REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

ELRC JUDICIAL REVIEW NO. E075 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

C.K. BETT TRADERS LTD ……. ……..APPLICANT

VS

DIRECTORATE OF OCCUPATIONAL SAFETY AND HEALTH SERVICES (DOSHS) –

ATHI RIVER SUB-COUNTY ……..1ST RESPONDENT

THE HONOURABLE

THE ATTORNEY GENERAL……..2ND RESPONDENT

AND

PETER MIGIRO MOGOI……INTERESTED PARTY

RULING

1 The Applicant filed an Originating Motion dated 7th November 2025 seeking orders that: -

i. Spent

ii. THAT the adoption/enforcement/execution of the decision of the Director of Occupational Safety and Health Services (DOSHS), Athi River, in Claim Reference No. WIBA/ATR/236/2024 dated 31st October 2024 (hereinafter referred to as the

decision) be stayed pending hearing of this Application inter partes.

iii. *THAT the adoption/enforcement/execution of the decision be stayed pending hearing of the main Application/Originating Motion herewith.*

iv. *THAT the proceedings in MACHAKOS ELRC MISC. E005/2025 PETER MIGIRO MOGOI VS C.K. BETT TRADERS LTD. do stay pending the hearing of this application inter partes.*

v. *THAT the proceedings in MACHAKOS ELRC MISC. E005/2025 PETER MIGIRO MOGOI VS C.K. BETT TRADERS LTD. be consolidated and heard together with the matter herewith*

vi. *THAT the proceedings in MACHAKOS ELRC MISC. E005/2025 PETER MIGIRO MOGOI VS C.K. BETT TRADERS LTD. do stay pending the hearing and determination of this application.*

vii. *THAT the decision be nullified/ invalidated and or set aside.*

viii. *THAT alternatively the decision be set aside and the matter be remitted for reconsideration.*

ix. *THAT alternatively, and without prejudice to the foregoing, an independent or second medical evaluation to be conducted without delay.*

x. *THAT Damages, General, Moral, Aggravated, Exemplary and Punitive damages do issue.*

xi. *THAT any other orders that meet the ends of justice do issue.*

xii. THAT costs of this Application with interest on the above do issue.

Applicant's Case

2 The Applicant avers the Interested Party lodged Claim Reference No. WIBA/ATR/236/2024 against the Applicant before the 1st Respondent seeking compensation for an alleged work-related injury. This claim culminated in a decision made by the 1st Respondent through its Senior Occupational Safety and Health Officer dated 31st October 2024, which decision is the subject of the present proceedings.

3 The Applicant avers that the Interested Party proceeded with the claim unilaterally and without involving the Applicant in the process leading to the impugned decision.

4 It is the Applicant's case that the Interested Party participated in proceedings before the 1st Respondent in the absence of the Applicant and thereafter moved to enforce or adopt the said decision as an order of the Court in Machakos ELRC Misc. E005 of 2025, Peter Migiro Mogoi v C.K. Bett Traders Ltd.

5 The Applicant avers that it only became aware of the existence of the decision on or about 21st October 2025, when the Interested Party served upon it a hearing notice dated 2nd October 2025, a Notice of Motion dated 13th January 2025, and a Further Affidavit dated 2nd October

2025 in the said Machakos ELRC Miscellaneous Cause. According to the Applicant, by the time of such service, the statutory period of sixty (60) days within which to object to or appeal against a DOSHS award had already lapsed, thereby prejudicing the Applicant's right to challenge the decision.

6 It is the Applicant's case that the Interested Party is intent on having the impugned decision adopted as a judgment of the Court, and that unless the adoption proceedings are stayed, consolidated, or otherwise halted, the present suit will be rendered nugatory.

7 The Applicant avers that any delay in moving the Court was occasioned by late service and concealment of the decision by the Interested Party, and is therefore excusable and not inordinate.

8 The Applicant further avers that the Interested Party's claim before the 1st Respondent was substantively and procedurally flawed.

9 It is the Applicant's case that the Interested Party did not suffer any injury at work on 28th June 2024 as alleged, that no accident was reported at the workplace, and that the Applicant's internal medical facilities and reporting mechanisms were never engaged. The Interested Party's supervisors were never notified of any such incident.

10 It is further the Applicant's case that the Interested Party reported the alleged accident months later, on 31st October 2024, by unilaterally submitting a DOSH/WIBA Form 1, contrary to the requirements of the Work Injury Benefits Act which mandate prompt reporting of workplace injuries.

