



Makau v Occidental Insurance Company Limited (Miscellaneous Application E013 of 2025) [2025] KEELRC 2701 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2701 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E013 OF 2025**

**SC RUTTO, J
OCTOBER 3, 2025**

BETWEEN

URBANUS MAKAU APPLICANT

AND

OCCIDENTAL INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. Through a Notice of Motion dated 22nd January 2025, the Applicant herein seeks the following orders:
 1. That the Honourable Court be pleased to adopt as Judgment of this Court the award of the Director, Work Injury Benefits Administration issued on 5th September 2024.
 2. That Judgment be entered for the Claimant (sic) against the Respondent for the sum of Kshs. 16,661,604 as per the award made on 5th September 2024 by the Director, Work Injury Benefits Administration.
 3. That this Court be pleased to award interest on the amount at court rates from the date of assessment until payment in full.
 4. That the costs of this application abide the result thereof.
2. The Motion is premised on the grounds set out therein and the Supporting Affidavit of Urbanus Makau, the Applicant herein. Grounds in support of the Motion are that at all material times prior to this action, the Applicant was a senior employee, serving in the position of Human Resources and Administration Manager.
3. The Applicant avers that he sustained injuries in the course of employment on 20th October 2022, which were duly reported under claim reference number ML/DOSHS/WIBA/NRB/07298/2023. Upon assessment, the Director of WIBA awarded him compensation in the sum of Kshs. 16,661,604.



4. That the Respondent submitted the claim in the year 2023, but was dissatisfied with the award made on 14th March 2023 and agreed to have him subjected to a second medical examination performed by their preferred doctor, Dr. W.M Wokabi.
5. Despite Dr. Wokabi's report and assessment, the Respondent wantonly disregarded to settle the assessed sum. That the Respondent did file an objection with the Director- WIBA on 17th September 2024 and on 28th November 2024, the Director- WIBA, wrote to him with the Respondent in copy, confirming that the process before him had been exhausted. In effect, he did not uphold the Respondent's objection.
6. The Applicant contends that under Section 52(2) of the *Work Injury Benefits Act*, the Respondent ought to have lodged an appeal within 30 days of the dismissal of its objection, but failed to do so.
7. It is the Applicant's case that, despite knowledge of the award, the Respondent has refused, failed, and/or neglected to pay the decretal sum. Instead, it has claimed that the matter falls outside the ambit of WIBA, a position inconsistent with its earlier conduct in commencing the WIBA process, and contrary to the ruling in Cause E1069 of 2023, which decision was never appealed.
8. The Applicant thus maintains that the award remains valid and enforceable as there is neither a pending objection nor an appeal against it.
9. In response to the Motion, the Respondent filed a Preliminary Objection dated 28th April 2025 in which it contends that the Applicant's injuries were self-inflicted, having been sustained while he was driving under the influence of alcohol and outside the course of his employment.
10. On this basis, the Respondent argues that the Director's assessment was null and void ab initio, the Director having lacked jurisdiction under Sections 2 and 10(4) of the *Work Injury Benefits Act*.
11. Further, the Respondent argues that this Court similarly lacks jurisdiction to entertain the suit by virtue of Clause 11 of a Personal Accident Insurance Policy dated 27th June 2023, which provides for negotiation, mediation, or arbitration as the forum for resolution of disputes.

Submissions

12. The Application was canvassed by way of written submissions. The court has paid due consideration to the submissions by both parties.

Analysis and Determination

13. Having considered the Notice of Motion, the objection thereto, and the rival submissions, the principal issue for determination is the merit of the Motion; specifically, whether this Court should adopt the award made on 5th September 2024 by the Director, WIBA.
14. The Respondent has argued that the award is null and void on grounds that the Applicant's injuries were self-inflicted and sustained outside the course of employment. It is the Respondent's case that the Director lacked jurisdiction under Sections 2 and 10(4) of the *Work Injury Benefits Act*. The Respondent has further contended that this Court equally lacks jurisdiction by virtue of the arbitration clause contained in a Personal Accident Insurance Policy.
15. The Court observes that Sections 51 and 52 of the *Work Injury Benefits Act* establish a clear statutory framework for addressing disputes arising from the Director's award. In this regard, a party dissatisfied with an award may lodge an objection under Section 51, upon which the Director is obligated to render



a written response. In the event the objector is dissatisfied with the Director's decision, Section 52(2) allows for an appeal to this Court within thirty (30) days of the Director's decision.

16. In the present case, the Applicant has averred that the Respondent filed an Objection to the Director's award and that the same was declined. Notably, this position has not been refuted by the Respondent.
17. The record does not bear the Director's response to the Respondent's Objection and further, there is no appeal to this Court under Section 52(2) aforesaid against the Director's decision. In the event the Respondent was dissatisfied with the Director's decision, the proper recourse available at that point was to file an appeal before this Court within the statutory timelines. As it is, the Respondent did not do so.
18. It is evident that the issues advanced in the Preliminary Objection have been improperly presented. In the absence of an appeal under Section 52(2) of the Work Injury Benefits Act, this Court lacks jurisdiction to interrogate the merits of the Director's award, including the question of whether the injuries arose in the course of employment. To do so would be to exercise appellate jurisdiction in the absence of a proper appeal.
19. To this end, this court is of the respectful view that the issues raised by the Respondent in the Preliminary Objection dated 28th April 2025 ought to have been ventilated through the appellate process contemplated under Section 52(2) of the Work Injury Benefits Act as opposed to the said Objection.
20. In light of the foregoing reasons, the Court has no reason to decline the Application by the Applicant. In the case of *Mwangata v Shyam General Merchants Limited* (Cause E086 of 2024) [2025] KEELRC 616 (KLR) (16 January 2025) (Ruling), the Court held as follows:

“Absent an objection and/or appeal by the respondent against the award dated May 30, 2023, this court's jurisdiction to enforce the said award in the face of the respondent's non-settlement of the same, has matured.”

21. In the present case, it is not in dispute that the Director issued an award in favour of the Applicant on 5th September 2024. The record bears no evidence that the award has been challenged through the procedures set out under the Work Injury Benefits Act. Equally, there is no indication that the Respondent has taken steps to satisfy the award.
22. Accordingly, this Court finds that the Applicant is rightfully entitled to the award of Kshs. 16,661,604.00 as assessed by the Director on 5th September 2024.
23. The Court further awards interest on the said sum at court rates from the date of this decision until payment in full.
24. The Respondent shall also bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Ondego



For the Respondent Mr. Kasiye instructed by Ms. Muema

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

