

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E226 OF 2025

ROBERT WANDABWA WANYONYI.....APPLICANT

VERSUS

ROYAL GARMENT INDUSTRIES & EPZ LIMITED.....RESPONDENT

THE DIRECTOR OF

**OCCUPATIONAL SAFETY AND HEALTH.....INTERESTED
PARTY**

RULING

1. This Ruling is with respect to two applications filed by the parties herein. The first is the Notice of Motion dated 9th July 2025 filed by **Robert Wandabwa Wanyonyi**, and the second is the Notice of Motion dated 25th July 2025 filed by **Royal Garment Industries & EPZ Limited**.

2. For clarity in this Ruling, Robert Wandabwa Wanyonyi shall be referred to as the Applicant, while Royal Garment Industries & EPZ Limited shall be referred to as the Respondent.

3. Through the Notice of Motion dated 9th July 2025, the Applicant seeks the following orders:

1. *Spent.*
2. *THAT this Honorable Court be pleased to adopt as a judgment of this Honorable Court the award of the Directorate of Occupational Safety and Health Officer made on 18th March, 2025.*
3. *THAT judgment be entered for the Applicant against the Respondent for Kshs. 664,241/= being the amount assessed under the Work Injury Benefits act.*
4. *THAT this Honorable Court be pleased to award interest on the amount from the date of assessment until payment in full.*
5. *THAT this Honorable Court be pleased to award any other relief this court may deem fit and just to grant.*
6. *THAT the costs of this application be awarded to the Applicant.*

4. The Application is premised on the grounds set out on its face and is supported by the annexed Affidavit of **Robert Wandabwa Wanyonyi**, the Applicant.

5. The Applicant avers that on 11th April 2024, he sustained severe injuries while in the course of his employment with the Respondent as a machine operator. He

subsequently reported the incident to the Director of Occupational Safety and Health Services (Director), who assessed the compensation payable at Kshs. 664,241/= on 18th March 2025.

6. It is further averred that the Respondent neither lodged an objection nor preferred an appeal against the said award under Sections 51 and 52 of the Work Injury Benefits Act (WIBA). That despite being fully aware of the award, the Respondent has refused and/or failed to settle the assessed sum of Kshs. 664,241/= awarded to the Applicant by the Director.

7. Upon being served with the Applicant's Application, the Respondent filed a Notice of Motion dated 25th July 2025 seeking the following orders:

1) The award/order dated 18th March 2025 issued by the Director of Occupational Safety and Health in favour of the Respondent be set aside, vacated and/or quashed for non-service, want of notice, and violation of the Applicant's constitutional and statutory rights.

2) The Honourable Court confirms and declares that the proceedings before DOSH were conducted in breach of natural justice, Articles 47 and 50 of the Constitution, and Section 115 of the Occupational Safety and Health Act, and are thus null, void and of no legal effect.

3) The Applicant be granted leave to file its objection and challenge to the proceedings and/or determination at Director of Occupational Safety and Health, including presenting its response, evidence, and witnesses and the matter be remitted to the Director of Occupational Safety and Health for a fresh and fair hearing de novo with full participation of all parties and strict compliance with the applicable law.

4) The costs of this Application be borne by the Respondent.

8. The Respondent's Motion is founded on the grounds set out on its face and is supported by the Affidavit of **John Muthui**, its Administration Manager.
9. The Respondent contends that it was never served, notified, or otherwise made aware of the institution, pendency, or substance of the proceedings before the Director, contrary to the mandatory requirements of service under Section 115 of the Occupational Safety and Health Act and the principles of natural justice.
10. It is further averred that the Respondent did not lodge or receive any report, did not participate in, nor make any representations at any stage during the DOSH process, and remained wholly unaware of the proceedings and the claim against it until after the delivery of the impugned award.

11. Mr. Muthui avers that the Respondent only became aware of the award upon being served with the Application dated 9th July 2025, approximately four months after the award had been issued. Prior to this, the Respondent had no knowledge of any claim or proceedings before the Director.

12. The Respondent asserts that the Director failed to comply with Section 115 of the Occupational Safety and Health Act, which mandates service of any order, summons, notice, or proceedings on the concerned party before any determination is made.

13. On 28th July 2025, the Respondent, through its counsel on record, informed the Court that its application would serve as its response to the Applicant's Application.

14. The Applicant, Robert Wandabwa Wanyonyi, opposed the Respondent's Notice of Motion by filing a Replying Affidavit dated 5th August 2025. He avers that on 11th April 2024, while in the course of his employment with the Respondent, a metal rod fell on his left hand, causing severe injuries. He reported the accident to the Respondent, who facilitated his treatment at Kitengela Medical Services.

15.He further states that he reported the matter to the Director after the Respondent declined to do so. That the Occupational Safety and Health Officer assessed the compensation payable on 18th March 2025 at Kshs. 664,241/= and thereafter forwarded the assessment to the Respondent for payment. He contends that the Respondent was duly notified but declined to participate in the process.

16.Mr. Wanyonyi asserts that, despite being aware of the award and despite a subsequent demand notice, the Respondent has refused and/or failed to settle the assessed amount of Kshs. 664,241/=.

17.He further states, on the advice of his advocates on record, that this Court lacks jurisdiction to entertain contested factual issues arising from the Director's decision, as such matters fall within the exclusive mandate of the Director prior to issuing an award.

