



Kikuyu Pipes and Fittings Centre Limited v Kiambu County Director of Occupational Safety and Health Services & another (Miscellaneous Application E194 of 2025) [2026] KEELRC 177 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 177 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E194 OF 2025
BOM MANANI, J
JANUARY 29, 2026

BETWEEN

KIKUYU PIPES AND FITTINGS CENTRE LIMITED APPLICANT

AND

KIAMBU COUNTY DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH SERVICES 1ST RESPONDENT

ANNASTASIAH WAIRIMU MWAURA (BEING SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF BENARD KILONZO KALELI (DECEASED)) 2ND RESPONDENT

(Being sued as the Personal Representative of the estate of Benard Kilonzo Kaleli (Deceased))

RULING

1. The Applicant has filed the application dated 5th June 2025 seeking the following orders:-
 - a. Spent.
 - b. That there be a temporary stay of enforcement of the award issued by the 1st Respondent on 29th January 2025 pending the hearing and determination of the application.
 - c. That the Applicant be granted leave to object to the 1st Respondent's aforesaid award out of time.
 - d. That there be stay of enforcement of the 1st Respondent's award pending the hearing and determination of the objection against it.
 - e. That costs of the application be provided for.



2. The Applicant contends that Benard Kilonzo (hereafter referred to as the deceased) was involved in a fatal road accident on 11th June 2023. It contends that on 12th January 2024, the 2nd Respondent lodged a claim with the 1st Respondent in respect of the deceased alleging that he (the deceased) was an employee of the Applicant and that he died whilst in the course of employment.
3. The Applicant avers that the 1st Respondent wrote to it (the Applicant) on 21st February 2024 alleging that the deceased died whilst on duty. It contends that the 1st Respondent required it to report the accident by filling DOSH 1 form within seven (7) days.
4. The Applicant contends that it wrote to the 1st Respondent on 26th February 2024 contesting the assertion that the deceased was its (the Applicant's) employee and that he died in the course of employment. The Applicant avers that the deceased was not its employee within the meaning of section 5 of the *Work Injury Benefits Act* since he was engaged on casual basis. Further, the Applicant contends that at the time that the fatal accident occurred, the deceased was not on duty.
5. The Applicant contends that the deceased died when he fell off a motorcycle whilst going to attend a funeral for his colleague's kin in Nyanza. It avers that the motorcycle was not its property.
6. The Applicant further asserts that it was not involved in arranging for the deceased's travel to attend the funeral. It contends that the deceased was to attend the funeral in his personal capacity and not as its (the Applicant's) representative.
7. The Applicant avers that the 1st Respondent called for a meeting on 10th June 2024 to ascertain its (the Applicant's) position on the matter. However, it contends that the 2nd Respondent did not attend the meeting. It further avers that one Evans Oduor who was with the deceased at the time of the accident was also not available for the meeting.
8. The Applicant thus contends that the inquiry by the 1st Respondent into the matter on the material day (10th June 2024) was flawed. It contends that the 1st Respondent did not afford it adequate opportunity to be heard.
9. The Applicant accuses the 1st Respondent of bias whilst conducting its investigations into the matter. It contends that the 1st Respondent did not allow it to access legal representation during the process. It further avers that the 1st Respondent's conduct breached the rules of natural justice.
10. The Applicant avers that despite the position it expressed on the matter, the 1st Respondent proceeded to make a finding in favour of the 2nd Respondent. It contends that the 1st Respondent unjustifiably held it (the Applicant) liable to pay compensation to the 2nd Respondent.
11. The Applicant avers that the 1st Respondent wrote to it on 29th January 2025 asking it to pay compensation to the 2nd Respondent within 90 days of the demand. The Applicant avers that in a bid to settle the matter out of good faith, it engaged its insurer over the demand.
12. The Applicant avers that the insurer initiated fresh investigations into the matter thus delaying the process of lodging an objection to the award. It contends that by the time the insurer declined to take up the matter, the time for lodging the objection had lapsed.
13. The Applicant asserts that it wrote to the 1st Respondent requesting to lodge the objection out of time but the 1st Respondent did not respond. As such, it avers that it was forced to seek the court's intervention in the matter. It contends that it is in the interest of justice to grant it leave to lodge the objection outside the time that is set by law.



