



REPUBLIC OF KENYA



KENYA LAW
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**Rok Industries Limited v Kang'ethe (Appeal E241 of 2025)
[2026] KEELRC 61 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 61 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E241 OF 2025
NJ ABUODHA, J
JANUARY 23, 2026**

BETWEEN

ROK INDUSTRIES LIMITED APPELLANT

AND

MESHACK KYALO KANG'ETHE RESPONDENT

*(Being an appeal arising from the Ruling/Decree of the Chief
Magistrate's Court at Milimani (Hon. Tom Mark Orlando) delivered
on 26th June, 2025 in Milimani MCELRCMISC No. E044 of 2024.)*

JUDGMENT

1. Through the Memorandum of Appeal dated 21st July, 2025, the Appellant appeals against the whole ruling of the Hon. Tom Orlando delivered on 26th June, 2025.
2. The Appeal was based on the grounds that:
 - i. The Learned Trial Magistrate acted in error when he failed, as he did to properly evaluate evidence on record thus reaching an erroneous decision.
 - ii. The Learned Trial Magistrate erred in both law and in fact in failing to address his mind on the issue of two not only separate but conflicting awards allegedly issued by the Director of Occupational Safety and Health Services (DOSH) that DOSH FORM 4 dated 13th July, 2024 and DOSH FORM 4 dated 25th July, 2024 both in relation to a work injury claim by the Respondent that occurred on 7th June, 2023 when in the course of his official duties.
 - iii. The Learned Trial Magistrate erred in both law and in fact in failing to address the issue that the DOSH FORM 4 dated 25th July, 2024 of which the Respondent sought enforcement was issued in the absence of an objection and /or appeal against the decision of the DOSH pursuant



to section 51 of the WIBA which is an elementary issue of law that the trial court could not have possibly been ignorant of.

- iv. The Learned Trial Magistrate acted in error when he failed as he did to properly evaluate and/or appreciate the evidence on record including a letter by Kenya Medical Practitioners and Dentists Council (KMPDC) conforming that a Dr. Ronald Oroko of registration number A3734 who is said to have assessed the Respondent to have suffered 10% permanent disablement, does NOT appear in the KMPDC register of known/registered doctors and hence to find that DOSH FORM 1 relied upon by the Respondent is a fake and forged document.
 - v. The Learned Trial Magistrate therefore acted in error in failing to find that the DOSH FORM 4 dated July 2024 levied against the Appellant was obtained unprocedurally and therefore an outright illegality which the trial court cannot sanction and/or enforce.
 - vi. The Learned Trial Magistrate erred in law in finding as it did that as the trial court is only limited to adoption of the award by the DOSH and nothing more.
 - vii. The Learned Trial Magistrate was openly bias in shrewdly ruling in favour of the Respondent in finding that the court cannot look at the issues raised by the Respondent therefore completely disregarding the Applicant's submissions and evidence on record in its determination.
 - viii. The learned Trial Magistrate erred in law and in fact by basing his decision on extraneous matters and failing to base his said decision on the facts, evidence on record and the principle of stare decisis.
3. The Appellant prayed that the Appeal be allowed with costs and the ruling and consequential decree of the Chief Magistrate's Court at Milimani MCELRCMISC No. E044 of 2024 be set aside/quashed and be pleased to substitute the same with an order striking out/dismissing the Respondent's application with costs to the Appellant.
 4. The Appeal was disposed of by written submissions.

