

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

JUDICIAL REVIEW NO. E011 OF 2024
(Before Hon. Lady Justice Anna Ngibuini
Mwaure)

REPUBLIC.....

APPLICANT

EX-PARTE: H. YOUNG & CO. (EA)
LIMITED..... *EX-PARTE*
APPLICANT

VERSUS

THE DIRECTORATE OF OCCUPATIONAL
HEALTH AND SAFETY SERVICES.....1ST
RESPONDENT

THE CHIEF MAGISTRATES COURT
AT NAIVASHA.....2ND
RESPONDENT

PETER MATIESO ONGANGI.....3RD
RESPONDENT

RULING

Introduction

1. The *ex-parte* Applicant filed a Notice of Motion dated 25th November seeking the following orders that:

1. *An order of Prohibition directed at the Directorate of Occupational Health and Safety Services (the 1st Respondent) and Peter*

Matieso Ongangi (the 3rd Respondent), prohibiting any further attempts to enforce the award dated 2nd May 2024 or any related claims against H. Young & Co. (E.A) Ltd (the Ex-Parte Applicant) in relation to Miscellaneous Civil Application No. E002 of 2024 before the Naivasha Magistrate's Court.

2. An order of Certiorari directed at the Directorate of Occupational Health and Safety Services to quash the decision to issue the award dated 2nd May 2024 in favour of the 3rd Respondent, concerning claims related to the alleged workplace injury sustained on 2nd July 2020.

3. The order granting leave to operate as a stay of the proceedings, decisions or directives given in Naivasha Miscellaneous Civil Application No. E002 of 2024 – Peter Matieso Ongangi -V- H. Young & Co (E.A) Ltd, and for the avoidance of doubt, the 1st and 3rd Respondents be restrained from enforcing or taking any further action in relation to the award dated 2nd May 2024 in any court or tribunal pending the hearing and determination of this application.

4. *This Honourable Court be pleased to make such further or other orders as it may deem just and expedient.*

5. *The costs of this application be awarded to the Ex-Parte Applicant.*

Ex-parte Applicant's Supporting Affidavit

2. The application is supported by the affidavit of Lilian Omenga, the *Ex-Parte* Applicant's legal officer, sworn on even date as the application.
3. The *Ex-Parte* Applicant avers that the 3rd Respondent filed Miscellaneous Application No. E002 of 2024 before the 2nd Respondent, seeking to enforce an award issued by the 1st Respondent on 2nd May 2024, arising from an injury allegedly sustained on 2nd July 2020.
4. However, the *Ex-Parte* Applicant avers that the injury was only reported on 2nd July 2024, four years later, in contravention of Section 26 of the Work Injury Benefits Act, 2007, (WIBA), which mandates that such claims be filed within 12 months.
5. The *Ex-Parte* Applicant avers that the award was rendered without due consideration of sections 23,

25, 26, and 29 of the WIBA Act, and without a formal application for extension of time, thereby violating Article 47 of the Constitution on Fair Administrative Action.

6. The *Ex-Parte* Applicant avers that the 3rd Respondent admitted to resuming work until July 2022, further undermining the legitimacy of the claim.
7. The *Ex-Parte* Applicant avers that it has filed a Preliminary Objection, with the matter set for mention on 11th November 2024. Since the 60-day window under Section 51 of the Act to challenge the award has lapsed, the Applicant fears enforcement may proceed to their detriment.
8. The *Ex-parte* Applicant avers that it risks substantial financial loss amounting to Kshs.398,178.40 plus legal costs, as the 3rd Respondent is unlikely to reimburse, necessitating urgent judicial intervention to prevent further procedural and financial harm.

3rd Respondent's replying affidavit

9. In opposition to the application, the 3rd Respondent filed a replying affidavit dated 20th June 2025.

10. The 3rd Respondent contends that he sustained an injury on 2nd July 2020 while working for the ex-Parte Applicant, who was duly notified in accordance with section 22(1) of the Work Injury Benefits Act, 2007.
11. The 3rd Respondent avers that the ex-Parte Applicant seeks to quash the award issued on 2nd May 2024 based on limitation grounds, while concealing its own failure to meet reporting obligations.
12. The 3rd Respondent further avers that claims of no medical assessment are false and misleading, and that the award was procedurally granted.
13. The 3rd Respondent accuses the *Ex-Parte* Applicant of approaching the court with unclean hands and attempting to evade rightful compensation.
14. The 3rd Respondent urges the court to dismiss the application with costs, citing its lack of merit and deliberate effort to defeat justice.
15. The 1st and 2nd Respondents did not enter an appearance or oppose the application.

