

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
ELDORET**

**ELRC APPEAL NO. E030 OF 2024**

**PALUMA ENGINEERING LIMITED.....**

**APPELLANT**

**VERSUS**

**JOSEPH WAINAINA THINI (Suing as the Representative of  
the Estate of HENRY THINI WAINAINA**

**(DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**INTIME CONTRACTORS**

**WORLDWIDE LIMITED ..... 2<sup>ND</sup>**

**RESPONDENT**

*(Being an appeal from the Orders of P.N. Areri Senior Principal  
Magistrate in Eldoret Chief Magistrate's Court Civil Misc.  
Application No. E142 OF 2024 for the ruling delivered on 20<sup>th</sup>  
August 2024)*

**JUDGMENT**

1. This Appeal arises from a ruling delivered by the trial court in Eldoret Chief Magistrate's Court Civil Miscellaneous Application No. E042 OF 2024 on 20<sup>th</sup> August 2024.

2. A brief background is that the 1<sup>st</sup> Respondent filed a miscellaneous application in the trial court vide a Notice of Motion dated 16<sup>th</sup> August 2024, seeking for orders that the Director's decision to award Kshs. 2,304,000 being the compensation for the Work injury resulting in the death of HENRY THINI WAINANINA (DECEASED) be adopted as an order of the court for purposes of enforcement.
3. The 1<sup>st</sup> Respondent also sought for an order that the Appellant and the 2<sup>nd</sup> Respondent be ordered to deposit the said amount with the Applicant's Advocate with immediate effect.
4. The trial court after considering the said application delivered its ruling on 20<sup>th</sup> August 2024 granting the orders sought.
5. Aggrieved by the trial court's ruling, the Appellant filed the Memorandum of Appeal dated 27<sup>th</sup> August 2024 raising the following grounds of appeal: -
  - a. The Learned Trial Magistrate erred in law and in fact by enjoining the Appellant as a 2<sup>nd</sup> Respondent while adopting the award of the Director of Occupational Safety and Health Services Uasin Gishu County dated 10<sup>th</sup>

November 2022 in Claim No. WIBA/ELB/2843 a claim that the Appellant was not a party to

b. The Learned Trial Magistrate erred in law and in fact by ordering the Appellant to pay to Kshs 2,304,000 to the 1<sup>st</sup> Respondent's advocates with immediate effect, while the Appellant was not a party and was not mentioned in the Director of Occupational Safety and Health Services Uasin Gishu County award, the subordinate court was adopting.

6. The Appellant prays for orders that the Appeal be allowed, and honourable court be pleased to set aside the orders of the subordinate court given on the 20<sup>th</sup> August 2024 and dated 23<sup>rd</sup> August 2024. The Appellant further prays that the 1<sup>st</sup> Respondent pays the costs of this appeal.
7. On 30<sup>th</sup> September 2025, the Court directed that the Appeal to be disposed of by way of written submissions. The Appellant's submissions are dated 13<sup>th</sup> October 2025 while the 1<sup>st</sup> Respondent's submissions are dated 24<sup>th</sup> October 2025. It appears the 2<sup>nd</sup> Respondent did not participate in the appeal.

***The Appellant's submissions***

8. In its submissions, the Appellant crystallized the two grounds of appeal into a single issue namely, whether the learned trial magistrate erred in law and fact by enjoining it as a 2<sup>nd</sup> Respondent at the stage of adopting the Director's award and by ordering the Appellant to pay Kshs. 2,304,000.
9. It is the Appellant's submission that it was not a party to Claim No. WIBA/ELB/2843 before the Director of Occupational Safety and Health Services, Uasin Gishu County and further, that it was neither named nor mentioned in the award issued by the Director which the subordinate court proceeded to adopt.
10. The Appellant asserts that its enjoinderment occurred after the determination of the claim and after the assessment and issuance of the award by the Director, at a time when there were no pending proceedings capable of sustaining such joinder.
11. The Appellant has submitted that by ordering it to pay Kshs. 2,304,000 the trial court sought to bind it to orders arising from proceedings to which it was not a party. Such enjoinderment, according to the Appellant, constitutes a gross violation of the Appellant's right to be accorded a fair hearing before a decision

affecting its rights and obligations is made as guaranteed under Article 50 of the Constitution of Kenya.

12. The Appellant therefore maintained that the learned Trial Magistrate erred in law and in fact by enjoining it as a 2<sup>nd</sup> Respondent at the stage of adopting the award and by ordering it to pay Kshs. 2,304,000.00. In support of this position, the Appellant relied on the case of ***Titus Makhanu & Associates Advocates v Alicate Holding Limited; Southern Shield Holdings Limited (Interested Party) (Miscellaneous Application E145 of 2021) [2024] KEHC 1558 (KLR)***
13. The court was thus urged to find merit in the appeal and set aside the orders of the subordinate court issued on 20<sup>th</sup> August 2024 and dated 23<sup>rd</sup> August 2024.

