



China State Construction Engineering Corporation Limited v Makanda (Employment and Labour Relations Appeal E318 of 2025) [2025] KEELRC 3739 (KLR) (9 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3739 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E318 OF 2025**

**DKN MARETE, J
DECEMBER 9, 2025**

BETWEEN

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION
LIMITED APPELLANT**

AND

RICHARD WAMABANI MAKANDA RESPONDENT

RULING

1. This is an application dated 16th September, 2025 by the Appellant/Applicant seeking a stay of proceeding in ELRC Misc application No. 294 of 2025 on the DOSH decision dated 27th May, 2025 and also leave for the applicant to file an appeal out of time of the DOSH decision dated 8th June, 2023.
2. The application is based on the grounds that as soon as the DOSH made their decision on 27th May, 2025, the Appellant forwarded the said decision to their insurer Britam to enable them appoint counsel for their appeal but this was not be as this was inadvertently filed away by the insurer record department. Other reasons for the intent to lodge an appeal come out of the fact that the DOSH assessment of Kshs.1,977,365.00 was a wholly erroneous assessment estimation and failed to take into consideration the medical report by a Dr. Wambugu as instructed by the insurance company.
3. In conclusion, the Appellant/Applicant avers that the failure to file the appeal on time was caused by factors beyond their control under that this application was been brought without undue delay. It is their averment that it would be in the interest of justice to allow this application.
4. The Respondent oppose the application vide Grounds of Opposition dated 13th October, 2025 and an elaborate Replying Affidavit sworn on the same date. It is their case that the application is incompetent, misconceived and devoid of merit for having been filed with inordinate delay and also lacking sufficient cause. This is because the Appellant was duly served with their award and other relevant notices by the Director of Occupational Safety and Health Services (DOSHS) timeously but



failed to act within 30 days as stipulated by section 52 of the Work Injury Benefits Act, 2007(WIBA). It is therefore not deserving of this court discretion and indulgence.

5. This application is indeed an afterthought and intended to defeat the ends of justice and brought out after the Respondent commenced lawful enforcement of the proceeding with a view to acquiring compensation as appropriate. Other grounds of opposition come out thus; That the application is frivolous, vexatious and oppressive intended to merely delay and frustrate the Respondent realization of compensation for injuries sustained at the work place. That the Respondent continued to suffer the impact of permanent partial disability and financial hardship which should not be advanced by the applicant dilatory tactics. That this application offends the principle of finality in administrative and quasi- judicial processes. Allowing this application would erode public confidence in the statutory authority of the DOSH while undermining the authority of WIBA. The application is tainted with unclean hands having been preceded by willful non-compliance, concealment of material fact and a pattern of procedural abuse and therefore ousts this court discretion.
6. The Respondent in their Replying Affidavit aforementioned narrates the sequence of event leading to the DOSH's decision of the subject and the dalliance of the Appellant in acting on its clear instructions on the matter. The decision of 8th June, 2023 was not diligently acted upon by the Appellant who resulted in a hide and seek game culminating in this application.
7. The parties brought in their written submissions all dated 21st October, 2025 in which they reiterated their respective cases.
8. This court find it undue to exercise its discretion in favour of the application. This is because of the compelling case of the Respondent in which they set out a case of dalliance and non-compliance with the law and procedure on action in WIBA cases. It is evident that the Appellant were served with the decision of DOSH and awarded time to comply on the same. Instead, they choose to take diversionary tactics to delay the realization of the fruits of the DOSH decision by the Respondent. No adequate or convincing reasons are offered for such inaction on their part.
9. This court find its appropriate to depart from its recent determination on the same issues by the Appellant. It is convincing that any attempt to derail the functions and decisions of the DOSH without good measure would be inappropriate for the industry and dilute the impetus and functionality of WIBA, a sad case, so to speak.
10. I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 9TH DAY OF DECEMBER 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Njuguna instructed by Wainaina Ileri Advocates LLP for the Appellant/Applicant.

Mr. Akiro instructed Akiro & Associate Advocates for the Respondent.

