

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**MISC. APPLICATION NO. E240 OF 2025**

**CHARLES ODHIAMBO ASUNA.....APPLICANT**

**VERSUS**

**WOODWAYS (K) LIMITED.....**  
**RESPONDENT**

**RULING**

1. By a Notice of Motion dated 16<sup>th</sup> July 2025, the Applicant approached this Court seeking the following orders:

1. ***THAT the decision by the Director of Occupational Safety and Health Services rendered on 12<sup>th</sup> May 2025 awarding the Applicant a sum of Kshs.1,036,800/= against the Respondent be adopted as a judgment of the court.***
2. ***THAT interest on a sum of Kshs, 1,036,800/= be awarded to the Applicant at the court rate from 12<sup>th</sup> May 2025 being the date of the award.***
3. ***THAT the costs of this suit be awarded to the Applicant.***

2. The Application is premised on the grounds set out on its face and is supported by the annexed Affidavit of **Charles Odhiambo Asuna**, the Applicant herein.
3. The Applicant deposes that he was employed by the Respondent as a carpenter and that, due to the Respondent's negligence, he was involved in a workplace accident in which he sustained bodily injuries.
4. He further asserts that the accident was reported to the Director of Occupational Safety and Health Services (Director), who on 12<sup>th</sup> May 2025, assessed his compensation at Kshs. 1,036,800.00.
5. The Applicant contends that the Respondent has shown no intention of settling the award, noting that it even failed to report the accident to the Director.
6. He also avers that no objection to the award is currently pending.
7. Upon being served with the Applicant's Notice of Motion, the Respondent filed a Replying Affidavit sworn on 14<sup>th</sup> August 2025 by **Peninah Mungai**, who describes herself as the Respondent's Human Resource Officer.

8. Ms. Mungai states that before filing the present Application, the Applicant had previously instituted a Petition seeking to compel the Respondent to complete DOSH forms, including Form DOSH 1, under the Work Injury Benefits Act (WIBA), despite not having complied with the prescribed statutory procedures.
9. She further states that on or about 21<sup>st</sup> May 2025, the Applicant filed a Further Affidavit in which he annexed an award allegedly issued by the Director. In her view, the Affidavit contains documents whose authenticity, relevance, and procedural conformity have not been verified.
10. Without conceding its validity, Ms. Mungai contends that the referenced award was procured outside the statutory framework under the WIBA and that the Applicant failed to meet the conditions necessary for such a determination to be legally binding or enforceable against the Respondent.
11. She further avers that the timing and manner of service of the Applicant's Further Affidavit, effected on 23<sup>rd</sup> May 2025, were improper, lacking adequate notice and not affording the Respondent sufficient time to interrogate its contents and annexures.

12. She adds that the Respondent reserves the right to challenge the admissibility and probative value of the Affidavit, particularly the attached award, on grounds of procedural irregularity, failure to comply with statutory dispute-resolution mechanisms, and breach of the Respondent's right to a fair hearing.

13. She states that the Applicant's Petition was dismissed by the Court on the basis that he had approached the Court prematurely and had not exhausted the statutory dispute-resolution mechanisms under WIBA.

14. In her view, the filing of that Petition effectively suspended the 60-day objection period under Section 52 of WIBA, as the matter was under judicial consideration, precluding the parties from taking parallel action.

15. She asserts that the statutory 60-day period under Section 51 of WIBA only commenced upon the dismissal of the Petition, making any claim that the objection period had lapsed before the Respondent acted both factually and legally unfounded.

16. She states that after the Petition was dismissed, and in the spirit of cooperation, the Respondent completed the DOSH form requested by the Applicant based on the limited information available.

17. Unbeknownst to the Respondent, the Applicant allegedly took the completed form, without its knowledge or consent, to a different hospital and a different doctor, neither of whom had attended to him at or after the material time of the accident.

18. She avers that the said doctor was not involved in the Applicant's initial treatment, rendering any medical assessment or opinion issued irregular, unilateral, and lacking a proper clinical foundation.

19. Ms. Mungai further states that the final DOSH 2 submitted to the Directorate of Occupational Safety and Health was neither verified nor authenticated by the Respondent, and therefore cannot form the basis of an enforceable judgment.

20. She asserts that the Applicant has failed to satisfy the essential legal requirements to invoke this Court's jurisdiction, in that he did not serve the Respondent with the purported final assessment or award as required by law, nor did he demonstrate that the Respondent was afforded a reasonable opportunity to lodge an objection within the statutory period under Section 51 of WIBA.

