



REPUBLIC OF KENYA



KENYA LAW
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**Jaramogi Oginga Odinga University & another v Corporate Insurance Company Limited
(Cause E049 of 2025) [2025] KEELRC 2970 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2970 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E049 OF 2025
JK GAKERI, J
OCTOBER 30, 2025**

BETWEEN

JARAMOGI OGINGA ODINGA UNIVERSITY 1ST CLAIMANT

PROF. CHARLES MAKORI OMOKE 2ND CLAIMANT

AND

CORPORATE INSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The claimants commenced the instant suit on 18th June, 2025 vide a Statement of Claim dated 12th June 2025.
2. The 2nd claimant testified that he was an employee of the 1st claimant serving as a Professor and was injured in a fire incident on 12th April 2022 at about 1:30pm while, at the 1st claimant's outdoor cafeteria, where he was having lunch.
3. It was the 2nd claimant's case that he was admitted at Avenue Hospital, Kisumu on 12th April 2022 to 23rd May 2022 and the Respondent was notified of the incident and requested for documents to facilitate processing of the claim.
4. That on 23rd September 2022, the County Occupational Safety and Health Officer, Siaya assessed the 2nd claimants compensation at Kshs.2,767,699.20, but the same remained outstanding.
5. The claimants prayed for:
 - i. Adoption of the award of Kshs.2,267,699.20.
 - ii. Costs of the suit.
 - iii. Interest on (a) above.



- iv. Any other relief that the court may deem fit to grant.
6. The respondent neither entered appearance nor defend the suit.
7. CWI Wanjiru Karugu testified that the 1st claimant had a WIBA policy from 1st May 2021 to 29th April 2022 and despite notification of the of the incident no payment was made.
8. CWII, Professor Charles Makori, testified that he was involved in a fire incident on 12th April, 2022 while seated having lunch at the 1st claimant's cafeteria after hearing a loud bang and was hospitalized.
9. During the hearing on 16th October, 2025, counsel for the claimants withdrew the 2nd claimant's case but retained him as a witness.
10. The claimant was accorded 7 days to file and serve submissions.

Claimant's submissions

11. On jurisdictional basis, counsel submitted that the respondent had not objected to the assessment under the provisions of Section 51 and 52 of the *Work Injury Benefits Act*. Reliance was placed on the sentiments of the court in Chweya Mwendabole V Protective Custody Ltd [2021] KEELRC 1809 (KLR) to urge that the Employment and Labour Relations Court had jurisdiction to adopt awards made by the Director of Occupational Safety and Health Services (DOSHS).
12. Counsel, further submitted that adoption of the award was the only way to enable the victim realize the fruits of the award.
13. Reliance was also placed on the Court of Appeal decision in Charles V Cheto [2025] KECA 784 (KLR) where the court upheld the decision of B.O.M Manani J on adoption of DOSHS award to the court to adopt the award.

Analysis

14. It is not in dispute that Professor Charles Makori Omoke was injured when a fire incident occurred on 12th April 2022.
15. Strangely, the incident was neither reported to the police nor investigated by any person including the 1st claimant which now seeks to enforce its WIBA policy against the respondent insurance company.
16. Copies of documents under the letterhead of Avenue Hospital signed by Dr. Odira on 23rd May 2022 reveal that the Professor Charles Makori suffered 12% 3rd degree burns and was admitted from 12th April 2022 and discharged on 23rd May 2022.
17. Regrettably, the claimant only attached WIBA Form 4 which is a demand for payment by the DOSHS to the claimant.
18. The assessment was made in favour of Professor Makori against the claimant, and ought to have been filed as an application for the court to adopt the award by the Director of Occupational Safety and Health Services (herein after DOSHS) under the *Work Injury Benefits Act* (WIBA).
19. Although the claimant's evidence was uncontroverted owing to the non-attendance by the respondent, the burden of proof lay on Professor Charles Makori to demonstrate that the court ought to adopt the award by DOSHS as its judgment.



