

REPUBLIC OF KENYA

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

MISC. APPLICATION NO. E018 OF 2025

MICAH KATIKU NELSON & JONATHAN MUEMA MUTUNGA

**[Suing as the administrators and legal representatives of the
Estate of**

**NELSON MUTUNGA (DECEASED)
APPLICANTS**

VERSUS

BONAN CONSULT LIMITED RESPONDENT

RULING

The applicants, Micah Katuku Nelson and Jonathan Muema Mutuga, being the Administrators and legal representatives of the Estate of Nelson Mutunga, the deceased, filed an application dated 26 June 2025 seeking orders:

- a) The court adopts the Director of Occupational Health and Safety's assessment as an order of the court.*
- b) A decree be issued in accordance with the assessment of the Director of Occupational Health and Safety for the sum of KSh. 2,956,800.*
- c) The court be pleased to award interest on the amount from the date of assessment at the rate of 14% per annum.*
- d) Costs be paid.*

The application is supported by Micah Katuku Nelson, one of the administrators of the estate of the deceased, Nelson Mutunga. He avers that on 21 September 2021, the deceased, while at work as a carpenter with the respondent, while at the construction site in Kilifi Mtonda, slipped and fell from a height during roofing and sustained fatal injuries. The matter was reported to the Director of Occupational Safety and Health Services (DOSHS), who assessed and awarded Ksh. 2,956,800.

The respondent was served with a notice to pay the award, but declined to do so. The statutory payment period has lapsed as of 25 August 2022. Under the Work Injuries Benefits Act (WIBA), the applicants have moved the court seeking to enforce the DOSHS award.

In reply, the respondent filed the Reply Affidavit of Boniface Kyalo Muthwale, the managing director and avers that the deceased was an employee and while at work suffered fatal injuries on 21 September 2021. The deceased's estate filed these proceedings seeking to enforce the DOSH award of Ksh. 2,956,800 issued on 25 May 2022.

The respondent was not served with notice as alleged. There was no communication from DOSH regarding the assessment that led to these proceedings.

The respondent intended, through the statutory processes, to cooperate with DOSH and relevant government agencies to document and assess liability under WIBA. Upon learning of the evaluation, the respondent notified its insurer, Jubilee Alianz General Insurance (K) Ltd under Policy Number B/101/2010/2018/000002/0978/01/02, which was valid at the time of the accident, running from 5 June 2021 to 4 June 2022.

Muthwale avers that the respondent took all the necessary steps to activate the claim, including submitting the relevant claim forms and engaging a loss assessor as directed by the insurer. Despite forwarding the assessment to the insurer, the respondent has not received indemnity and has filed a declaratory suit in the Kilifi Law Courts to compel the insurer to settle the claim.

The present application for enforcement of the award is premature and in contravention of sections 26, 30 and 43 of WIBA. The suit is prejudicial to the respondent, who has not denied liability subject to indemnity from valid insurance coverage. The respondent has not been held liable by a competent court, as the matter is still pending.

Parties addressed the application by way of written submissions.

The sole issue for determination is whether the court should adopt the DOSH award as the court's order and issue a decree thereon.

The work injury to the deceased on 21 September 2021 is not denied. Indeed, the respondent has admitted to the fatal injury and has secured an insurance cover with Jubilee Allianz (K) Ltd, and the matter of liability and indemnity is pending in court at Kilifi.

Upon DOSH Form 1, the Director assessed the claim and awarded Ksh. 2,956,820. Under WIBA, there are timelines within which the employer should make payment to the deceased's estate.

In this case, the respondent asserts that it was not notified of the assessment, but it is currently facing an ongoing liability claim with its insurers.

In the case of **Charles v Cheto, Civil Appeal No. E046 of 2022**, the court held that upon the DOSH assessment and award, the employer has the duty to make payment within 90 days. Upon the lapse of such a timeline, if there is no objection or appeal against the DOSH ward, an applicant may file an enforcement claim with the court.

The need to file separate proceedings against the insurer instead of a joinder suit herein is not addressed.

Upon the DOSH assessment, there being no objections or appeal, the application dated 26 June 2025 is allowed. The respondent shall pay KSh. 2,956,800 to the applicants as the administrators of the estate of the deceased, Nelson Mutunga. The award is to be paid within 30 days from the date hereof, after which, costs shall be due.

Delivered in open court at Mombasa, this 30th day of October 2025.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Japhet

..... and