14. The Respondents have opposed the application. They have both filed affidavits to anchor their objections.
15. The 1st Respondent contends that the 2nd Respondent presented a report on the impugned accident on 12th January 2024. The 1st Respondent avers that after it received the aforesaid report, it opened investigations into the matter.
16. The 1st Respondent contends that it visited the Applicant's premises on 20th May 2024 to conduct its investigations. It avers that it conducted further inquiries on the matter on 10th June 2024.
17. The 1st Respondent avers that the Applicant was represented in the investigative meetings by various individuals including its employees and advocate. As such, it disputes the Applicant's assertion that it was denied the right to be represented and that it was not accorded an opportunity to be heard.
18. The 1st Respondent avers that upon finalization of investigations into the accident, it arrived at the conclusion that the deceased was an employee of the Applicant and that he died in the course of duty. It contends that the deceased had gone to represent the Applicant and his co-employees at a funeral when he met his death.
19. The 1st Respondent avers that it computed the benefits payable to the deceased's family and notified the Applicant to pay the amount within 90 days of the assessment. It (the 1st Respondent) avers that the Applicant did not lodge an objection to the award in accordance with the law.
20. The 1st Respondent states that on 3rd June 2025, long after the expiry of the 60 days within which the Applicant was to have lodged its objection to the award, it (the Applicant) lodged DOSH/WIBA 12 purporting it to be an objection to the award. The 1st Respondent avers that the law does not entitle it to accept objections outside time. As such, it avers that it did not have jurisdiction to enlarge time for filing the objection beyond the time set by law.
21. The 1st Respondent contends that despite the Applicant being aware that its objection was lodged outside time and not in the prescribed form, it did not move the court for leave to regularize its papers. It contends that instead, the Applicant sought to shift blame for its inaction.
22. The 1st Respondent reiterates that the Applicant had no right to file the objection to the impugned award out of time. As such, it contends that the Applicant's assertion that its rights have been violated is misplaced.
23. The 1st Respondent avers that it adhered to the law whilst processing the 2nd Respondent's claim. It contends that it is the Applicant who disregarded the law whilst pursuing its purported objection.
24. The 2nd Respondent contends that the 1st Respondent involved both the Applicant and herself in the investigations on the impugned claim. She avers that after the 1st Respondent rendered its award, it notified the Applicant about it.
25. The 2nd Respondent avers that the Applicant had 60 days to object to the award but did not do so. She avers that it is only after her lawyers demanded for settlement of the matter that the Applicant filed the instant application in a bid to evade liability for the claim.
26. The 2nd Respondent avers that the Applicant's assertion that it delayed to file its objection to the claim because it was trying to engage its insurer to settle the matter is an indirect admission of liability for the claim. As such, she contends that the Applicant's attempts to disown the claim is self-contradictory.
27. The 2nd Respondent reiterates the assertion that the deceased was an employee of the Applicant when he met his death. As such, she avers that the Applicant is under obligation in law to settle the claim.



28. The 2nd Respondent asserts that the Applicant cannot contend that it was not notified of the right to lodge the objection to the award since ignorance of the law is not a defense. She contends that all and sundry are presumed to know the law.
29. The 2nd Respondent contends that the 1st Respondent is not empowered to extend time to lodge objections to its awards beyond the 60 days that are prescribed under section 51 of the [Work Injury Benefits Act](#). Similarly, she contends that the court has no jurisdiction to entertain the instant application since it is not presented as an appeal against the award of the 1st Respondent.

