



Ochieng v Vata Creations Limited & another (Miscellaneous Application E022 of 2025) [2026] KEELRC 321 (KLR) (4 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 321 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E022 OF 2025**

**SC RUTTO, J
FEBRUARY 4, 2026**

BETWEEN

ANDREW OCHIENG APPLICANT

AND

VATA CREATIONS LIMITED 1ST RESPONDENT

**DIRECTORATE OF OCCUPATIONAL SAFETY AND HEALTH
SERVICES 2ND RESPONDENT**

RULING

1. By way of a Notice of Motion dated 20th May 2025, the Applicant moved this Court seeking the following orders:
 1. Spent.
 2. That this Honorable Court be pleased to adopt as a judgment of this court the award made by the Directorate of Occupational Safety and Health Officer on 1st April, 2025.
 3. That judgment be entered for the Applicant against the 1st Respondent for Kenya Shillings Four hundred and seventy-three thousand, eighty-eight Shillings (Kshs 473,088.00/-) being the amount assessed under the *Work Injury Benefits Act*.
 4. That the Honorable Court be pleased to award interest on the amount from the date of assessment until payment in full.
 5. That costs of this suit be borne by the 1st Respondent.
2. The Application is based on the grounds set out therein and is supported by the annexed Affidavit of Andrew Ochieng, the Applicant herein.



3. The Applicant deposes that he sustained injuries in the course of his employment on 31st January 2024 while working for the 1st Respondent as a general labourer.
4. He further avers that on 1st April 2025, he obtained an assessment of damages from the 2nd Respondent, who awarded him Kshs. 473,088.00. The 1st Respondent was duly notified of this award.
5. The Applicant further states that the period for appealing the award has now expired.
6. He further states that the 1st Respondent has made no effort to settle the award despite having been served with a demand letter.
7. Upon being served with the Applicant's Notice of Motion, the 1st Respondent filed a Replying Affidavit sworn on 25th September 2025 by its Director, Christopher Kasuni.
8. Mr. Kasuni avers that he became aware of the award on 15th May 2025 and immediately contacted his insurance broker, BTB Insurance Brokers Ltd, to inform them of the same.
9. He states that he shared the DOSH/WIBA Form 4 with the insurance broker, who acknowledged receipt by stamping the documents.
10. Mr. Kasuni further avers that he was never made aware of the complaint at the Director's office and did not participate in the proceedings.
11. He is informed by his advocates that under the [Work Injury Benefits Act](#), a party is allowed at least sixty (60) days to lodge an objection to the Director's decision, and that since his insurance broker had been notified, they still had at least ten (10) days remaining to file an Objection with the Director's office.
12. Mr. Kasuni avers that his insurance company remains willing to lodge an Objection to the Director's decision.
13. The 2nd Respondent did not file any response to the application.

Submissions

14. The Application was canvassed by way of written submissions, which the Court has duly considered.

Analysis and Determination

15. Having considered the Notice of Motion, the 1st Respondent's Replying Affidavit, and the parties' respective submissions, the central issue for determination is whether the Court ought to adopt the Director's award issued on 1st April 2025.
16. It is notable that Sections 51 and 52 of the [Work Injury Benefits Act](#) set out a clear statutory mechanism for the resolution of disputes arising from the Director's award. Under this framework, a party aggrieved by an award may lodge an objection pursuant to Section 51, whereupon the Director is required to issue a written determination. Should the objector remain dissatisfied with that decision, Section 52(2) provides for an appeal to this Court within thirty (30) days of the Director's determination.
17. In opposing the Motion, the 1st Respondent contends that it was never notified of the complaint before the office of the Director of Occupational Safety and Health (Director).
18. It further asserts that upon learning of the award, it notified its insurance broker and that its insurer remains desirous of lodging an objection to the Director's award.



19. Notwithstanding these assertions, no evidence was placed before the Court to demonstrate that the 1st Respondent, whether on its own behalf or through its insurer, had in fact lodged an objection to the award. As such, the award remains unchallenged, having neither been objected to nor appealed against.
20. I find it worth mentioning that the 1st Respondent's contention that it was never notified of the complaint before the Director's office ought to have been ventilated through a judicial review application to quash the Director's award prior to its adoption by the Court, while staying the enforcement proceedings.
21. This finding is consistent with the Court of Appeal's decision in Charles v Cheto [2025] KECA 784 (KLR), where the Court held that, having taken no steps to seek judicial review of the Director's award, the appellant in that case was misdirected in attempting to claim a violation of his constitutional right to a fair hearing.
22. It should also be appreciated that the Court's jurisdiction at this stage is narrowly circumscribed. Consequently, it is not appropriate for the Court to consider contentious matters of non-service raised by the 1st Respondent in these enforcement proceedings.
23. In the absence of any objection or appeal against the Director's award, and noting that the 1st Respondent has not instituted judicial review proceedings to quash the award, the Court finds no basis for declining the Applicant's prayer for adoption of the Director's award.
24. Consequently, the Notice of Motion dated 20th May 2025 is hereby allowed, and the Court finds that the Applicant is entitled to the sum of Kshs. 473,088.00 as assessed by the Director on 1st April 2025.
25. The Court further awards interest on the said amount at court rates from the date of this Ruling until payment in full.
26. The 1st Respondent shall also bear the costs of this Application.

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

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Mwendwa for the Applicant

Mr. Mulaku instructed by Ms. Kaggia for the 1st Respondent

No appearance for the 2nd Respondent

Catherine Court Assistant

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.