18.Mr. Wanyonyi maintains that all due process requirements, including notifying the Respondent, were complied with.

19.The Director, who was joined as an Interested Party in the Respondent's Application, did not file any response thereto.

Submissions

20. The Application was canvassed through written submissions. The Court has duly considered the parties' respective submissions.

Analysis and Determination

21. Having considered the two Applications dated 9th July 2025 and 25th July 2025, the Applicant's Replying Affidavit, and the rival submissions, the Court has distilled the following issues for determination:

- i. Whether the Director's award should be set aside, the Respondent granted leave to file an objection; or the matter remitted for a fresh and fair hearing de novo.*
- ii. Depending on the determination of (i), whether the Court should adopt the award issued by the Director on 18th March 2025.*

Whether the Director's award should be set aside, the Respondent granted leave to file an objection, or the matter remitted for a fresh and fair hearing de novo.

22. The Respondent contends that it was never served, notified, or made aware of the institution, pendency, or substance of the proceedings before the Director. It further asserts that it did not lodge a report, receive a report, participate, or make any representations at any stage during the process, and remained

unaware of the proceedings and the claim against it until after the Director issued the award.

23. In opposition, the Applicant avers that upon sustaining injuries while at work, he reported the accident to the Respondent, who facilitated his treatment at Kitengela Medical Services.

24. The Applicant further states that he reported the accident to the Director after the Respondent declined to do so.

25. Section 21 of the Work Injury Benefits Act (WIBA) provides that written or verbal notice of any workplace accident, as outlined in Section 22, shall be given by or on behalf of the employee to the employer, with a copy of the notice sent to the Director within twenty-four hours in the case of a fatal accident.

26. Section 22 requires the employer to report an accident to the Director in the prescribed manner within seven days of receiving notice of the accident or learning that an employee has been injured.

27. Notably, under Section 22(5) of WIBA, an employee is not precluded from reporting an occupational accident or disease directly to the Director at any

stage. It is presumably on this basis that the Applicant reported the accident to the Director.

28. Given the Respondent's contention that it neither lodged a report nor participated in the proceedings before the Director, and only became aware of them after the award had been issued, the question arises: what is the correct legal recourse in such a situation?

29. In **Charles v Cheto [2025] KECA 784 (KLR)**, the Court of Appeal upheld the trial Judge's finding that Sections 51 and 52 of WIBA are silent on the remedies available to a party who becomes aware of proceedings before the Director after the statutory period for lodging an objection or filing an appeal has lapsed. The Court further concurred with the trial Judge that, in such circumstances, the appropriate course is to lodge a Motion for Judicial Review to quash the award before its adoption by the Court, while first seeking to stay the adoption proceedings.

30. As correctly observed by the Court of Appeal, the only viable remedy for a party such as the Respondent, who becomes aware of proceedings before the Director after the statutory period for lodging an objection or filing an appeal, is to institute judicial review proceedings to quash the Director's award.

31. In light of the binding authority of **Charles v Cheto (supra)**, it is evident that the Respondent has improperly approached this Court through the instant Notice of Motion, instead of filing a Motion for Judicial Review to quash the Director's award.

32. In the *Cheto* case, the learned Judges of Appeal found that the appellant, having taken no steps to seek judicial review of the Director's award, was misdirected in seeking to present a case for what he misperceived as a breach of his constitutional right to a fair hearing. Similarly, in this current case, the court finds the Respondent cannot raise grievances regarding the Director's procedures (breach of natural justice and constitutional rights under Articles 47 and 50) at this stage.

33. Indeed, it is during judicial review proceedings that a party, such as the Respondent, may appropriately challenge the fairness and legality of the administrative process followed by the Director. Clearly, this cannot be achieved through the instant Notice of Motion.

34. The Respondent has also sought leave to file an objection and challenge the proceedings before the Director. On this point, the Court of Appeal in *Cheto* held that any attempt to seek leave from the ELRC to file objection proceedings out of time, or to stay adoption proceedings pending such an objection, would be a futile effort to invoke the Court's jurisdiction, which only arises on an appeal against the Director's written determination of an objection.

35. Applying the decision in *Cheto* to the present case, it becomes apparent that this Court, having been approached through the instant Motion, lacks jurisdiction to grant the orders sought by the Respondent. As it stands, the present matter relates to enforcement proceedings of the award by the Director, and consequently, the Court's jurisdiction is limited.

36. Indeed, it is clear that the Court's jurisdiction at this stage is narrowly circumscribed, being limited solely to appeals and expressly excluding original jurisdiction. Accordingly, it is not appropriate for the Court to engage in contentious matters such as alleged non-service, as raised in the present application by the Respondent.

37. Having found that the Respondent has moved this Court improperly through the instant Motion, I now move to consider the second issue identified for determination: ***whether this Court should adopt the award by the Director.***

38. As no appeal has been filed against the Director's award, and the Respondent has not engaged this Court in the manner outlined above, the Court finds no reason to refuse the Applicant's request for adoption of the Director's award.

39. Consequently, this Court finds that the Applicant is entitled to the sum of **Kshs. 664,241.00**, as assessed by the Director on 18th March 2025.

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

41. 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:

Mr. Kyalo instructed by Mr. Mwihi for the Applicant

Mr. Farah for the Respondent

No appearance for the Interested Party

Mohammed Court Assistant

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

ORIGINAL