



**Mrima v C. K Bett Traders Limited & another (Cause E024 of 2025)
[2026] KEELRC 318 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 318 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E024 OF 2025
SC RUTTO, J
FEBRUARY 4, 2026**

BETWEEN

ANDREW MRIMA APPLICANT

AND

C. K BETT TRADERS LIMITED 1ST RESPONDENT

EAST AFRICA PORTLAND CEMENT 2ND RESPONDENT

RULING

1. By way of a Notice of Motion dated 11th March 2025, the Applicant moved this Court seeking the adoption of the award issued by the Directorate of Occupational Health and Safety Services (the Director) on 14th October 2024.
2. The Motion is premised on the grounds set out on its face and is supported by the Affidavit of Andrew Mrima, the Applicant herein. In support thereof, it is deposed that on or about 8th November 2023, the 1st Respondent engaged the Applicant as a cement loader and seconded him to work for the 2nd Respondent at its cement factory.
3. The Applicant avers that on 21st November 2023, while lawfully engaged in the course of his duties, he was involved in a workplace accident and sustained an injury resulting in loss of sensation to the distal finger. He contends that the Respondents failed to provide the necessary machinery required for the safe performance of the assigned duties.
4. The Applicant further avers that he was immediately rushed to Mukuru Health Centre Hospital, where he received treatment and was diagnosed with loss of sensation to the distal finger.
5. He states that upon medical review, he was advised to take fourteen (14) days off duty and to refrain from engaging in heavy-duty work so as not to aggravate the injury and to facilitate proper healing, during which period he was confined at home.



6. The Applicant further avers that he subsequently reported the matter to the Directorate of Occupational Health and Safety Services at Athi River, where he was issued with the requisite DOSH forms and initiated the reporting process, culminating in the issuance of an award. He contends that despite this, the Respondents have allegedly failed and/or refused to remit the awarded amount, notwithstanding numerous follow-ups and negotiations.
7. The Applicant further avers that he is presently unemployed owing to his medical condition, which has impaired his ability to effectively perform his duties.
8. He further states that he remains on pain management medication as a result of the injury and persistent loss of sensation to the distal finger, necessitating regular medical review.
9. The 1st Respondent opposed the Applicant's Notice of Motion by filing Grounds of Opposition dated 27th March 2025, wherein it contends, inter alia, that:
 - i. The Notice of Motion as brought is ill-advised, prejudicial, and defective.
 - ii. It is trite that a suit for enforcement of a DOSHS award may be brought vide an ordinary substantive suit confined to matters of execution/enforcement only or in summary form through a miscellaneous cause. That it is trite that, absent these conditions, this Honourable Court lacks the jurisdiction to adopt the DOSHS award.
 - iii. That the Claimant failed to file or serve any pleadings, either an ordinary substantive suit confined to matters of execution/enforcement only or a miscellaneous cause.
 - iv. The Claimant is opaque and purports to throw the 1st Respondent into confusion and speculation of the case against it and consequently is not able to prepare an adequate defence.
10. In response to the Motion, the 2nd Respondent filed a Replying Affidavit sworn on 29th October 2025 by Abdisalan Ali, its Legal Officer.
11. Mr. Ali deposes that Rule 62 of the Employment and Labour Relations Court (Procedure) Rules mandates that proceedings for the adoption and enforcement of an award be instituted by way of a Miscellaneous Application.
12. He contends that the instant application, though styled as an ordinary cause, is not anchored on any substantive pleading, no Statement of Claim having been filed together with the Notice of Motion.
13. Mr. Ali further avers that the 2nd Respondent contracted the 1st Respondent to provide packing plant services for a period of two (2) years and that no employer–employee relationship existed between the 2nd Respondent and the Claimant.
14. He states that pursuant to Section 4(2) of the *Work Injury Benefits Act*, the 1st Respondent was, at all material times, the employer of the Claimant, and not the 2nd Respondent.
15. Mr. Ali contends that the 2nd Respondent was neither aware of nor notified of the alleged accident involving the Claimant, which is said to have occurred on its premises.
16. He further avers that the Directorate of Occupational Safety and Health Services issued an award on 14th October 2024, in which liability for occupational injury was expressly determined against the 1st Respondent or its insurer.
17. He states that the 2nd Respondent was neither notified of nor involved in the proceedings before the Directorate and that no liability was apportioned to the 2nd Respondent therein.



