



**Anguso v DPL Festive Limited (Miscellaneous Case E087 of 2025)
[2026] KEELRC 426 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 426 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E087 OF 2025
JK GAKERI, J
FEBRUARY 19, 2026**

BETWEEN

BENSON CHRIS OWIRO ANGUSO APPLICANT

AND

DPL FESTIVE LIMITED RESPONDENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 28th November 2025, seeking Orders that:-
 1. Spent.
 2. The Honourable court adopts the assessment of the work injury benefits by the County Occupational Safety and Health Officer, Kisumu in the sum of Kshs.536,121.60 set out in Form DOSH/WIBA 1.
 3. Judgment be entered for the Applicant against the respondent in sum of Kshs.536,121.60 together with interest from 25th April 2017 until payment in full.
 4. Costs of this Application be provided for.
2. The Notice of Motion was based on the grounds enumerated on its face and the Supporting Affidavit of Benson Chris Owiro Anguso sworn on 28th November 2025 which explains the background of the instant application following injuries the applicant sustained at the work place on 12th January 2017.
3. According to the affiant, the respondent completed the DOSH 1 Form, the County Occupational Safety and Health Officer completed the Notice of Accident/Disease of an Employee and assessed the compensation payable at Kshs.536,121.60 DOSH/WIBA Form 4 and the same was served upon the respondent.



That there was no re-evaluation of re-assessment of the injury benefits.

4. The applicant further deposed that he filed Kisumu Civil Suit No. 158 of 2018 and Kisumu ELRC Appeal No. E264 of 2025 and Kisumu Misc. Application No. E079/2025 in a bid to enforce the award but was unsuccessful for various reasons including want of relevant documentation in the case of the Miscellaneous Application.
5. Finally, the affiant deposed that the instant application was made without undue delay after the previous application was struck out and the court had jurisdiction to grant the Orders sought.

Respondent's response

6. In opposition to the Notice of Motion vide a Replying Affidavit sworn by Dancan Njoga Advocate on 23rd January 2026, the affiant deposes that the award sought to be enforced was issued on 18th April 2017 and no steps had been taken to enforce it or have it adopted and had been declined previously for want of jurisdiction.
7. That the applicant did not follow the statutorily mandated procedure for enforcement of the award and doing so at this stage would be tantamount to punishing a diligent litigant for the indolence and procedural missteps of the applicant.
8. That there neither a final nor valid award by the Director of Occupational Safety and Health Services (DOSHS) for enforcement under the Work Injury Benefits Act (WIBA) and a dismissal for want of jurisdiction rendered all proceedings void.
9. That no service was effected upon the respondent and the award was stale and the delay had not been explained and the applicant had not met the threshold for grant of the Orders sought.

Applicant's submissions

10. Counsel submitted that the delay in this matter was occasioned by the filing of a suit before the Chief Magistrate's Court in 2018 for enforcement of the award and the subsequent appeal which was dismissed, and Kisumu Misc. Application No. E079 of 2025 was struck out for want of documentation and none of these matters addressed the issue of the applicant's entitlement to payment.
11. On jurisdiction of the court to adopt DOSHS awards, reliance was placed on the sentiments of the Court of Appeal in Charles V Cheto [2025] KECA 784 (KLR) to urge that the applicant was an employee of the respondent and sustained injuries at the work place and the respondent completed DOSH I Form.
12. Counsel, further submitted that the respondent was duly served with the award and neither objected nor filed an appeal and any challenges with the award would have been addressed by the court.
13. Reliance was placed on the decision in Speaker of the National Assembly V Karume [2008] 1 KLR 426 as well as the sentiments of the court in Kimani Wanyoike V Electoral Commission Civil Appeal No. 213 of 1995, Diana Kethi Kilonzo V IEBC & 2 others [2013] eKLR and Chief Land Registrar & 4 Others V Nathan Tirop Koech & 4 others [2018] KECA 27 (KLR) on the need to seek redress procedure before invoking the courts jurisdiction.
14. Finally, counsel submitted that since the Director's award was not challenged, it remained enforceable.

