

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC JUDICIAL REVIEW NO. E032 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

C.K BETT TRADERS LIMITED.....
APPLICANT

VS

**DIRECTOR OF OCCUPATIONAL SAFETY
AND HEALTH SERVICES (DOSHS)**

ATHI RIVER SUB-COUNTY.....1ST
RESPONDENT

THE HONOURABLE

THE ATTORNEY GENERAL.....2ND
RESPONDENT

AND

ABSOLOM MAHUGU.....INTERESTED
PARTY

RULING

- 1 The Applicant filed an Amended Originating Summons dated 2nd October 2025 seeking orders **THAT**: -
- i. spent*
 - ii. the enforcement/execution of the decision of the Director of Occupational Safety and Health Services (DOSHS), Athi River, in Claim Reference No. WIBA/ATR/239/2024 dated 20th November 2024*

- (hereinafter referred to as the decision) be stayed pending hearing of this Application inter partes.*
- iii. the enforcement/execution of the decision be stayed pending hearing of the main Application/Originating Motion.*
 - iv. the proceedings in both MACHAKOS ELRC MISC. E011/2025 ABSOLOM MAHUGU VS C.K. BETT TRADERS LTD. and MILIMANI MCELR MISC. E037 of 2025 ABSOLOM MAHUGU MAFWAFU VS C.K. BETT TRADERS LTD. do stay pending the hearing of this application inter partes.*
 - v. the proceedings in both MACHAKOS ELRC MISC. E011/2025 ABSOLOM MAHUGU VS C.K. BETT TRADERS LTD. and MILIMANI MCELR MISC. E037 of 2025 ABSOLOM MAHUGU MAFWAFU VS C.K. BETT TRADERS LTD. do stay pending the hearing and determination of this application.*
 - vi. time be extended to enable Applicant object and or appeal to the decision*
 - vii. alternatively, the decision be nullified and or set aside*
 - viii. alternatively, the decision be set aside and the matter be remitted for reconsideration*
 - ix. alternatively, and without prejudice to the foregoing, an independent or second medical evaluation to be conducted without delay.*
 - x. any other orders that meet the ends of justice do issue.*
 - xi. costs of this Application do issue.*

Applicant's Case

- 2 The Applicant avers that the Interested Party lodged a Claim Reference No. WIBA/ATR/239/2024 against it for compensation for a purported injury with the 1st Respondent and a determination was given.
- 3 The Applicant avers that the 1st Respondent made its decision dated 12th November 2025 but the same was not communicated to it in a timely manner.
- 4 The Applicant avers that it learnt of the decision on or about 13th February 2025 when the Interested Party served the notice of motion application dated 17th January 2025 in *MACHAKOS ELRC MISC. E011/2025 ABSOLOM MAHUGU VS C.K. BETT TRADERS LTD*, which seeks adoption of the decision as an order of the Court. This has since been consolidated with the instant suit.
- 5 The Applicant avers that the Interested Party later served *MILIMANI MCELR MISC. E010 of 2025 ABSOLOM MAHUGU MAFWAFU VS C.K. BETT TRADERS LTD* which similarly seeks adoption of the decision as an order of the Court. However, the Interested Party withdrew it on 5th August 2025 following the decision in ***Charles v Cheto (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR) (9 May 2025) (Judgment)*** ousting the jurisdiction of the lower court to hear/enforce DOSHS/WIBA matters.
- 6 The Applicant avers that in further abuse of court process and violating doctrine of *sub judice* the Interested Party

filed a third claim vide *MILIMANI MCELR MISC. E037 of 2025 ABSOLOM MAHUGU MAFWAFU VS C.K. BETT TRACKERS LTD* seeking to enforce the decision.

