

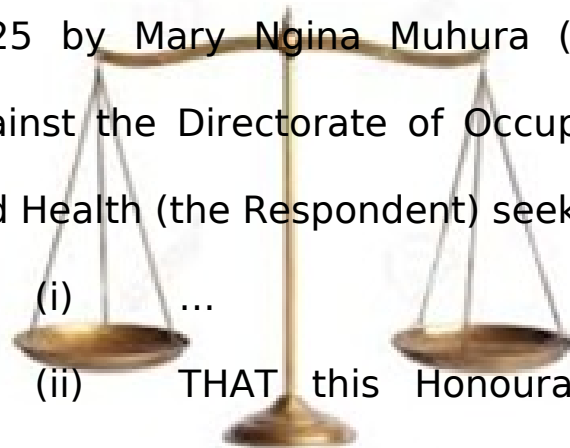
**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT NAIROBI  
MISCELLANEOUS APPLICATION NO. E016 OF 2025  
MARY NGINA MUHURA  
APPLICANT**

**v**

**DIRECTORATE OF OCCUPATIONAL SAFETY  
AND HEALTH SERVICES  
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**RULING**

1. For determination is a Motion dated 24<sup>th</sup> January 2025 by Mary Ngina Muhura (the applicant) against the Directorate of Occupational Safety and Health (the Respondent) seeking orders:



(i) ...

(ii) THAT this Honourable Court be pleased to set aside the award of

**NAIROBI**

the Directorate of Occupational

Safety and Health Officer (DOSHS)

made on 10<sup>th</sup> April 2018 and

contained in DOSHS/WIBA 4

Reference No WIBA/CB4/557/2018.

(iii) THAT upon grant of prayer in (ii) above, this Honourable Court be

pleased to grant the applicant leave to lodge an objection with the Respondent against the Respondent's decision made on 10<sup>th</sup> April 2018 and contained in DOSH/WIBA 4 Reference No

**EMPLOYMENT AND LABOUR RELATIONS COURT**

(iv) THAT in alternative to pray (iii)

above, the applicant's objection dated 23<sup>rd</sup> May 2022 and lodged with the Respondent on even date in respect of the Respondent's decision made on 10<sup>th</sup> April 2018 and contained in DOSH/WIBA 4



Reference No WIBA/CB4/557/2018

**NAIROBI**

be deemed duly lodged and the Respondent be directed to determine the said applicant's objection substantively on merit.

(v) THAT this Honourable Court be pleased to grant/issue any other

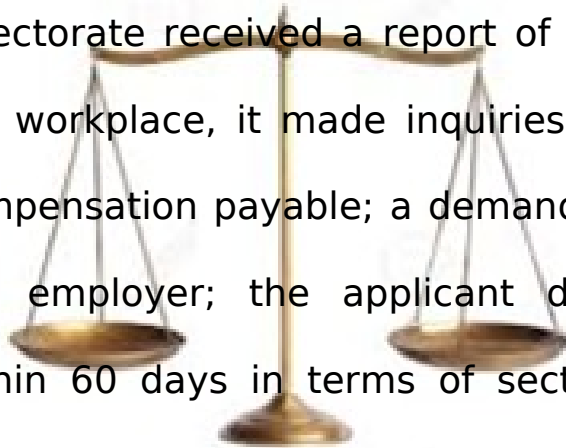
orders and/or directions as may be just and expedient with a view to dispensing justice.

(vi) THAT the costs of this application be provided for.

2. The grounds advanced in support of the Motion were that the applicant's husband died on 11 June 2017 while in the employment of Westbuild General Contractors Ltd; the employer gave wrong information relating the deceased's earnings to the Respondent thus leading to inaccurate assessment of compensation of Kshs 1,920,000/-; the applicant's former advocate failed to lodge an objection to the assessment; that an objection was lodged on 23 May 2022 outside the prescribed time and the Respondent declined to entertain the objection and that because of the fraud in procuring the assessment, there were high chances that an objection would succeed.