21. In her view, this Court cannot transform a contested administrative process into an enforceable judgment without due process, a hearing, or pleadings properly filed in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016 (sic).

22. She also deposes that the supporting Affidavit to the Motion is sworn by one James Robi Chacha, whom she describes as a stranger to the proceedings, with no disclosed authority, relationship to the Applicant, or *locus standi*.

23. She adds that the Applicant inconsistently describes himself as a “labourer” in some documents and a “carpenter” in others, casting doubt on the credibility and consistency of his pleadings.

24. Ms. Mungai contends that the Respondent was never accorded a hearing prior to the issuance of Form 4, nor was it notified of any proceedings or decision by DOSH, thereby infringing its constitutional right to a fair hearing under Article 50(1).

25. She avers that the objection previously raised by the Respondent remains unresolved and is still pending before the relevant authority, as no formal response or communication regarding the objection has been issued to date.

26. Ms. Mungai states that the matter before the Court is not a formal claim or appeal but a disguised enforcement request grounded on an unauthenticated, unserved, and procedurally irregular administrative form. In her view, granting such Applications would open the door to abuse of the court process and undermine judicial integrity.

27. To this end, she urged the Court to dismiss the Notice of Motion, declaring it premature, procedurally defective, misleading, and legally untenable, and to direct the Applicant to pursue any intended claim through the proper channels set out under WIBA.

28. In a Further Affidavit sworn on 18<sup>th</sup> August 2025, Ms. Mungai reiterates that the pendency of the Applicant's Petition effectively suspended the 60-day statutory objection period under Section 52 of WIBA, as all parties, including the Director, were barred from taking parallel steps or processing claims.

29. She states that the statutory objection period only began to run once the Petition was dismissed, thereby restoring the ordinary procedural framework under WIBA.

30. She maintains that any claim that the objection was lodged out of time is misleading. According to her, the objection filed was timely and compliant with WIBA.

31. Ms. Mungai while referencing a letter dated 13<sup>th</sup> August 2025 from the Directorate of Occupational Safety and Health Services, avers that no decision had been made on the work injury claim, that DOSH/WIBA Form 4 had not been processed, and that objections could only properly be lodged after the Director issued a formal decision.

32. In response to the Respondent's Replying Affidavit and Further Affidavit, the Applicant filed a Further Affidavit dated 20<sup>th</sup> August 2025, in which he states that the DOSH 4 annexed to his Supporting Affidavit was processed and lawfully issued by Justus Nyakego, the Deputy Director of DOSH. He avers that the form is duly signed and stamped, bears the claim reference number WIBA/WKL/6060/2025, is addressed to the Respondent, and is both valid and genuine.

33. He further asserts that the letter relied upon by the Respondent is signed by one Fatun Adan, who is neither the Director nor the Deputy Director. He claims that the said Fatun Adan does not cite the DOSH reference number for the claim,

suggesting she did not review the relevant file. He adds that the letter does not address the DOSH Form 4 issued on 12<sup>th</sup> May 2025, nor does it confirm whether it is genuine or forged.

34. The Applicant further states that the said Fatun Adan has not indicated her official position. If indeed she is an employee of the Ministry of Labour, the Applicant contends she is a junior officer who cannot countermand a decision of the Director. He maintains that the said Fatun Adan is neither the Director nor Deputy Director and therefore lacks the statutory authority to respond to objections under Section 52 of WIBA.

35. The Applicant avers that the Respondent's reliance on the letter claiming that DOSH 4 has not been processed is a tactic intended to mislead the Court and deny him justice. In his view, the Court should not call for a second DOSH 4 when an existing one remains unchallenged. He urges the Court to disregard the misleading information.

36. The Applicant concedes that he filed Nairobi ELRC Petition No. E036 of 2025 seeking orders compelling the Respondent to report the accident to the Director so that compensation could be determined in accordance with the law. He adds

that the Judge handling the matter advised that the Petition be withdrawn and instructed him to file an application for enforcement of the award if no payment or objection was made within 60 days from the date of the award.

37. He states that the present proceedings are purely for enforcement and that the Court's role is limited to determining whether an award exists and whether any objection or appeal is pending. In his view, the Respondent is improperly asking the Court to take over the Director's statutory functions by confirming the accident and the report, determining which doctor completed the medical form, re-evaluating the injuries and degree of disability, and reassessing the compensation.

38. The Applicant asserts that the Director is not required to conduct a hearing in the nature of a full trial by a court of law when assessing compensation.

39. He contends that there is no legal requirement that DOSH Form 1 must be completed by the primary treating doctor and that any qualified medical practitioner may assess the degree of disability.

