

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E394 OF 2025

SHANTAL CHARI ANDREW.....1ST
APPLICANT

ESAU MAGHANGA ANDREW.....2ND APPLICANT
(suing for and on behalf of Andrew Marago Ndindi- deceased)

VERSUS

MIDLAND HAULIERS LTD.....1ST
RESPONDENT

OCCIDENTAL INSURANCE COMPANY LIMITED.....2ND
RESPONDENT

RULING

1. By way of a Notice of Motion dated 9th October 2025, the Applicants seek an order for the adoption of the assessment made by the Director of Occupational Health and Safety on 5th August 2020 as the judgment of this Court against the Respondents, jointly and severally. The Applicants further pray for a decree for the sum of Kshs 2,463,672, burial expenses of Kshs 786,495, and interest at court rates of 14% from the date of the award (5th August 2020) until full payment.

2. The Motion is premised on the grounds set out therein and is supported by the Affidavit of **Shantal Chari Andrew**, the 1st Applicant herein. Ms. Shantal has described herself as the daughter of the late Andrew Mwarago Ndindi. She avers that the deceased was an employee of the 1st Respondent until the date he sustained injuries on 9th May 2018.
3. Ms. Shantal further avers that the deceased suffered an untimely death while at work, an incident which was reported to the Director of Occupational Safety and Health (Director). Following an assessment, the Director issued DOSH/WIBA 4, directing the 1st Respondent to compensate the deceased in the sum of Kshs 2,436,672/=.
4. She adds that there was also an expenditure of Kshs 786,495/= incurred in the process of laying the deceased to rest.
5. Ms. Shantal further avers, based on the advice of her counsel, which she believes to be true, that the 1st Respondent was required to make payment within 90 days, after which the Director would remit the sum to her within 30 days.

6. She further avers that the 1st Respondent was notified of the assessment on 5th August 2020 but has neither lodged an objection nor filed an appeal as required by law.
7. The Respondents did not file any response to the Motion. In the Affidavit of Service sworn on 3rd November 2025, **Jackson Mutinda**, who describes himself as a duly authorised court process server, states that on 26th October 2025, he went to the 1st Respondent's offices, only to find the gate closed and the premises unoccupied. He further avers that upon inquiring at a neighboring company, he was informed by a security guard that the 1st Respondent had been closed since 2020 and its whereabouts were unknown.
8. Regarding the 2nd Respondent, Mr. Jackson Mutinda attached to his Affidavit of Service a copy of the Notice of Motion bearing the 2nd Respondent's receiving stamp, confirming that the 2nd Respondent was duly served with the Motion.

Analysis and Determination

9. Having considered the Notice of Motion and the grounds in support thereof, the central issue for determination is whether this Court should adopt the award made by the Director on 19th November 2024, and whether the 2nd Respondent (insurer) is obliged to satisfy the said award.

10. As earlier stated, the 1st Respondent did not respond to the Motion. Consequently, the claim that the deceased was an employee of the 1st Respondent remains undisputed. Similarly, it is not contested that a claim was lodged with the Director, who, following an assessment, awarded compensation of Kshs 2,436,672/= on 5th August 2020.

11. It is notable that Sections 51 and 52 of the Work Injury Benefits Act provide a clear statutory mechanism for addressing disputes arising from the Director's award. In this regard, a party aggrieved by an award may lodge an objection under Section 51, to which the Director must issue a written response. If dissatisfied with that decision, Section 52(2) allows an appeal to this Court within 30 days of the Director's determination.

12. In the present matter, there is no record of any objection having been lodged with the Director or an appeal having been filed before this Court under Section 52(2) challenging the Director's award.

13. To this end, the Court finds no reason to refuse the Applicants' Motion, noting that it is undisputed that the Director issued an award in favour of the Applicants on 5th August 2020 as compensation for the deceased's death, and that no objection or appeal has been filed in accordance with the procedures

under the Work Injury Benefits Act. Likewise, there is no evidence that the 1st Respondent has taken any steps to satisfy the award.

14. With respect to the Applicants' claim against the 2nd Respondent, it is important to note that the claim between the Applicants and the 1st Respondent is separate and distinct from any potential claim that may exist between the 1st Respondent and the 2nd Respondent (the insurer).

15. While Section 7 of the Work Injury Benefits Act requires employers to obtain and maintain insurance coverage for their employees, an employee or their dependants has no direct cause of action against the insurer, as they are not a party to the contract of insurance between the employer and the insurer.

16. It is worth noting that the Court's jurisdiction in work injury claims is expressly confined by Section 52(2) to appeals against the Director's decisions.

17. In the absence of any appeal in this matter, this Court's jurisdiction is confined to the dispute between the Applicants, as dependants of the deceased who was an employee of the 1st Respondent, in their respective capacities as dependants under the framework of the Work Injury Benefits Act.

18. In light of the foregoing, the Court allows the Motion dated 9th October 2025 and finds that the Applicants are entitled to the compensation of **Kshs 2,436,672.00** as assessed by the Director on 5th August 2020.

19. The said sum shall attract interest at court rates from the date of this Ruling until payment is made in full.

DATED, SIGNED and DELIVERED at NAIROBI this 11th day of December 2025.

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STELLA RUTTO
JUDGE

In the presence of:

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|---------------------|------------|
| For the Applicant | Mr. Odunga |
| For the Respondents | Mr. Kasiye |
| 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