



**Moraa v Commission on Administrative Justice (Miscellaneous Application
E219 of 2025) [2026] KEELRC 72 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 72 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E219 OF 2025**

**SC RUTTO, J
JANUARY 23, 2026**

BETWEEN

EUNICE NYABIO MORAA APPLICANT

AND

COMMISSION ON ADMINISTRATIVE JUSTICE RESPONDENT

RULING

1. Through a Notice of Motion dated 22nd January 2025, the Applicant seeks an order for the assessment made by the Director of Occupational Health and Safety on 19th November 2024 to be adopted as an order of this Court.
2. The Motion is premised on the grounds stated therein and is supported by the Supporting Affidavit of Eunice Nyabio Moraa, the Applicant. The basis of the Motion is that the Applicant is an employee of the Respondent and that she sustained an injury to her left ankle following a workplace accident on 28th June 2018.
3. That the Applicant lodged a claim with the Director of Occupational Safety and Health Services (the Director) under Claim Reference Number WIBA/CA/5915, and was awarded compensation in the sum of Kshs 6,819,382.82.
4. The Applicant avers that despite issuing several notices and reminders to the Respondent through its insurer, the Respondent has willfully refused, failed, and/or neglected to satisfy the said award.
5. She further contends that although the law provides for an appeal against the Director's decision, the Respondent neither lodged an appeal nor took any steps to challenge the award, yet has still failed to honour it.
6. The Applicant adds that more than 150 days have elapsed since the Director rendered the award, and no objection, review, or appeal has been filed by the Respondent to date.



7. In response to the Motion, the Respondent filed a Replying Affidavit sworn on 28th July 2025 by Mercy Wambua, its Chief Executive Officer and Commission Secretary.
8. Ms. Wambua confirms that an employment relationship exists between the Applicant and the Respondent.
9. She further states that at the time of the alleged accident, the Respondent was covered under a valid and subsisting general insurance policy issued by Pacis Insurance Company Limited, which included employer's liability and work injury benefits insurance coverage.
10. Ms. Wambua explains that under the terms of the insurance policy, all work-related injury claims, including those assessed under the *Work Injury Benefits Act* (WIBA), were to be processed through the insurer, which would indemnify the Respondent upon proper verification and determination of liability.
11. She avers that by a letter dated 1st August 2024, the Applicant informed the Respondent that she had sustained an ankle injury on 29th June 2024. The Respondent immediately notified the insurer and sought guidance on the next steps to be undertaken under the policy.
12. The insurer, through an email dated 29th June 2024, addressed to the Respondent and copied to the Applicant, provided the DOSH-1 Accident Notification Form and the WIBA Claim Assessment Form to facilitate processing of the claim.
13. Ms. Wambua further deposes that the Respondent submitted the necessary documents to the insurer, following which the insurer issued a discharge voucher for Kshs 2,804,954/- in settlement of the Applicant's claim.
14. The Applicant, however, disputed the said amount. In response, the insurer stated that the assessment of Kshs 6,819,382.82 was irregular and contrary to the provisions of WIBA. The insurer clarified that WIBA only applies to injuries sustained in the course of employment and asserted that, in this case, the Applicant was injured while on her way home, outside official working hours.
15. The insurer further informed the Respondent that it had lodged an appeal with the Directorate in accordance with WIBA and consequently withdrew its earlier offer of Kshs 2,804,954/-, thereby rendering the claim inadmissible.
16. Ms. Wambua adds that the Respondent subsequently received a letter dated 13th June 2025 from the Directorate indicating that no objection or appeal had been filed against its decision. The Respondent relayed this communication to the insurer but has since received no feedback.
17. In Ms. Wambua's view, since the Respondent is covered under a valid insurance policy, it is not directly liable to settle any assessed compensation as such responsibility rests with the insurer.
18. In addition to the Replying Affidavit, the Respondent also filed an Ex parte Chamber Summons dated 31st July 2025 seeking leave to enjoin Pacis Insurance Limited as a Third Party in these proceedings.
19. The Chamber Summons is grounded on the reasons stated therein and is supported by the Affidavit of Mercy Wambua, the Respondent's Chief Executive Officer. The Respondent contends that it holds a valid insurance policy with Pacis Insurance Limited covering work-related injuries sustained by employees in the course of employment.
20. The Respondent further avers that the Applicant's claim falls within the scope of the said insurance policy, and that the insurer had previously issued a discharge voucher in purported settlement of the claim.