11 The Applicant disputes the degree of incapacity assessed and avers that it is implausible that an employee allegedly suffering from 50% incapacity would continue working normally for weeks without complaint, only to raise the issue months later.

12 The Applicant avers that the Interested Party engaged in forum shopping by lodging the claim at the Athi River DOSHS Office despite the Applicant being based in Kitengela where a DOSHS office exists. The process adopted by the Interested Party and the 1st Respondent was unfair, opaque, and procedurally irregular, leading to an unjust award whose quantum is disputed.

13 The Applicant avers that the Interested Party, together with the Respondents, violated the Applicant's constitutional and statutory rights, including the right to fair administrative action under Article 47, the right to a fair hearing under Article 50(1), and the principles of natural justice, by proceeding ex parte, condemning the Applicant unheard, and denying it the opportunity to object, appeal, or be heard.

14 It is the Applicant's case that the Interested Party benefited from an unlawful process that breached the Fair Administrative Action Act and the Work Injury Benefits Act.

15 The Applicant contends that the Interested Party's conduct, in pursuing and seeking to enforce an irregular and unlawfully obtained decision, has caused it loss, damage, reputational harm, and procedural prejudice.

16 It is the Applicant's case that the Respondents and the Interested Party are jointly and severally liable for the alleged violations and that the Court ought to intervene in the interest of justice to protect the Applicant's non-derogable rights to a fair hearing, due process, and access to justice.

Interested Party's Case

17 In opposition to the application, the Interested Party filed a replying affidavit dated 8th December 2025.

18 The Interested Party avers that the present application is frivolous, vexatious, bad in law, and an abuse of the Court process.

19 It is the Interested Party's case that the application has not been filed in good faith and is solely intended to derail and frustrate the enforcement and adoption of the lawful award made in its favour by the 1st Respondent.

20 The Interested Party avers that it was an employee of the Applicant and that on 28th June 2024, it sustained serious injuries while lawfully engaged in the performance of its assigned duties at the Applicant's workplace.

21 The Interested Party avers that the accident was duly reported to the Applicant on the same day as required by law, and upon such report, it was under a statutory obligation to notify the relevant authorities of the work injury.

22 The Interested Party avers that despite being duly notified of the accident, the Applicant declined and/or failed to report the occurrence of the work injury as required under the law.

23 Consequently, the Interested Party avers that it personally reported the injury to the 1st Respondent in compliance with statutory requirements, thereafter, the Applicant was invited by the 1st Respondent to participate in the proceedings but neglected and/or failed to do so.

24 The Interested Party avers that following due assessment, the 1st Respondent, on 31st October 2024, computed and assessed compensation payable to it in the sum of Kshs 720,000, and formally communicated the same to the Applicant through a demand letter requiring payment. The

Applicant neither objected to nor appealed against the said decision within the prescribed statutory timelines.

25 The Interested Party further avers that owing to the Applicant's failure, neglect, and refusal to settle the awarded sum, it instructed its advocates to institute enforcement proceedings by way of Machakos ELRC Miscellaneous Application No. E005 of 2025, seeking adoption of the award as an order of the Court to enable execution. The Applicant has never responded to the said enforcement application since its filing in January 2025.

26 The Interested Party avers that the assessment of its injuries, the award made by the 1st Respondent, and the subsequent enforcement proceedings were conducted lawfully, procedurally, and in strict compliance with the applicable statutory framework.

27 It is the Interested Party's case that the 1st Respondent took all appropriate steps before arriving at the award and that there exists no lawful basis for quashing, setting aside, or impugning the said decision.

28 The Interested Party therefore avers that the Applicant was aware of the occurrence of the injury, the reports made to the 1st Respondent, and the decision awarding compensation, but deliberately chose to ignore due process. The Applicant only sought to challenge the process after enforcement proceedings were commenced.

29 The Interested Party accordingly prays that the present application be dismissed with costs, maintaining that it is devoid of merit and is merely intended to delay, obstruct, and defeat the lawful enforcement of a valid and unchallenged statutory award.

