

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**MISC. APPLICATION NO. E199 OF 2025**

*(Before Hon. Lady Justice Agnes Kitiku Nzei)*

**GEORGE THUKU KINGORI .....APPLICANT**

*VERSUS*

**MAGIC SLOTS LIMITED .....RESPONDENT**

**RULING**

1. The application before me for determination is the Applicant's Notice of Motion dated **23<sup>rd</sup> June, 2023**. The Applicant seeks the following Orders:-

- (a) *That the Court be pleased to adopt the decision of the Director of Occupational Safety and Health Services **dated 17<sup>th</sup> January, 2025** as contained in **ML/DOSH/WIBA FORM 4** of even date as an order and/or decree of this Court.*
- (b) *That a decree be issued against the Respondent in the sum of **Kshs.147,661.54/=** together with*

*costs at Court rates from the date of award i.e. **17<sup>th</sup> January, 2025** until payment in full.*

*(c) That costs of the application be provided for.*

2. The application sets out on its face the grounds on which it is brought, and is based on the Applicant's supporting affidavit sworn on **23<sup>rd</sup> June, 2025**. It is deponed in the said supporting affidavit:-

*(a) that the Applicant was on **9<sup>th</sup> January, 2024** employed by the Respondent as a driver, and worked diligently until **6<sup>th</sup> May, 2024** when he was involved in a road traffic accident along **(sic)** Uhuru Highway and Lusaka Road Junction.*

*(b) that the accident was reported to the Directorate of Occupational Safety and Health Services whereby the Director assessed the compensation payable to the Applicant at **Kshs.147,661.54/=**.*

*(c) that the Respondent **never** appealed against the Director's assessment, and instead terminated the Applicant's services.*

(d) that the Respondent **has refused** to pay the assessed sum, despite demand by the Applicant's Advocates.

3. Documents annexed to the supporting affidavit include copies of a duly filled and signed **DOSH/WIBA/FORM 4**, notice by employer of an occupational accident dated 11<sup>th</sup> October, 2024, a demand letter by Nairobi County Occupational Safety and Health Officer dated 5<sup>th</sup> May, 2025 and addressed to the Respondent demanding payment of the assessed sum, and a demand letter by the Applicant's Advocates dated 23<sup>rd</sup> May, 2025.
4. The Respondent filed a Preliminary Objection which appears to be **undated and unsigned**, but the **creed** of the Preliminary Objection is that the suit herein is fatally defective by virtue of having been instituted by way of a **miscellaneous application**. The Respondent did not, and had not filed any response to the application as **on 21<sup>st</sup> October, 2025 when the Court reserved a Ruling date. Suffice to say that the Respondent did not comply with the Court's Orders dated 24<sup>th</sup> July, 2025 granting**

**the Respondent 14 days to file and serve response to the said application.** Further, the Respondent **did not** file written submissions as ordered on the aforesaid date.

5. According to the Court's aforesaid Orders, any Preliminary Objection filed by the Respondent was to be treated as part of the Respondent's response to the application.
6. As I have previously stated in past decisions of this Court, the Work Injury Benefits Act (**WIBA**) is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (**the Director**) to employees who suffer work injuries or occupational diseases are to be enforced. At the same time, the said Act does not oust this Court's jurisdiction **to enforce such awards;** and especially where the Director's decision **determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act has not been objected to pursuant to Section 51 of the Act (WIBA);** or has been objected to and the objections/appeals and/or appeals thereon have been determined in favour of the injured employee, and the employer has refused to pay.

7. I stated as follows in this Court's decision in **Marcus Curvey Ojango - vs - Kenya Revenue Authority [2024] eKLR:-**

*“Pursuant to Article 162(2)(a) of the Constitution of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where that jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such a statutory provision is Section 16 of the Work Injury Benefits Act (**WIBA**) which expressly ousts courts' jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.”*

8. An employer's failure to pay a demanded compensation that has been assessed by the Director pursuant to the provisions

of the Work Injury Benefits Act, to which no objection has been lodged, creates a dispute over a **liquidated** claim/sum, which this Court can entertain and determine. The employee in favour of whom the Director's award is made has a right to formally move this Court by way of an application to enforce the award by entering judgment in terms of the award. Issuance of a decree will follow the entry of judgment. Execution of the decree will follow, if the Respondent (the employer) still refuses to pay.

9. Article 50(1) of the Constitution of Kenya 2010 provides as follows:-

***“(1) Every person has a right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court, or if appropriate, another independent and impartial tribunal or body.”***

10. In matters of enforcement of the Director's awards as aforestated, an awarded employee need **not** file a substantive suit, the two crucial issues of **liability and**

**quantum of damages having been determined by the Director.** The Court's role is purely enforcement of the Director's award/decision. The cause herein is, therefore, not defective.

11. Having said that, and having considered the Applicant's written submissions filed herein, the Notice of Motion dated 23<sup>rd</sup> June, 2025 is hereby allowed in the following terms:-

**(a) The award of Kshs.147,661.54/= made by the Director of Occupational Safety and Health Services on 17<sup>th</sup> January, 2025 in favour of the Applicant herein is hereby adopted by this Court, and accordingly, Judgment is hereby entered for the Applicant against the Respondent in the aforesaid sum.**

**(b) A decree shall issue, and shall be enforceable in accordance with the Civil Procedure Rules pursuant to Section 13 of the Employment and Labour Relations Court Act.**

**(c) The Applicant is awarded interest on the decreed sum, to be calculated at Court rates from the date of this Ruling until payment in full.**

**(d) The Applicant is also awarded costs of these proceedings, to be agreed or taxed.**

12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS  
20<sup>TH</sup> DAY OF FEBRUARY 2026**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Waithaka for the Applicant

No appearance for the Respondent

ORIGINAL