21. Accordingly, the Respondent seeks indemnity and/or contribution from the insurer in respect of any liability that may arise from the Applicant's claim.
22. The Respondent asserts that it is in the interest of justice, fairness, and judicial economy that Pacis Insurance Limited be joined as a Third Party to these proceedings to enable the Court to effectively determine all the issues in dispute.
23. The Third Party opposed the Respondent's Application by way of a Replying Affidavit sworn on 14th November 2025 by Morine Munene, its Legal Officer.
24. Ms. Munene admits that the Third Party issued the Respondent with a WIBA insurance policy, which was valid and in force at all material times. She avers that the policy provided indemnity strictly in respect of injuries sustained by employees arising out of and in the course of employment, in accordance with Sections 15 and 16 of the WIBA.
25. She deposes that the incident forming the subject matter of these proceedings, if it occurred at all, took place while the Applicant was walking home after work and therefore fell outside the course and scope of employment.
26. Ms. Munene further states that at the material time, the Applicant was neither being conveyed by nor using any means of transport provided, arranged, or facilitated by the employer as contemplated under Section 15(6) of the WIBA, and thus was not within the scope of employment as envisaged under the policy.
27. She contends that the alleged injury, having been sustained during the Applicant's personal commute and outside the employer's control or supervision, does not constitute an occupational injury within the meaning of the Act or the policy.
28. In Ms. Munene's view, the question of whether the Respondent is entitled to indemnity under the policy is purely contractual, turning on the interpretation of the insurance contract together with its terms, conditions, and exclusions, and cannot be summarily determined within an application for adoption or enforcement of a WIBA award.
29. She further avers that the statutory framework under the WIBA does not vest this Honourable Court with jurisdiction to interrogate, interpret, or enforce private contractual rights and obligations between an insured and its insurer.
30. Ms. Munene deposes that the attempt to implead the Third Party in these proceedings is procedurally improper, premature, and misconceived, as it invites the Court to determine issues of insurance indemnity in proceedings whose scope is limited to the adoption of a WIBA award.
31. She maintains that any dispute between the Respondent and the Third Party can only be resolved through a separate and properly instituted civil suit, in which the parties' respective contractual obligations may be ventilated by way of evidence and legal argument, and on this basis disputes this Court's jurisdiction.
32. Ms. Munene consequently avers that the Third Party proceedings are misconceived, premature, and an abuse of the Court process, and urges the Court to strike them out with costs.
33. The Respondent, by way of a Supplementary Affidavit sworn on 26th November 2025 by its Acting Commission Secretary/Chief Executive Officer, Daniel Karomo, avers that the Third Party's averments are a belated afterthought aimed at defeating the Respondent's indemnity claim.



34. Mr. Karomo deposes that upon the accident being reported, the Third Party voluntarily assumed liability by issuing the Applicant with the requisite forms, subjecting her to a second medical opinion, and subsequently issuing a discharge voucher for an amount lower than that awarded by the Director.
35. He further contends that at no time prior to the issuance of the award did the Third Party raise any of the objections now contained in its Replying Affidavit.
36. Mr. Karomo additionally avers that the Third Party did not file any objection and/or appeal against the decision of the Director.
37. He further avers that he has been advised by the Respondent's Advocates, which advice he verily believes to be true, that pursuant to Section 17 of the WIBA and Rule 30 of the Employment and Labour Relations Court (Procedure) Rules, 2024, this Honourable Court is properly vested with jurisdiction to hear and determine its Application.
38. In Mr. Karomo's view, the sole and germane issue for determination by this Honourable Court is the Applicant's compensation and whether the intended Third Party is obligated to indemnify the Respondent.

