

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
MISC. APPLICATION NO. E008 OF 2025

**IN THE MATTER OF: ENFORCEMENT OF THE AWARD OF
THE DIRECTOR OF OCCUPATIONAL
SAFETY AND HEALTH SERVICES,
KAKAMEGA**

-AND-

**IN THE MATTER OF: SECTIONS 10(1), 19(2) AND 51 OF THE
WORK INJURY BENEFITS ACT CAP
236**

-AND-

**IN THE MATTER OF: ARTICLES 27(1) & (2), 41(1) AND 162(2)
OF THE CONSTITUTION OF KENYA,
2010**

-AND-

**IN THE MATTER OF: SECTION 12 OF THE EMPLOYMENT
AND LABOUR RELATIONS COURT
ACT AND THE INHERENT POWERS
OF THE COURT.**

-AND-

IN THE MATTER OF: RULE 69 OF THE EMPLOYMENT AND

**LABOUR RELATIONS COURT ACT
[PROCEDURE] RULES, 2024**

-BETWEEN-

ELINA BUNYUA NDAYA

**ELIZABETH NASAMBU (Suing for and on behalf of the estate of
Musa Kulecho Nyundo – Deceased)**

-VERSUS-

HANDYMAN STAFFING SOLUTIONS1ST RESPONDENT

BRITAM INSURANCE KENYA2ND RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. In a notice of motion (the application) dated 25th July 2025 filed through Odunga & Associates Advocates, the applicant is seeking for the following orders –

1. This application be certified urgent and service thereof be dispensed with.

2. The honourable court be pleased to adopt as judgment of court, the assessment/award of the Director of Occupational Safety and Health Services, Kakamega made on 13th February 2025.

3. A Decree do issue against the respondents jointly and severally for;

- a) *The sum of Kshs. 914,496.00 being the Director's award/assessment made on 13th February 2025;*
- b) *Reasonable burial expenses for Kshs. 714,450/-; and*
- c) *Interests on the assessed/awarded sum at court rates (14%) from the date of the award (13th February 2025) until payment in full.*

4. *Costs of this application be awarded to the applicant.*

2. The application is expressed to be brought under **Articles 159(2)(d) & 162 of the Constitution, Section 12 of the Employment and Labour Relations Court Act, Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, Sections 19(2) and 51 of the Work Injuries Benefits Act, Orders 40 and 51 of the Civil Procedure Rules**, the inherent jurisdiction of the court and all other enabling powers of the court and provisions of the law.
3. The application is based on the grounds stated on the face of it and supported with the affidavit of Elinah Bunyua Ndaya sworn on even date with several annexures thereto.
4. Upon service of the application the 1st respondent through Odindo Ambala Advocates LLP filed a replying affidavit sworn by Elly Masinde, the human resources manager, on 26th September 2025 with several annexures thereto.
5. The applicants filed a supplementary affidavit sworn by Elinah Bunyua Ndaya on 28th October 2025 in response to the replying

affidavit.

6. In a notice of withdrawal dated 28th October 2025 the applicants withdrew the claim against the 2nd respondent in whole, opting to pursue the entire claim against the 1st respondent.
7. When the matter came up in court on 30th September 2025 for directions the 1st respondent through its counsel Mr. Odendo admitted to settle the amount awarded by the Director but disputed the additional claim of funeral/burial expenses. The court thus directed that the admitted sum be settled and that counsel submit on the remainder of the claim and a consent to that effect was recorded.
8. Mr. Weloba holding brief for Mr. Odunga for the applicants filed written submissions dated 28th October 2025 while Mr. Odendo holding brief for Mr. Ambala for the 1st respondent filed submissions dated 27th October 2025.

II. EVIDENCE

9. In the supporting affidavit to the application sworn by the 1st applicant on her own behalf and on behalf of the 2nd applicant, it is deposed that the two are administrators of the Estate of the late Musa Kulecho Nyundo (the deceased) having obtained a limited grant *Ad Litem*. The deceased was an employee of the respondent as a tractor-driver as at the time of his demise on 28th February 2024.
10. It is deposed that since the deceased died in the course of his duties as an employee, the incident was reported to the Directorate of

Safety and Health Services and the Director thereof assessed the loss and awarded Kshs914,496/= in compensation.

