



Oketch v Technical University of Mombasa & another (Miscellaneous Application E115 of 2025) [2025] KEELRC 3541 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3541 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E115 OF 2025**

M MBARŪ, J

DECEMBER 11, 2025

BETWEEN

FREDRICK OMBOGA OKETCH APPLICANT

AND

TECHNICAL UNIVERSITY OF MOMBASA 1ST RESPONDENT

ACENTRIA NSURNACE BROKERS 2ND RESPONDENT

RULING

1. The application filed on 1 October 2025 seeks orders that the DOSH award of 8 April 2024 for Ksh. 5,800,444 be adopted as the order of the court, and the same be paid with interest from the date of the award.
2. The applicant filed his Supporting Affidavit on the basis that on 28 September 2023, he sustained a work injury while employed as a lecturer with the 1st respondent. The respondent issued DOSH/FRM 1 to the Director of Occupational Health and Safety (DOSHS), and upon assessment, an award of Ksh. 5,800,444 on 8 April 2024.
3. Upon assessment, a notice to pay was issued to the respondents within 60 days, which they have failed to do. The respondents have not filed any objection or appeal against the DOSH award leading to these enforcement proceedings. Through a letter dated 17 October 2024, DOSH directed the respondents to pay the applicant; however, there has been no compliance with sections 7 and 26 of the *Work Injury Benefits Act* (WIBA), and the orders sought should be issued.
4. In reply, the 1st respondent filed Notice of Preliminary Objection on the grounds:
 1. The motion seeks adoption of a non-work-related injury award contrary to sections 2 and 10(1) of the *Work Injury Benefits Act*, and thus should be struck out with costs.



2. The court has no jurisdiction to entertain the instant proceedings by dint of section 2 and 10(1) of the *Work Injury Benefits Act*, article 162(1) of the *Constitution* and section 12 of the *Employment and Labour Relations Court Act*.
5. The 1st respondent also filed the Replying Affidavit of Prof. Laila Abubakar, Vice Chancellor, who avers that the applicant's case is premised on the fact that he was injured in the Buxton area stage after falling while leaving work on or about 4.30 pm. This was not a work-related injury under WIBA. It did not arise from the employer-employee relationship. This denies the court the requisite jurisdiction.
6. Prof. Abubakar avers that under the 1st respondent policy, the employee is paid a car allowance, and the official working hours are 8 am to 5 pm. The alleged work injury did not occur at the 1st respondent's premises, and the DOSH's demand for compensation of Ksh. 5,800,444 is irregular and illegitimate.
7. The avenue of appeal against the DOSH decision is available; however, it was curtailed and hindered by the applicant's and the directors' acts and omissions. The incident is alleged to have occurred on 28 September 2023 but was reported to the 1st respondent on 27 March 2024. The 1st respondent reported the incident under section 22(1) and (2) of WIBA, and it was the duty of the DOSH to conduct an inquiry as provided for under the law. The DOSH assumed that the notification issued was for assessment and the award of compensation, without any inquiry; the 1st respondent only learned of the award on 17 October 2024. The DOSH did not allow the 1st respondent to be heard and thus condemned the 1st respondent to be heard.
8. Prof. Abubakar avers that upon receipt of the demand notice from DOSH, she engaged the office through a letter dated 22 October 2024, providing the circumstances of the alleged work injury; however, she received no response. The officers of the 1st respondent engaged with the DOSH regarding the illegalities of the assessment and award, but received no response.
9. Allowing the application would entrench an illegality and should be dismissed with costs.
10. The 2nd respondent filed Grounds of Opposition on the basis that it is improperly enjoined in these proceedings and there is no cause of action against it. It is an insurance broker advertisement under the *Insurance Act*, where the underwriter is Corporate Insurance Company of Kenya Limited. The 2nd respondent has no statutory obligation to settle the claim on its behalf. The insane contract was between the 1st respondent and the underwriter, Cooperative Insurance Company of Kenya Limited.
11. Parties attended and made submissions.
12. The issues to be determined are whether the applicant suffered a work-related injury, whether the 2nd respondent has been irregularly joined to these proceedings, and whether the orders sought by the applicant should be issued.
13. Regarding the joinder of the 2nd respondent, the applicant admitted that they relied on the DOSH/FORM 1 provided by the 1st respondent, as indicated in paragraph 1(vii), which states that the insurer was the 2nd respondent. The basis of sections 7 and 17 of WIBA is to hold the insurer liable for compensation due to a work-related injury where the employer has secured insurance coverage/policy. Indeed, an insurance broker is not the principal.
14. The 2nd respondent admitted in its objections that the principal is Corporate Insurance of Kenya Limited, which maintained an insurance policy with the 1st respondent, and that, in the event of a work-related injury to an employee, this is the entity that pays the compensation.
15. The joinder of the 2nd respondent is improper. The 1st respondent should pay for the error arising from the 1st respondent.



