

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E344 OF 2025

FRANKLIN OMODING.....APPLICANT

VERSUS

**LUPAT
LIMITED.....RESPONDENT**

CLEANING SERVICES
RULING

1. The Applicant, **Franklin Omoding**, moved this Court by way of a Notice of Motion dated 11th September 2025, seeking the following orders:

1. *THAT the compensation of Kshs 572,062.81 assessed by the Director of Occupational Safety and Health Services to the applicant herein be adopted as the judgment of this court.*
2. *THAT a decree be issued in accordance with the assessment of the Director of Occupational Health and Safety (sic) for the sum of Kenya shillings Five Hundred and Seventy-Two Thousand, and Sixty-Two shillings, Cents Eight One only (Ksh. 572,062.81) with interest at 14% per annum from 19/05/2025.*

3. *THAT costs of the application be paid by the Respondent.*

2. The Motion is premised on the grounds appearing on its face and by the Supporting Affidavit sworn on the same date by the Applicant, Franklin Omoding. The Applicant states that he was employed by the Respondent as a rider and that on 20th January 2025, while discharging his duties, he was involved in an accident along Mombasa Road near Signature Mall. As a result, he sustained fractures of the femur bone in his leg and the ulna bone in his left forearm. He received treatment at various hospitals and was subsequently examined by Dr. Yunis Abdi of Ushirika Elite Hospital, who prepared a medical report in Part II of DOSH Form 1 confirming the injuries.
3. The Applicant further avers that he reported the accident to the Director of Occupational Safety and Health Services (Director), whereupon a DOSH/WIBA 4 Form was duly completed. His permanent incapacity was assessed at 0%, and the compensation payable to him was assessed at Kshs. 572,062.81.
4. He avers that the Director issued a demand to the Respondent for payment on 19th May 2025, but the Respondent refused and/or neglected to settle the assessed amount. His advocates subsequently issued a demand letter dated 21st

August 2025, but the Respondent still refused and/or failed to pay the sum of Kshs. 572,062.81.

5. The Applicant states that more than 90 days have lapsed since the demand was made and that the Respondent has neither paid the assessed compensation nor lodged an appeal against the Director's assessment.

6. The Motion was opposed. The Respondent filed a Replying Affidavit sworn on 14th November 2025 by **Lucy Mutie**, who describes herself as a director of the Respondent company. Ms. Mutie contends that the award was issued against the Respondent without their participation, as they were neither involved in the proceedings nor served with the award delivered on 19th May 2025. She states that they only became aware of the decision upon being served with the present Miscellaneous Application.

7. She further avers that upon the Applicant sustaining the injuries, the Respondent offered to facilitate his treatment at Mama Lucy Hospital or Kenyatta National Hospital, facilities ordinarily used for their staff, but the Applicant declined the offer.

8. Ms. Mutie contends that had the Applicant sought treatment at the facilities designated by the Respondent, the medical expenses would not have exceeded Kshs. 100,000/=. In her view, the amount assessed by the Director escalated because the Applicant ignored the Respondent's advice and sought treatment at alternative facilities contrary to company policy.
9. She asserts that the Respondent is being unfairly compelled to settle the assessed amount despite not having been afforded an opportunity to be heard by the Director.
10. She adds that the Respondent filed a judicial review application, and the Court directed that the substantive issues be canvassed in response to the present enforcement application.
11. In response to the Respondent's Replying Affidavit, the Applicant filed a Further Affidavit dated 14th January 2026, in which he denies the Respondent's claim that they only became aware of the award upon service of the present application.

12.He avers that on 19th May 2025, officers at the Directorate of Occupational Safety and Health Services informed him that the demand had already been served upon the Respondent. On the same day, he personally served the Respondent with a copy of the demand seeking settlement, but the Respondent declined to pay the assessed amount.

13.He further states, upon advice from his Advocates on record, that the Respondent failed to lodge any dispute, objection, or appeal within the 60 days despite being formally served with the assessment in the requisite form.

14.The Applicant further denies the Respondent’s allegation that he was offered treatment at Mama Lucy Hospital or Kenyatta National Hospital. He asserts that after the accident, the Respondent did not assist him, and he was instead rushed to the hospital by good Samaritans and he bore all medical costs personally. He adds that when he later sought assistance from the Respondent, his employment was terminated.

15.He maintains that due process was duly followed and therefore urges the Court to allow his application.

Submissions

16. On 27th November 2025, the Court directed that the Application be canvassed through written submissions. Both parties complied with this directive and filed submissions, which the Court has duly considered.

Analysis and Determination

17. It is clear that the key issue for determination is whether the Court should allow the Notice of Motion dated 11th September 2025 and adopt the award issued by the Director on 19th May 2025.

18. Whereas the Respondent does not dispute that the Director issued an award in favour of the Applicant on 19th May 2025, it maintains that it was never notified of the proceedings and therefore did not participate in them. The Respondent asserts that it only became aware of the award upon being served with the present application.

19. In the case of *Charles v Cheto [2025] KECA 784 (KLR)*, the Court of Appeal affirmed the position taken by the trial Court that where a party becomes aware of proceedings before the Director after the period for lodging an objection or

filing an appeal has lapsed, the appropriate recourse is to file a judicial review application seeking to quash the award before its adoption, while seeking a stay of the adoption proceedings.

20. In this case, the Respondent averred in its Replying Affidavit that upon learning of the award, it filed a judicial review application. However, the Respondent neither cited the case number of the alleged judicial review application in the Affidavit nor attached any documentation to confirm that such an application was indeed filed.

21. It was only through its submissions that the Respondent referred to ELRCJR/E0166/2025 as the judicial review application allegedly filed. Nonetheless, a search of the online Case Tracking System portal (CTS) does not reveal any case bearing that reference number.

22. Further, the Respondent did not file a formal application seeking a stay of the present proceedings pending the outcome of the purported judicial review application. Instead, it merely urged the Court to do so in its Replying Affidavit.

23. As correctly observed in *Charles v Cheto (supra)*, a party in circumstances similar to those of the Respondent is required to file a judicial review application and concurrently seek a stay of enforcement proceedings. This is the course the Respondent ought to have taken.

24. As matters stand, there is no evidence before this Court that a judicial review application seeking to quash the Director's decision has been filed. In addition, there is no application by the Respondent seeking a stay of these enforcement proceedings.

25. In light of the foregoing, the Court finds no basis upon which to stay the ongoing enforcement proceedings.

26. It is undisputed that the Director issued an award in favour of the Applicant, and there is no evidence that the Respondent has challenged that award through the mechanisms provided under the Work Injury Benefits Act or by filing a judicial review application. Consequently, the Court finds no justification for declining the Applicant's Motion.

27. Accordingly, the Court allows the Motion dated 11th September 2025 and finds that the Applicant is entitled to the award of **Kshs. 572,062.81** as assessed by the Director on 19th May 2025.

28. The Court further orders that interest on the said amount shall accrue at court rates from the date of this Ruling until payment in full.

29. The Respondent shall bear the costs of this suit.



DATED, SIGNED and DELIVERED at NAIROBI this 27th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Masua for the Applicant

Ms. Talu instructed by Mr. Mugalo for the Respondent

Mohammed 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.

STELLA RUTTO

JUDGE