11. It is further deposed that the respondent is equally liable to meet reasonable funeral expenses which were not necessarily awardable by the Director. The applicants are seeking for a sum of Kshs714,450/= in that regard under ***Section 34 of the Work Injury Benefits Act (WIBA)***.
12. As noted in the introductory part of this ruling, the assessed and awarded sum of Kshs914,496/= is not in contest as the same was admitted and a consent recorded to that effect. Hence, the subject of this ruling is the claimed funeral expenses. The court shall only thus dwell on depositions and submissions in regard to that aspect and not the entire claim as such.
13. In regard to the disputed burial expenses, it is deposed in the replying affidavit that the sum of Kshs714,450/= claimed by the applicants is inordinately high, unreasonable, and unjustified.
14. In the supplementary affidavit it is deposed that the applicants have placed on record the evidence in support of the burial expenses and yet except for the mere denial the respondent has no offered any evidence in rebuttal.

III. SUBMISSIONS BY COUNSEL

15. Counsel for the applicant submitted that notwithstanding a consent entered wherein the respondent admitted and was ordered to pay the

admitted awarded amount of Kshs914,496/= this amount has not been paid to the applicants as ordered by the court.

16. Counsel for the applicant identified the issue for determination by the court to be – *Whether the applicants are entitled to burial expenses amounting to Kshs714,450/.*
17. It is submitted that pursuant to **Sections 34 & 56 of WIBA** the applicants ought to be compensated for reasonable burial expenses incurred notwithstanding that the Minister has not formulated regulations on such expenses. It is submitted that the the court cannot sit back and fail to remedy the situation.
18. The court is urged to adopt the reasoning in ***Mombasa Misc. Application No. E116 of 2024 Topista Chari Mwakulomba & Another V YMM Freight Limited & Another (2025) eKLR***. It is submitted that the claimed burial expenses have been particularized and supported with documentary evidence of receipts and hence specifically proved.
19. Counsel for the respondent identified the same issue for determination as counsel for the applicants – *Whether the applicants are entitled to burial expenses amounting to Kshs714,450/=.*
20. It is submitted that the Minister has not formulated the regulations envisaged under **Section 34 of WIBA** and hence the court should only award a reasonable figure as there is no minimum or maximum set. It is submitted that the claim by the applicants is exaggerated,

unfair, and unreasonable.

21. Counsel cited *Kahindi & Another V Shyam General Merchants Limited (2025) eKLR* urging the court to only award a reasonable amount and not as claimed by the applicants who included luxurious and excessive expenses on food items, carpets, etc.

IV. ISSUES FOR DETERMINATION

22. There is only one main issue for determination in this application – *Whether the applicants are entitled to the sum of Kshs714,450/= claimed for funeral expenses.*

V. ANALYSIS & DISPOSAL

23. As far as the court understands the case for the respondent and the submissions by their counsel, it is not opposed to award of funeral expenses to the applicants. However, it is opposed to the award of the sum of Kshs714,450/= claimed for the same. According to the respondent the amount claimed is exaggerated, unfair, and unreasonable.
24. It is a fundamental principle and presumption of the law that there is no legal wrong without a remedy – *Ubi jus ibi remedium*. Although the Minister has not formulated the regulations envisaged under *Section 34 of WIBA*, the court cannot and should not sit back and fail to remedy and compensate the applicants albeit only for fair, just, reasonable, and lawful expenses incurred in the burial of the deceased.

25. It is not in dispute that the remains of the deceased were indeed interred. For sure some expenses were incurred in the burial for a death that was directly related to his employment with the respondent. The court has for sure to order reasonable compensation for genuine and necessary burial expenses that were incurred.
26. The court has gone through the receipts provided by the applicants in support of the expenses incurred in the funeral. While the respondent did not challenge for the makers of the documents to appear in court and or swear affidavits in support of the claimed payments, the court notes that some of the receipts are not in the names of the applicants.
27. In Africa mourners are fed and tents are pitched for days or weeks. There is also no dispute that the body must have been preserved, a grave dug, the body clothed, and transported for burial. However, it is also fair and just to comment that funerals and burials should not be turned into feasts.
28. Doing the best that I can do in the circumstances, the court awards a sum of Kshs300,000/= as reasonable expenses incurred for the burial/funeral.
29. Obiter, the court states that it is the high time our society considered ways and means of reducing burial expenses in these contemporary hard economic times. The dead is dead and gone and if he/she did not add value to the world in their lifetime, or we did not look after

them while alive, a lavish funeral adds no value or meaning.

VI. ORDERS

30. The court makes the following orders –

- a) The award of Kshs914,496/= made by the Director is hereby affirmed and judgment entered therefor in furtherance to the already entered consent.*
- b) The applicants are hereby awarded a sum of Kshs300,000/= being reasonable funeral expenses.*
- c) The award in (a) above shall attract interest from the date the award was made by the Director till payment in full.*
- d) The award in (b) above shall attract interest from the date of this ruling till payment in full.*
- e) Costs of the application to the applicants.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 15TH DAY OF JANUARY, 2026.**

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DAVID NDERITU
JUDGE