- 7 The Applicant avers that it is apprehensive that if the decision is confirmed in the said proceedings, the current suit will be rendered nugatory. It thus prays the proceedings in *Machakos Elrc Misc. E011 of 2025* And *Milimani MCELR Misc. E037 Of 2025* both between *Absolom Mahugu Mafwafu Vs C.K. Bett Traders Ltd* be stayed pending the hearing and determination of the matter herein.
- 8 The Applicant avers that it has since written to the 1st Respondent demanding extension of time and review of the decision. The 1st Respondent verbally agreed to extend time and it promptly filed an objection.
- 9 However, there was a delay when the officer at Athi River went on transfer and they are still waiting for the replacement.
- 10 It is the Applicant's case that *MACHAKOS ELRC MISC. E004 of 2025 between ABSOLOM MAHUGU MAFWAFU VS C.K. BETT TRADERS LTD* is premature and offends the doctrine of exhaustion of remedies, and ought to be struck out.
- 11 The Applicant avers that under the relevant statute, an employer is allowed a period of 90 days to settle a claim following a decision by DOSH; however, the Claimant filed *MACHAKOS ELRC MISC. E011 of 2025* on 17th January

2025, prior to the expiry of the 90-day period permitted under the Act. The Respondents purport to unfairly circumvent the 90-day period permitted under the Act.

- 12 It is the Applicant's case that *MACHAKOS ELRC MISC. E011 of 2025* constitutes an abuse of the court process for failure to exhaust available administrative remedies prior to seeking judicial intervention.
- 13 The Applicant avers that the application is brought without undue delay and shall enable substantive justice. Further, no prejudice or injustice shall befall the Respondents or Interested Party.
- 14 The Applicant avers that the accident that caused the injury/disease occurred on 27th March 2024 at 10pm, whereas on this day the Interested Party was off duty proving the purported accident did not occur in the cause of duty. The Interested Party further misrepresents that he reported the accident on the same day when he was off duty.

Respondents' Case

- 15 In opposition, the Respondents filed a replying affidavit dated 19th June 2025, sworn by the Assistant Director of Occupational Safety & Health in charge of DOSHS - Athi River, Eugene Oduori Anyimi.
- 16 The Respondents aver that the Applicant did not follow due process of reporting the accident as provided under

Part IV of the Work Injury Benefits Act to warrant the 1st Respondent.

- 17 The Respondents aver that the Interested Party in exercise of his rights as conferred to him under Section 22(5) of WIBA, lodged a claim of the said injury to the Director as defined under Section 2 of WIBA seeking compensation using the prescribed DOSH1 as provided under Section 22(1).
- 18 Upon receipt of the claim, the 1st Respondent made necessary inquiry from the Interested Party to prove that he was an employee of the Applicant, which the Applicant has not denied.
- 19 The Respondents aver that Part 2 of the prescribed from DOSHS1 had been duly filled by a medical practitioner KMP&DB 9230 pursuant to Section 25(3) of WIBA awarding the Interested Party 30% permanent incapacity which formed the basis for the amount computed for compensation of injuries sustained by the Interested Party. The Appellant has not raised any objection on percentage of incapacity awarded by the medical practitioner.
- 20 It is the Respondents' case that the Applicant's assertion that the 1st Respondent failed to take in relevant considerations and investigation is erroneous.
- 21 The Respondents aver that the Applicant's supporting affidavit is erroneous both in law and facts as the disputed case reported by the Interested Party is a case of

occupational disease as opposed to occupational accident as sworn in the affidavit; and that he erred in law in demanding that the employer be notified in writing as per the company policy. This is illegal and contravenes Section 21 of WIBA which provides that the report be done either verbally or in writing.

- 22 The Respondents aver that Applicant failed to honour Section 103 of the Occupational Safety and Health Act (OSHA) which provides that it ought to have conducted pre-employment medical examination on the Interested Party to ascertain his fitness in the work environment as well establish any pre-medical condition that may be aggravated by exposure to prevailing work conditions.
- 23 The Respondents aver that at least once in every 12 months in line with Section 102 of the Occupational Safety and Health Act as read together with Section 11 and the Eight Schedule , the Applicant was mandated to cause a thorough safety and health audit of his workplace to be carried out by a safety and health advisor, who shall issue a report of such an audit containing the prescribed particulars to the occupier on payment of a prescribed fee and shall send a copy of the report to the Director as well as provide protective gear .This has not been availed before this Court.
- 24 The Applicant was further mandated to conduct annual lung function test so as to determine exposure to cement

dust to establish the status of respiratory health of the Interested Party.