Appellant's Submissions

5. The Appellant's Advocates Ochieng' K. & Associates filed written submissions dated 26th September, 2025.
6. On the issue of whether the Appeal was merited counsel relied on the case of Kofinaf Limited v Njuguna (Appeal E147 of 2021) (2023) (KEELRC 2703(KLR) (22 September 2023) on the role of first appellate court. Counsel also relied on the case of Price & Another v Hilder (1984)eKLR which cited the case of Mbogo v Shah (1968) EA on when the appellate court will interfere with the discretion of trial court.
7. Counsel on the claim for permanent disablement submitted that following the accident the Respondent sought medical attention and treatment for his injuries where he was admitted to Mater Misericordiae Hospital on 7th June, 2023 and discharged the following day on 8th June, 2023 with no assessed of permanent disability. That the Respondent was attended to by Dr. Philemon Owino Odour of KMP&DB N0. A3734 who assessed that the Respondent suffered no permanent disability as indicated on the DOSH FORM 1 dated 25th July, 2024.
8. Counsel submitted that on the other hand the Respondent filed an undated DOSH FORM 1 indicating that he sought medical attention and was treated at Jerusalem Medical centre by Dr. Ronald Oroko of the same KMP&DB No. A3734 who assessed the Respondent's injuries as 10% permanent



- disablement. That it was on the said assessment the Respondent argued he was issued with the DOSH FORM 4 award dated 25th July, 2024.
9. Counsel submitted that no two doctors could have same registration numbers and the Appellant through its lawyers wrote to KMPDC to verify who of the two doctors was the actual holder of KMP&DB No. A3734. That KMPDC wrote back to the Appellant's lawyers confirming that the registration number A3734 was assigned to Dr. Philemon Owino Odour and that Dr. Ronald Oroko did not appear in its register of doctors and therefore was fake.
 10. Counsel submitted that the undated DOSH FORM 1 was therefore forged document as the purported doctor did not exist in KMPDC'S records and therefore the DOSH FORM 4 award dated 25th July, 2024 assessing compensation at Kshs 208,631.81/= for alleged disablement was indeed a forged/ fake document. That the trial court erred by finding that it could not look in to issues raised by the Respondent. That the Respondent was not entitled to a claim off permanent disability of Ksh 208,631.81 as the DOSH FORM 4 was an outright illegality which could not be sanctioned by the court.
 11. Counsel submitted that if the Respondent was dissatisfied with the initial award/demand dated 13th July, 2024 he has not placed before the court any proof whatsoever to indicate that he lodged an objection to the said initial demand in the prescribed format with DOSH in 60 days. That the sum of Kshs 64,307.69 assessed by the DOSH became payable to the Respondent upon absence of such objection.
 12. Counsel relied on the case of Milimani ELRCMISC NO. E034 OF 2025 Nzuva Kyalo versus DPL Festive Limited & APA Insurance Ltd (Ruling Delivered on 18th September, 2025) where the court was faced with a similar application where two DOSH Form 4 awards on the record for enforcement of a DOSH FORM 4 award was thought to be a fake/forgery where the court disallowed adoption of forged document purported to have come from DOSH.
 13. Counsel submitted that similarly the DOSH FORM 4 awards presented before this court were said to have been issued by the said Director James Mithanga as was in the above case. That the trial court ought to have summoned the said Director for cross examination of the DOSH award the Respondent sought herein for enforcement.

Respondent's Submissions

14. The Respondent's Advocates Wambugu Muchiri & Company Advocates filed submissions dated 27th October, 2025.
15. Counsel submitted that what was in issue was the twin issues of reporting of work place accident and the ensuing awards. That while on one hand the Respondent was aggrieved at the silence of the Appellant therefore filing a WIBA Award enforcement application before the trial Magistrate which was allowed whilst the Appellant alleges that the said award was not legitimate and had asked the magistrate to look at the merit of the awards before it.
16. Counsel submitted that when the dispute before trial magistrate came up for hearing on 8th April, 2025 parties elected to dispose of the application via written submissions hence there was no way the trial Magistrate could summon the Director of DOSH.
17. On the issue of jurisdiction counsel submitted that this area of law was facing a plethora of issues after the judgment of the Supreme Court upholding the mandate of the DOSH as the primary port of call under [Work Injury Benefits Act](#) 2007. That it was not an issue that the employer reported the injury



and what was an issue was how an award was made by the Appellant's doctor in its absence awarding 0% disability when the doctor before whom he had appeared clearly awarded a 10% disability.

