

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI

MISC.APP. NO. E258 OF 2025

JAMES ROBI CHACHA.....
.....CLAIMANT

VERSUS

WOODWAYS (K) LTD.....
.....RESPONDENT

RULING

1. For determination is the Applicant's Notice of Motion application dated 20th May, 2025, brought pursuant to Section 12 of the Employment and Labour Relations Court Act, and the inherent power of the court. The Applicant seeks orders **THAT**: -
- i. The decision by the Director of Occupational Safety and Health Services rendered on 12th May 2025, awarding the Applicant a sum of Kshs.483,600 against the Respondent, be adopted as a judgment of the court.
 - ii. Interest on a sum of Kshs.483,600 be awarded to the Applicant at the court rate from 12th May 2025, being the date of the award.
 - iii. The costs of this suit be awarded to the Applicant

2. The application is supported by grounds on the face thereof, and the affidavit of James Robi Chacha, the Applicant herein. The crux of the Motion is that the Applicant was employed by the Respondent as a machine operator and that he suffered bodily injuries in a workplace accident.
3. The Applicant avers that the accident was assessed by the Director of Occupational Safety and Health Services, who awarded him compensation in the sum of Kshs.483,600 on 12th May 2025. The Applicant contends that the Respondent has since declined to report the accident and has refused to compensate the Applicant as awarded.
4. The Applicant states that he has no alternative avenue for enforcement of the award other than this Honourable Court, which has the jurisdiction to hear and determine employment and labour relations matters and related issues.
5. It is his prayer that the court allow his application in the interest of justice.
6. The Respondent opposed the Motion vide a Replying affidavit sworn on 3rd September, 2025, by one **Penina Mungai** and a further affidavit sworn on 15th October, 2025, by the same deponent.
7. The Respondent states that upon being served with the Applicant's application, Supporting Affidavit, and the

purported DOSH claim on the same day, it promptly filed a Notice of Objection, demonstrating its intention to contest the claim at the earliest opportunity.

8. It is its case that while it acknowledges that it previously employed the Applicant as a machine operator, it wholly denies the allegations of negligence, noting that they are unsupported by credible evidence. The Respondent further states that both the alleged accident and the resulting injuries remain disputed, and that it is improper for the Applicant to proceed as if liability has already been determined.
9. It is the Respondent's case that it was only served with the DOSH assessment after the application had been filed, which it contends raises concerns on the procedural propriety and adequacy of notice in relation to the alleged award.
10. The Respondent states that the Applicant's claim that the incident was not reported to DOSH is misleading and inaccurate, and firmly refutes the allegation. It further argues that the Applicant's attempt to enforce the DOSH award as a court judgment is premature, as no final judgment has been entered in accordance with due process, and the prescribed enforcement mechanism under the Work Injury Benefits Act (WIBA) has not been followed, as evidenced by its objection.

11. It is the Respondent's position that the demand for interest and punitive costs is unfounded, made in bad faith, and unjustified, given that the alleged award is disputed and it has not been granted a fair hearing under WIBA.
12. The Respondent submits that the application should be dismissed with costs for being premature, lacking merit, and constituting an abuse of the court process.
13. Parties urged the application by way of written submissions, and which have been duly considered.

Determination

14. Having considered the motion, the grounds and affidavit in support, the affidavits in opposition by the Respondent, and the parties' submissions, I distil the following issues for determination:
 - i. Whether the Director of Occupational Safety and Health Services (DOSHS) award dated 12th May 2025 is ripe for adoption as a judgment of this Court.
 - ii. Whether the Applicant is entitled to interest and costs as prayed.

Whether the Director of Occupational Safety and Health Services (DOSHS) award dated 12th May 2025 is ripe for adoption as a judgment of this Court

15. Sections 51, 52, and 53 of the Work Injury Benefits Act (WIBA), require that an employer be notified of an accident, participate in the assessment of the injury, and further allow the employer to lodge an objection to the decision of the Director within the prescribed period.
16. The law is also clear that where an objection is lodged, the award does not crystallize into a final and enforceable determination until the objection is heard and determined.
17. In the instant case, it is not disputed that the Respondent filed a Notice of Objection with the Director contemporaneously with the service of the DOSH award and the application herein.
18. The Respondent disputes liability, the occurrence of the accident, and the alleged injuries. It avers that it was served with the DOSH assessment after the filing of the present application. In ***Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & Another [2016] eKLR***, the Court of Appeal held:-

“The Director’s decision under WIBA is not a judgment capable of execution where an objection has been lodged. Enforcement can only arise after the statutory process has been exhausted.”
19. Further in ***West Kenya Sugar Co. Ltd v Busienei [2021] eKLR***, this court held that an award made under

WIBA cannot be adopted as a judgment of the Court where the employer has lodged an objection or where the process under the Act has not been concluded.

20. The question of whether or not the objection is time barred is a pronouncement that can only be made by the DOSH and not this court. The role of this court at this point is limited to adopting a final award of the Director.
21. In the premise, the Court is persuaded that the Applicant's move to seek adoption of the award is premature, as the Respondent's objection remains unresolved.
22. In the circumstances, the Applicant's application is hereby dismissed with no orders on costs.
23. Orders accordingly.

**SIGNED, DELIVERED, AND DATED AT NAIROBI THIS 18TH
DAY OF DECEMBER, 2025**

**C. N. BAARI
JUDGE**

Appearance:

Mr. Odhiambo present for the Applicant

Mr. Owiti present for the Respondent

Ms. Esther S - Court Assistant