

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

MISC. APPLICATION NO. E 067 OF 2025

(Before Hon. Justice Ocharo Kebira)

CHARLES ONYANGO SAMADA..... APPLICANT

VS

SUPPLIES & SERVICES LTD1ST RESPONDENT

GA INSURANCE LIMITED.....2ND RESPONDENT

RULING

1 By a Notice of Motion Application dated 23rd July 2025, the Applicant seeks the following orders:

- I. The Honourable Court be pleased to adopt as judgment of the Court, the assessment /award of the Director of Occupational Safety and Health Services, Mombasa, made on 7th March, 2025, as judgment of the Court.
- II. THAT a decree do issue against the Respondent jointly and severally for;

- a) The sum of KShs. 711,336.40 being the Director's award /assessment made on 7th March 2025; and
- b) Interested thereon at court rates from the date of the award, 7th March 2025, until payment in full.

III. Costs of this application to be awarded to the applicant.

2 The application is based on the grounds outlined on its face, supported by an affidavit sworn by the Applicant dated 23rd July 2025.

3 The Applicant opposes the application through a replying affidavit sworn by SYMON K. LARIAK, the 2nd Respondent's Assistant Manager-Legal Department on 3rd September 2025.

The Application

4 The Applicant states that on 26th April 2024, he suffered a workplace injury while performing his duties as an employee of the 1st Respondent.

5 The incident was reported to the Directorate of Occupational Safety and Health Services in Mombasa via DOSH/FORM 1. Following an assessment, it was determined that he sustained a 35% permanent incapacity. Accordingly, on the 7th of March, 2025, DOSH/WIBA 4 was issued, mandating the first Respondent to pay the Applicant compensation in the amount of KShs. 711,336.40.

6 He asserts that upon assessment, the Respondent was required to make the said payment within 90 days, after which the Director would remit the sum paid to the Applicant within 30 days.

7 Despite being notified of the assessment and the award, the Respondent did not object or appeal against it within the statutory period or at any time.

8 The Applicant further asserts that, noting the delay in effecting the compensation, the Director issued a letter dated 1st July 2025, requiring the Respondent to settle the awarded sum within twenty-one [21] days. The letter did not attract any response.

9 The justice of this matter demands that the award be adopted as a judgment of this Court to enable enforcement of the award against the Respondent.

The Response.

10 The Respondents state the Applicant's application is baseless and a gross abuse of the process of the Court. It is not grounded on principles of law and is brought in bad faith.

- 11 They argue that, contrary to the assertions made by the Applicant, the Respondents were never informed of the award issued by the Director on 7th March 2025, nor given an opportunity to challenge the award through an objection within 60 days, as stipulated by section 51 of the Work Injury Benefits Act.
- 12 They contend that the 1st Respondent did not receive any communication, correspondence, or directive from the Director in relation to the award. The 2nd Respondent was equally not notified of the award, assessment or liability under the Act.
- 13 They contend that they only came to know about the award when they were served with the instant application by the Advocate for the Applicant.
- 14 The award dated 7th March 2025 was made unilaterally without affording them an opportunity to be heard or respond, contrary to their constitutional and statutory right to fair administrative action.
- 15 That the award under WIBA may only be enforced by filing a suit with the court under the provisions of section 87 of the Employment Act.

16 The wider interest of the application demands that the application be dismissed with costs.

Analysis and Determination.

17 This Court notes that the replying affidavit in response to the Application is sworn by a Legal Officer of GA Insurance Company Ltd, the 2nd Respondent, which insures the Applicant concerning third-party claims under the Work Injury Benefits Act. A Director of the 1st Respondent or an authorised employee should have deposed to facts in the replying Affidavit, particularly those relating to the 1st Respondent, such as the issue of non-service of the award, being not involved in the proceedings before the Director. In my view, the facts presented are essentially hearsay, as the affiant lacks direct knowledge of the matters discussed.

18 There is no dispute that the Respondents did not file any objection or appeal against the Director's assessment and award, or against the manner in which the proceedings before the Director were conducted. Although the Respondents had other options to challenge the process — which they claim violated their right to a hearing and produced a decision they consider arbitrary and unreasonable — such as initiating judicial review proceedings or seeking an extension of time from this Court to

contest the assessment and award before the Director, they have not undertaken any such actions to date.

19 In my view, and as a line of judicial authorities clearly demonstrates, given the structure of the Work Injury Benefits Act—which confers on this Court jurisdiction limited solely to appeals and explicitly excludes original jurisdiction—the Court would not involve itself in contentious matters such as non-service in an application like the present.

20 As there was no appeal filed against the Director’s award, and as the Respondents have not engaged this Court in any of the ways identified hereinabove, the Applicant’s application dated 23rd July 2025 is hereby allowed.

Read Signed and Delivered virtually in Mombasa on the 20th November 2025.

OCHARO KEBIRA

JUDGE