

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
MISCELLANEOUS CAUSE NO. E010 OF 2025

FREDRICK ONGOLO OTIENO..... APPLICANT

VERSUS

KENYA POWER & LIGHTING CO. LTD.....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. The Applicant filed a notice of motion (the application) dated 10th September 2025 seeking the following orders –
 - a) The respondent be directed to fill the assessment form (DOSH FORM) for purposes of compensation.*
 - b) A declaration that the respondent has committed a criminal offence contrary to Section 22(4) of the Work Injuries Benefits Act for failing to report the accident.*
 - c) This Honourable court do fine the Respondent for committing an offence in Prayer 2 above.*
 - d) The costs of this application be provided for.*
2. The application is expressed to be based on Sections **21, 22, & 23 of the Work Injury Benefit Act(WIBA)**. It is founded on the grounds stated on the face of it and the dispositions in the supporting affidavit

sworn by applicant on 10th September 2025 and the annexures thereto.

3. The Respondent neither entered appearance nor filed any response and there is convincing evidence of service on record by way of affidavit of service.
4. The application was canvassed by way of written submissions. The applicant's counsel, Ms. Munihu, filed her written submissions dated 21st November 2025.

II. THE EVIDENCE

5. In the supporting affidavit, it is deponed that the applicant was employed by the respondent as an electrical wirer earning a daily pay of Kshs672/- paid via Mpesa.
6. It is deponed that on 18th May 2024 while discharging his duty at Musanda area, the applicant while on an electrical post lost balance and fell breaking his right leg – medical records are attached.
7. It is deponed that on 3rd February 2025 the applicant reported the accident to the Director of Occupational Safety and Health (DOSHS), who notified the respondent on even date of the same and directed it to complete the requisite forms for purposes of assessment of the claim. The applicant avers that he personally served the letter dated 3rd February 2025 upon the respondent – A copy of the letter is exhibited.
8. It is deponed that when the respondent failed to respond, the applicant through his advocates wrote to DOSHS, on the status of the claim, who in turn wrote to the respondent vide a letter dated 6th May,

2025 – the letter is attached.

9. It is deponed that despite the reminders, the respondent has refused to complete the requisite DOSH forms to enable and facilitate the assessment of the compensation for the applicant's injuries and thus the respondent has committed a criminal offence for which the court should impose a fine.
10. It is further deponed that the **Work Injury Benefits Act(WIBA)** does not provide for a civil remedy where an employer declines to fill the forms for purposes of assessment of a claim and, unless the application is allowed, the applicant shall continue to suffer as a result of the accident unless the respondent is compelled to comply with the law.

III. SUBMISSIONS

11. The applicant's counsel submitted globally, asserting that while **WIBA** does not provide for a civil remedy where an employer fails to fill forms for assessment of compensation under the Act, **Article 159(2) of the Constitution** empowers the court to overlook procedural technicalities and administer justice. It is submitted that **Article 162(2) of the Constitution** establishes this court to determine employment and labour relations matters.
12. It is submitted that pursuant to **Section 24(1) of WIBA** the applicant reported the accident and the respondent was notified to comply vide the letters of 3rd February 2025 and 6th May 2025.

13. It is submitted that the respondent has refused to fill-in and submit the forms, and **DOSH** has no enforcement mechanism and powers to compel the respondent to comply, prompting the applicant to seek justice from the court which enjoys exclusive jurisdiction in matters employment and enforcement of constitutional rights incidental thereto.
14. Citing ***Republic v Directorate of Occupational Safety and Health Services; Genjoy Food Product Limited (Interested Party); Ikuni (Applicant) [2024] KEELRC 580 (KLR); Wambugu v H Young & Company East Africa Limited (Employment and Labour Relations Constitutional Petition E006 of 2024) [2025] KEELRC 1498 (KLR) (16 May 2025) (Ruling); and, Samson Chweya Mwendabole v Protective Custody Limited [2021] KEELRC 1809 (KLR)***, counsel submitted that the suit is competent and the court is clothed with inherent jurisdiction to compel the respondent to comply with its statutory obligation.