3. The office of the Honourable the Attorney General entered an appearance on behalf of the Respondent on 23 June 2025.
4. The Court gave directions on 24 February 2025, 11 June 2025 and 17 November 2025.
5. The Respondent filed a replying affidavit sworn by an Assistant Director on 16 July 2025. The Director swore in the affidavit that the Directorate received a report of an accident in the workplace, it made inquiries and assessed compensation payable; a demand was made to the employer; the applicant did not object within 60 days in terms of section 51 of the Work Injury Benefits Act; an objection was received outside the prescribed time on 23 May 2022; a decision was made the same day rejecting the objection and the applicant informed and that the applicant failed to appeal against the objection decision within 30 days.
6. The applicant filed her submissions on 28 February 2025. She urged that, despite the

EMPLOYMENT AND LABOUR RELATIONS COURT



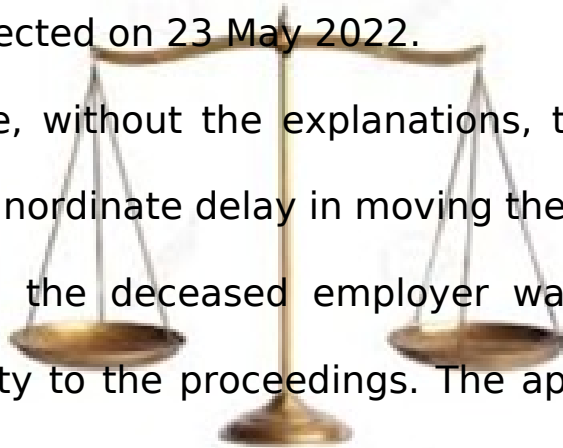
NAIROBI

Work Injury Benefits Act not expressly providing for late objections to the Respondent, the Court had the inherent power to grant leave to lodge such an objection. The applicant cited *Samson Chweya Mendabole v Protective Custody Ltd* (2021) eKLR and *Wanyama v Danree Multifaceted Services Ltd* (2024) KEELRC 765 (KLR) 8.

- 
7. The Respondent did not file any submissions.
  8. The Court has considered the Motion, affidavit and submissions and makes the following determinations.
  9. One, the applicant obtained Letters of Administration to the estate of Joseph Muhura Njuguna on 21 March 2021, about 3 years after the assessment by the Respondent.
  10. Two, the Respondent had made an award on or around 10 April 2018, and an objection should have been lodged within 60 days. The applicant did not object within the prescribed timeline.

11. Three, the applicant has not disclosed when she came to the information that the employer had provided wrong or incorrect salary details to the Respondent.
12. Four, the applicant has not disclosed the date when she instructed her erstwhile advocates to lodge an objection with the Respondent before the firm of Kamwara Law and Co Advocates objected on 23 May 2022.
13. Five, without the explanations, the Court finds an inordinate delay in moving the Court.
14. Six, the deceased employer was a necessary party to the proceedings. The applicant did not explain why she omitted to include it in the proceedings.
15. Seven, the Respondent declined to allow the applicant's objection through a notice dated 23 May 2022.
16. By virtue of section 52(2) of the Work Injury Benefits Act, the applicant had 30 days to

EMPLOYMENT AND LABOUR RELATIONS COURT



**NAIROBI**

appeal to the Employment and Labour Relations Court.

17. The applicant has not explained why no appeal was made to the Court within 30 days of the Respondent's decision not to entertain the Objection.

18. Lastly, although the issue of limitation was not raised, it is doubtful whether the applicant would be able to surmount the limitation prescription in section 89 of the Employment Act, 2007, even if the Court were to grant leave to object 8 years after the accident/injury.

19. The applicant was seeking an exercise of the Court's discretion. She did not demonstrate that she deserved the exercise of such discretion.

20. The delivery of this Ruling was brought forward with notice to the parties.

### **Orders**

21. The Motion dated 24 January 2025 is found without merit and is dismissed with no order on costs.

**Delivered virtually, dated and signed in Nairobi on this 23<sup>rd</sup> day of January 2026.**

**Radido Stephen, MCI Arb  
Judge**

**Appearances**

For applicant

Kaveke Mwanja &  
Co. Advocates

For Respondent

Office of the  
Honourable the  
Attorney General

Court Assistant

Wangu



**NAIROBI**