

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA  
AT MOMBASA**

**MISC. APPLICATION NO. E113 OF 2025**

**CONSOLIDATED WITH**

**MISC. APPLICATION NO. E114 OF 2025**

**OTIENO MANASSEH EB'BALO .....  
APPLICANT**

**MOSES RANDUGU MWAPONDA .....  
APPLICANT**

**VERSUS**

**BAS TITANIUM LIMITED .....  
RESPONDENT**

**RULING**

The miscellaneous applications are consolidated for this ruling because they relate to the same respondent and share similar causes of action. The lead file is Misc. Application No. E113 of 2025, and the findings will apply in Misc. Application o. E114 of 2025.

The applicant filed an application dated 1 October 2025 under the provisions of section 1A, and 18 of the Civil Procedure Act, order 2 ad 51 of the Civil Procedure Rules, section 12 of the Employment and Labour Relations Court Act, section 87 and 90 of the Employment Act and sections 10, 16 and 51 of the Work Injury Benefits Act (the WIBA) and seeking:

*The court be pleased to adopt as judgment of the court the award of the Director of Occupational Health and Safety dated 8 July 2025.*

*Judgment be entered for the applicant against the respondent for a sum of Ksh. 1, 220,243.48 being the amount assessed under the Work Injury Benefits Act.*

*The court be pleased to award interests and costs.*

The applicant supports the application through the Supporting Affidavit and avers that he was employed by the respondent from 1 October 2013 until 28 February 2025, during which period he contracted an occupational disease. The matter was reported to the Director of Occupational Health

and Safety (DOSH), who assessed the claim and awarded Ksh. 1, 220,243.48 in compensation. Despite demand being issued to the respondent by DOSH, they have not paid within the legal timelines under the WIBA.

In his affidavit, the applicant avers that, despite the DOSH award, the respondent has made no appeals or objections. Unless the award is paid, there will be loss and damage.

In reply, the respondent filed the Replying Affidavit of Anne Mercy, the assistant legal officer of Mayfair Insurance Company Limited, who avers that the respondent and the Mayfair Insurance Company entered into a combined WIBA insurance policy under policy Number 02/01/115/0019/2019. Under the policy, the insurer had a legal duty to settle all claims arising from it.

The insurer received a report through DSH Form 1 for settlement.

The respondent was served with a demand notice on 8 July 2025, who filed objections in DOSH Form 12 within the statutory timelines, which to date have not been addressed by DOSH. The respondent is thus opposed to the award by DOSH, and the office failed to consider the findings and determination by Dr Udayan R. Sheth, who performed a second medical re-examination of the applicant.

The insurer has been keen to settle the matter, and the only reason this has not been done is that the respondent has yet to receive a response from DOSH on its objections. The respondent and insurer will be prejudiced if the application is allowed before DOSH has determined the objections.

The basis for Misc. Application o. E114 of 2025 is that the applicant's award by DOSH for occupational disease assessed at ksh. 4,334,273.83 assessed on 11 July 2025 should be paid with costs and interest.

The respondent has opposed the application on the basis that they filed objections with DOSH, which have not been addressed, and a determination has not been taken.

#### Determination

The applicants' employment by the respondent is not contested.

The issue is that during the course of employment, they contracted an occupational disease, which was reported to DOSH, and that assessments and an award of compensation were made.

The respondent contests that the applications were taken through a second medical re-examination, that objections were filed with DOSH, and that these matters have not been determined.

Indeed, under sections 10 and 16 of the WIBA, upon work injury or the employee contracting an occupational disease, the matter should be reported to DOSH for an inquiry, assessment, and award of compensation. Upon the award, the DOSH is required to serve and demand that the employer or the stated insurer pay the compensation within 90 days pursuant to section 26(4) and 41 of the WIBA.

However, upon the notice and demand to pay under section 26 of WIBA, the employer has a right to object or file an appeal under section 51 of WIBA, as held in **Law Society of Kenya v Attorney General & Another [2019] eKLR**. The right to object should be addressed within 60 days from the date of the demand to pay.

In this case, the DOSH notice WIBA Form 4 issued on 8 July 2025.

The respondent filed objections through DOSH Form 12 on 24 July 2025.

The DOSH is required to respond to the objections within 14 days under section 52 of WIBA. This has not been addressed.

Under the WIBA, the respondent is entitled to due process, with their objections being addressed and the reasons for the award and a second medicate re-examination being taken into account. This is the basis of fair administrative action protected under sections 47 and 41 of the Constitution, which requires fair labour practices.

The respondent exercised its legal rights under section 51 of WIBA and should not be prevented from seeking justice and a response from DOSH to its objections.

The applicant therefore filed this application on 1 October 2025, before the DOSH could respond to the objections filed within time.

**Parties shall revert to DOSH to address the respondent's objections dated 24 July 2025.**

**The applications under Misc. Application No. E113 and E114 of 2025 are premature. Each party bears its costs.**

Delivered in open court at Malindi, this 11<sup>th</sup> day of December 2025.

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant: Davis Wekesa

..... and .....