



**Gitau v Shreeji Enterprises (K) Limited (Miscellaneous Application
E083 of 2025) [2025] KEELRC 2908 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2908 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E083 OF 2025**

**AK NZEI, J
OCTOBER 24, 2025**

BETWEEN

SAMUEL KURIA GITAU APPLICANT

AND

SHREEJI ENTERPRISES (K) LIMITED RESPONDENT

RULING

1. The application before me for determination is the Applicant's Notice of Motion dated 20th March, 2025 and expressed to be brought under Article 165 of the Constitution of Kenya 2010, Rules 28 and 31 of the Employment and Labour Relations Court (Procedure) Rules 2016 and Section 26 of the Work Injury Benefits Act. The Applicant, Samuel Kuria Gitau, seeks the following Orders:-
 - a. That this Court adopts the assessment of the Director of Occupational Safety and Health Services as a Judgment of the Court.
 - b. That a decree for Kshs.1,135,569/= do issue in accordance with [the] assessment of the Director of Occupational Safety and Health Services against the Respondent.
 - c. That this Court grants any other order as it may deem fit to grant in the circumstances.
 - d. That costs of the application be provided for.
2. The application sets out on its face the general grounds on which it is brought, and is based on the annexed supporting affidavit of the Applicant, sworn by himself on 20th March, 2025. It is deponed in the said affidavit:-
 - a. that the Applicant was employed by the Respondent as a driver, and was on 13th January, 2023 involved in an accident while in the course of his employment, which resulted in a serious injury.



- b. that the accident was reported to the Director of Occupational Safety and Health Services (Director), and that the Applicant's degree of permanent disablement (in capacity) was assessed at 15%.
 - c. that on 28th November, 2024, the Director assessed the compensation payable to the Applicant at Kshs.1,135,569/=; and issued a demand notice to Respondent.
 - d. that to date, the Respondent has not paid the assessed sum, and no appeal has been preferred against the Director's assessment within the time prescribed by the statute.
 - e. that failure by the Respondent to pay has caused the Applicant significant hardship, and that it would be in the interest of Justice if the application herein is granted.
3. Documents annexed to the Applicant's said supporting affidavit are copies of Wiba/Form 1 and Dosh/wiba/form 4; duly filled and signed as required. The award payable to the Applicant is shown on the duly filled Dosh/wiba/form 4 dated 28th November, 2024 as having been assessed by the Director at Kshs.1,135,569/=, which amount the Director is shown to have demanded from the Respondent on the aforesaid date (28th November, 2024).
 4. The application was initially not opposed by the Respondent, though shown to have been served on the Respondent; and I on 8th July, 2025 fixed the matter for delivery of a Ruling on the application on 17th October, 2025.
 5. On 15th July, 2025, however, the Respondent filed an urgent Notice of Motion dated 14th July, 2025, seeking, inter-alia, the setting aside of the ex-parte proceedings taken herein and leave to the Respondent to file Response to the application.
 6. The Respondent's said application was placed before me under a certificate of urgency on 15th July, 2025. I certified the application as urgent and directed that the same be served on the Applicant for taking of directions on 28th July, 2025.
 7. Counsel for both parties appeared before me on 28th July, 2025 and were in agreement that the Respondent's said application (dated 14th July, 2025) be allowed; and was indeed allowed in the following terms:-
 - “(1) The Respondent shall file and serve response to the Applicant's Notice of Motion dated 20/3/2025 and a PO within 21 days of today, hard copies of which shall be placed in the Court's record.
 - (2) The Respondent will pay throw away costs of the application (dated 14th July, 2025) to the Applicant, assessed at Kshs.5,000/= within 7 days of today.
 - (3) The Applicant's application dated 20/3/2025 will be determined on the basis of affidavits filed by both parties, but any party wishing to make submissions will file written submissions within 30 days of today, hard copies of which will be placed in the Court file upon filing.
 - (4) The Ruling date already reserved, 17/10/2025, shall be retained.
 - (5) For record purposes, the Applicant's Notice of Motion dated 20/3/2025 and any PO that may be filed by the Respondent as ordered herein shall be determined concurrently.”



8. The Respondent, Shreeji Enterprises (K) Limited, is not shown to have filed any response to the Applicant's Notice of Motion dated 20/3/2025 pursuant to this Court's aforesaid Orders of 28th July, 2025. All that there is on the Court's CTS (e-filing portal) are draft copies of a replying affidavit and notice of preliminary objection annexed to the affidavit sworn in support of the Respondent's Notice of Motion dated 14th July, 2025 which this Court allowed on 28th July, 2025 as already stated in this Ruling.
9. The import of the foregoing is that the Respondent did not comply with this Court's orders dated 28th July, 2025 regarding filing of response to the Applicant's application dated 20th March, 2025; and that the said application therefore stands unopposed.
10. The twin issues that fall for determination in this matter are whether this Court is seized of jurisdiction to entertain and to determine the Applicant's said application (dated 20th March, 2025) and if so, whether the orders sought can issue.
11. As I have previously stated in quite a number of this Court's decisions on the foregoing issues, the [Work Injury Benefits Act](#) is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (the Director) in favour of employees who suffer occupational injuries or occupational diseases are to be enforced. At the same time, the said Act does not oust this Court's Jurisdiction to enforce such awards, and especially when the Director's decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act ([WIBA](#)) has not been objected to pursuant to Section 51 of the Act; or has been objected to and the objections and appeals from such objections have been determined in favour of the injured employee or the estate of a deceased employee (where the work injury or occupational disease resulted in the death of the employee, and the employer has refused to pay.
12. On the issue of this Court's jurisdiction to enforce the Director's award, I stated as follows in the case of [Ojango v Kenya Revenue Authority](#) [2024] KEELRC 2767 (KLR):-

“Pursuant to Article 162(2)(a) of the [Constitution](#) of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where that Jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such a statutory provision is Section 16 of the [Work Injury Benefits Act](#) (WIBA) which expressly ousts courts' jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake 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.”
13. Still on this Court's jurisdiction over the aforesaid issue, I stated as follows in the case of [Amir Swaleh Omar v Mackezie Maritime \[EA\] 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.”

14. Having demonstrated that this Court is seized of Jurisdiction to enforce the Director's award made in favour of the Applicant herein on 28th November, 2024, and the legality and/or authenticity of the said award being unchallenged, I proceed to allow the Applicant's Notice of Motion dated 20th March, 2025 in the following terms:-

- a. The award of Kshs.1,135,596/= made by the Director of Occupational Safety and Health Services in favour of the Applicant is hereby adopted by this Court and, accordingly, Judgment is hereby entered for the Applicant against the Respondent in the said sum of Kshs.1,135,569/=.
- b. A decree shall issue, and shall be enforceable in accordance with this Court's Rules of Procedure.
- c. Costs of the proceedings herein are awarded to the Applicant, to be agreed or taxed.

15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 2025

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.

Appearance:

Miss Ochieng for the Applicant

Miss Bett for the Respondent

