

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. E324 OF 2025

(Before D. K. N. Marete)

CHINA STATE CONSTRUCTION ENGINEERING CORPORATION LIMITED
.....**APPELLANT**

-VERSUS-

MUSYIMI KISUNA**RESPONDENT**

RULING

This is an application dated 22nd September, 2025 and seeks a stay of execution of the decision of DOSH dated 27th May, 2025 that confirmed the decision dated 8th June, 2023 according the Respondent Compensation in the sum of Kshs.5,557,929.00. it also seeks leave to file an appeal out of time in the circumstances.

The Respondent in a Replying Affidavit sworn on 3rd October, 2025 opposes the application and prays that it be dismissed with costs.

The Applicant's case is premised on the ground that when the decision of the Director (DOSH) dated 27th May, 2025 was released, this was forwarded to the insurance, M/s Britam General Insurance Company (K) Ltd to facilitate the appointment of a lawyer for purposes of appeal. It was not until 18th September, 2025, when a follow-up with the insurer was made that it was realized that the matter had not been acted upon but filed away by the insurer's records department. This was not intended and remains regretted.

It is the Applicant's position that the assessment of the DOSH in the tune of Kshs.5,557,929.00 does not take into account the medical report by the insurance doctor, Dr. Wambugu who assessed the incapacity of the Respondent at 8%. This is instead of the erroneous 50% assessment made by Dr.

Sakari, a medic attached to the agency. It also failed to make adequate inquiries as contemplated by sections 21, 22, and 23 of the Work Injury Benefits Act, 2007.

The Respondent in their Grounds of Opposition posit that this application is incompetent, misconceived and devoid of merit having been filed with inordinate delay and lacking in sufficient cause. The Applicant was served with the award and all requisite notices of director but failed to act as is required of section 52 of the Act. They are therefore not deserving of this court's discretionary indulgence.

The Respondent further posits that this application is afterthought intended to defeat the cause of justice and was brought out when the respondent commenced execution proceedings. It is an attempt to deny that the Respondent the fruits of his award. It is *in toto* frivolous, vexatious and oppressive and intended to delay an award resulting from injuries sustained in course of duty. Again, the Applicant does not come to court with clean hands and should therefore be declined an opportunity to continue their opaque overtures against the interest of an injured and jobless worker.

In summation the Respondent seeks to rely on the authority of **Maclean & another v Kiago & another (Miscellaneous Civil Application E070 of 2023) [2025] KEHC 3572 (KLR) (24 March 2025) (Ruling)** where the court observed the following on issues of an application to appeal out of time;

“...It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted.”

The Respondent has brought out a case of dalliance and immobility on the part of the Applicant but overall, court must warn themselves of making determinations of salient issues at a preliminary a stage. These are best left for determination on hearing the party's respective cases. It is in this respect that this court exercises its discretion in favour of the application.

I am therefore inclined to allow the application on the following terms;

- (i) Stay of execution be and is hereby issued against the award of the Director (DOSHS) dated 8th June, 2023.
- (ii) That the Applicant is awarded thirty (30) days to make, file and serve an appeal out of time against the Director's award dated 8th June, 2023.
- (iii) That the Applicant be and is hereby ordered to deposit the amount of Kshs.5,557,929.00 in court within thirty (30) days of this ruling of court and in default, execution to issue.
- (iv) Each party shall bear their costs of this application.

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Njuguna instructed by Wainaina Ileri Advocates LLP for the Intended Appellant/Applicant.

2. Mr. Akiro instructed by Akiro & Associate Advocates for the Respondent.