



**C.K. Bett Traders Limited v Director of Occupational Safety and Health Services
& another; Mosoti (Interested Party) (Employment and Labour Relations Cause
E003 of 2025) [2026] KEELRC 352 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 352 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
EMPLOYMENT AND LABOUR RELATIONS CAUSE E003 OF 2025**

**JW KELL, J
FEBRUARY 6, 2026**

BETWEEN

C.K. BETT TRADERS LIMITED APPELLANT

AND

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH
SERVICES 1ST RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

AND

JAMES OMBUI MOSOTI INTERESTED PARTY

JUDGMENT

1. The appellant/applicant filed an Originating Motion dated 22nd April 2025 seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. Time be extended to enable Applicant object and or appeal to the decision of the Director of Occupational Safety and Health Services (DOSHS), Athi River, in Claim Reference No. WIBA/ATR/250/2024 dated 12th November 2024 (hereinafter referred to as the decision).
 - d. The decision be nullified and or set aside.
 - e. Alternatively, the decision be set aside and the matter be remitted for reconsideration.



- f. Alternatively, and without prejudice to the foregoing, an independent or second medical evaluation to be conducted without delay.
 - g. Any other orders that meet the ends of justice do issue.
 - h. Costs of this Application do issue.
2. The Originating Motion was supported by the grounds set out therein, the Supporting Affidavit of COLLIN BETT dated 22nd April 2025, and the annexures thereto.
 3. In response to the application, the 1st Respondent filed a replying affidavit sworn by EUGENE ODUORI ANYIMI on 19th June 2025, and another replying affidavit sworn by the same deponent on 18th September 2025.
 4. On his part, the Interested Party filed a replying affidavit sworn on 24th June 2025.
 5. To counter the Respondent and Interested Party's responses, the Applicant filed a further affidavit sworn by COLLINS BETT on 21st October 2025.
 6. The application was triggered by an application by way of Notice of Motion dated 10th December 2025 by the interested party which sought for the following orders-
 - a) That the Court adopt the assessment of the Director of Occupational Health and Safety. Athi-River, as an order of the Court.
 - b) That a decree be issued in accordance with the assessment of the Director of Occupational Health and Safety Athi- River for the sum of Kenya shillings Five Hundred and Four Thousand only (Kshs.504,000/-)
 - c) That this Honourable Court be pleased to award interest on the amount from the date of assessment until payment in full.
 - d) That this Honourable Court be pleased to award any other relief this court may deem fit and just to grant.
 - e) Costs of this Application be awarded to the Applicant.
 7. The existence of the award was not in dispute.

The Applicant's case in summary

8. The Applicant's case is that the Interested Party lodged a Work Benefits Injury Claim Reference No. WIBA/ATR/250/2024 against the Applicant for compensation for a purported injury which occurred on 21st June 2024 while the Interested Party was employed with the 1st Respondent, and a determination was made in favour of the interested party for the sum of Kenya Shillings Five Hundred and Four Thousand only (Kshs. 504,000/-) only.
9. The Applicant is aggrieved by the decision of the 1st Respondent made vide its Senior Occupational Safety and Health Officer dated 12th November 2024 (hereinafter referred to as the decision).
10. The Applicant now seeks an extension of time to file an objection and/or appeal against the decision, and states that the delay in bringing this application is excusable and inadvertent, as the Applicant learnt of the decision on or about 14/01/2025 when the interested party served it with the notice of motion application dated 10/12/2024 in MACHAKOS ELRC MISC. E004/2025 is seeking the adoption of the decision by the court.



