disputes before the ELRC should be governed by these rules. Consequently, parties to such proceedings are not entitled, as a matter of course, to invoke provisions of the [Civil Procedure Act](#) and [Civil Procedure Rules](#) in the proceedings ([Benedict Ojou Juma & 10 others v A. J. Pereira & Sons Limited](#) [2016] eKLR and [Prisca Jepngétich v Generation Career Readiness Social Initiative Limited](#) [2021] eKLR).
  9. Notwithstanding the foregoing, it is acknowledged that the [ELRC Rules](#) are not exhaustive. There are instances where they (the ELRC Rules) do not provide for the procedure to be followed in moving the ELRC.
  10. The challenge is usually how to navigate the gaps in the rules. Whilst some Judges of the court believe that the problem can be overcome by invoking provisions of the [Civil Procedure Act](#) and Civil Procedure Rules, others believe that this is not the correct approach to resolve the challenge. This court subscribes to the latter view.
  11. In my view, all proceedings before the ELRC which are not expressly anchored either on the [ELRC Act](#) or [ELRC Rules](#) should be instituted under section 12 of the [ELRC Act](#) as read with section 86 (formerly section 87) of the [Employment Act](#) and rule 17 of the [ELRC Rules](#). It is these provisions that anchor the general power of the court.
  12. Whilst it is true that the law is silent on the procedure to be followed in enforcing the Director's awards, it is doubtful that one is entitled to seek enforcement of the awards under provisions of the [Civil Procedure Act](#). As such, the Applicant ought to have invoked the aforesaid provisions of the [ELRC Act](#), [Employment Act](#) and [ELRC Rules](#).
  13. The instant application is not founded on the foregoing provisions of statute. As such, it is apparent that the Applicant moved the court under the wrong provisions of law. Therefore, the court has no jurisdiction to grant the orders sought (see [Kipngok v Kotut](#) (Application 34 of 2019) [2020] KESC 26 (KLR) (4 September 2020) (Ruling) and [Vincent Mwatsuma Nguma & 5 others v Kilifi Mariakani Water & Sewerage Co Ltd \(KIMAWASCO\)](#) [2021] eKLR).

### **Determination**

14. The court finds that the Applicant has improperly invoked its jurisdiction by moving it under inapplicable provisions of the law.
15. Therefore, the application is incompetent.
16. Consequently, it is struck out.
17. Each party shall bear own costs.

**DATED, SIGNED AND DELIVERED ON THE 24<sup>TH</sup> DAY OF OCTOBER, 2024**

**B. O. M. MANANI**



**JUDGE**

In the presence of:-

..... for the Applicant

..... for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the *ELRC Procedure Rules* which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

**JUDGE**