40. The Applicant challenges the Respondent's position that time began to run only after the Petition was withdrawn. He maintains that under Section 51(1) of WIBA, the 60-day objection period begins to run from the date of the award. He further asserts that the filing of the Petition did not suspend the statutory timeline and that the Respondent became aware of the award before the expiry of the 60-day period.

41. Regarding the alleged non-service of the award prior to invoking the Court's jurisdiction, the Applicant states that it is the Director who is responsible for serving DOSH Form 4 once it is processed. He argues that since the form is addressed to the Respondent, it must have been received. He adds that the Respondent's challenge to the award confirms their knowledge of it.

42. The Applicant further avers that the error in the Notice of Motion is a mere technicality that the Court should overlook in the interest of justice and in compliance with Article 159 of the Constitution.

43. In view of the parties' conflicting positions regarding the Director's decision, the Court, on 22<sup>nd</sup> September 2025, ordered that the Director file a report in respect of the claim.

44. In a report dated 22<sup>nd</sup> October 2025, **Justus Bosire Nyakego**, identifying himself as the Deputy Director of Occupational Safety and Health in the Directorate of Occupational Safety and Health Services, states that on 8<sup>th</sup> May 2025 the Directorate received a letter dated 28<sup>th</sup> April 2025 from Odhiambo Owino & Co. Advocates requesting an assessment of the compensation payable to the Applicant for injuries sustained at work. The Directorate proceeded to assess the claim, and on 12<sup>th</sup> May 2025 issued a demand, referenced ML/DOSH/WIBA.FORM 4, directing the Respondent to pay the Applicant Kshs. 1,036,800.00 as compensation.

45. Mr. Bosire further states that on 8<sup>th</sup> July 2025, the Directorate received a letter from Odhiambo Owino & Co. Advocates indicating that the Respondent had been granted 60 days by the Court in ELRC Petition No. E036 of 2025 to lodge any objection to the Director's award.

46. He states that on 28<sup>th</sup> July 2025, well after the expiry of the 60-day period for filing objections against the Director's award, the Directorate received an objection from the Respondent disputing the assessment of Kshs. 1,036,800.00.

47. He states that on 13<sup>th</sup> August 2025, the Directorate issued a response stating that DOSH/WIBA Form 4 had not been generated in respect of the claim. He clarifies that this response was issued in error, as it was based on a search of the online system, which did not contain details of the claim because it had not been initially lodged through the system.

48. Mr. Bosire states that on 29<sup>th</sup> September 2025, after discovering that a manual DOSH/WIBA Form 4 had indeed been issued, the Director responded to the Respondent's objection by nullifying the earlier letter of 13<sup>th</sup> August 2025 and upholding the original assessment.

49. According to Mr. Bosire, the Director's assessment of Kshs. 1,036,800.00 remains valid and has not been paid to the Applicant.

50. In response to the report filed by the Directorate of Occupational Safety and Health, the Respondent, through the Affidavit of **Penina Mungai**, avers that Form 1 Part II remains incomplete and has never been finalized or acknowledged by the Directorate. To this end, she references the letter dated 13<sup>th</sup> August 2025 from the Director which indicated that no final determination had been generated.

51. On this basis, Ms. Mungai contends that the Director lacked jurisdiction and lawful authority to issue any assessment or compensation demand. In her view, the Directorate did not act within its mandate under Section 51 of WIBA, and the Director's report appears to have been prepared solely in response to pressure from the Applicant's Advocates.

52. Ms. Mungai maintains that no statutory provision empowers the Director to issue an incapacity assessment or compensation computation where Form 1 remains incomplete. According to her, the assessment is ultra vires, irregular, and null.

53. She further asserts that the mandatory procedural steps under Sections 23 to 30 of WIBA were not followed. Specifically, she claims that no site visit or independent fact-finding was conducted by the officer who prepared the report. She also states that the Director did not verify whether Dr. J. L. Amugada was authorized under Section 25 of WIBA to conduct permanent incapacity assessments.

54. According to Ms. Mungai, reliance on a report prepared by a doctor who was not the treating physician further undermines its credibility and contradicts accepted medico-legal practice.

55. She states that although the Respondent lodged an objection on 28<sup>th</sup> July 2025, the Directorate neither acknowledged the objection nor scheduled a hearing, contrary to the requirements of fair administrative process.

56. Ms. Mungai adds that the letter dated 29<sup>th</sup> September 2025, in which the Director upheld the assessment, was issued without verifying system records, without addressing the Respondent's objection, and without reconciling earlier contradictory communications. She contends that the Respondent was not afforded an opportunity to review, challenge, or comment on any medical report before the assessment was upheld.