16. Parties were directed by the court to put in their respective written submissions.

Ex-parte Applicant submissions

17. The *Ex-parte* Applicant submitted that the 3rd Respondent's claim was filed four years after the alleged injury on 2nd July 2020, in clear violation of section 26(1) of WIBA, which mandates that claims be lodged within 12 months of the accident. Section 26(2) of WIBA further stipulates that late claims may only be considered if the accident was reported in accordance with section 21(1), which requires employees to report accidents to their employer within 12 months. Additionally, section 22 of WIBA obligates the employer to report the accident to the Directorate within 7 days. The failure to comply with these provisions renders the award legally defective and procedurally invalid.

18. The *Ex-parte* Applicant submitted that the award issued on 2nd May 2024 is challenged as ultra vires and legally void for violating the strict statutory timelines prescribed under the Work Injury Benefits Act, 2007. The ex-parte Applicant cited the cases of ***Peter Gichuki King'ara V IEBC [2017] eKLR***, ***Attorney General V Law Society of Kenya [2017] eKLR***, and ***Kenya Revenue Authority v***

Menginya Salim Murgani [2009] eKLR, where the courts have consistently held that statutory deadlines are mandatory and non-compliance renders administrative actions null. The doctrine of stare decisis obliges this Court to uphold these authoritative rulings and declare the impugned award a nullity *ab initio*, thereby preserving constitutional integrity and reaffirming the primacy of statutory limitation as a jurisdictional threshold.

19. The *Ex-Parte* Applicant challenges the award issued by the 1st Respondent on 2nd May 2024, citing a fundamental breach of the right to fair administrative action under **Article 47(1) and (2) of the Constitution** and **Sections 4(3)(b) and 4(3)(g) of the Fair Administrative Action Act, 2015**. The *Ex-parte* Applicant was not notified of the claim, invited to participate in any inquiry, or given an opportunity to be heard, only discovering the award in October 2024 during enforcement proceedings. This administrative silence violates the *audi alteram partem* rule and renders the award constitutionally infirm. The *ex-parte* Applicant cited the cases of ***Judges and Magistrates Vetting Board V CHRD & 11 Others [2014] eKLR***, ***Communications Commission of Kenya V Royal Media Services [2014] eKLR***, ***Dry Associates***

Ltd V CMA & Another [2012] eKLR, Geothermal Development Co. Ltd V AG & 3 Others [2013] eKLR, and Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR all affirming that procedural fairness is a binding constitutional requirement and that decisions made in breach of natural justice are null and void.

20. The *Ex-Parte* Applicant submitted that the award is unreasonable, procedurally improper, and an abuse of discretion, citing violations of ***Sections 7(2)(j), (k), and (n) of the Fair Administrative Action Act, 2015*** and ***sections 23(1) and 25(1) of the WIBA***. The award was rendered the same day the claim was filed, four years after the alleged injury, without medical assessment, inquiry, or notice to the *ex-parte* Applicant, breaching ***Article 47 of the Constitution*** and ***Sections 4 and 5 of the Fair Administrative Action Act***. The *Ex-Parte* Applicant cited the cases of ***Pastoli V Kabale District Local Government [2008] 2 EA 300, Republic V KRA ex parte Yaya Towers Ltd [2008] eKLR, and Keroche Industries Ltd V KRA [2007] eKLR***, which affirm that decisions made irrationally or without due process are void. The enforcement proceedings in Naivasha Misc.

Civil Application No. E002 of 2024 are also deemed to be an abuse of court process, as established in ***Muchanga Investments Ltd V Safaris Unlimited [2009] eKLR, Beatrice Ndungu V Henry Wanyoike [2020] eKLR, and Republic V Commissioner of Co-operatives Ex parte Kirinyaga Tea Growers [1999] eKLR.***

21. The *Ex-parte* Applicant urges the Court, in line with ***Republic V PPARB Ex Parte Gibb Africa Ltd [2012] eKLR*** and ***Suchan Investment Ltd V Ministry of National Heritage [2016] eKLR***, to quash the award and halt its enforcement, preserving the integrity of judicial review and constitutional justice.