11. The Applicant explains that they have written to the 1st Respondent demanding extension of time and review of the decision on various grounds namely:
 - i. The Applicant disputes the occurrence of the alleged workplace accident on 21/06/2024. The Claimant failed to report any purported injury to their Supervisor, as required by company policy, and there is no record of the incident in the Applicant's official records.
 - ii. It is highly improbable that an individual with a 35% disability would continue reporting to work as usual for weeks without raising any concerns, only to later claim an injury as an afterthought three months later in August 2024, after termination of employment on 31st July 2024.
 - iii. The Interested Party unilaterally completed and submitted the ML/DOSH Form 1 dated 12th November 2024 without the Applicant's involvement and proceeded to report the disputed incident directly to the 1st Respondent.
 - iv. The 1st Respondent failed in its duty to conduct any investigation into the validity of the Interested Party's claim, and failed to take into account relevant considerations
 - v. Alternatively, and without prejudice to the foregoing, the Claimant disputes the assessed disability and formally requests that a second or independent medical opinion be obtained without delay.
 - vi. In any event, the 1st Respondent miscalculated the compensation, awarding an excessive amount of Kshs. 504,000.00/-.
 - vii. The Applicant was never invited to the proceedings that led to the decision/assessment of 12/11/2024, and his right to fair hearing was therefore violated contrary to among others Articles 25 and 50 of *the Constitution* of Kenya, as well as the Fair Administrative Actions Act.
 - viii. The 1st Respondent lacked territorial jurisdiction to hear the Interested Party's Claim as the purported accident supposedly occurred at the Applicant's place of business located in Kajiado County; therefore the office with proper jurisdiction is DOSHS - Kajiado County. The 1st Respondent acted ultra vires and in abuse of power.
 - ix. The decision was only served on the Applicant on 15/01/2025, well past the time allowed for objection. Indeed the 1st Respondent verbally agreed to extend time and the Applicant promptly filed an objection. The 1st Respondent has failed to act upon the Applicant's objection to date.
 - x. When the Applicant notified the Court in MACHAKOS ELRC MISC. E004 of 2025 the ensuing progress in ADR, the Honourable Court had the opinion that the 1st Respondent lacked the jurisdiction to extend time to object or appeal the decision. The Court advised that it could not extend time, during the proceedings in MACHAKOS ELRC MISC. E004 of 2025, and was only mandated to allow or deny the application to adopt the decision.
12. The Applicant is emphatic that the procedures under WIBA and OSHA do not oust the right to fair hearing under *the Constitution*. It is admitted by the 1st Respondent that it did not grant the Applicant an opportunity to present its case. The Applicant only learned about the claim for compensation before the Director on 14th January 2025 when it was served with the application for adoption of the award as an order of the Court, and by this time, the 60 days for lodging an objection had lapsed on 12th January 2025. It denies vehemently that it was served with the 1st Respondent's decision on 12th November 2024 as alleged by the Interested Party or at all.



1st Respondent's case in brief

13. The 1st Respondent states that the Director of Occupational Safety and Health - Athi River office is part of the larger DOSH'S department in the Ministry of Labour and Social Protection charged with the responsibility of processing compensation for injuries sustained at work within the Sub-County, under the provisions of the [Work Injury Benefits Act, 2007](#).
14. They deny failure and/or refusal to consider any representations of the Applicant, and particularize the proceedings before them as follows:
- i. Upon occurrence of an accident or injury arising from an occupational disease related to work, the injured is conveyed for medical treatment while a notice is sent by the employer to the area office of the Directorate of Occupational Safety and Health Services in the prescribed form (DOSHS1) within 7 days of occurrence pursuant to section 22 of [Work Injury Benefits Act, 2007](#) in case of non-fatalities and within 24 hours pursuant to section 21 of WIBA, 2007 in case of fatal injuries.
 - ii. Section 22(5) as read together with section 26(1) of WIBA, 2007 allows an employee to lodge claim of the same to the office of the Directorate of Occupational Safety and Health Services in the prescribed form (DOSHS1) at any time provided the said claims is done within twelve (12) months as provided for under section 26(1) of WIBA 2007.
 - iii. Upon receipt of notice of occurrence of an accident at work (DOSHS1), the Directorate proceeds to make enquiries of the said accident pursuant to section 23(1) of WIBA, 2007, before making a decision to either deny compensation in line with section 13 of WIBA, 2007 or give an award as provided for in section 28, 30 & 34 among other sections of WIBA 2007. Where an award is given, a demand notice in form of DOSH/WIBA 4 is issued.
 - iv. Where enquiry is not sufficient to enable the office of the director to award or deny an award, an investigation may be conducted as provided for under section 23(2) of WIBA 2007.
 - v. In the case of a fatal accident, computation of the work injury benefits (compensation to dependents) is done and a demand lodged vide a form DOSH/WIBA 4 with the employer after the process of identifying dependents is completed.
 - vi. Upon identification of the dependents, the amount compensable is apportioned to highlight a breakdown of the amount for each dependent taking cognizance of section 36 and the third schedule of the [Work Injury Benefits Act, 2007](#) with the employer required to provide for the payments in accordance with the breakdown.
 - vii. In the case of a non-fatal accident, upon completion of medical treatment, the injured is assessed by the primary medical practitioner (doctor) suitably at the primary treatment facility and an award given (percentage of incapacity and temporary incapacity) in Part II of DOSH 1 pursuant to section 28, 30(2) of WIBA, 2007, and presented to the Directorate for processing the benefits in accordance with the provisions of sections 28, 30 and 37 of WIBA, 2007.
 - viii. In addition to the doctor's report the following documents are required for processing of the claim:
For injured employees in the private sector
 - Completed DOSH 1- Accident notification/reporting
 - Pay slips- Month of accident, Preceding Month & Month After



