

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MALINDI

MISC. APPLICATION NO. E021 OF 2025

JUMAA KALUME KITSAO ..... APPLICANT

VERSUS

BRIQUE ENERGY LIMITED ..... RESPONDENT

## RULING

The respondent, Brique Energy Limited, filed an application dated 11 December 2025 seeking orders:

- a) *There be a stay of execution of the Court Order adopting the assessment of the Director of Occupational Health and Safety – Kilifi and or judgment and Decree arising therefrom from the applicant’s Notice of Motion dated 14 July 2025 pending the hearing and determination of the application*
- b) *There be a stay of execution of the ruling on taxation delivered on 9 December 2025 pending the hearing and determination of this application.*
- c) *The court Order adopting the assessment of the Director of Occupational Health and Safety – Kilifi and or judgment and decree assigning the form of the applicant’s Notice of Motion dated 14 July 2025 be set aside, and the respondent be allowed to defend the application.*

Okeyo Dandan has filed his Supporting Affidavit and avers that he is the respondent's director. The applicant filed his application dated 14 July 2025, seeking to enforce the DOSH order dated 21 March 2025. The respondent wrote to the applicant, notifying the applicant that they had filed objections with DOSH regarding the award on 22 July 2025.

Okeyo avers that they requested the applicant to withdraw the suit pending in court, to allow DOSH to address the matter administratively, particularly the applicant's objections. The objection related to the DOSH assessment that awarded the applicant Ksh. 679,846, and upon addressing the objections, DOSH reviewed the award to Ksh. 140,654.

The respondent has since paid the applicant the sum of Ksh. 200,000 in Kaloleni MCELRC No. E053 of 2024. The matter was referred to Court-Annexed Mediation, and a settlement was reached.

The applicant was directed to report to the DOSH offices in Malindi for his case to be assessed, but he declined. Upon the assessment at the Kilifi office, the respondent attended and was advised to deposit a cheque of Ksh. 72,000 in favour of the respondent, which was done on 29 November 2025. The same is pending collection at the DOSH Malindi office.

Okeyo avers that they have since settled the award by DOSH. Further, payments made following the application dated 14 July 2025 will be fraudulent, as the same have already

been settled. It is unfair to condemn the respondent to pay advocate fees based on the settlement described above.

In reply, the applicant filed his Replying Affidavit and avers that on 6 October 2023, while working for the applicant, he was involved in an accident and sustained severe injuries. He was treated at Mariakani Hospital. He referred the matter to the DOSH Kilifi offices upon the respondent's issuance of DOSH Form 4.

The DOSH assessed his case and, on 21 March 2025, awarded KSh. 679,846. Notice issued to the applicant to make payment within 90 days as required under the Work Injury Benefits Act (WIBA). There was no compliance.

The applicant avers that the objection filed on 5 May 2025 was not in compliance with section 52 of WIBA. The DOSH office did not receive any objections required by law.

Equally, there was no appeal from the award. Time lapsed on 20 May 2025 under the 90-day notice issued by DOSH. The respondent was at liberty to seek the execution of the award.

The applicant avers that in Kaloleni MCELRC E053 of 2024, the matter concerned a different cause of action and was unrelated to his work injury. His claim was payment of terminal dues following termination of employment. The matter has since been settled through mediation and consent.

On the alleged deposit of Ksh. 70,000 at the Malindi DOSH office, there is no evidence of such payment.

The parties attended and made oral submissions, which are addressed in the analysis herein.

It is not in dispute that the applicant got injured while at work with the respondent on 6 October 2023. The respondent issued the DOSH form 4, giving rise to the DOSH award assessed at Ksh. 679,846 on 21 March 2024.

DOSH issued a notice to the respondent to make payment within 90 days. Equally, under section 52 of the WIBA, upon the award, the respondent had a right to object or file an appeal within 14 days of the award, as held in *Law Society of Kenya v Attorney General & another* **Petition 4 of 2019**.

Upon receipt of the award dated 21 March 2024, the respondent wrote to the applicant on 28 July 2025, stating that they had filed objections with DOSH on 5 May 2025.

The timeline to file objections under WIBA section 51(1);

***(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.***

From the award and notice to the respondent dated 21 March 2024, there was until 20 May 2024 to raise objections or file an appeal.

The acceptance by the DOSH of the objection out of time without notice to the applicant is contrary to the principles of fair administrative action and, in essence, an abuse of office. This is conduct contrary to the provisions of Articles 10, 47 and 41 of the Constitution.

A public officer, given a mandate to make a decision, must adhere to the principles and values of fair administrative action. Where the DOSH office issued the DOSH form 1 by the respondent following the work injury to the applicant, fair administrative action demanded adherence to the WIBA provisions. To proceed and review the award of 21 March 2025 out of time and in the absence of the applicant, violated his rights under the constitution and the law.

The proposal by the respondent seeking the applicant to withdraw his case so that the matter can be resolved is a further entrenchment of impunity. Upon failure to pay the award dated 21 March 2025, the applicant was justified to move the court as held in **Charles v Cheto, Civil Appeal E046 of 2022 [2025] KECA**. Under WIBA, an employee who is injured at work has the right to move the court to enforce his award of compensation. His right to enforce work injury claims is protected under the Bill of Rights. The applicant cannot be faulted for moving the court to secure his rights.

The court takes cognisance of the fact that the DOSH office has since addressed the respondent's objections and reviewed the award. In compliance, the respondent has deposited the reviewed amount with DOSH.

However, the effort to sanitise the process does not deprive the applicant of his right to have his advocates paid for the work done in securing his rights.

Upon the DOSH review of the award dated 21 March 2025, from Ksh. 679,846 to the review on 22 July 2025 to Ksh. 72,000; it is only fair that the same be placed with the applicant, who is represented by his advocate in court. The costs due to the applicant under these proceedings are justified.

Before the conclusion, the respondent raised the issue of Kaloleni MCELRC No. E053 of 2024. There is a payment of Ksh. 200,000 through consent upon a mediated settlement. The applicant admitted that the suit pertains to his terminal dues and is unrelated to his work injury.

Indeed, the respondent has not filed any details regarding the payment of Ksh. 200,000 was in settlement of the DOSH award relating to the applicant's work injury on 6 October 2023. These are different and separate proceedings. Indeed, under the WIBA, the lower court has no jurisdiction to enforce a DOSH award. See **Wanyonyi v Royal Garment Industries & EPZ Limited; Director of Occupational Safety and Health (Interested Party) [2025] KEELRC 3438 (KLR)** and **Aura v Tiir Aluminium Industries Limited [2025] KEELRC 2539 (KLR)**.

**Accordingly, the application dated 11 December 2025 addressed the following orders issued:**

- a) **The orders issued pursuant to the application dated 14 July 2025 are hereby set aside.**
- b) **The DOSH award dated 21 March 2025 is hereby reviewed for the payment of Ksh. 72,000 to the applicant.**
- c) **The applicant is entitled to his costs in these proceedings, which shall be taxed accordingly.**

Delivered in open court at Mombasa this 16th day of February 2026.

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant: Omar

..... and .....