### **The 1<sup>st</sup> Respondent's submissions**

14. The 1<sup>st</sup> Respondent in his submissions identified the issues for determination to be:-
  - i. Whether the Appellant was properly held liable to satisfy the award

- ii. Whether the learned trial magistrate erred in law of fact in adopting the Director's award
  - iii. Whether the appeal is competent or merited.
15. On the first issue, the 1<sup>st</sup> Respondent submitted that although the Appellant was not initially a party before the Director, it subsequently made a clear post-award admission. The 1<sup>st</sup> Respondent contended that after issuance of the award, the Appellant wrote a formal letter and swore an affidavit to the Director of Occupational Safety and Health Services unequivocally admitting that the deceased was its employee and that it accepted responsibility for the incident.
16. The 1<sup>st</sup> Respondent argued that the said communication constituted a binding admission under section 120 of the Evidence Act, and that the Appellant could not resile from that admission to challenge the award on procedural grounds.
17. It was further submitted that the Appellant failed to appeal or seek review of the Director's award under sections 51 or 52 of the Work Injury Benefits Act (WIBA), rendering the award final, binding, and enforceable.

18. On the second issue, the 1<sup>st</sup> Respondent submitted that the trial court did not purport to re-open or vary the Director's findings and that the court merely adopted the award as a judgment of the court, as mandated by section 53(1) of WIBA. It is the 1<sup>st</sup> Respondent's submission that, at that stage, the magistrate's role was administrative, which was to give effect to the Director's decision. In this regard, the 1<sup>st</sup> Respondent asserts that no appeal or objection was ever lodged by the Appellant under sections 51 or 52 of WIBA and that as such, the trial magistrate acted lawfully and properly in adopting the award.
19. It is submitted that the Appellant's allegation that it was condemned unheard is untenable as it was duly notified of the incident, participated in the investigations, and even acknowledged employment of the deceased after the award was issued. The 1<sup>st</sup> Respondent maintained that the Appellant cannot now invoke the right to be heard to defeat a lawful statutory obligation it failed to challenge in time
20. Lastly, on the issue whether the Appeal is merited, the 1<sup>st</sup> Respondent maintains that the present appeal is an

afterthought and a collateral attack on a valid administrative award. He maintained that the Employment and Labour Relations Court has consistently held that challenges to DOSH awards can only be made through an appeal under section 52(2) of WIBA not through appeals against the adoption orders of magistrates.

21. The 1<sup>st</sup> Respondent thus maintained that the trial magistrate properly adopted the Director's decision and there is no error of law or fact to warrant appellate interference.

***Analysis and Determination***

22. This being a first appeal I am required to consider the evidence adduced, evaluate it and draw my own conclusions, bearing in mind that I did not hear and see the witnesses who testified.

See ***Selle & Another v Associated Motor Boat Company Ltd & Others [1968] EA 123.***

23. Having considered the grounds of appeal, the submissions on record and the trial court's record, the only issue that presents itself for determination is whether the learned trial magistrate erred in law by enjoining the Appellant at the stage of adopting



*Please, find herein the above case of occupational accident, which has been processed by this office for the purpose of compensation. Be reminded that this case should be compensated within a time frame of 90 days from the date indicated therein through this office. All copies of the DOSH WIBA 5 should be returned to this for countersigning.*

*No compensation shall be made for temporary incapacity if there is proof that full salary was paid during the time of temporary incapacity.*

*Yours faithfully,*

*Signed*

*Eric O. Guya*

**COUNTY OCCUPATIONAL SAFETY & HEALTH OFFICER**

25. The above award was made pursuant to the provisions of the Work Injury Benefits Act (WIBA). Under section 53(1) of WIBA, a Director's award may be filed in the magistrate's court for adoption as a judgment of the court strictly for purposes of enforcement.
26. Section 10 of the Work Injury Benefits Act provides as follows:

*Right to compensation.*

*10. (1) An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.*

*(2) An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.*

27. Further, section 17 of the Act provides:

*Claims against third parties.*

*17.(1) If an occupational accident or disease in respect of which compensation is payable, was caused in circumstances resulting in another person other than the employer concerned (in this section referred to as the „third party“) being liable for damages in respect of such accident or disease-*

*(a) the employee may claim compensation in accordance with this Act and may also institute action for damages in a court against the third party; and*

*(b) the employer or insurer by whom compensation in respect of that accident or disease is payable may institute*

*action in a court against the third party for the recovery of compensation that the employer or insurer, as the case may be, is obliged to pay under this Act.*

28. From the provisions above, the primary responsibility of compensating an employee for injuries arising out of an occupational accident lies with the employer. Where a 3<sup>rd</sup> Party is responsible for the injuries, the employee is free to sue both the employer and the 3<sup>rd</sup> Party or any one of them.
29. The role of the Director of Occupational Safety and Health Services is to assess the compensation payable for the injuries suffered by an employee according to the documents submitted to his office by the person reporting the accident. The Director does not have the role of determining who is responsible to compensate the employee where such liability is contested.
30. Further, the fact that the Director sends a demand note to a particular person does not mean that that person cannot contest liability. It is the Act that defines who is responsible and gives the employee the option to sue either his employer or the 3<sup>rd</sup> Party responsible or both.

31. I have looked at the Record of Appeal and note that there is no indication that the Appellant responded to the application before the trial court as none is contained in the Record of Appeal. There is further no indication that the Appellant asked the court to determine which of the Respondents should be responsible to compensate the Applicant in this case. The Record does not contain the submissions of the parties. The only pleading on record is the application by the 1<sup>st</sup> Respondent.
32. I have also noted from the proceedings in the Record of Appeal that there was an application for review which is not included in the Record of Appeal. It is the duty of an appellant to furnish the court with a complete record containing all pleadings filed in the trial court.
33. From the evidence before me I find no basis, legal or factual, to interfere with the decision of the trial court.
34. The appeal is accordingly dismissed with costs to the 1<sup>st</sup> Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON  
THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO  
JUDGE**