

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E100 OF 2025

ROBERT ORENGE NYAEGA.....APPLICANT

VERSUS

BONDS **GARDEN**
RESTAURANT.....RESPONDENT

RULING

1. Through a Notice of Motion dated 19th February 2025, the Applicant herein seeks the following orders:

- 1) *THAT the honorable court adopts the assessment of the Director of Occupational Safety and Health Services as a judgment of the court.*
- 2) *THAT a decree for Kshs. 398,923.00 do issue in accordance with the assessment of the Director of Occupational Safety and Health Services.*
- 3) *THAT the Honourable Court be pleased to award interest at court rates to be paid by the Respondent from the 29th February, 2024 when the award was made till payment in full.*
- 4) *THAT costs of this application be borne by the Respondent.*

2. The Motion is anchored on the grounds set out therein and on the Supporting Affidavit sworn by the Applicant, **Robert Orenge Nyaega**. The Applicant avers that he was employed by the Respondent as a rider at all material times and that on 17th March 2023, he was involved in a road traffic accident while in the course of his employment, sustaining serious injuries to his right leg.

3. The Respondent subsequently reported the incident to the Director of Occupational Safety and Health Services by completing DOSH Form 1. Upon consideration and assessment of the injury and the resulting claim, the Director awarded the Applicant compensation in the sum of Kshs. 398,923.00, which remains unpaid.

4. It is further averred by the Applicant that on 22nd September 2023, the Respondent was served with the DOSH/WIBA 4 Form, the Medical Report, and the duly completed DOSH Form 1, but has since failed, refused, and/or neglected to settle the assessed amount despite several reminders.

5. In the Applicant's view, the Respondent has no valid defence to the claim for compensation.

6. The Applicant further asserts that more than 90 days have lapsed since the demand was issued, and the Respondent has neither lodged an objection nor preferred an appeal against the Director's assessment, and is therefore obligated to settle the assessed amount.

7. In response to the Motion, the Respondent filed Grounds of Opposition through its counsel on record, contending, *inter alia*, that:

1. *While Section 12 of the Employment and Labour Relations Court Act outlines the Court's jurisdiction, the direct adoption of an administrative assessment as a court judgment without independent judicial review or a proper hearing may exceed the Court's inherent powers, particularly where the assessment itself is contested or potentially flawed.*
2. *Adopting the assessment of the Director of Occupational Safety and Health Services as a judgment of the court without affording the Respondent a full and fair opportunity to challenge the assessment on its merits infringes on the Respondent's constitutional right to a fair hearing as enshrined in Article 50 of the Constitution of Kenya, 2010.*
3. *The Respondent should be allowed to present its case regarding the assessment, including but not limited to the quantum awarded, the circumstances of the injury, and any other relevant factors.*

4. *While the Applicant asserts that the Respondent has "no defence to the claim for compensation", this is a matter that ought to be fully ventilated before the Court. The Respondent denies unequivocally that it has no defence and reserves the right to challenge the basis of the claim, the extent of the injuries, the causal link between the employment and the accident, and the quantum of Kshs. 398,923.00 awarded.*
5. *The Applicant's assertion that the Respondent has not preferred an objection or appeal against the Director's assessment within ninety days does not automatically grant this Honourable Court the power to adopt the assessment as a judgment.*
6. *The Court should satisfy itself that the pre-conditions for such an adoption have been strictly met and that no prejudice will be occasioned to the Respondent.*
7. *The Applicant seeks interest at court rates from February 29, 2024. This claim for interest is premature and baseless given that the principal amount itself is still contested and has not been formally adopted as a judgment of the Court. Interest, if any, should only accrue once a definitive judgment on the principal sum has been rendered.*

8. The Applicant's supporting affidavit contains assertions that are not admitted by the Respondent, including but not limited to the nature and extent of the Applicant's employment, the circumstances of the accident on March 17, 2023, and the Respondent's alleged failure, refusal, and/or neglect to settle the amount. These disputed facts necessitate a full hearing rather than a summary adoption of an administrative assessment.