Applicant's Submissions

30 The Applicant submitted on ten issues: whether the 1st Respondent lawfully exercised jurisdiction under the Work Injury Benefits Act (WIBA); whether the Applicant was accorded procedural fairness and a hearing prior to the impugned decision; whether late service of the decision violated Articles 47 and 50 of the Constitution and extinguished the Applicant's right of appeal; whether the Interested Party's claim met the statutory threshold of a compensable workplace injury under WIBA; whether the medical assessment, degree of incapacity, and quantum of compensation were lawful and reasonable; whether the impugned decision is tainted by illegality, procedural impropriety, irrationality, and abuse of power; whether the adoption and enforcement proceedings should be stayed, consolidated, or set aside; submissions on quantum; costs and interest; and whether the Honourable court has power/jurisdiction/discretion to grant the prayers herewith

31 On jurisdiction, the Applicant submitted that although the 1st Respondent is statutorily mandated to administer WIBA, such authority must be exercised strictly within

constitutional and statutory limits. Jurisdiction is everything, and where it is exercised unlawfully or in excess, the resultant decision is a nullity. Reliance is placed on ***Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR***, where the Supreme Court held that a court or tribunal can only exercise jurisdiction conferred by the Constitution or statute.

32 The Applicant submitted that jurisdiction under WIBA presupposes: timely and lawful reporting of the injury; investigation and verification of the claim; and participation of the employer whose liability is in issue.

33 It is the Applicant's submission that the 1st Respondent entertained a claim reported months after the alleged accident, failed to conduct investigations, and excluded the Applicant entirely, thereby unlawfully assuming jurisdiction.

34 On procedure, the Applicant submitted that Articles 47 and 50(1) of the Constitution guarantee the right to fair administrative action and a fair hearing. Further, Article 25(c) of the Constitution declared that the right to a fair trial may not be limited.

35 It is submitted that the Applicant was neither notified of the proceedings nor invited to participate, and only

received notice of the decision after the time for objection or appeal had lapsed. This denial of participation is said to amount to condemnation unheard. Reliance is placed on ***Judicial Service Comission v Mbalu Mutava & another [2015] eKLR*** and ***Kenya Revenue Authority v Menginya Salim Murgani [2010] eKLR.***

36 The Applicant submitted that the failure to notify, invite, or hear it before making a determination affecting its rights fatally vitiates the decision for breach of the *audi alteram partem* rule.

37 On late service, the Applicant submitted that the decision dated 31st October 2024 was disclosed nearly one year later, after the statutory 60-day window for objection or appeal had lapsed, thereby extinguishing the Applicant's statutory right of recourse.

38 It was submitted that Article 47(1) of the Constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Additionally, Section 4 of the Fair Administrative Action Act, prior notice, an opportunity to be heard, written reasons, and notification of the right to review or appeal. Therefore, the conduct of the Respondents failed/breached their obligation to ensure Fair Administrative Action

39 The Applicant submitted that failure to give timely notice and reasons rendered the administrative action unconstitutional as held in ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR.*** Therefore, delay occasioned by concealment cannot be attributed to the affected party and renders the right of appeal illusory, contrary to Articles 47, 48, and 50 of the Constitution.

40 On the statutory threshold under WIBA, the Applicant submitted that WIBA requires prompt reporting and verification of workplace injuries. Sections 21, 23, and 51 of WIBA impose a duty on the Director to investigate and verify claims before determination.

41 The Applicant submitted that the Interested Party's claim was not reported contemporaneously, was not recorded in workplace medical facilities, and was not verified through investigation. It was submitted that a claim lodged months later without supporting evidence is argued to fall outside the protective scope of WIBA. Reliance was placed on ***Obiro v Maua Agritech Limited [2025] KEELRC 463 (KLR)*** where the court held that absence of proof of injury on a balance of probabilities defeats liability.

42 On medical assessment and quantum, the Applicant submitted that it disputes the assessment of 50%

incapacity, and contends that it was conducted without employer participation or opportunity for a second medical opinion. It is implausible for an employee with such incapacity to continue working uninterrupted for weeks without complaint.

43 The Applicant submitted that medical assessments affecting legal rights must be evidence-based, fair, and reasonable. Decisions founded on untested, one-sided medical evidence are said to offend the principle of reasonableness under the Fair Administrative Action Act.

44 On whether the impugned decision is tainted by illegality, procedural impropriety, irrationality, and abuse of power, the Applicant submitted that the classic grounds of judicial review are well established in Kenyan law. Reliance is placed on Ugandan Case of ***Pastoli v Kabale District Local Government Council & others [2008] 2 EA 300***, where illegality, irrationality, and procedural impropriety were defined.