20. It is common ground that the Employment and Labour Relations Court has jurisdiction to adopt decisions made by the DOSHS for purposes of enforcement, as affirmed by the Court of Appeal in *Thepot Patrick Charles V Joash Shisia Cheto* [2025] KECA 784 (KLR).
21. Concerning the evidence availed by the claimant, the court noted that the claimant did not attach a copy of the WIBA FORM I, which is the assessment by the DOSHS.
22. The form sets out the particulars of the employee, particulars of the incidence and the medical report authenticated by the medical practitioner and authenticated by the DOSHS.
23. As adverted to elsewhere in this Judgment the WIBA Form I is the actual assessment by the Director of Occupational Safety and Health Services and without it the claim for adoption of the award is incomplete and fatally defective.
24. The copy of WIBA Form 4 availed by the claimant is simply a demand by the DOSHS to the employer to pay the amount stated thereon. It is not the award.
25. The second issue on which this suit turns is manner in which the suit was framed and was prosecuted.
26. Strangely, the claimant, the employer of Professor Charles Makori testified that it had a WIBA policy at the time the fire incident took place and it reported the incident to the insurer which requested for certain documents which the claimant testified that it availed but not payment was forthcoming. Thus, the claimant was by this suit enforcing its contractual claim against the respondent.
27. It is unclear to the court what cause of action or claim the Professor Charles Makori had against the respondent.
28. As framed, the Professor Charles Makori appeared to be enforcing a claim against a 3rd party yet the respondent neither caused nor was it involved in the fire incident.
29. During the hearing, counsel for the claimant's orally withdrew Professor Charles Makori's case but retained him as a witness.
30. Could this ameliorate the claimants case against the respondent?
31. The answer to this question, in the court's considered view, is in the negative and this is why.
32. The preambular provision of the *Work Injury Benefits Act* is explicit that it is

An Act of Parliament to provide for compensation to employees for work related injuries and diseases in the course of their employment and for connected purposes.

33. Section 2 of the Act defines compensation to mean:

Compensation as provided for under this Act and includes medical aid and any benefit of any nature to which an employee or his dependants may be entitled to under this Act;

Under Section 7 of the Act,

1. Every employer shall obtain and maintain an insurance policy, with an insurer approved by the Minister in respect of any liability that the employer may incur under this Act to any of his employees.

Significantly, under Section 10 of the Act



1. An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.
 2. An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.
 3. An employee is not entitled to compensation if an accident, not resulting in serious disablement or death, is caused by the deliberate and wilful misconduct of the employee.
34. The foregoing provisions of WIBA leave little doubt as to where liability to compensate an employee for injuries sustained in the course of employment lies.
35. From the uncontroverted evidence adduced by the claimant, it is discernible that an incident occurred at the it's out door cafeteria on 12th April 2022 and Professor Charles Makori was injured by fire and was thus entitled to compensation under the provisions of WIBA.
36. From the foregoing, it is clear that Professor Charles Makori had no cause of action against the respondent and was a stranger to the contract of insurance between the claimant and the respondent.
37. From the facts of the instant case and the law, Professor Charles Makori's action was against the claimant and because he invoked the provisions of WIBA, any award made by the DOSHS was against the employer and is only enforceable against the employer. It is not an award against the respondent and cannot be adopted by this court as a judgment against the respondent.
38. Professor Charles Makori ought to have filed a Miscellaneous Application seeking adoption of the award as a judgment of the court against the employer/claimant.
39. The upshot of the foregoing is that the instant suit is unsustainable on account of being incomplete and it is framed against a 3rd party as opposed to the employer, who is the real respondent in the case.
40. In Order to safeguard Professor Charles Makori's right to compensation, the statement of claim dated 18th June 2025 be and is hereby struck out with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 30TH DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

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 has 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.



DR. JACOB GAKERI
JUDGE