IV. ISSUES FOR DETERMINATION

15. In my considered view, there is one main issue for determination in this application –
- a) Whether the employer’s failure to fill out the DOSH Form I prevents assessment for compensation under WIBA?***
 - b) Who should bear the costs of this application?***

V. ASSESSMENT OF AN AWARD

16. *Section 22(1), (4) & (5) of WIBA* provides that –
(1) Subject to the provisions of this section, an employer shall report an accident to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.

.....

(4) An employer who fails to comply with subsection (1) commits an offence.

(5) The provisions of this section do not prevent an employee from reporting an occupational accident or disease to the Director at any stage. (Emphasis added)

17. The applicant’s case is that he notified the respondent’s staff about the accident and was promised compensation. He asserted that no compensation was forthcoming and this prompted him to report the accident to **DOSH**. Through the letters of 3rd February 2025 and 6th May 2025 the respondent was directed by **DOSH** to fill **DOSH** Form 1 but it has not acted on the same to date.

18. As provided for in the law cited above, the failure of an employer to fill the **DOSH** forms or report an accident does not prevent an employee from reporting an accident.

19. Furthermore, under *Section 23 of WIBA*, upon receiving notice of an accident, **DOSH** is required to make such inquiries as are necessary to decide upon any claim in accordance with the Act.

Thus, whether the employer made a report or filled out the DOSH forms or not, once the accident and injury was reported to the DOSH, DOSH was required to make the assessment for compensation for injuries sustained by the applicant.

20. Moreover, under **Section 23(2) & (3) of WIBA**, an inquiry by DOSH under **Section 23(1)** can be conducted concurrently with any other investigation. Further, **Section 22(3)** provides that an employer or employee shall at the request of the Director furnish such further particulars regarding the accident as the Director may require.
21. By dint of the above statutory provisions, it is evident that the DOSH has wide statutory powers and duties to ensure that the applicant's claim is assessed and compensated as appropriate.
22. The failure of the respondent/employer to fill out and submit the DOSH forms does not prevent an assessment of a claim for compensation as alleged by the applicant as DOSH is not prevented by the respondent's failure to so perform its statutory mandate.
23. The respondent's failure to act as required in filling out and submitting statutory form (DOSH Form 1) attracts a penal sanction under **Section 22(4) of the WIBA**. The Director is empowered by the law under **Section 23(5) (e) of the Occupational Safety and Health Act (OSHA)** to undertake any other function, such as to commence any criminal proceedings for violations committed by

employers.

24. On whether the court can declare the respondent guilty of the offence for failing to fill out the DOSH FORM 1 under **Section 23(2) and (3) of WIBA**, an inquiry by the DOSH under **Section 23(1) of WIBA** can be conducted concurrently with any other investigation to establish whether the respondent is guilty of an offence. In any event, the court cannot issue such a declaration without a proper trial over the alleged offence.

25. On the question whether the court may fine the respondent, the court does not have jurisdiction to impose fines arising from offences relating to matters occupational, health and safety which is a reserve of the magistrates' court under **Section 116 of the OSHA**.
to wit –

“116. Prosecution of offences

(1) All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered in a magistrate’s court.”

26. The court thus finds that the employer’s failure to fill out the DOSH form does not prevent an assessment of a claim for purposes of compensation by DOSH, which is mandated to make an assessment after receiving a report of an accident under **Section 23 of WIBA**. In the upshot, the court finds the motion devoid of merit and the same is hereby dismissed with no orders as to costs.

27. The applicant ought to approach DOSH for assessment of the claim and it is DOSH that has mandate to demand for any information that is required to complete the assessment and award.
28. It is important to note that the applicant has not alleged any failure on the part of DOSH to do its role as per the law cited in the foregoing paragraph. Notably, DOSH is not a party in these proceedings.
29. The court has said enough in demonstrating that the respondent's failure to fill-out the DOSH forms does not prevent the assessment of a claim for compensation. DOSH has the statutory powers to establish whether the respondent has committed an offence. In fact, it is DOSH that should report the failure of the respondent to comply with the law to a labour enforcement officer or appropriate criminal charges to be preferred against the appropriate officers of the respondent, a limited liability company.
30. The application is devoid of merits and the same is hereby dismissed with no order as to costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 22ND DAY OF JANUARY 2026.**

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DAVID NDERITU
JUDGE