Submissions

8. The Application was canvassed by way of written submissions. The court has paid due consideration to the written submissions by both parties.

Analysis and Determination

9. Having considered the Notice of Motion, the Respondent's Grounds of Opposition, and the parties' respective submissions, the principal issue for determination is the merit of the Motion, specifically, whether this Court should adopt the award made on 29th February 2024 by the Director of Occupational Safety and Health Services (the Director).

10. The Respondent argues that adopting the Director's assessment as a judgment of the Court, without according it a reasonable opportunity to challenge the

assessment on its merits, would infringe upon its constitutional right to a fair hearing.

11. The Respondent further contends that it should be afforded an opportunity to present its case on the assessment, including but not limited to the quantum awarded, the circumstances surrounding the injury, and any other pertinent factors.

12. According to the Respondent, it retains the right to dispute the basis of the claim, the extent of the injuries, the causal link between the accident and the Applicant's employment, and the assessed compensation of Kshs. 398,923.00.

13. It is instructive to note that Sections 51 and 52 of the Work Injury Benefits Act provide a clear statutory dispute-resolution mechanism regarding awards issued by the Director. In this regard, a party dissatisfied with an award by the Director may lodge an objection under Section 51, to which the Director must issue a written response. If still aggrieved, the party may thereafter appeal to this Court under Section 52(2) within thirty (30) days of the Director's decision.

14. In the present case, it is notable that although the Respondent contends that it has not been afforded a reasonable opportunity to challenge the assessment of the Director on its merits, it has neither indicated nor suggested that it lodged an objection or an appeal against the award in accordance with the statutory framework under the Work Injury Benefits Act.

15. Indeed, the record before this Court contains no Objection under Section 51, nor any appeal under Section 52(2), challenging the Director's decision.

16. In the event the Respondent was aggrieved by the Director's decision and desired an opportunity to contest the assessment, the quantum, the extent of the injuries, or the causal connection between the accident and employment, its proper recourse would have been to file an appeal within the statutory timelines. Evidently, it did not do so.

17. If I may add, the issues raised by the Respondent in its Grounds of Opposition, particularly those relating to the quantum, the extent of the injuries, and the causal link between the accident and the Applicant's employment, ought to have been ventilated through the appellate process contemplated under Section

52(2) of the Work Injury Benefits Act. It is at that stage that the Respondent would have been afforded an opportunity to be heard.

18. In view of the foregoing, the Court finds no reason to decline the Applicant's Motion. In so finding, the Court concurs with the observation in **Mwangata v Shyam General Merchants Limited (Cause E086 of 2024) [2025] KEELRC 616 (KLR) (16 January 2025) (Ruling)**, thus:

“Absent an objection and/or appeal by the respondent against the award dated May 30, 2023, this court’s jurisdiction to enforce the said award in the face of the respondent’s non-settlement of the same, has matured.”

19. In the present case, it is undisputed that the Director issued an award in favour of the Applicant on 29th February 2024. The record contains no evidence that the award has been challenged through the mechanisms provided under the Work Injury Benefits Act, nor that the Respondent has taken any steps toward satisfying it.

20. Consequently, this Court allows the Application dated 19th February 2025 and finds that the Applicant is entitled to the sum of **Kshs. 398,923.00** as assessed by the Director on 29th February 2024.

21.The Court further awards interest on the said amount at court rates from the date of this Ruling until payment in full.

22.The Respondent shall also bear the costs of this Application.

DATED, SIGNED and DELIVERED at NAIROBI this 1st day of December 2025.

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**STELLA RUTTO
JUDGE**

In the presence of:

For the Applicant	Mr. Mwaura
For the Respondent	No appearance
Court Assistant	Mohammed

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 had 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.

STELLA RUTTO

JUDGE