- 25 The Respondents aver that the Applicant was obliged under Section 103 of OSHA to conduct post-employment examination of the Interested Party to establish his health at the time of exit. The Applicant failed to do this and instead alleges false play or unjust enrichment without any medical reports to support his allegations.
- 26 The Respondents aver that the Applicant had 3 opportunities to exercise his obligation as provided under Section 103 of OSHA to conduct medical examinations on the Interested Party but failed to do so. The Applicant's complaints that it was denied a second or third medical examination just because it emerged that the Interested Party exercised his right under Section 25(3) of WIBA renders the applicant nugatory.
- 27 The Respondents aver that pursuant to Section 10(5) of WIBA, serious disablement is interpreted as an injury that results to 40% and above permanent disablement. Therefore, the Interested Party's 35% permanent disablement is a minor injury and the possibility of an injured person executing duties while nursing such an injury cannot be ruled out. Further, the Applicant did not account for the time and level of the Interested Party's recuperation as he executed his duties.

- 28 It is the Respondents' case that there was no error on the 1st Respondent's part in relying in the medical report in Part 2 of DOSH 1 and awarding the Interested Party Kshs. 436,038 as compensation in compliance with Sections 28 and 30 of WIBA. Thus, the allegations that the 1st Respondent erred in its computation is misplaced.
- 29 The Respondent aver that there was no provision under WIBA that barred the Interested Party from seeking services from DOSHS-Athi River or compelled it to seek services from DOSHS-Kajiado; both Athi River and Kajiado fall within the 1st Respondent's jurisdiction.
- 30 The Respondents aver that the 1st Respondent gave the award and raised a demand vide DOSH/WIBA 4 and lodged it with the Applicant and received on 21st January 2025.
- 31 The Respondents aver that despite being served, the Applicant never raised an objection and/or complaint that it received the demand notice way after lapse of the appeal period. Between 21st January and 19th February 2025, the Applicant had an opportunity to raise an objection, dispute or concern of late communication of the Director's decision by the Interested Party.
- 32 It is the Respondents' case that the purported appeal to the 1st Respondent was time barred and there is no provision in WIBA that provides that the 1st Respondent can entertain objections outside the 60-day period provided under Section 51 of WIBA.

Interested Party's Case

- 33 In opposition, the Interested Party filed a Replying Affidavit dated 6th August 2025 and a further Replying Affidavit dated 9th October 2025. The Interested Party reiterated the content of the Respondents' replying affidavit.
- 34 The Interested Party avers that it is legally untenable for proceedings in this court to be stayed on account of a matter pending before a subordinate court, which was filed without authority and in breach of the principles of judicial hierachy.
- 35 The Interested Party avers that the Applicant has also failed to demonstrate any sufficient cause for the extension of time to lodge an objection or appeal against the Director's decision dated 12th November 2024 and the delay is both inordinate and inexcusable.
- 36 It is the Interested Party's case that the Director's decision was duly communicated and valid; the Applicant failed to comply or seek a lawful review under WIBA.
- 37 The Interested Party avers that this court lacks jurisdiction following the decision in ***Charles v Cheto (Civil Appeal No. E046 of 2022) [2025] KECA784 (KLR)***, which held that this court's jurisdiction over WIBA matters is limited and any attempt to re-open or stay the Director's award is misconceived and void ab ignition.

- 38 The Interested Party avers that the Applicant's prayer for stay of execution of the Director's award amount to inviting the Court to sit on appeal over an administrative decision contrary to Section 52 of the WIBA and the established appellate procedures.
- 39 The Interested Party avers that he will continue to suffer through non-payment of the award made in his favour for injuries suffered in the course of employment while the Applicant suffers no irreparable harm that cannot be remedied if their appeal were ever to succeed.

Applicant's Submissions

- 40 The Applicant submitted that in ***Charles v Cheto (Civil Appeal E046 of 2022)[2025] K ECA 784 (KLR) (9 May 2025) (Judgment)*** the Court held that: *"In this case, the learned Judge correctly observed that sections 51 and 52 of the WIBA are silent on the avenues for redress for a party who becomes aware of the proceedings before the Director after the time for lodging an objection and/or filing an appeal against the Director's decision has already lapsed. We agree with the learned Judge that the solution in such circumstances would be to lodge a Motion for Judicial Review to quash the award before adoption by the court, and on first seeking to have the adoption proceedings stayed. Notably, the appellant sat back and took no steps to that end.*

The remedy identified by the learned Judge appears to be the only viable course of action in the circumstances.....”