45 It is submitted that the impugned decision is tainted by lack of notice and hearing, failure to investigate, forum shopping, and one-sided reliance on the Interested Party's account. Such conduct amounts to an abuse of statutory power and violates among others Article 10 national values of transparency, accountability, and good governance.

46 On stay, consolidation, or nullification, the Applicant submitted that unless the adoption proceedings in Machakos ELRC Misc. E005 of 2025 are stayed or consolidated, the present proceedings will be rendered nugatory. It cited ***TAIB A. TAIB V MINISTER FOR LOCAL GOVERNMENT & 3 OTHERS [2006] eKLR***, where the Court held that:

> *"That this court has jurisdiction to grant orders of stay has never been in issue given the provisions of Order 53 Rule 1(4). What is always in issue is whether, in the circumstances of any particular case, a stay order is efficacious. I also want to state that in judicial review applications like this one the court should always ensure that the Ex-parte applicant's application is not rendered nugatory by the acts of the respondent during the pendency of the application. Therefore where the order of stay is efficacious the court should not hesitate to grant it."*

47 It is the Applicant's submission that the balance of convenience favours preservation of the right to be heard.

48 On damages, the Applicant submitted that following the Respondent's constitutional and administrative violations it suffered non-pecuniary harm, including injury to reputation, business standing, and institutional dignity arising from the unlawful DOSHS decision. It is in the

interest of justice to vindicate the rights violated and to prevent or deter any future infringements. It cited ***Chief of Kenya Defence Forces & another v Etyang [2025] KECA 1409 (KLR)***, where substantial damages were awarded for procedural unfairness and constitutional violations.

49 The Applicant submitted that its corporate reputation, business operations, compliance record, and legal rights have been materially and publicly impugned by state action without due process, a range of Kshs. 5,000,000 to Kshs. 20,000,000 is appropriate for general damages.

50 The Applicant submitted that it has suffered legal uncertainty, inability to plan compliance, operational anxiety, exposure to enforcement without recourse, internal disruption compounded by the Respondents' procedural unfairness. Accordingly, given the compound prejudice suffered (reputational harm, operational disruption, inability to appeal, and exposure to court proceedings), an additional range of Kshs. 5,000,000 to Kshs. 15,000,000 is just.

51 The Applicant further submitted that the Respondents' demonstrated high-handed, reckless, and oppressive conduct: no notice, no hearing, no investigation, concealment of decision, forum shopping. Thus, a range of Kshs. 3,000,000 to Kshs. 10,000,000 for aggravated damages is proportionate here, given the: deliberate

failure to notify; denial of procedural fairness; forum shopping outside Applicant's jurisdiction; and concealment of decision until appeal rights lapsed.

52 The Applicant submitted that the Respondents must be punished and deterred for unconstitutional abuse of statutory power by public officers; vindication of rule of law. Given the constitutional violation and need for deterrence against future unlawful DOSHS conduct, the Applicant submits an exemplary damages band of Kshs. 3,000,000 to Kshs. 8,000,000 is justified.

53 It further submitted that following the violations of the Respondents', the Applicant has suffered institutional humiliation, unfair stigmatization, erosion of trust with staff, regulators, and business partners. Accordingly, an award of Kshs. 2,000,000 to Kshs. 5,000,000 is a reasonable and proportionate sum to address moral harm suffered by the Applicant as a corporate body.

54 The Applicant submitted that alternatively and without prejudice, global damages award in the range of Kshs. 20,000,000 to Kshs. 50,000,000 is proportionate to the violations; consistent with recent Kenyan jurisprudence on constitutional and administrative damages; and justified by the gravity and cumulative prejudice occasioned by the Respondents' unlawful conduct.

55 On costs, the Applicant submitted that costs follow the event and that the application was necessitated by the Respondents' unfair and unconstitutional conduct. The Court is urged to award costs and interest.