18. Mr. Ali avers that he has been advised by the advocates on record, which advice he verily believes to be true, that under Section 23 of the *Work Injury Benefits Act*, the Directorate is vested with exclusive jurisdiction to inquire into, determine claims, and apportion liability. He further avers that this Honourable Court lacks jurisdiction to determine liability under the Act, save through an appeal.
19. He is advised by counsel on record, which advice he verily believes to be true, that the Court's jurisdiction in adopting the Director's award as a judgment for purposes of execution is strictly limited to adoption and enforcement and does not extend to the determination or apportionment of liability under the *Work Injury Benefits Act*.
20. Consequently, he contends that this Honourable Court cannot, through adoption and enforcement proceedings, impose liability upon a party against whom no liability was found by the Directorate, as to do so would amount to usurping the statutory mandate conferred upon the Director under the *Work Injury Benefits Act*.
21. Mr. Ali further avers that he has been advised by the advocates on record, which advice he verily believes to be true, that an award cannot lawfully be enforced against a party who was neither notified of nor accorded an opportunity to participate in the proceedings, and against whom no award was made.
22. In addition to the Replying Affidavit, the 2nd Respondent filed a Notice of Motion dated 29th October 2025 seeking the following orders:
 1. That the Notice of Motion dated 11th March 2025 be struck out and/or dismissed for being incompetent, fatally defective, and an abuse of the process of this Honourable Court pursuant to Rule 69(2) of Employment and Labour Relations Court (Procedure) Rules.
 2. That this Honourable Court lacks jurisdiction to entertain the Application for lack of an employment relationship between the Claimant and the 2nd Respondent.
 3. That this Honourable Court lacks jurisdiction to entertain the Application in so far as it seeks to amend, vary, and/or rewrite the award issued by the Director of Occupational Safety and Health Services, or to impose liability upon the 2nd Respondent, who was neither a party to nor held liable in the said award.
 4. That the 2nd Respondent be and is hereby struck out of the proceedings; and
 5. That the costs of this application and of the Claimant's Notice of Motion be awarded to the 2nd Respondent.
23. The Motion is premised on the grounds set out therein and is supported by the Affidavit of Abdisalan Ali, the 2nd Respondent's Legal Officer. The 2nd Respondent contends that the Applicant's Motion, though instituted as an ordinary cause, is not anchored on any substantive suit.
24. The 2nd Respondent further contends that the Applicant's application contravenes Rule 69(2) of the Employment and Labour Relations Court (Procedure) Rules, which mandates that applications for adoption and enforcement be instituted by way of a Miscellaneous Application.
25. It is further averred by the 2nd Respondent that the Director issued an award solely against the 1st Respondent, who was the employer of the Claimant.
26. The 2nd Respondent further contends that it was not the employer of the Applicant within the meaning of Section 4(2) of the *Work Injury Benefits Act*, that it was not notified of the proceedings before the Director, and that it did not participate in those proceedings.



27. The 2nd Respondent avers that this Court cannot, through adoption and enforcement proceedings, impose liability upon a party who was not found liable by the Director, as to do so would amount to usurping the statutory jurisdiction vested in the Director under the [Work Injury Benefits Act](#).

Submissions

28. The Motion was canvassed through written submissions, which the Court has duly considered.

Analysis and Determination

29. Having considered the Applicant's Notice of Motion, the 1st Respondent's Grounds of Opposition, and the 2nd Respondent's Application together with its affidavits and the rival submissions, the Court identifies the following key issues for determination:
- i. Competency of the Applicant's Notice of Motion dated 11th March 2025;
 - ii. Subject to the determination of (i), whether the Court should adopt the award issued by the Director on 14th October 2024, and if so, which of the Respondents is liable.