18. Counsel submitted that whilst the award with 0% award was discovered by the Respondent when the Appellant responded to the enforcement Application before the trial magistrate the Appellant was clearly aware of the award from DOSH awarding a 10% disability ratio from the demand letter issued to it on 6th November, 2024 via email as acknowledged by the employer in its email dated 5th December, 2024 and filed before the trial court.
19. Counsel submitted that no objection or stay application was done despite this notice. That once DOSH does an assessment unless an objection is made within the set timelines the same stands as the decision on that issue. Counsel relied on the case of Charles V Cheto (Civil Appeal E046 of 2022) (2025) KECA 784(KLR)(9 May 2025)(Judgment) where the court addressed itself on the weaknesses of the legislation of WIBA where the employer learns of the Judgment past the time given for an appeal where such a party should file a judicial review to quash the award.
20. Counsel submitted that the same ought to have been done before the adoption of the award by court where the Appellant would ventilate the several procedural issues he now raises. That the court of appeal agreed with Justice Manani who declined to look in to merits or demerits of an award when there was no appeal before it under section 52 of the WIBA which was a similar situation in this case as this is not an appeal under section 52 of the WIBA on the decision/ indecision of the DOSH. Instead it was an appeal of an enforcement application where the trial magistrate in tandem with its enforcement jurisdiction declined to look in to merits of the DOSH decision.
21. Counsel urged this court to be persuaded that the issues of fraud by either party could only have been decided before DOSH or through Judicial review. That this approach by Court of Appeal appreciates the doctrine of exhaustion recognized by the Supreme Court of allowing the DOSH to address issues of investigating work place accidents and making determinations on whether or not payments arises.
22. Counsel submitted that while appreciating the contrary positions raised by both parties over the issue that at this stage they were the preserve of the DOSH and subsequently the judicial review court and not an appeal as framed. That this was the finding in the case of Charles v Cheto when the right of appeal under WIBA has lapsed. That jurisdiction is everything and this court cannot determine the question of whether or not disability existed or whether or not questions of fraud by either party existed as this would be looking in to merits of the award.
23. Counsel submitted that for a merit appeal to have properly before the court it would have had to come under section 52 of the WIBA within 60 days of the decision. That it was not and the court of appeal rendition in Charles v Cheto was binding on this aspect.
24. Counsel distinguished the authorities relied upon by the Appellant while submitting this court could only rely on justiciable facts in the trial court and the appeal was contrary to section 52 of WIBA. That the trial court did not exercise any discretion as it was enforcing the DOSH award.

Determination

25. The court has considered the grounds of appeal, the record of appeal and submissions filed by the both parties herein and proceeds to analyse them as follows.
26. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its own findings and conclusions



as held in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated that: -

“[A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”

27. In this case, the Ruling of the trial court was a declaration that the jurisdiction of the court was limited only to adoption of the award and nothing more and the court could not look at the issues raised by the Respondent while allowing the application for enforcement. The Appellant being aggrieved by the Ruling appeals on the whole of the ruling raising 8 grounds.
28. The court finds that from the grounds the major issue for determination is whether the trial court erred by finding that it was only limited to enforcement of the DOSH award and nothing more.
29. The Appellant faults the trial court for not delving in to issues of the merits or demerits of the process of awards alleging that the awards of 25th July, 2024 were procured from a forged DOSH FORM 1 which was undated and signed by a fake doctor.
30. Whereas the Appellant alleged that the initial FORM 1 was that dated 25th January, 2024 which culminated to DOSH FORM 4 dated 13th July, 2024; the Appellant acknowledged that before it could settle the demand of 13th July, 2024 of Kshs 64,307.69/= based on 0% permanent disability it was served with the demand of 25th July, 2024 of Kshs 208,631.81/= which had assessed the degree of permanent disability at 10% hence high compensation.
31. This court notes that the Appellant after being aware of the same they did not take any action to object to the said assessment. This court also notes that the Appellant was again notified through the demand of 6th November, 2024 which they acknowledged but still they never took any action to challenge the same. The Appellant ought to object the same via section 51 within 60 days so that it is after the Director's response as per Section 52 of the Act they could approach this court to appeal against the decision of the Director.
32. Section 51 of the *Work Injury Benefits Act* provides: -
 - “(1) any person aggrieved by a decision of the director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.
 - (2) the objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.”
33. In the case of *Stephen Wangusi Nyongesa v Dot.Com Bakery Limited* [2022] KEELRC 224 (KLR) the court held as such:-