- Police abstract for Road Traffic Accident
- Medical report- Discharge Summary, Sick sheet
- P3 form for assaults.
- A copy of ID

For public sector injured employees

- Completed DOSH 1- Accident notification/reporting
- Pay slips- Month of accident, Preceding Month & Month After
- Police abstract for Road Traffic Accident
- Medical report- Discharge Summary, Sick sheet
- P3 form for assaults.
- A copy of National ID
- letter from the PS of the employee to Director DOSHS
- Medical Report by empaneled doctors at DOSHS (Work Injury Evaluation Clinic Report)
- Forwarding form
- Bank Details of the claimant

- ix. Once the work injury benefits are computed, the Directorate issues a demand to the employer vide a form DOSH/WIBA 4.
 - x. Upon receipt of the demand, the employer is obliged to settle the claim within 90 days from date of lodgement pursuant to section 26 of WIBA, 2007, to the injured in the case of non-fatal accidents and to the dependents in the case of fatal injuries.
 - xi. In the event of a dispute as to the award on percentage of incapacity by the primary medical practitioner (doctor) for cases of non-fatal injuries or decision of the Director, the aggrieved party lodges an objection with the Directorate and subsequently an appeal to the ELRC if unsatisfied by the director's decision pursuant to section 51 of WIBA, 2007.
 - xii. The timeline for appeals is prescribed by section 51 of the Act, and an appeal can only be lodged through prescribed form DOSH/WIBA 12.
 - xiii. When the directorate receives an objection disputing the award of permanent and temporary incapacities by the medical practitioner (doctor), the Director subjects the claimant to a further assessment by a panel of doctors at the Directorate of Occupational Safety and Health Services who make a comprehensive report on the claimant's incapacity and if such report is disputed, the claimant proceeds to ELRC to file an appeal.
 - xiv. Further, the Director considers the objection and may vary or uphold his decision in accordance with section 52 of WIBA, 2007 and communicates the same to the aggrieved party in a prescribed period of time and if still aggrieved, the party proceeds to ELRC to file an Appeal.
15. The 1st Respondent states that in the present case, the Interested Party in exercise of his rights under section 22 (5) of WIBA, 2007 lodged a claim for the subject injury seeking compensation as provided for under section 10(1) of WIBA 2007 vide form DOSH 1 as provided for under section 22(1).



