



REPUBLIC OF KENYA

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

(ON Makau J on 26th February, 2026)

MISCELLANEOUS APPLICATION NO. E522 OF 2025

**DANIEL WAINAINA.....
.....APPLICANT**

-VERSUS-

**SALUTE HOLDING OCCIDENTAL INSURANCE.....
RESPONDENT**

RULING

Introduction

1. By a Notice of Motion dated 16th December 2025, the Applicant seeks the following orders:-

a) The Honourable Court be pleased to adopt as Judgment of the Court (against the Respondents jointly and severally), the assessment/award of the Director of Occupational Safety and Health Services, Nairobi made on 21st October, 2020.

b) A decree do issue for:

- i. The sum of Kshs. 4,320,000/- being the Directors award/assessment made on 21st October, 2020; and***
- ii. Interests thereon at court rates (14%) from the date of the award (15th June, 2015) until payment in full.***

c) Each party to bear its own costs.

2. The Motion is supported by the Applicant's Affidavit sworn on 16th December 2025 which annexed a demand for payment to the Applicant amounting to Kshs. 4,320,000 being compensation for Jeremiah Kagwi (deceased). The deceased 28th September 2019 while in the cause of employment by the Respondent and the award of damages was assessed by the Senior County Occupational Health and Safety Officer Nairobi. The Respondent never challenged the award through objection or appeal as required by the law.

3. The Respondent's opposed the motion vide A Replying Affidavit sworn by its Director Vivek Mehra on 4th February 2026, In brief the Applicant admitted that the deceased suffered fatal accident while in the cause of employment by the Respondent. He contended that the Respondent had obtained an insurance cover from Occidental Insurance Company who should pay the deceased's estate for the fatal injuries suffered.
4. He further deposed that after the assessment of damages, the insurer issued a discharge voucher but later failed to pay the claim forcing the Respondent to file suit CMCC E6195 of 2022 which is still pending determination following an order staying the trial until arbitration is exhausted as per the insurance contract.
5. He averred that the proceedings in the instant Motion should be stayed as it raises the same issue as CMCC E6195 of 2022.
6. The Applicant filed a Supplementary Affidavit sworn on 10th February 2026 by Daniel Wainaina Mugure, deceased brother. In brief he stated that the court has jurisdiction to adopt the award by DOSH as Judgment for purposes of enforcement. He stated further that he was a stranger to the proceedings before the Magistrates court. He also observed that under section 26(4) of work Injury Benefits Act, both the employer and the insurer has obligation to pay compensation to the injured

employee. Finally, he contended that the Respondent has admitted the claim.

7. The Motion was canvassed by written submissions. I have considered the Motion, Affidavits and submissions. The only issue for determination is whether the court should adopt the award of Kshs. 4,320,000 by DOSH made on 21st October 2020 as judgment and issue a decree for the same.

Adoption of DOSH Award

8. The 2nd Respondent (Insurer) never entered appearance and the Applicant withdrew the Motion against it. The remainder of the Motion is against the 1st Respondent (Employer) who admits that the deceased perished while in the course of his employment and that compensation was assessed by the DOSH.
9. The 1st Respondent has not demonstrated that the award is pending challenge under section 51(1) and 52 (2) of the Work Injury Benefits Act. The said section provides that:-

Section 51 (1)

“ Any person aggrieved by the decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.”

Section 52 (2)

“ Any objector may, within thirty days of the Directors reply being received by him, appeal to the Industrial Court against such decision.”

10. The Respondent alleged that the Motion herein is sub judice by dint of section 6 of the Civil Procedure Rules with respect to CMCC E 6195 of 2022 that is, however not so. This court has the inherent power to adopt and enforce a final award of the DOSH under the WIBA. The Applicant has filed a final award before the court and prays for adoption and issuance of a decree for execution of the award. The jurisdiction of the court is amplified by Rule 69 of this court Procedure Rules, 2024 which allows the court to adopt and enforce a lawful award/ decision reached in alternative justice system when it is filed by a party seeking enforcement.

11. The Applicant has laid before this court a final decision by DOSH made under WIBA. There is no proof that it is not a lawful decision. Consequently, I allow the Notice of Motion dated 16th December 2025 as prayed as order (1) and 2 (a). In doing so I have discharged my duty under Article 159 (2) (c) of the Constitution which instructs courts to encourage alternative dispute resolution mechanisms. The Applicant is awarded costs of the Motion plus interest at court rates from the date of filing the motion herein. The Applicant has not shown any basis for awarding interest from 15th June 2015 as prayed under order 2(b) of the Motion.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN
COURT AT NAIROBI THIS 26TH DAY OF FEBRUARY 2026.**

**ONESMUS MAKAU
JUDGE**

Appearance:

Odunga for the Applicant

Ombija for the Respondent