3rd Respondent submissions

22. The 3rd Respondent submitted that he opposes the *Ex-parte* Applicant's attempt to quash the award dated 2nd May 2024 on grounds of limitation under the Limitation of Actions Act, arguing that the delay in reporting the injury was caused by the Applicant's own failure to fulfil its statutory duty under section 22(1) of the WIBA, which requires employers to report workplace injuries to the Directorate within seven days of learning about them.

23. The 3rd Respondent contends that the ex-parte Applicant, having failed to report the injury sustained on 2nd July 2020, cannot now rely on the delay to escape liability. The 3RD Respondent further submitted that the Applicant was duly notified of the award but failed to act, and has consistently avoided addressing the substantive merits of the claim. The 3rd Respondent relied on ***London Distillers (K) Ltd V NEMA & Another [2023] KEELC 16266 (KLR)***, where the Respondent invokes Article 159 of the Constitution, urging the Court to prioritize substantive justice over procedural technicalities and reject attempts to exploit legal loopholes to deny compensation.

24. The 3rd Respondent submitted that the application is characterized as an admission of the ex-parte Applicant's own non-compliance with statutory obligations and an effort to unjustly deprive the injured employee of rightful redress. The 3rd Respondent urged this Honourable Court to dismiss the application with costs.

Analysis and determination

25. The court has considered the application, replying affidavit together with the rival submissions by both

counsels; the issue for determination is whether the application is merited.

26. In ***Republic V Minister for Lands Exparte Justin Nyagi Ngure & 5 Others***

[2012] KEHC 1087 (KLR), the court held that the main purpose for a judicial review is to check a process and not make a decision on the merits of the facts.

27. In ***Dande & 3 Others v Inspector General, National Police Service & 5 Others***

[2023] KESC 40 (KLR), the Supreme Court stated as follows:

“The entrenchment of judicial review in the Constitution has led to the emergence of divergent views on the scope of judicial review. The first group postulates that judicial review is concerned with the process a statutory body employs to reach its decision and not the merits of the decision itself, while the second group opine that under the current constitutional dispensation, courts could delve into both procedural and merit review in resolving disputes.”

28. In this instant case, the *Ex-parte* Applicant seeks orders of prohibition and *certiorari* to halt the enforcement of an award issued on 2nd July 2024, citing procedural irregularities and the expiry of the applicable time limitation.
29. In this case, a case of injury and the *Ex-parte* Applicant referred 3rd Respondent to some medical facility on 3rd July 2020 though the facility identity is not clear. But this proves the *Ex-parte* Applicant was aware of the Claimant/3rd Respondent was injured and needed medical intervention.
30. Clearly, the *Ex-Parte*/Applicant failed to report the accident to the Director as required in **Section 22(1) of Workmen Injury Benefits ACT (WIBA)** and an employer who fails to comply with subsection (1) commits an offence. The employee is mandated to report an occupational accident or disease to the Director at any stage.
31. The *Ex-parte* Applicant therefore did not come to court with clean hands as he failed to report the accident as required to the Director of Occupational Safety and Health Services.

The employee had the right therefore to report the accident at any time since the employer failed to discharge his duty.

32. In any case, in the event the *Ex-parte* Applicant was dissatisfied with the award of Director or the process he should have used the right procedure as provided in Section 51 & 52 of the Workmen Injuries Benefits Act (WIBA). Section 51(2) of WIBA provides: -

Objections and appeals against decisions of the Director

“The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.”

Section 52 of WIBA provides: -

Director’s reply

“The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his

decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.

An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision."

33. The court is of the opinion the Applicant should rightly have appealed the Director's decision rather than initiating a Judicial Review.

34. The court has critically considered the Judicial Review by the *Ex-parte* Applicant and is convinced the same is improperly coached as a review instead of following the right procedure which would have been an appeal.

35. The court finds the application by the *Ex-parte* Applicant lacks merit and is dismissed.

36. Each party will bear its costs of this application.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 24th Day of October, 2025.**

**ANNA NGIBUINI MWAURE
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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL