

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**MISC. APPLICATION NO. E061 OF 2025**

**METRICK ONZORE EBOSO ..... APPLICANT**

**VERSUS**

**WELD-CON LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KENINDIA INSURANCE LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The applicant filed an application dated 30 June 2025 seeking judgment based on the assessment of the Director of Occupational Safety and Health Services (DOSHS) dated 26 May 2023. A decree to issue against the respondents, jointly and severally, for the sum of Ksh. 261,300 with costs and interests at 14% from 26 May 2023 until payment in full.

The applicant filed the Supporting Affidavit and avers that he was employed by the 1<sup>st</sup> respondent as a general fitter and sustained an injury while at work on 8 October 2020. The incident was reported to DOSHS, who made an assessment and on 26 May 2023 awarded KSh. 261,300 to the applicant. The respondents were served but failed to make payment, file an appeal or make any objections within the stipulated timelines. Under section 26(6) of the Work Injury Benefits Act (WIBA), the respondents are jointly and severally liable to make the payment with costs and interest.

Only the 2<sup>nd</sup> respondent attended and filed the Replying Affidavit of Mary Mutuku, who states that as the legal officer of the 2<sup>nd</sup> respondent, the instant application is fatally defective as the responsible party to make payment is the 1<sup>st</sup> respondent. The work injury accident took place on 8 October 2020 when the 1<sup>st</sup> respondent had a valid **WIBA plus Insurance Policy No. P/107/11/1116/2020/06/100002** with the 2<sup>nd</sup> respondent as the insurer. The relationship was only contractual and should not be enjoined in these proceedings. There is no employment relationship between the applicant and the 2<sup>d</sup> respondent.

Mutuku avers that section 3 of WIBA requires every employer to insure its employees. Upon injury, liability is upon the employer and not the insurance.

The applicant filed a Supplementary Affidavit and avers that the 2nd respondent admitted there was a valid insurance cover under WIBA covering the 1st respondent's employee. There is an obligation to take responsibility for the claim and DOSH award herein. The applicant relied on the case of Mombasa ELRC Misc. Application No. E116 of 2024, where the court held that where the insured had a valid WIBA policy, the insurer had a duty to pay the liability. Joinder of the 2<sup>nd</sup> respondent is meant to avoid multiplicity of suits. The insurance has a legal duty to indemnify the employer's liability under WIBA.

The applicant and 2<sup>nd</sup> respondent attended court and made oral highlights of their submissions. The sole issue to be determined is who should pay the DOSH award dated 26 May 2023.

The work injury to the applicant is not challenged. The report and award by DOSH dated 26 May 2023 is to be challenged.

The 2<sup>nd</sup> respondent has admitted that at the time of the applicant's work injury on 8 May 2020, the 1<sup>st</sup> respondent had valid insurance coverage, specifically the **WIBA plus Insurance Policy No. P/107/11/1116/2020/06/100002**.

Section 7 of WIBA requires every employer to be insured and to protect its employees for work-related injuries.

Upon a report of injury to DOSH, an assessment is done and communicated to the employer and the insurer as contemplated under sections 7 and 17 of the WIBA.

The employer and insurer against whom a claim for compensation is due are required to make payment in accordance with section 26 (4) and (6) of WIBA;

***(4) An employer or insurer against whom a claim for compensation is lodged by the Director under this section, shall settle the claim within ninety days of the lodging of the claim.***

***(5) ...***

***(6) An employer or an insurer who fails to pay the compensation claimed under this subsection commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.***

Upon the 2nd respondent's admission that the 1st respondent was covered for employee work injuries as of 8 May 2020, when the applicant suffered a work-related injury, under the **WIBA plus Insurance Policy No. P/107/11/1116/2020/06/100002** comes into effect under sections 17 and 26 of the WIBA. There is joint liability between the respondent and the applicant to make payment as per the DOSH award.

**Accordingly, the application dated 30 June 2025 is allowed. The following orders are issued:**

- a) The respondents are jointly and severally liable to pay the applicant the sum of Ksh. 261,300 as assessed by DOSH on 26 May 2023;**
- b) The payment (a) above shall be made within 30 days from the date hereof; failure to do so shall result in costs plus interest accruing at court rates.**

Delivered in open court at Mombasa, this 16<sup>th</sup> day of October 2025.

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant: Japhet

..... and .....