

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER E003 OF 2024

DANIEL OMBWORI MAAKE.....
CLAIMANT

VERSUS

DOSHI & CO. (HARDWARE) LTD-SPD
RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 13th December 2023, the Claimant initiated the legal proceedings herein against the Respondent, seeking;

- a. A declaration that the respondent is under an obligation to compensate the claimant for the occupational injury under Section 26 of the Work Injury Benefits Act,2007.
- b. A declaration that the respondent is under a statutory obligation to compensate the Claimant and pay him the sum of Ksh. 421,912.00 as assessed by

the Directorate of the Occupational Safety and Health Services.

- c. An order compelling the respondent to pay the sum of KShs. 421,912.00 to the Claimant.
- d. Interest on (c) above from the date of filing this suit until payment in full.
- e. Costs of this suit.
- f. Any other remedy and or relief which this Honourable Court may deem just and expedient to award in the circumstances.

2. The Respondent disputed the Claimant's claim through a Response to the Memorandum of Claim dated 23rd May 2024. The Respondent asserts that the claim is flawed and does not establish a valid cause of action. It denies employing the Claimant at the relevant time, disputes the alleged injury and any DOSH assessment or award of Ksh. 421,912, and also denies any refusal to remit payment.

3. On 27th May 2025, the parties notified the Court that they had agreed to have the matter decided based on the

documents on record. Accordingly, none of them testified in Court or presented any witnesses.

4. The Claimant's Memorandum of Claim was filed concurrently with his witness statement, along with a list of documents dated 13th December 2023, which included the documents he relied on to support his case.
5. The Respondent did not file any witness statement. They only filed a list of witnesses and a medical report by Dr Salim K. Noorani.

The Claimant's case

6. It was the Claimant's case that he was first employed by the Respondent, Doshi & Co. (Hardware) Ltd-SPD, as a loader. On 1st March 2019, he sustained an occupational injury while in the course of his employment.
7. The injury was properly reported to the Directorate of Occupational Safety and Health Services (DOSHS). He then received a medical examination at Coast General Teaching

and Referral Hospital, which determined his permanent disability at 25%. Using this assessment, the County Occupational Safety and Health Office, Mombasa, calculated his compensation at Ksh. 421,912, as shown on Form DOSH/WIBA 4 dated 17th February 2022. This form was served to the Respondent for payment.

8. It was further stated that the Respondent, under the instruction of his insurer, GA Insurance Limited, was subjected to a second medical examination. He attended the second examination, carried out by Dr Salim K. Noorani. A medical report resulting from this examination was never provided to him.

9. He stated that even after the re-examination, the Respondent did not compensate him as required by law. This prompted the Director to issue a demand letter dated 25th January 2023, requiring the Respondent to settle the awarded amount within fourteen days. The letter didn't elicit any response from the Respondent.

10. As confirmed by the Director to his [the Claimant's] Counsel, the Respondent did not object and appeal against the assessment and award.

11. Despite demands by his Counsel to the Respondent's Insurer, the Insurer did not bother to reply to them.

Respondent's case

12. As indicated above, the Respondent, Doshi & Co. (Hardware) Ltd-SPD, did not file any witness statement. They only filed a list of witnesses and a medical report, in addition to the Response to Memorandum of Claim.

Determination

13. I have carefully considered the pleadings filed by the parties herein, the witness statement by the Claimant, and the documents filed by the parties respectively, and a sole issue emerges for determination in this matter, namely, whether the Claimant's case is merited.

14. Before delving further into the identified issue, I find it important to point out that, in light of the Court's limited

jurisdiction under the Work Injury Benefits Act, an appellate jurisdiction, and the explicit ouster of its original jurisdiction, borne out of jurisprudence to address the lacuna in the Act concerning enforcement of the Director's award under the Act, this Court acknowledges that it has jurisdiction to entertain enforcement motions or claims, for as long as they are only regarding matters enforcement of the award and not contentious.

15. In **Charles v Cheto (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR) (9 May 2025) (Judgment)**, the Court of Appeal stated;

“The general position established by a majority of these decisions is as follows:

a. The law does not provide for mechanisms of enforcing the Director's award against a reluctant employer.

b. In the face of this lacuna, the holder of the award can move the court to seek for enforcement of the award. A majority of the

decisions favour the view that the ELRC can be moved for this purpose pursuant to its jurisdiction under Article 162 of the Constitution as read with section 12 of the ELRC Act. Only one decision holds the view that the ELRC cannot be moved for this purpose. A few share the view that the Magistrate's court may be moved where pecuniary jurisdiction allows

c. The proceedings for enforcement may be in summary form by way of miscellaneous causes or in the form of ordinary causes, but confined to matters of enforcement only.

d. Unless by way of appeal under section 52 of the WIBA, it is not open to the court to consider the merits of the Director's award or indeed go on a fact-finding mission. This jurisdiction is the preserve of the Director."

16. A careful examination of the material submitted before this Court does not suggest a different perspective from the

understanding that the matter is solely one of enforcement, with no contentious issues that would cause this Court, in its endeavour to resolve them, to appear to be exercising original jurisdiction.

17. It is equally important to note at this point that if a Respondent files a Statement of Response but, during the hearing, calls no witness to testify on their behalf or fails to file a witness statement contemporaneously with or after the filing of the Statement/Memorandum of Response, which can be adopted as their evidence in chief during trial in accordance with the Procedure Rules of this Court, such a Statement of Response will remain merely that—without any evidential value. This principle applies against the Respondent in this matter.

18. From the documents presented by the parties, including the Medical Report by Dr Salim Noorani [by the Respondent], addressed to their Insurer, GA Insurance Ltd, I arrive at this unavoidable conclusion: The Claimant was an employee of the Respondent at all relevant times.

19. The Claimant's version states that he was employed by the Respondent as a loader and was injured on 1st March 2019 during his employment; the incident was reported to the Directorate of Occupational Safety and Health Services (DOSH); the Director had his incapacity assessed and made an award of KShs. 421,912 based on the assessment; and despite being served with the assessment and the award, the Respondent and its insurer, GA Insurance Limited, failed to settle the sums of the award, which was not rebutted.

20. **Section 24(4) of the Work Injury Benefits Act** provides that an employer or insurer against whom a claim for compensation is made by the Director shall settle the claim within ninety days of the lodging of the claim.

21. An employer who is dissatisfied with a decision of the Director is obliged, under Sections 51 and 52 of the Work Injury Benefits Act, to challenge the decision and, within 60 days, formally. Failure to do so will make the decision final and legally binding. In this case, the Respondent did not dispute the assessment within the required period.

22. In the upshot, judgment is hereby entered in favour of the Claimant in the following terms;

- a) The award issued by the Director of Occupational Safety and Health Services is hereby adopted as a judgment of this Court.
- b) The Respondent shall pay the Claimant the sum of KShs. 421,912.
- c) Interest at court rates from the date of the award till full payment.
- d) Costs of this suit.

Read Signed and Delivered this 27th Day of November 2025.

OCHARO KEBIRA
JUDGE