56 On the final issue, the Applicant submitted that this Court has power/jurisdiction/discretion to grant the prayer. Reliance is placed on Charles v Cheto [2025] KECA 784 (KLR), where the Court of Appeal held:

> *"49.In this case, the learned Judge correctly observed that sections 51 and 52 of the WIBA are silent on the avenues for redress for a party who becomes aware of the proceedings before the Director after the time for lodging an objection and/or filing an appeal against the Director's decision has already lapsed. We agree with the learned Judge that the solution in such circumstances would be to lodge a Motion for Judicial Review to quash the award before adoption by the court, and on first seeking to have the adoption proceedings stayed. Notably, the appellant sat back and took no steps to that end.*
>
> *50.The remedy identified by the learned Judge appears to be the only viable course of action in the circumstances. .. "*

Further, the Fair Administrative Action Act under Sections 2, 3, 4, 7, 11empowers the Court to give the reliefs prayed for.

1st Respondent's Submissions

57 The 1st Respondent submitted on four issues: whether the objection/dispute on the occurrence of the injury at work is valid; whether the accident involving Absolom Mahugu on 11/06/2023 was occupational; whether the Employer/Applicant should pay a sum of Kshs. 436,038/- (four hundred thirty-six thousand, thirty-eight shillings only) to the injured, Absolom Mahugu; and whether the 1st Respondent was justified in declining to consider and entertain the Applicant's objection out of time.

58 On the first issue, the 1st Respondent submitted that that although the Applicant alleges that Absolom Mahugu never sustained any work-related injury and was therefore not entitled to compensation, the purported objection was lodged out of time and was unsupported by any credible investigation or evidence. Additionally, while the Applicant claims to have filed an objection dated 11th March 2025 against the Director's decision, the 1st Respondent contends that such an objection could not be considered as it was lodged well outside the statutory timelines and lacked factual and evidentiary foundation.

59 It is the 1st Respondent's submission that the Applicant did raise an objection/dispute on the occurrence of the injury to the Interested Party notwithstanding that it was way out of time. Such an objection could not and cannot be considered because the Applicant did not conduct any

investigation into the matter to back the objection/dispute being raised. The Occupational Safety and Health Act, 2007 (OSHA, 2007) provides for safety, health and welfare of workers at the workplace. Section 9(1) of OSHA, 2007 provide for workplace safety and health committees whose mandate has been amplified in the Safety and Health Committees Rules Legal Notice No. 31 of 2004. One of the mandates of the workplace safety and health committee is to initiate and/or investigate workplace accidents and incidents. The Applicant did not conduct any investigation and did not even demonstrate existence of any safety and health committee at the workplace in the first place. It is nugatory for Applicant to dispute/object to occurrence of injury occurrence without any investigation report

60 The 1st Respondent further submitted that the Medical Examination Rules, 2005, provide that employees exposed to hazardous conditions undergo medical examinations on prescribed intervals of time for detection of any medical conditions arising from exposure to the hazards. The Applicant did not demonstrate that this legal requirement was ever met as no statutory medical examination report was produced.

61 It was further submitted that Legal Notice No. 24 of 2005, require pre-employment medical examination at the time of joining a workplace, during employment statutory medical examinations and post-employment medical

examination when one exits a workplace. The Applicant failed to ensure the good health of the Interested Party and any emerging health issues could have been detected at a very early stages and even curbed before it escalated to the levels of litigation.

62 The 1st Respondent submitted that the Applicant misconceived Section 51 of the Work Injury Benefits Act (WIBA). The injuries complained of arose from a primary medical practitioner's assessment and not from a Director's decision capable of objection under that provision. The Applicant was duly notified of the claim and had sufficient opportunity to object within the prescribed period but failed to do so. Consequently, by reason of lateness, lack of investigation, absence of medical evidence, and the Director's lack of power to enlarge time, the objection is invalid, null, and void.

63 On the second issue, the 1st Respondent submitted that under Section 2 of WIBA, an accident includes any occurrence arising out of and in the course of employment, including occupational diseases. Under Sections 38(1) and 10(4) of WIBA, an occupational disease or accident is deemed to arise out of employment even where the employee acted without instructions or in contravention of employer directives, provided the act was connected to the employer's business.

64 It was submitted that Absolom Mahugu was an employee of the Applicant at all material times. The Applicant's attempt to rely on the Interested Party's alleged three-month contract to exclude him from the definition of an employee under Section 5(3)(a) of WIBA is described as a red herring. The 1st Respondent maintains that even casual or contract workers are employees for purposes of compensation where they are engaged in the employer's trade or business. Accordingly, the Interested Party was an employee within the meaning of WIBA and entitled to protection.