16. On the issue of a work-related claim, the DOSH/FORM 1 under paragraph 3 states that on 28 September 2023, the applicant was injured at 4.30 pm around the Buxton stage after leaving work as a lecturer. He was heading home from work at the time.
17. The 1st respondent asserts that the applicant is paid a vehicle allowance. This is included in his payment statement, which is attached to the affidavit of Prof. Abubakar.
18. Under the WIBA, the objective is to provide for compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes.
19. Under section 2 of WIBA, an accident is defined to include:

Accident” means an accident arising out of and in the course and scope of an employee’s employment and resulting in personal injury;
20. Under the WIBA, a work injury is a personal injury to an employee arising out of and in the course of employment.
21. In *Dock Workers Union (K) v Director of Occupational Safety and Health Services & 5 others; Federation of Kenya Employers & another (Interested Parties)* [2025] KEELRC 51 (KLR), the court, in defining a work-related injury, held that:

Employers are required to report any workplace accidents to the Director upon receiving notice or becoming aware of an employee’s injury. An accident includes any injury reported by an employee that the employee claims occurred during employment, regardless of the employer’s opinion on the validity of the claim. This report is to be submitted using the DOSH 1 form.
22. The purpose of DOSH/FORM 1 is to allow the Director to proceed and make enquiries under section 23 of WIBA before processing the assessment and award. This would enable the Director to appreciate the circumstances of the given accident and incident and, based on the WIBA parameters, apply their expertise to make a decision.
23. The director must establish the causal link between the reported accident and injury, and, if this is unrelated to the injured person’s work or employment, despite the employer’s report, direct the employee as appropriate. It would defeat logic for the Director to apply the DSH/FORM 1 and issue a demand for payment without the necessary inquiries. The purpose of WIBA would be lost if this were to be allowed to take root.
24. The applicant does not deny that his injury happened outside the shop floor. He has not denied that the 1st respondent, as the employer, has facilitated his attendance at work by paying a car allowance.
25. What happened to the applicant on 29 September 2023, at around the Buxton stage, just after leaving work, is not explained or elaborated upon. The relationship of such presence to such point, place and time is not linked to the 1st respondent.
26. The Director must conduct a thorough inquiry into the matter before assessing and awarding against the 1st respondent. The process of objections, though not addressed under WIBA, the principles of article 47 of the *Constitution* demand that, before an adverse action is taken against any party, notice be issued, and such party be invited to address.



- 27. The motions of article 47 of the Constitution apply to the office of the DOSH, particularly in matters where, as the initiator of the DOSH/FORM1, as of necessity, before a decision is taken on the report, notice should issue to the employer.
- 28. It would be of no consequence to report an accident and a work-related injury, and the only response from DOSH is a demand for payment. In these enforcement proceedings, although anchored in the court's jurisdiction, the right to be heard and to ensure due process in any administrative action is imperative.
- 29. In *Achar v County Assembly of Kisumu. & another* [2025] KECA 1781 (KLR), the court held that fair administrative action requires adherence to principles of natural justice, including audi alteram partem and nemo iudex in causa sua. The failure to provide adequate notice, relevant documents, or a reasonable opportunity to be heard constitutes a violation of Article 47 of the Constitution.
- 30. In *Law Society of Kenya v Attorney General & another* (Petition No. 4 of 2019), the Supreme Court acknowledged the role of the Director in addressing work injury-related claims. The principle is to ensure that, as an administrative body, there is an obligation to resolve disputes before they are escalated to the judiciary. The courts shall intervene only in a lawful and valid award that the Director appropriately assesses following an inquiry that is imperative under WIBA. Where an award is devoid of due process, there is a clear constitutional violation of Article 47 of the Constitution and the WIBA.
- 31. Accordingly, the parties shall revert to the Director to allow for a proper inquiry into the circumstances leading to the notice issued by the 1st respondent on 27 March 2024, before an assessment and award of any compensation to the applicant.
- 32. The application dated 1 October 2025 is premature. The 1st respondent shall meet the 2nd respondent's costs. The applicant and the 1st respondent are to meet their costs.

DELIVERED IN OPEN COURT AT MALINDI, THIS 11TH DAY OF DECEMBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

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