The Respondent did not dispute the Director's assessment and award, either as by law provided or at all. Indeed the Respondent passed on the assessed claim to its insurers for settlement.



34. There is no evidence before this court that the Appellant objected to the demand of the awards made to the Respondent. The Appellant did not make payments of the initial demand of 13th July, 2024 and the Respondent acknowledged that he came to know about the 0% permanent disability when the Appellant replied to their application to enforce the award.
35. This court wonders why the Appellant waited until the Respondent filed the application to enforce the award for it to bring the issues raised on the process. If at all the Appellant was not aware of the award which in any way it acknowledged it was aware and again a demand was sent in 6th November, 2024, the Appellant ought to have challenged the award as per the law under 51 of the WIBA.
36. The DOSH demand of 25th July, 2024 has not being objected to by the Appellant so that after the Director disallowed the objection the Appellant could appeal to this court as per section 52 of the WIBA. The appeal herein is on the enforcement application not on the merits or demerits of the award.
37. This court agrees with the trial court that it was only limited to enforcement of the award since it is within the purview of DOSH to investigate work place injuries and determine the awards. The issues raised herein could be ventilated via objections to the DOSH or through judicial review to quash the said proceedings if the timelines for appeal under section 51 of the WIBA had lapsed which was not the case in this case anyway.
38. This issue of enforcement of DOSH awards was settled in the case of Joash Shisia Cheto v Thepot Patrick Charles [2022] eKLR the court held as follows:-

The general position established by a majority of these decisions is as follows: -

- a. The law does not provide for mechanisms of enforcing the Director's award against a reluctant employer.
 - b. In the face of this lacuna, the holder of the award can move the court to seek for enforcement of the award. A majority of the decisions favour the view that the ELRC can be moved for this purpose pursuant to its jurisdiction under article 162 of *the Constitution* as read with section 12 of the ELRC Act. Only one decision holds the view that the ELRC cannot be moved for this purpose. A few share the view that the Magistrate's court may be moved where pecuniary jurisdiction allows.
 - c. The proceedings for enforcement may be in summary form by way of miscellaneous causes or in the form of ordinary causes but confined to matters of enforcement only.
 - d. Unless by way of appeal under section 52 of the WIBA, it is not open to the court to consider the merits of the Director's award or indeed go on a fact finding mission. This jurisdiction is the preserve of the Director.
39. This position was upheld by the court of Appeal in Charles V Cheto (Civil Appeal E046 of 2022) (2025) KECA 784(KLR)(9 May 2025)(Judgment) where the court of Appeal agreed with Justice Manani on his refusal to delve with merits or demerits of the award. The trial court could not deal with the merits of the award as it could only adopt the award as the decree of the court and enforce it as such. This court therefore agrees with the trial court's position that it was limited to adopting the DOSH award and nothing more.
 40. In the upshot the Appeal is found unmerited and is hereby dismissed with costs to the Respondent.



41. It is so ordered.

DATED AT NAIROBI THIS 23RD DAY OF JANUARY 2026

DELIVERED VIRTUALLY THIS 23RD DAY OF JANUARY 2026

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