41 The Applicant submitted that this court has jurisdiction to quash the impugned decision. Section 7 of the Fair Administrative Actions Act provides that: *“(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to - (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.*

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if- (a) the person who made the decision- (i) was not authorized to do so by the empowering provision; (ii) acted in excess of jurisdiction or power conferred under any written law; (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation; (iv) was biased or may reasonably be suspected of bias; or (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case; (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with; (c) the action or decision was procedurally unfair.....”

42 The Applicant submitted that Section 11 of FAAA provides that In proceedings for judicial review under section 8(1), the court may grant any order that is just and equitable,

including an order: setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions; and setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions.

- 43 The Applicant submitted that the issue is spent tis issue is spent following the consolidation of this matter and *MACHAKOS ELRC MISC. E011/2025*. Further, the Interested Party had in court argued that he did not give instructions for the filing of other/subsequent matters which were nevertheless estopped vide the provisions of *sub judice*.
- 44 The Applicant submitted that is trite that the WIBA and DOSH do not oust the provisions of the Constitution as provided under Article 25(c) (non-derogable right to fair trial) and Article 50(1) of the Constitution, as well as Section 4 of the Fair Administrative Action Act, 2015 among other provisions including common law.
- 45 The Applicant submitted that the conduct of the Respondents failed/breached their obligation to ensure Fair Administrative Action as provides under Section 4 of the Fair Administrative Action Act.
- 46 The Applicant submitted that having received notice of the decision after the expiry of time to object/appeal denied the Applicant an opportunity to be heard amounting to an unfair trial. It cited ***Judicial Service Commission v***

Mbalu Mutava & Another [2015] eKLR, where the Court of Appeal held that the right to fair administrative action is constitutionally entrenched and binding on all public bodies.

- 47 It is the Applicant's submission that unless the prayers sought issue the Applicant shall suffer great prejudice following violation of its fundamental rights including non-derogable right to fair trial. On the other hand, the Respondents and Interested Party have not violated prejudice.
- 48 The Applicant submitted that the decision was delivered on 20th November 2024, but it became aware on 13th February 2025 when served with the Interested Party's application in *MACHAKOS ELRC MISC. E011/2025*. The delay was neither deliberate nor inordinate but occasioned by late service/notice.
- 49 The Applicant submitted that following lodging of *MACHAKOS ELRC MISC. E011/2025*, even before notice/service of the decision, time has been distorted and/or suspended. Therefore, this action is brought without delay other avenues having been exhausted such as seeking extension of time with the 1st Respondent and also with the court in *MACHAKOS ELRC MISC. E011/2025*.
- 50 The Applicant further submitted that the issue of time is mute following the consolidation of this matter and *MACHAKOS ELRC MISC. E011/2025*.

- 51 The Applicant submitted that it is not disputed and Interested Party admits that impugned decision was based on a unilateral report by the Interested Party, without investigation or hearing the Applicant, and is thus unreasonable and unlawful. The 1st Respondent failed to make proper inquiries and investigations reaching a prejudicial decision and was therefore irregular, negligent and unfair.
- 52 The Applicant submitted that in the DOSHS/WIBA FORM1 which Interested Party made and submitted on their own, states that: The accident that caused the injury/disease occurred on 27/03/2024 at 10pm, whereas on this day the Interested Party was off duty proving the purported accident did not occur in the cause of duty; The Interested Party further misrepresents that he reported the accident on 27/03/2024 when he was off duty; The charges on the DOSHS/WIBA FORM 1 are at the very least equivocal and duplicitous whereof calculated to prejudice the Applicant.
- 53 The Applicant submitted that these apparent contradictions and misrepresentation warranted an inquiry by the 1st Respondent.
- 54 The Applicant submitted that the Applicant disputes both the alleged illness/injury and the percentage of purported incapacity. Without prejudice, the Applicant disputes the medical findings and prays for an independent evaluation; and asserts that it is suspect that the Interested Party

failed to report any purported illness/injury to the Applicant while the Interested Party was still in employment neither verbally nor in writing despite Interested Party purporting to have been admitted and diagnosed as such in March 2024 while still in employment. This warranted an inquiry and investigation by the 1st Respondent.