16. The 1st respondent upon receipt of the claim, before awarding the Interested Party an award, pursuant to section 23 (1) WIBA 2007, made necessary inquiry from the Interested Party. The 1st Respondent sought proof that the Interested Party was an employee of Applicant, a fact that is not disputed. They also verified that Part 2 of the prescribed form DOSH 1 had been duly filled by the medical practitioner KMP&DB 9230 pursuant to section 25(3) of WIBA 2007. The medical practitioner awarded the Interested Party 35% permanent incapacity, which formed the basis of the computation of compensation for the injuries sustained by the Interested Party. It is the 1st Respondent's averment that the Applicant has not raised any objection to the percentage of incapacity awarded by the Medical Practitioner.
17. Considering the above, the 1st Respondent takes issue with the Applicant's assertion that it failed to take into relevant considerations and investigation is therefore erroneous. It is not accurate to state that the employer must be notified in writing when the injury occurs, as this is not in line with section 21 of WIBA, 2007 which provides that the report may be done either verbally or in writing. If indeed the Applicant has a company policy that requires notification of injuries only in writing, then it is in contravention to the said provisions of WIBA, 2007.
18. It is stated that under section 103 of the *Occupational Safety and Health Act* 2007, the Applicant ought to have conducted several medical examinations on the Interested Party, namely:
 - a. a pre-employment medical examination to ascertain his fitness in the work environment as well as establish any pre-existent medical condition that may be aggravated by exposure to prevailing work conditions.;
 - b. an annual lung function test to determine exposure to cement dust for establishing the status of the respiratory health of the Interested Party, in line with the said Section as read with the second schedule of OSHA 2007; and
 - c. a post-employment examination to establish the Interested Party's health at the time of exit, upon expiry of the contract of employment.
19. The 1st Respondent argues that the Applicant failed to do this, as demonstrated by the lack of evidence of his compliance, but has turned around with allegations of foul play or unjust enrichment without any medical report to support his allegations.
20. It is the 1st Respondent's case that the Interested Party, of his own volition, sought medical examination pursuant to section 25(3) of WIBA 2007. The Applicant cannot complain that he requires an opportunity to carry out a second medical examination on the Interested Party when he had three opportunities to do so as aforesaid in exercise of his obligation under Section 103 of the *Occupational Safety and Health Act*, 2007.
21. According to the 1st Respondent, pursuant to section 10(6) of WIBA 2007, serious disablement is interpreted as an injury that results in 40% and above permanent disablement. The 35% disablement in respect of the Interested Party is a minor injury and the possibility of an injured person executing duties while nursing such a minor injury cannot be ruled out. In any case the Applicant did not account for the period of recuperation of the Interested Party as he executed his duties.
22. The 1st Respondent is adamant that there was NO error on the part of the 1st Respondent in relying on the medical report in Part 2 of Form DOSH 1 and in awarding Kshs. 504,000/- to the Interested Party. The computation of the Interested Party's dues complied with sections 28 and 30 of WIBA 2007.



23. The 1st Respondent confirms that it made the award and raised a demand vide DOSH/WIBA 4 and served it with the Applicant. They point out that even after the admitted service upon the Applicant on 21st January 2025, they still failed to raise an objection or/and complaint of having allegedly received the demand notice way after lapse of the appeal period. The Applicant had between 21st January 2025, and 19th February 2025 to raise the objection, dispute or concern of the late communication of the Director's decision.
24. It is the 1st Respondent's position is that the purported appeal lodged by the Applicant through DOSH/WIBA 12 was time-barred and there is no provision in the WIBA 2007 allowing the 1st Respondent to entertain objections out of time. The 1st Respondent disowns any purported verbal agreements made with the Applicant to allow the objection out of time and reiterates that it had no powers under WIBA to entertain, process and consider any appeals made outside the 60-day period provided under Section 51 of WIBA, 2007.
25. On the issue of territorial jurisdiction, the 1st Respondent states that the provisions of WIBA, 2007 are applicable throughout the Republic. The accident occurred in Portland Cement, Athi River which is within the Republic of Kenya. It is the 1st Respondent's case that there is no provision under WIBA 2007 that barred the Interested Party from seeking services from DOSHS-Athi River, and no similar provision exists that compelled the Interested Party from seeking services from DOSHS-Kajiado. Both Athi River and Kajiado DOSHS offices fall within the purview of the 1st Respondent's jurisdiction.