Submissions

39. Only the Respondent filed written submissions. The Respondent contended that liability for the claim lies with the Intended Third Party (the Insurer), Pacis Insurance Limited, which accepted responsibility under the insurance policy to assess and settle the Applicant's WIBA claim. In support of this position, the Respondent relied on the decision in *Wanyama v Danree Multihandling Services Limited* [2024] KEELRC 765 (KLR).
40. Further, relying on the decision in *Tonbi v Vintage Concept Limited & another* (Miscellaneous Application No. 026 of 2022) [2022] KEELRC 4067 (KLR) (30 June 2022) (Ruling), the Respondent submitted that by acknowledging the accident report, advising the Applicant on the applicable claims process, and issuing a discharge voucher upon delivery of the compensation award/decision, the Third Party accepted liability and should therefore be estopped from approbating and reprobating.
41. The Respondent urged that, if the Applicant's Application is allowed, it should be on condition that Pacis Insurance Limited indemnifies the Respondent against the compensation award dated 19th November 2024.
42. In further submissions, the Respondent stated that all actions it undertook in relation to the claim were directed at the Insurer, and that it played no active role in the assessment, approval, or processing of the compensation. The Respondent maintained that it acted in good faith on the basis of the Insurer's acceptance of liability, and that any claim arising from the Applicant's injury should therefore be directed solely at the Insurer, who remains responsible under the policy.

Analysis and Determination

43. Having considered the Applicant's Notice of Motion, the Respondent's Application, its affidavits and submissions together with the Third Party's Replying Affidavit, the key issues that arise for determination are whether this Court should adopt the award made by the Director on 19th November 2024; and if so, whether the Third Party is obligated to indemnify the Respondent by settling the said award.
44. It is undisputed that the Applicant is an employee of the Respondent and that she reported a work-related injury to the Respondent. It is equally undisputed that the Applicant lodged a claim under



WIBA with the Director, who, upon assessment, awarded her compensation amounting to Kshs 6,819,382.80.

45. The Respondent contends that it had taken out an insurance policy with the Third Party covering all work-related claims, including those assessed under WIBA. Consequently, it argues that since it is insured, it is not directly responsible for settling the awarded sum, and that such responsibility rests with the Third Party, Pacis Insurance Limited.
46. The Court notes that Sections 51 and 52 of WIBA provide a clear statutory mechanism for addressing disputes arising from the Director's award. Specifically, a party aggrieved by an award may lodge an objection under Section 51, to which the Director must issue a written response. If dissatisfied with that decision, Section 52(2) allows an appeal to this Court within thirty (30) days of the Director's determination.
47. In the present matter, there is no record of any objection having been lodged with the Director or an appeal having been filed before this Court under Section 52(2) challenging the Director's award.
48. It is worth noting that the Court's jurisdiction in such matters is expressly confined by Section 52(2) to appeals against the Director's decisions.
49. It should also be appreciated that the claim between the Applicant and the Respondent is distinct from any claim that may exist between the Respondent and the Third Party.
50. While Section 7 of WIBA requires employers to obtain and maintain insurance coverage for their employees, there is no direct relationship between an employee and the insurer, as they are not a party to the contract of insurance between the employer and the insurer.
51. In the absence of an appeal in the present matter, this Court's jurisdiction is confined to the enforcement of the award as between the Applicant and the Respondent, in their respective capacities as employee and employer, within the framework of WIBA.
52. In light of the foregoing, this Court is of the respectful view that any claim the Respondent may wish to pursue against the Third Party can only be properly ventilated through a separate declaratory suit, and not within these enforcement proceedings. As such, the Respondent's claim for indemnity against the Third Party cannot be sustained in the instant proceedings, and the application to that effect is declined.
53. To this end, the Court finds no basis to decline the Applicant's Motion, noting that it is undisputed that the Director issued an award in favour of the Applicant on 19th November 2024, and no objection or appeal has been lodged in accordance with the procedures prescribed under the [Work Injury Benefits Act](#). Similarly, there is no evidence that the Respondent has taken any steps to satisfy the award.
54. Consequently, the Court finds that the Applicant is entitled to the compensation of Kshs 6,819,382.80 as assessed by the Director on 19th November 2024.
55. The said sum shall attract interest at court rates from the date of this Ruling until payment is made in full.
56. The Respondent shall bear the costs of these proceedings.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

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STELLA RUTTO



JUDGE

In the presence of:

For the Claimant Ms. Muhanda

For the Respondent Ms. Muthiga

For the Third Party Ms. Ng'ang'a

Court Assistant Catherine

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