- 55 The Applicant submitted that the alleged accident occurred in Kajiado County. The DOSHS office in Athi River therefore acted *ultra vires* by purporting to assume jurisdiction over the matter.
- 56 The Applicant submitted that the award of Kshs. 436,038 was erroneously calculated, further demonstrating the unreliability of the decision.
- 57 The Applicant avers that the Interested Party purports to unfairly circumvent the 90-day period permitted under Section 26 of the WIBA where an employer is allowed a period of 90 days to settle a claim following lodging of a claim by the Director.
- 58 The Applicant submitted that the delay is excusable and well explained; it promptly lodged objection once aware; the Respondents suffer no prejudice, while denial gravely prejudices the Applicant. It cited the Supreme Court in *Nicholas Kiptoo Arap Salat v IEBC & 7 Others [2014] eKLR* and Rule 18 and 80 of the ELRC Procedure Rules 2024.

59 It is the Applicant's submission that it is trite that costs do follow the event. This Application was caused by the unfair violations by the Respondents and Interested Party.

The Interested Party's submissions

60 The Interested Party submitted on four issues: Whether these proceedings should be stayed-spent; whether the claim was filed pre-maturely; whether the Applicant has made a proper case for extension of time to lodge an objection and/or appeal against the DOSHs decision; and whether this Court should adopt the decision of the Director of Occupation Safety Health dated 20th November 2024.

61 On the first issue, the Interested Party submitted that the 90-day period under WIBA is designed to allow the employer an opportunity to settle. It is not a jurisdictional pre-condition barring the injured employee from seeking statutory compensation.

62 The Interested Party submitted that the Act imposes no sanction for early filing and does not oust the Director's mandate. In any event, the Respondent was duly notified, afforded an opportunity to participate, and further had recourse through objection, review, and appeal, which avenues they failed to invoke. Having slept on their statutory rights, they cannot now raise a procedural technicality to defeat enforcement. The award is valid,

subsisting, and therefore properly enforceable under section 51(2) of WIBA.

- 63 It is the Interested Party's submission that the employer's position on the doctrine of exhaustion is materially misconceived in that this doctrine refers to the internal objections, reviews and appeals mechanism, not the 90-day period for employers to settle awards. The 90-day period is a capped period within which an employer must pay an award. It should not be interpreted to mean that an employee must suffer a little bit longer for 90 days before enforcing an award. It beats the purpose of Administrative actions which should be quick, efficient and devoid of technicalities.
- 64 The Interested Party further submitted that once the window for challenge closes, the award is final and payable and cannot be frustrated by reliance on the 90-day rule.
- 65 On the second issue, the Interested Party placed reliance in ***LSK versus AG & others (2019)*** where the Court confirmed that objections, reviews and appeals lie within WIBA not ordinary Courts. Courts have repeatedly held that an adoptive Court cannot re-open merits or procedure of the Director's award.
- 66 He submitted that the law governing objections to decisions of DOSHs officers is found under Section 52 of the Work Injury Benefits Act, 2007 (WIBA), which provides

that a person aggrieved by such decision may, within 60 days of such decision, lodge an objection before the Director, who is to consider the same and make a determination.

- 67 The Interested Party submitted that the timelines stipulated under WIBA are mandatory, not merely directory, as they are tied to statutory administrative processes intended to ensure finality and certainty. The Respondents confirmed that the relevant notice was lodged with the Applicant and no objections applications for review and or Appeal have been made to date.
- 68 The Interested Party submitted that Applicant has not demonstrated sufficient cause for the inordinate delay. The decision of DOSH was rendered on 12th November 2024 and the present application lodged on or about 22nd April 2025, over 5 months later only upon being served with the Application to adopt the award. No explanation has been rendered for failure to pay the sums awarded save for alleged non-communication.
- 69 The Interested Party submitted that Director's processes is administrative and once an inquiry is initiated the employer is deemed constructively aware of the process so long as the injury report was filed, medical examinations carried and DOSH officers made inquiries. Constructive knowledge and prior involvement means that the Applicant cannot now claim surprise that an award has been made in the matter.