Interested Party's case in brief

26. The Interested Party has reiterated almost word for word the averments of the 1st Respondent as captured hereinabove.
27. He further states that according to the laid down administrative procedure for work injury processing, there has been availed adequate opportunity for any aggrieved party to raise concerns. The Applicant failed to utilize this opportunity and has not substantiated that he was denied such opportunity.
28. Specifically, an employer who is aware of an injury at work ought to have dutifully adhered to the statutory process and prepared a DOSH1 containing a doctor's report by the doctor who treated and assessed the interested party. The Applicant failed to discharge this duty, and has in fact admitted that it did not submit DOSH 1 to the Directorate of Occupational Safety and Health Services. They term the submission of the form by the Interested Party as a unilateral decision.
29. It is the Interested Party's case that the Applicant's conduct, including its failure to cater for his medical expenses after the accident, shows a lack of care and concern for its workers. They have only surfaced since compensation is due and the matter before court for adoption of the award as an order of the court. He states that there are no proceedings that that the Applicant was to be invited to, rather they ought to have submitted a duly filled DOSH 1 form. The 1st respondent was only mandated to compute the award.
30. It is the Interested Party's conclusion that any verbal arrangements made between the 1st Respondent and the Applicant cannot stand; this application is a scheme intended to deny the Interested Party compensation for his work injuries; and the Applicant has come to Court with unclean hands.

Decision

31. The applicant/respondent (seeking enforcement of WIBA Award) filed written submissions and outlined the following as the issues for determination –



- a) Whether the claim was filed pre-maturely;
 - b) Whether the Applicant has made a proper case for extension of time to lodge an objection and/or appeal against the DOSHs decision;
 - c) Whether this Court should adopt the decision of the Director of Occupation Safety Health dated 20th November 2024
32. Conversely the respondent/ applicant seeking to set aside the award and for order of 2nd medical assessment of the interested party outlined the following issues –
- i. Whether the Honourable court has power/jurisdiction/discretion to grant the prayers herewith
 - ii. Whether stay of proceedings should be granted.
 - iii. Whether the decision is invalid for violating tenets of fair administrative action, fair hearing and common law/natural justice.
 - iv. Whether the Applicant shall suffer prejudice and - Whether the Respondent failed to demonstrate prejudice
 - v. Whether purported delay is not inordinate and excusable vi. Whether prima facie
33. The court was of the considered opinion the issues for determination in the are-
- a. whether the court has jurisdiction to set aside the award where no objection was lodged.
 - b. whether the court application to set aside the award was merited
 - c. whether, if not merited, there is a valid award for adoption as an order of the court under Misc. Application No. E004 of 2025 application dated 10th December 2025

Whether the court has jurisdiction to set aside the award where no objection was lodged.

Exparte applicant’s submissions

34. Reference is made to Charles v Cheto (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR) (9 May 2025) (Judgment) where the Court held that: “49. In this case, the learned Judge correctly observed that sections 51 and 52 of the WIBA are silent on the avenues of redress for a party who becomes aware of the proceedings before the Director after the time for lodging an objection and/or filing an appeal against the Director’s decision has already lapsed. We agree with the learned Judge that the solution in such circumstances would be to lodge a Motion for Judicial Review to quash the award before adoption by the court, and to seek, on first occasion, to have the adoption proceedings stayed. Notably, the appellant sat back and took no steps to that end. The remedy identified by the learned Judge appears to be the only viable course of action in the circumstances. ..” The Fair Administrative Action Act under Section 7 (1) provides as follows:

“7. Institution of proceeding(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to–

- (a) a court in accordance with section 8; or



- (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. The Fair Administrative Action Act under Sections 2, 3, 4, 7, 11 provides as follows:

“ 2. Interpretation In this Act, unless the context otherwise requires–“administrative action” includes–

- (a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
- (b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

“administrator” means a person who takes an administrative action or who makes an administrative decision; ...” This Act applies to all state and non-state agencies, including any person–

- (a) exercising administrative authority;
- (b) performing a judicial or quasi-judicial function under the Constitution or any written law; or
- (c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.’