65 The 1st Respondent submitted that following its investigations, it was established that the Interested Party's medical condition resulted from prolonged exposure to dust during the course of his work. The condition was one that manifests over time and could only arise from sustained workplace exposure. It is not right for the Applicant to allege that it had no knowledge of the Absolom Mahugu's condition as it was obliged to ensure the health and safety of all workers, Interested Party being among them. The injuries sustained by the Interested Party, cannot be any other than being occupational because the occupational disease arose out of and in the course and scope of an employee's employment as provided for in section 10(4) of WIBA.

66 The 1st Respondent submitted that pursuant to Section 42(1) of WIBA, the date of an occupational disease is the

date when the medical practitioner diagnoses the disease for the first time and this was given on the notification form DOSH1. When the accident occurred, the Absolom Mahugu was not in contravention of any law and not in contravention of any instructions by or on behalf of his employer. Pursuant to section 10 of WIBA, the deceased, had all the right to compensation as this injury was occupational.

67 The 1st Respondent submitted that Section 23 of the Work Injury Benefits Act (WIBA) does not prescribe a specific manner in which investigations are to be conducted, and that the statutory mandate to investigate injury claims rests solely with the Director. Any investigative methodology proposed or relied upon by the Applicant would only relate to the Applicant's internal obligations and is not binding on, nor does it constrain, the Director's exercise of statutory functions under WIBA. The Respondent further contends that no investigation report allegedly conducted by the Applicant was ever presented to the Director for consideration, and that the report the Applicant sought to rely on amounted to mere hearsay. It was therefore incumbent upon the Applicant to avail relevant details to facilitate the investigation within the required time, which it failed to do.

68 It was submitted that Absolom Mahugu was within the scope of his employment and therefore at work when the medical condition manifested. Under section 22 of the

Work Injury Benefits Act (WIBA), all occupational accidents or injuries must be notified to the Director using the prescribed DOSH 1 form. The Applicant failed to notify the Director of the injury, notwithstanding its opinion that the accident did not arise out of and in the course of employment, contrary to section 22(2) of WIBA.

69 The 1st Respondent submitted that Interested Party, however, duly notified the Director pursuant to section 22(4) of WIBA, which permits an employee to report an occupational accident or disease at any stage. The Applicant's failure to notify the injury, an omission amounting to an offence under the Act, did not render the injury non-occupational. In any event, notification was validly made by the Interested Party under section 22(5) of WIBA, and the employer's non-compliance could not negate the occupational nature of the injury.

70 On the fourth issue, the 1st Respondent submits that Section 7 of WIBA obligates employers to obtain insurance to cover liabilities arising from work injuries, but in the absence of such cover, the employer remains directly liable. The Applicant's late objection only arose after it became apparent that the compensation would be borne directly by the employer.

71 The 1st Respondent questions why the Applicant failed to lodge an objection within time if it genuinely believed the injury was non-occupational, why no investigation was

undertaken, and why no medical examinations were conducted to contradict the Interested Party's claim. The failure to conduct pre-employment, periodic, or exit medical examinations is cited as evidence of neglect of statutory duties. The objection is thus an afterthought intended solely to defeat a lawful claim.

72 The 1st Respondent submitted that the WIBA compensation process is time-bound, commencing with notification of injury, followed by investigation and computation by the Director, and eventual settlement by the employer or insurer. The Applicant failed to follow this statutory process, failed to engage the Director at the appropriate stage, and instead resorted to litigation after declining to settle the claim.

73 The 1st Respondent submitted that Sections 10(1) and 10(2) of WIBA, an employee injured at work is entitled to compensation and the employer is liable to pay. The demand for Kshs. 436,038/= was lawfully addressed to the Applicant, and any challenges with insurers cannot absolve the employer of liability. Therefore, enforcement of the claim is justified given the Applicant's delay and failure to settle.

74 On the final issue, the 1st Respondent submitted that Section 13 of WIBA outlines limited circumstances under which compensation may be refused, none of which apply

in the present case. A chronological review of events demonstrates that the Interested Party's occupational disease became apparent on 27th March 2024, the Applicant failed to notify the Director as required, and notification was instead made by the Interested Party pursuant to Section 22(5) of WIBA.

75 The 1st Respondent submitted that it conducted investigations under Section 23 of WIBA and concluded that the injury was occupational. The Applicant did not raise any objection within the prescribed time. A demand for compensation was issued on 20th November 2024 requiring settlement within 90 days, but no objection was lodged within the statutory 60-day period under Section 51 of WIBA. The objection was only filed in March 2025, long after expiry of the statutory timelines.

