



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISCELLANEOUS APPLICATION NO. E279 OF 2025

HANNAH WANGARI WAIRIMU.....
.....APPLICANT

-VERSUS-

LATHYFLORA (K) LIMITED.....
....RESPONDENT

RULING

Introduction

1. On 1st January 2023, the Applicant suffered bodily injuries while in the course of employment by the Respondent and the matter was reported to the Director of Occupational Safety and Health Services who assessed his compensation at Kshs. 592,014 as per DOSH/WIBA 4 dated 15th September 2023.
2. Subsequently, the Applicant filed Notice of Motion dated 5th August 2025 seeking the following orders:

- a) The Honourable Court be pleased to direct the Respondent to pay to the Applicant, the sum of Kshs. 3,442,974/- being reasonable medical expenses incurred by the Applicant (at Mediheal Hospital Parklands) following the work- related injuries the Applicant sustained on 21st January, 2023 and more so in view of the assessment/award of the Director of the Occupational Safety and Health Services, Kiambu made on 15th September, 2023.**
- b) Upon such order/Directions being issued, a Decree do issue for;**
- i. The sum of Kshs. 3,442,974/- being reasonable medical expenses incurred by the Applicant (at Mediheal Hospital Parklands) following the work-related injuries the Applicant sustained on 21st January 2023 and more so in view of the assessment/award of the Director of Occupational Safety and Health Services, Kiambu made on 15th September, 2023; and.**
 - ii. Interest thereon at court rates from the date the medical expenses became due(31st July, 2023) until payment in full.**
- c) Costs of this Application be awarded to the Applicant.**

3. In response to the Motion, the Respondent filed a Notice of Preliminary Objection dated 7th October 2025 praying for the Applicant's Motion to struck out and/or dismissed with costs for the following grounds:

a) THAT the Application for enforcement of the Directors award is statute-barred having been filed outside the statutory timelines provided under the Work Injury Benefits Act.

b) THAT pursuant to section 26(1) of the Work Injury Benefits Act, the Directors award a claim for compensation in accordance with this Act shall be lodged by or on behalf of the Claimant in the prescribed manner within twelve months after the date of the accident or, in the case of death, within twelve months after the date of death.

c) THAT pursuant to Section 27(1) of the Work Injury Benefits Act, right to benefits in accordance with this Act shall lapse if the accident is not reported to the employer within twelve months after the date of such accident.

d) THAT the medical expenses claimed in the present enforcement proceedings do not form part of the Directors award, and therefore cannot lawfully be introduced or enforced under the guise of enforcement proceedings;

enforcement must be strictly limited to the award as assessed and issued by the Director.

e) THAT this Honourable Court therefore lacks jurisdiction to entertain or determine the present Application as framed, the same being incompetent, bad in law, and an abuse of the court process.

4. The Objection was disposed of by written submissions which were highlighted on 9th October, 2025. It was submitted that the Motion dated 5th August 2025 is incompetent, bad in law and an abuse of the court process because it seeks to introduce and/or enforce a claim of Kshs. 3,442,974 of being medical expenses that was not part of the Director's award in the DOSH/WIBA 4 of 15th September 2023.
5. It was further submitted that without an award by the Directors under WIBA the court cannot issue the orders sought. It was argued that the alleged medical expenses constitutes a civil claim and the court ought to be moved by a plaint and not through enforcement proceedings. It was submitted other than when exercising the appellate jurisdiction under WIBA, this can only adopt for enforcement an award by the Director. It cannot review or otherwise alter the liability or quantum of damages assessed by Director.

6. The Applicants case was that the motion was brought under section 2, 17, 29 and 47 of WIBA. It was submitted that section 16 of WIBA provides that work injury claims are to be sought under the provisions of the WIBA. It was argued that the Director does not assess medical expenses but the law grants the power to move the court for medical expenses. Besides, the medical expenses in this case were incurred after the DOSH form was filled.
7. It was submitted that DOSH FORM 1 bears endorsement in paragraph 6 that the Applicant was still on treatment to fortify the above submissions reliance was placed on **Samuel Otieno Musumba v. Industrial & Commercial Development Corporation [2022] eKLR.** where the court declined a claim for medical expenses and held that the Claimant ought to have pursued the same through the mechanism provided under WIBA.
8. I have considered the Motion, the objection and the submissions filed. The main issue is whether the court lacks jurisdiction to entertain the Applicant's Notice of Motion dated 5th August 2025.