“7. Institution of proceedings (2) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to–

- (c) a court in accordance with section 8; or
- (d) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. (3) A court or tribunal under subsection (1) may review an administrative action or decision, if–
 - (a) the person who made the decision– ... (v)denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person’s case;
 - (b) a mandatory and material procedure or condition



prescribed by an empowering provision was not complied with;

- (c) the action or decision was procedurally unfair;
- (f) the administrator failed to take into account relevant considerations;
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- (k) the administrative action or decision is unreasonable;
- (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;
- (n) the administrative action or decision is unfair;

or ...Orders in proceedings for judicial review

(1) In proceedings for judicial review under section 8(1), the court may grant any order that is just and equitable, including an order—

- (a) declaring the rights of the parties in respect of any matter to which the administrative action relates;
- (b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;
- (c) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;



- (d) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;
- (g) prohibiting the administrator from acting in a particular manner;
- (h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;
- (i) granting a temporary interdict or other temporary relief; or
- (j) for the award of costs or other pecuniary compensation in appropriate cases.” That this Honourable Court has the jurisdiction to quash the impugned decision.

Interested party submissions

35. From the onset we seek to rely on the case of LSK versus AG & others (2019) where the Court confirmed that objections, reviews and appeals lie within WIBA not ordinary Courts. Courts have repeatedly held that an adoptive Court cannot re-open merits or procedure of the Director’s award. The law governing objections to decisions of DOSHs officers is found under Section 52 of the [Work Injury Benefits Act, 2007 \(WIBA\)](#), which provides that a person aggrieved by such decision may, within sixty (60) days of such decision, lodge an objection before the Director, who is to consider the same and make a determination. The timelines stipulated under WIBA are mandatory, not merely directory, as they are tied to statutory administrative processes intended to ensure finality and certainty. The Office of DOSH in their Replying Affidavit paragraph 19 to 21 indeed confirm that the relevant notice was lodged with the Company and no objections applications for review and or Appeal have been made to date.

Decision

36. It is not in contention that the decision of WIBA was issued on 12th November 2024 and served on the Applicant on 15th January 2025. The window for objection of 60 days had lapsed. Section 52 of the [Work Injury Benefits Act, 2007 \(WIBA\)](#), provides that a person aggrieved by such decision may, within sixty (60) days of such decision, lodge an objection before the Director, who is to consider the same and make a determination. The applicant correctly approached the court for extension of time as held in *Charles v Cheto* (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR) (9 May 2025) (Judgment) where the Court held that: “49. In this case, the learned Judge correctly observed that sections 51 and 52 of the WIBA are silent on the avenues of redress for a party who becomes aware of the proceedings before the Director after the time for lodging an objection and/or filing an appeal against the Director’s



decision has already lapsed. We agree with the learned Judge that the solution in such circumstances would be to lodge a Motion for Judicial Review to quash the award before adoption by the court, and to seek, on first occasion, to have the adoption proceedings stayed. Notably, the appellant sat back and took no steps thereafter. 50. The remedy identified by the learned Judge appears to be the only viable course of action in the circumstances”

37. The 1st respondent did not deny the late service of the assessment. The denial of opportunity to exercise the right to object of the applicant falls under the right to fair administrative action and the right to a hearing. That right was infringed, and there can be no wrong without a remedy. I have noted the applicant wrote to the 1st respondent on 11th March 2025. The interested party stated there was an inordinate delay and invoked the Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat V IEBC & 7 Others* (2014) eKLR, where the Supreme Court held that extension of time is not a right but an equitable remedy available only to a deserving party who has demonstrated good and sufficient cause for delay. While I agree there was a delay in bringing the application, I find that the respondent's failure to comply with the law on service of the assessment demand, which would have ensured the applicant had 60 days to object, the allegation of delay in filing application would amount to a technicality. Section 20 of the ELRC Act is to effect that the court will not decide matters on a technicality. Serious issues have been raised, including the applicant's failure to report the occupational accident while employed. The court for the foregoing reasons is satisfied that there is merit to allow the application by setting aside the award of 12th November 2024. The decision is set aside. Consequently, the court declines to adopt the award as sought in Misc E004 OF 2025. The court finds merit in the application for extension of time for objection which is extension is granted. The court further grants the alternate prayer that the interested party be subjected to an independent and second medical evaluation as per WIBA provisions within 30 days.

38. Each party to bear its own costs in both applications.

39. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 6TH DAY OF FEBRUARY, 2026.

J. W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Applicant : Aketch

Respondent: Lung'u h/b Mumo

Interested Party – Mutuku