Analysis and determination

15. The singular issue for determination is whether the applicant's Notice of Motion is merited.



16. It is common ground that the applicant was injured, while on duty on 12th January 2017 and was attended to at Nightingale Medical Centre, Kisumu on even date, and the benefits payable were subsequently assessed by the County Occupational Safety and Health Officer and despite service upon the respondent no payment was made and attempts to have the same paid through the court process had been unsuccessful and in the case of Misc. Application No.E079 of 2025, failure to attach DOSH I Form which provides the foundation of the claim.
17. The respondent's case was that the instant application was made late in the hour and was stale, no final award of DOSH, the respondent was not served and no steps had been taken to enforce the award.
18. On delay in filing the instant application, the applicant's Supporting Affidavit set out a concatenation of events which culminated in the instant application and the respondent indirectly acknowledged that the applicant had filed previous suits, initially before the Magistrate's court and later in the Employment and Labour Relations Court.
19. A perusal of the Supporting Affidavit dated 28th November 2025, reveals that the applicant has not been indolent. This is clearly borne by the fact that the instant application was filed on 4th December 2025 after the earlier application was struck out vide a Ruling delivered on 27th November 2025, barely 7 days later.
20. Similarly, Misc. Application No. E079 of 2025 was filed less than 7 days after the court dismissed Kisumu ELRCA No. E040 of 2025.
21. In the court's view, the delay was occasioned by Kisumu MCCC/158/2018 which was not heard and determined until 20th November 2024.
22. Relatedly, availment of the proceedings of the Magistrate's Court also took some time and the applicant had no control over the two processes.
23. The foregoing was also occasioned by the lack of clarity of the law as to which court had jurisdiction to enforce claims under WIBA and the absence of clarity persisted until the decision in Thepot Patrick Charles V Joash Chisia Cheto (supra). The applicant cannot be wholly blamed for the procedure he adopted.
The court is satisfied that nothing turns on this issue.
24. As submitted by counsel for the applicant, the respondent neither objected to nor appealed against the award by the DOSH dated 25TH April 2017 although it was uncomfortable with the percentage of permanent incapacity which appeared high.
25. It requires no belabouring that if the respondent had any issue touching on the award nothing prevented it from invoking the provisions of Section 51 and 52 of the Work Injury Benefits Act (WIBA).
26. Under Section 51 of the Act
 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.
27. Section 52 of the Act provides:



1. The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
 2. An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision.
28. The foregoing provisions accorded the respondent two stages at which he was at liberty to challenge the award made in April 2017 but adduced no evidence of having done so.
- Thus, as contended by the applicant's counsel, the award dated 25th April 2017 remained in force.
29. The issue of lack of service on the respondent would have been addressed and determined if respondent had invoked the prescribed procedure which included applying for a stay of these proceedings and have the award set aside by way Judicial Review.
30. On jurisdiction of the court to adopt DOSH awards for purposes of enforcement, the provisions of Section 86 of the *Employment Act* are emphatic that the court has jurisdiction to hear and determine the instant Application.
31. Section 86 of the Act provides:
1. Subject to the provisions of this Act, whenever—
 - a. an employer or employee neglects or refuses to fulfill a contract of service; or
 - b. any question, difference or dispute arises as to the rights or liabilities of either party; or
 - c. touching any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party, under any contract of service, the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Employment and Labour Relations Court.
 2. No court other than the Employment and Labour Relations Court shall determine any complaint or suit referred to in subsection (1).
32. The foregoing was fortified by the Court of Appeal in *Thepot Patrick Charles V Joash Shisia Cheto* (supra) where the Court of Appeal held:
- ...Be that as it may, Employment and Labour Relations Courts have aptly held that enforcement of the Directors decision properly lies with the ELRC as the court with jurisdiction to deal with employment and labour relations claims and for connected purposes and as provided for under Section 86 and 89 (formerly Section 87 and 90) of the *Employment Act* (Cap. 226)..."
33. This decision put to rest the issue of which court had jurisdiction to adopt Directors awards under WIBA.
34. A final comment on the decisions in Kisumu ELRCA No. E040 of 2025 and Kisumu Misc. Application No. E079 of 2025.
35. While in the former, the court upheld the decision of the Magistrate's Court that the court had no jurisdiction to hear and determine the suit before it, which meant that the proceedings were a nullity, in



the latter matters the application was struck out for being incomplete. The applicant had not attached DOSH/WIBA 1.

36. None of these decisions, denied the applicant the right to file a further application in this court to have the award adopted for purposes of enforcement.
37. For all these reasons the court is satisfied that the applicant's Notice of Motion dated 28th November 2025 is merited and is allowed as follows:
 - a. The Director's award of Kshs.536,121.60 dated 25th April 2017 be and is hereby adopted as an Order of this court.
 - b. Judgment be and is hereby entered for the Applicant against the respondent in the sum of Kshs.536,121.60 set out in Form DOSH/WIBA 4 dated 25th April 2017 with interest from the date hereof till payment in full.
 - c. Parties shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 19TH DAY OF FEBRUARY 2026.

DR. JACOB GAKERI

JUDGE

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 has 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.