Analysis

9. There is no dispute that the Applicant was injured while in the course of his employment by the Respondent. It is also common ground that the Director DOSH assessed the

compensation payable to the Respondent vide DOSH 4 dated 15th September, 2023. There is no indication that the said computation was under any challenge.

10. The Applicant is now before this court to claim an award of Kshs. 3,442,974 being medical expenses incurred at Mediheal Hospital where he was taken after the accident. The Applicant contends that the expenses were incurred after the Form DOSH 1 was filled by the employer. He avers that the claim is permitted under section 45 and 47 of the WIBA.
11. The Respondent has not challenged the merits of the claim but rather the procedure adopted by the Applicant to move the court prematurely. It avers that the jurisdiction of the court to adopt and enforce a claim for compensation for work injury stems from an award made by the Director under the provisions of WIBA.
12. I will not belabor this point. The Respondent is right in the above submissions. There are only two ways, a party can move the court under WIBA. The first is by an appeal under section 52(2) of the Act to challenge a final decision by the Director made under section 52(1) of the Act.
13. The second way to move the court is by invoking the court's inherent jurisdiction under Article 159 (2) and 162 (2)(a) of the constitution, and section 12 of the Employment and Labour

Relations Court Act. Rule 69 procedure Rules (2024) amplifies the foregoing procedure as follows:

“(1) Where parties have entered into a conciliation, negotiation or mediation agreement, or are bound by an arbitral award or a lawful decision reached in Alternative Justice Systems, a party may file the award, decision or agreement for adoption and enforcement as an order of the Court.

(2) An application under sub-rule (1) shall be by way of a miscellaneous application instituted through a notice of motion supported by an affidavit exhibiting the award, decision or agreement together with all relevant documents”.

14. The Claim by the Claimant is medical expenses for receiving treatment at Mediheal Hospital and it is anchored on section 45 and 47 of WIBA.

15. Section 47(1) provides that:

“ (i) subject to the provisions of this section employer shall defray any expenses reasonably incurred by an employee as a result of an accident arising out of, and in the course of the

employer's employment in respect of the following matters:

a) dental, medical or hospital treatments.

b)

16. Section 47(3) then provides that:

“ The necessity, nature and sufficiency of any medical aid provided or to be provided in accordance with the provision of this Part shall be determined by the council”.

17. The above provisions obliges an employer to pay the medical expenses incurred by an employee who suffers injuries in the course of employment. However, the National Council for Occupational Safety and Health has the mandate to determine the necessity and adequacy of the medical aid to the injured employee.

18. In the instant case, the amount claimed was not been determined by the said Council under section 47(3) of the WIBA. It is just a bill charged by a hospital. It is therefore premature for the Applicant to invoke the jurisdiction of this court to enforce the claim of Kshs. 3,442,974 for medical aid under section 47 of the WIBA. Until Applicants approaches the court waving an award made by the Director under WIBA, the court declines jurisdiction.

19. I gather support from **Samuel Otieno Musumba v. Industrial & Commercial Development Corporation & another, supra** where Ocharo Judge held:

“ The Claimant has also sought for a sum of Kshs. 529,000 being medical expenses. This is not a claim that I can award under these proceedings considering the provisions of section 16 of WIBA. The court lacks jurisdiction to grant the same. The Claimant ought to have pursued the medical expenses against the Respondent through the mechanism provided for under the Act”.

20. The above decision affirms the mandatory alternative procedure provided under section 16 of WIBA, thus:-

“ No action shall lie by an employee or any dependant of an employee for recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee’s employer, and no liability for compensation on the part of such employer shall arise save under the provision of this Act in respect of such disablement or death”.

21. For the reasons discussed above. I have reached the conclusion that the claim for medical expenses initiated vide the Notice of Motion dated 5th August 2025 is premature and

the court lacks the requisite jurisdiction to entertain it. Accordingly I must down my tools by striking out the Motion. Considering the serious injuries suffered by the Applicant while in the course employment by the Respondent. I will not condemn him to pay costs.

**DATED, SIGNED AND DELIVERED VIRTUAL IN COURT
AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.**

**ONESMUS MAKAU
JUDGE**

Appearance:

Weloba for the Claimant

Muema for the Respondent