- 70 The Interested Party submitted that WIBA awards are presumed valid unless set-aside, the burden shifts to the employer to show non-service, no opportunity to be heard was granted and any prejudice occasioned to them. This burden remains un-discharged.
- 71 The Interested Party submitted that the Applicants assertion that he did not participate in an Administrative process or was not informed falls far short of the threshold required in judicial review application.
- 72 It is the Interested Party's submission that the plea for extension of time is devoid of merit and granting it would defeat the statutory framework and encourage indolence. The Courts have consistently held that equity aids the vigilant, not the indolent.
- 73 On the final issue, the Interested Party submitted that the law on awards made by the office of the Director of Occupational and Safety and Health as held in ***Luvizu v Timsales Limited (Miscellaneous Civil Application E069 of 2023) [2024] KEELRC 857 (KLR) (4 April 2024)***; *"Where the award is not objected to, as it happened in this matter, and the employer fails, refuses, and or neglects to settle the same, the employee has a right to approach the court for enforcement of the award by way of an application or a cause. The award, if not challenged by way of an objection and or appealed against as provided for by the law, becomes a debt due and*

payable arising from an employment relationship. I entertain no doubts in my mind that this court (ELRC) has jurisdiction to hear and determine such a cause or matter based on Section 12 of the Employment and Labour Relations Court Act and Section 87 of the Employment Act.....I wish to make the following comment. When an applicant approaches this court (ELRC) for enforcement of the award of the Director, such an applicant should not be asking this court to adopt the award as a judgment of the court; instead, once an award has been made by the Director and an employer fails, refuses, and or neglects to settle the same, without lodging an objection or appeal against such an award in accordance with the law afore-stated, and the period within which to lodge the objection or appeal lapses, the amount in the award becomes due and payable as a civil debt arising from an employment relationship”

- 74 The Interested Party submitted that from this decision, this Court has the power to issue a decree where the Director of Occupational and Safety and Health has made an award and the same is recoverable from the Decree-Debtor as a civil debt.
- 75 I have examined all the averments and submissions of the parties herein. The applicant seeks stay of enforcement of the decision of the Director Occupational Safety and Health Service (DOSHS) in claim ref no WIBA/ATR/239/2034 of 20/11/24 pending hearing of this application interpartes. This application also seek order of stay

proceedings on enforcement of the DOSH decision in Machakos ELRC Misc E011/25 and Milimani MCELRC Misc E037/25 pending the determination of this application amongst other prayers.

- 76 The applicant avers that he was never notified of the decision of DOSH in good time until 13th February 2025. The respondents avers that they have since written to the director DOSH seeking extension of time and review of the decision which was verbally agreed to.
- 77 The applicants thus contend that the causes filed in Machakos ELRC Mis E004/25 is premature and the one of Machakos ELRC Misc E011/25 was filed prior of the expiry of the 90 days period permitted under the Act.
- 78 The respondents have opposed the application and they aver that the application failed of follow due process of reporting the accident as provided for under part IV of WIBA. This then necessitated the filing of the claim by the IP under section 225 of WIBA.
- 79 The respondents have averred that the applicant also failed to adhere to the provisions of OSHA and WIBA of carrying out a thorough safety and health audit of their workplace. They also aver that they did their assessment and made an award which was served upon the applicant but who never raised any objection.
- 80 From the proceedings herein the report of DOSH is dated 20/11/24 and is addressed to the applicants herein. There

is no evidence that it was however served upon the respondents at the time save for the demand notice dated 20/1/25.

81 Under section 51 and 52 of WIBA Act

“1. any person aggrieved by a decision of the director on any matter under the Act may within 60 days of such a decision lodge an objection with the director against such decision.(2) the objection shall be in writing in a prescribed form....”

82 It is therefore apparent that the applicant once notified of the director’s decision had 60 days to lodge an appeal. In this case, the decision having been notified on 20/1/25 through a demand notice, the 60 days period was to expire on 20/3/25. It is however apparent that the application for execution was filed before the 60 days period for appeal and was therefore premature.

83 In the circumstances of this case, the recourse for the applicant would be to stay execution of the decision of the director and allow the applicant time to file his objection as prescribed under the law.

84 It is my finding therefore that the Machakos Misc E011/25 and Milimani MC ELR MISC 031/25 were prematurely filed and so is struck out accordingly. For the ends of justice the applicant has 30 days to file his objection to the Director of OSH and the parties to follow the required process under the law. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi
this 15th Day of January, 2026.**

**HELLEN WASILWA
JUDGE**