Analysis

30. The law which regulates the procedure for handling work injury claims and benefits is encapsulated in the [Work Injury Benefits Act](#), Cap 236 Laws of Kenya. Under the Act, when an employee gets injured or dies in the course of duty, a claim for compensation may be lodged with the Director of Occupational Safety and Health Services.
31. The claim is triggered by the employer and or the employee and or their representatives making a report of the accident to the Director of Occupational Safety and Health Services. The Director of Occupational Safety and Health Services then investigates the claim and makes an assessment of the compensation which is payable to the affected employee and or his family.
32. Once the of Director of Occupational Safety and Health Services has rendered his decision, the employer and or employee and or their representatives may lodge an objection to the award within 60 days of the Director's decision. If an objection is lodged as provided in law, the Director is obligated to review his decision and either sustain or vary the award. If the parties are not satisfied with the Director's decision on review, they are entitled to lodge an appeal to the Employment and Labour Relations Court within 30 days of receipt of the decision (see sections 51 and 52 of the [Work Injury Benefits Act](#)).
33. A peculiar feature of the aforesaid legislation is that it does not provide for enlargement of time to lodge an objection against a Director's award out of time. As such and having regard to this reality, it is apparent that neither the Director nor the court has jurisdiction to enlarge time to lodge an objection out of time.
34. Where legislation does not donate power to enlarge time that is fixed by statute, the court has no power to enlarge the time. Underscoring this reality, the Court of Appeal in the case of *Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza Musonye & another* [2016] KECA 213 (KLR) observed as follows:-

“Where a statute limits time for bringing an action, no court has the power to extend that time, unless the statute itself allows extension of time.”
35. In the court's view therefore, the instant application is bad in law in so far as it seeks the court's intervention to enlarge time to lodge an objection to the impugned award out of time when the law (the [Work Injury Benefits Act](#)) does not clothe the court with such jurisdiction. As such, the motion is bound to fail for this reason.
36. Importantly, a perusal of the entire of the [Work Injury Benefits Act](#) demonstrates that the only power which the Act donates to this court is respect of appeals from the Director's awards (see section 52 of the Act). There is no provision in the legislation which empowers the court to enlarge time for doing anything that is required under it. As such, the only other avenue which may be available to a party who has not been able to meet the timelines that are set in the legislation may be to invoke the court's judicial review jurisdiction to, inter alia, quash an award which is perceived to be irregular (see *Charles v Cheto* [2025] KECA 784 (KLR)).



37. Indeed, the Applicant seems to have been aware of this fact when it wrote an email dated 20th May 2025 in the following terms:-

“We launched an objection to the processed claim but the director’s office refused to accept the same citing time frames. We further wrote a letter to the Director requesting for extension of time to file an objection but the same has never been responded [to] hence necessitating us to reach out to you.

Pursuant to current jurisprudence and legislation[s] on the matter, once a director’s award has been enforced in the ELRC court, we won’t have any other remedy but to pay the processed claim despite the fact that we are not liable. The only recourse that we have now is to file a Judicial Review application to review the Director’s award before they enforce it.”
Emphasis added by underlining.

38. Despite the Applicant being aware of this pathway as suggested by the Court of Appeal in the case of *Charles v Cheto* (supra), it (the Applicant) filed the instant application for enlargement of time. As such and as matters stand now, the Applicant may have spent that opportunity since Judicial Review proceedings are also time bound.

39. In their submissions to court, the Applicant’s lawyers argue that the court has supervisory jurisdiction over the 1st Respondent which it should invoke to remedy the challenge at hand. Whilst it is true that the court has supervisory power over the 1st Respondent, such power can only be exercised when the court is appropriately moved and for the right purpose.

40. In this regard, the court can only invoke its supervisory mandate over the 1st Respondent where it has been demonstrated that the 1st Respondent has acted beyond the scope of its statutory mandate or has failed to discharge a duty which is bestowed on it by law. In the instant case, I have not been provided with evidence to show that the 1st Respondent has either acted beyond its statutory mandate or that it has deliberately declined to perform a duty that is bestowed on it by law.