57. She further asserts that the Director did not verify whether the alleged injury occurred at the Respondent's premises or during the course of employment. She states that no contemporaneous evidence such as incident reports, witness statements, safety records, or attendance logs, was reviewed, and no site visit,

interviews, or workplace inspection took place to corroborate the Applicant's account.

58. Ms. Mungai contends that the report is unsupported by any field notes, records, or photographic evidence.

59. She also states that the Applicant's very short duration of employment, approximately one week, raises legitimate doubt as to whether the alleged injury occurred during employment.

60. According to Ms. Mungai, issuing a compensation demand without procedural verification constitutes administrative overreach and a denial of due process.

61. She further contends that inconsistencies between the manual and digital processing of the claim render the assessment legally defective. She also argues that, because the report was signed by the Deputy Director rather than the substantive Director, it lacks proper legal authority.

62. Ms. Mungai maintains that neither party was present during the medical assessment, rendering the process *ex parte* and procedurally irregular.

## **Submissions**

63. The Application was canvassed through written submissions, which the Court has duly considered.

## **Analysis and Determination**

64. Having considered the Notice of Motion, the parties' Affidavits, and their respective submissions, the key issue for determination is whether the Court should adopt the Director's award issued on 12<sup>th</sup> May 2025.

65. In opposing the Motion, the Respondent has raised several issues concerning the manner in which the Director conducted the assessment and issued the award in favour of the Applicant. Specifically, the Respondent contends that the Director did not follow the procedures outlined in Sections 23 to 30 of WIBA. The Respondent further asserts that the assessment is ultra vires, irregular, and null. Additional concerns were raised regarding the factors the Director allegedly failed to consider in arriving at the assessment and award.

66. The Respondent further contends that it was never afforded an opportunity to review, challenge, or comment on any medical report before the Director upheld the assessment, in breach of Article 47 of the Constitution and the Fair Administrative Action Act.

67. It is this Court's respectful view that any dissatisfaction the Respondent may have had with the procedure followed by the Director in assessing the award ought to have been ventilated through a Motion for judicial review to quash the Director's award prior to its adoption by the Court, while staying these enforcement proceedings.

68. This finding is consistent with the Court of Appeal's decision in **Charles v Cheto [2025] KECA 784 (KLR)**, where the Court held that, having taken no steps to seek judicial review of the Director's award, the appellant in that case was misdirected in attempting to claim a violation of his constitutional right to a fair hearing.

69. Indeed, it is through judicial review proceedings that the Respondent would have appropriately challenged the fairness, procedural propriety, and legality of the administrative process followed by the Director.

70. Similarly, the Respondent's contention that the Director did not verify whether the alleged injury occurred on the Respondent's premises or during employment, nor review contemporaneous evidence such as incident reports, witness statements, safety records, or attendance logs, or undertake workplace

investigations, should have been raised in an appeal under Section 52(2) of WIBA.

71. In so finding, the Court is guided by the decision in **Charles v Cheto (supra)**, in which the Court of Appeal held as follows:

***“The appellant’s disaffection with the Director’s decision on the ground that he was not the respondent’s employer, and therefore not liable; that he had not been notified of the proceedings before the Director; and that, therefore, his right to a fair hearing were violated, were misplaced. Such grounds can only find relevance in an appeal contemplated in section 52(2) of the WIBA by way of judicial review of the Director’s decision.”***

72. It is also evident that the Court’s jurisdiction at this stage is narrowly circumscribed. Consequently, it is not appropriate for the Court to consider contentious matters raised by the Respondent, including the alleged failure of the Director to verify whether the injury occurred on the Respondent’s premises or during employment, to conduct investigations, or to review contemporaneous evidence.

73. In sum and guided by the binding authority of **Charles v Cheto (supra)**, the Court finds that the Respondent's contentions should have been raised through a motion for judicial review or an appeal.

74. As no appeal has been filed against the Director's award, and the Respondent has not initiated judicial review proceedings to quash the award, the Court finds no reason to decline the Applicant's prayer for adoption of the Director's award.

75. Consequently, this Court allows the Motion dated 16<sup>th</sup> July 2025 and finds that the Applicant is entitled to the sum of **Kshs. 1,036,800.00**, as assessed by the Director on 12<sup>th</sup> May 2025.

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

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

**DATED, SIGNED and DELIVERED** at **NAIROBI** this **11<sup>th</sup>** day of **December** 2025.

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**STELLA RUTTO**

**JUDGE**

**In the presence of:**

Mr. Odhiambo for the Applicant

Mr. Owiti for the Respondent

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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