Competency of the Applicant's Motion

30. The Respondents contend that the Applicant's Notice of Motion dated 11th March 2025 is incompetent and incurably defective. They further assert that, although styled as an ordinary cause, the Motion is not supported by any substantive pleading, as no Statement of Claim was filed alongside the Notice of Motion.
31. In support of this argument, the Respondents have referenced Rule 69(2) of the Employment and Labour Relations Court (Procedure) Rules (2024), which they contend mandates that proceedings for adoption and enforcement be instituted by way of a Miscellaneous Application.
32. My construction of Rule 69(2) of the Employment and Labour Relations Court (Procedure) Rules (2024) is that it governs the procedure for the adoption and enforcement of alternative dispute resolution agreements by the Court. Indeed, the Rule makes no reference to the adoption of awards issued by the Director under the [Work Injury Benefits Act](#).
33. It should be appreciated that the law is silent on the specific procedure by which an employee who is a beneficiary of an award issued by the Director under the [Work Injury Benefits Act](#) may approach the Court. However, the prevailing practice is to do so by way of a Miscellaneous Application.
34. In the present case, the Applicant has approached the Court for enforcement of the Director's award by way of an ordinary Notice of Motion, rather than following the generally accepted practice of instituting it by way of a Miscellaneous Application. It is this Court's view that such a technicality should not operate to defeat the ends of justice.
35. Over and above, Article 159(2)(d) of the [Constitution](#) provides that justice shall be administered without undue regard to procedural technicalities.
36. This constitutional imperative is further reinforced under Section 21 of the [Employment and Labour Relations Court Act](#), which expressly provides that in any proceedings to which the Act applies, the Court shall act without undue regard to technicalities.
37. All in all, the Court finds no merit in the Respondents' contention that the Applicant's Motion dated 11th March 2025 is incompetent.



Adoption of the award by the Director

38. The Applicant avers that on 21st November 2023, he sustained a work-related injury resulting in the loss of sensation in his distal finger. He further states that he reported the matter to the Directorate of Occupational Safety and Health Services at Athi River for assessment. According to the Applicant, the Director, upon assessment, issued an award in his favour, which the Respondents have failed to settle.
39. Sections 51 and 52 of the *Work Injury Benefits Act* provide a clear statutory framework for addressing disputes arising from an award issued by the Director. Specifically, a party aggrieved by an award may lodge an objection under Section 51, to which the Director is required to respond in writing. If dissatisfied with the Director's determination, Section 52(2) permits an appeal to this Court within thirty (30) days of that decision.
40. In the present case, the record bears that the Director assessed the compensation payable to the Applicant at Kshs 504,538.00 and issued an award to that effect on 14th October 2024.
41. There is no evidence that any objection was lodged with the Director, nor that an appeal was filed with this Court under Section 52(2) challenging the Director's award.
42. In light of the foregoing, the Court finds no basis to decline the Applicant's Motion, seeing that there is no evidence that the award issued by the Director is yet to be satisfied.
43. Regarding the question of liability between the Respondents, the record shows that the Director's award was made against the 1st Respondent and not the 2nd Respondent.
44. Further to the foregoing, it is noteworthy that the 2nd Respondent has consistently maintained that it did not have an employment relationship with the Applicant. As a matter of fact, neither the Applicant nor the 1st Respondent has disputed this assertion. If anything, the Applicant annexed a copy of his employment contract with the 1st Respondent, thereby confirming the existence of an employment relationship.
45. In support of its position, the 2nd Respondent annexed to its Replying Affidavit a copy of an outsourcing agreement entered into with the 1st Respondent. The agreement, which pertains to the outsourcing of packing plant manpower services, expressly places the responsibility for ensuring the safety of the outsourced employees on the 1st Respondent. It further stipulates under Clause 4.1 that the outsourced employees are employees of the 1st Respondent and not the 2nd Respondent.
46. In light of the foregoing, it follows that the responsibility to satisfy the award issued by the Director in favour of the Applicant rests with the 1st Respondent. Consequently, the Motion dated 29th October 2025 is allowed, and the 2nd Respondent is hereby struck out of these proceedings.
47. In sum, the Court allows the Applicant's application against the 1st Respondent and finds that the Applicant is entitled to compensation of Kshs 504,538.00, as assessed by the Director on 14th October 2024.
48. The said sum shall attract interest at court rates from the date of this Ruling until payment is made in full.
49. The 1st Respondent shall bear the costs of these proceedings.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of

For the Claimant No appearance

For the 1st Respondent No appearance

For the 2nd Respondent Mr. Simon Peter

Court Assistant Catherine

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 had 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.

STELLA RUTTO

JUDGE

