



**Kivulu v Professional Marketing Services Ltd (Miscellaneous Cause E118 of 2025) [2025] KEELRC 2659 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2659 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CAUSE E118 OF 2025**

**S RADIDO, J  
OCTOBER 2, 2025**

**BETWEEN**

**ANITA NZISA KIVULU ..... APPLICANT**

**AND**

**PROFESSIONAL MARKETING SERVICES LTD ..... RESPONDENT**

**RULING**

1. For determination is a Motion dated 1 May 2025 by Anita Nzisa Kivulu (the applicant) seeking orders:
  - i. ...
  - ii. That this Honourable Court do adopt the assessment of the Director of Occupational Health and Safety made on the 5<sup>th</sup> day of June 2024 as an order of this Honourable Court.
  - iii. That a decree be issued in accordance with the assessment of the Director of Occupational Health and Safety for the sum of Kenya Shillings Nine Hundred and Three Thousand, Three Hundred and Twenty-One Only (Kes 903,323/-).
  - iv. That this Honourable Court do issue any other and further orders it deems fit and just in the circumstances.
  - v. That costs of this application be provided for.
2. The grounds supporting the Motion were that the applicant, an employee of the Respondent was injured in the course of work; the Respondent informed the Director of Occupational Safety and Health; the Director assessed compensation at Kshs 903,323/- on 5 July 2024 and made a demand for payment to the Respondent; the Respondent's insurers caused the applicant to go through a second medical review; nevertheless the Respondent did not pay the compensation; that a previous Motion to adopt the assessment was dismissed by the Court for prematurity; the Director gave a decision on 30 April 2025 and the Respondent was yet to make payment and that the Court had jurisdiction.



3. The Respondent filed a replying affidavit opposing the Motion on the grounds that the Motion was res judicata as the question of the award had been heard and determined by a competent Court in Nairobi Misc Cause No. E298 of 2024; the decision of the Director made on 30 April 2025 did not address the earlier Objection raised by the Respondent; the Director had not provided a written answer to the Objection as required by section 52(1) of the *Work Injury Benefits Act*; the Court did not have original jurisdiction, and that the Motion was premature.
4. The applicant filed her submissions on 18 June 2025, contending that the Respondent had not appealed against the decision of the Director made on 30 April 2025; the Motion was not res judicata; there was no law backing a second medical review in cases seeking adoption of an award after an injury in the work place; the Respondent raised no Objection after the award on 5 June 2024, and that the Court was clothed with jurisdiction.
5. The Respondent filed its submissions on 23 June 2025, contending that the application was res judicata as it was seeking similar orders as those sought in Nairobi Misc Application No. E298 of 2024; that an Objection dated 14 August 2024 had been lodged with the Director after a second medical opinion found that the applicant had not suffered a permanent disability, but the Director had not responded to the objection.
6. The Respondent contested the merits of the application on the ground that the medical reports were inconsistent and could not be relied on.
7. The Court has considered the Motion, affidavits and submissions, including the authorities and makes the following determinations.
8. One, the Court with original jurisdiction over work injury claims is this Court pursuant to Article 162 of *the Constitution* as read with section 12(1)(a) of the *Employment and Labour Relations Court Act* (see *Charles v Cheto* (2025) KECA 784 (KLR)).
9. The jurisdiction bestowed on the Magistrates' Court is delegated or donated jurisdiction by virtue of Gazette Notice No 6024 of 2018.
10. Two, the Ruling of the Court on 6 March 2025 did not determine conclusively and on the merits the Motion that was placed before the Court. The Motion was not dismissed but was struck out for prematurity.
11. The Court concluded that the Motion was premature because the processes before the Director of Occupational Safety and Health had not been concluded.
12. Three, the Director rendered his decision on 5 June 2024, and the Respondent had 60 days to lodge an Objection.
13. There is nothing on record to show that the Respondent lodged an Objection within 60 days.
14. Four, if the Respondent was not happy with the decision made by the Director on 30 April 2025, it ought to have appealed as contemplated by section 52 of the *Work Injury Benefits Act* or seek a review of the decision.
15. Lastly, this Court notes the obiter dicta by the Court in the Ruling of 6 March 2025, that the jurisdiction of the Court was appellate only. That position has been addressed and clarified by the Court of Appeal in the Cheto judgment.



## Orders

16. The Court grants the following orders:

- i. That this Honourable Court hereby adopts the assessment of the Director of Occupational Health and Safety made on the 5<sup>th</sup> day of June 2024 as an order of this Honourable Court.
- ii. That a decree do hereby issue in accordance with the assessment of the Director of Occupational Health and Safety for the sum of Kenya Shillings Nine Hundred and Three Thousand, Three Hundred and Twenty-One Only (Kes 903,323/-).

17. The applicant to have costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN EMBU ON THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For applicant Masake & Associate Advocates

For Respondent Maitai & Co. Advocates

Court Assistant Wangu