41. As mentioned earlier, the law does not entitle the 1st Respondent to admit objections out of time. As such, refusal by it (the 1st Respondent) to enlarge time for the Applicant to lodge its objection out of time cannot be construed as evidence that the 1st Respondent either acted beyond the scope of its mandate or refused to discharge its statutory obligation.

42. Importantly, even assuming that the 1st Respondent had either acted outside the scope of its statutory mandate or refused to discharge its statutory duty, the procedure for correction of such malady would be to file Judicial Review proceedings to either quash the impugned decision or to prohibit or compel it (the 1st Respondent) to act as may be appropriate: not an application for enlargement of time as is the case before me.

43. However, assuming that the court had jurisdiction to enlarge time for the Applicant to object to the 1st Respondent’s award, does the instant application merit favourable consideration? The answer to the question appears to be in the negative.

44. The parties are in agreement that the suit accident was reported to the 1st Respondent and that it (the 1st Respondent) instituted investigations into the matter before it rendered its award on 29th January 2025. The Applicant admits that the 1st Respondent notified it of the award and the need to pay the assessed compensation within 90 days of the date thereof.



45. The Applicant asserts that on receipt of the 1st Respondent's notification, it (the Applicant) engaged its insurer over the matter in a bid to resolve it in good faith. However, it contends that the insurer declined responsibility for the claim.
46. The Applicant avers that by the time the insurer declined the claim, the time for lodging the objection to the award had lapsed. And hence the need for extension of time.
47. From this narration, it is apparent that the Applicant was aware that the law entitled it to lodge an objection to the 1st Respondent's award within prescribed timelines. However, instead of doing so, it sought to engage its insurer to see if it could settle the claim.
48. Even as the Applicant was trying to have its insurer settle the claim, it was aware of the fact that the time for lodging an objection to the award under section 51 of the *Work Injury Benefits Act* was running. However, it did not lodge the objection within the 60 days' window provided under the legislation. It only sought to do so after the 60 days had run out.
49. The court has previously underscored the fact that time for taking action which is prescribed by law in respect of a matter does not stop running merely because parties are engaged in discussions over the matter. As such, the parties must bear in mind the set timelines even as they seek alternative ways of resolving the matter (*Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza Musonye & another* [2016] KECA 213 (KLR)).
50. One cannot sit pretty as the prescribed timelines run out only to rush to court to seek extension thereof. Such conduct smirks of negligence for which the law will not provide redress. As has been underscored severally, equity will not come to the aid of the indolent (*Onesmus Odari v Mildred Achieng* [2015] KEHC 2894 (KLR)).
51. The failure by the Applicant to lodge an objection to the 1st Respondent's award within the 60 days' window that is prescribed by section 51 of the *Work Injury Benefits Act* cannot be accounted for in any other way other than due to negligence on its part. Even as the Applicant engaged its insurers over settlement of the award, it was aware of the statutory timelines for filing an objection against it and ought to have lodged the objection within those timelines. As such, the court is not ready to come to the aid of a party who is demonstrated to have been indolent.
52. For the avoidance of doubt, it is important to point out that the court is not entitled to inquire into the merits of the Director's award at this moment. It would only have done so if the matter had come before it by way of an appeal under section 52 of the *Work Injury Benefits Act* (see *Charles v Cheto* (supra)). As such, it (the court) cannot legitimately interrogate the Applicant's contention that the deceased was not its employee or that he did not suffer the fatal accident in the course of duty through the instant application.

Determination

53. The upshot is that the court finds that the application dated 5th June 2025 is not merited.
54. As such, it is dismissed.
55. Each party to bear own costs.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF JANUARY, 2026

B. O. M. MANANI

JUDGE



In the presence of:

.....for the Applicant

.....for the 1st Respondent

.....for the 2nd Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