76 The 1st Respondent further submitted that the Applicant failed to comply with section 103 of the Occupational Safety and Health Act by neglecting to conduct pre-employment, periodic, and post-employment medical examinations. Having failed to exercise these statutory opportunities, the Applicant cannot complain that it was denied a chance to challenge the injury.

77 It is the 1st Respondent's submission that the Director has no power under WIBA to extend the time for lodging objections and that entertaining such an objection would

amount to acting outside the law. The Applicant's recourse, if aggrieved, lay in an appeal under section 52(2) of WIBA, not in judicial review proceedings, which the 1st Respondent illustrates as an abuse of the court process.

78 The 1st Respondent submitted that the Applicant's failure to report, investigate, object in time, or comply with statutory obligations disentitles it from relief. The objection was properly rejected, the injury was occupational, the compensation lawfully assessed, and the Applicant is liable to pay.

Interested Party's Submissions

79 The Interested Party submits that the DOSH award was lawfully made on 31st October 2024 and duly communicated to the ex parte Applicant through the prescribed ML/DOSH/WIBA/FORM 4. Pursuant to Section 51 of the Work Injury Benefits Act (WIBA), the Applicant had 60 days, expiring on or about 31st December 2024, within which to lodge an objection. The Applicant neither responded to the award nor filed any objection within the statutory period.

80 It is the Interested Party's submission that the Applicant only purported to challenge the award after the Interested Party filed Machakos ELRC Misc. E005 of 2025 by an

application dated 13th January 2025 seeking enforcement of the award. Both the 1st Respondent and the Interested Party had duly notified the Applicant of the award, and the failure to object within time was entirely attributable to the Applicant's own inaction. On a balance of probability, there is no basis to doubt that the demand for settlement was delivered to the Applicant.

81 The Interested Party submitted that the present judicial review application is an afterthought, brought solely to frustrate and defeat the Interested Party's right to compensation for injuries sustained in the course of employment. The Applicant deliberately ignored the statutory objection mechanism under Section 51 of WIBA and only moved the Court when enforcement proceedings commenced.

82 The Interested Party submitted that in ***Walala v Guardian Coach Limited; Directorate of Occupational Safety and Health Services (Respondent) [2025] KEELRC 792 (KLR)*** the court held:

> *"The application for judicial review is not only a belated afterthought to defeat the expeditious determination of the adoption and enforcement of award proceedings, but also a glaring abuse of Court process. The ex-parte applicant deliberately opted not to oppose the adoption proceedings before the Court but also mischievously and in a misguided*

manner purported to seek judicial review orders by the Court against its own proceedings as was prayed for. Further, the Court finds that the judicial review proceedings were carefully calculated to defeat the statutory procedure in WIBA prescribing an objection to the DOSH against the award and then an appeal to the Court in an appropriate case per sections 51 and 52 of WIBA. While Judicial Review proceedings may be available to question procedural failures in implementation of WIBA and in appropriate cases as was held by Manani J in Joash Shisia Cheto –Versus-Thepot Patrick Charles[2022]Eklr the Court returns that the instant case has not passed the threshold for intervention by way of judicial review orders now prayed for. This not being an appeal under section 52 of WIBA, the Court rejects the ex-parte applicant's invitation for the Court to deal with issues of merit such as the cause of the injury in issue, whether the assessment was fair and such other matters which the Court may only consider in an appeal under section 52 of WIBA. The advisory to employers being that they must be vigilant in event of an injury, accident, occupational disease or even death at work environment and to consistently follow and cooperate throughout the WIBA processes. The employers must also be alert that WIBA institutes a no-fault compensatory system."

83 I have examined all the averments and submissions of the parties herein. The applicant has contended that they were never notified of the injury by the interested party and the processes done by Dosh until they were served with pleadings in the Machakos Court.

84 The applicants have sought various orders including having the director's decision being remitted back for consideration and to have a 2nd medical evaluation being conducted.

85 From the pleadings submitted there is no evidence that the applicants were invited and informed of the decision of the director after the assessment. In order to avoid any further miscarriage of justice I will allow the applicant's application to the extent that the applicants objections be resubmitted for consideration by the 1st respondent and re assessment of the interested party by another independent doctor. The proceedings in Machakos ELRC Misc E005/25 be stayed in the meantime until a reassessment is done. There will be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 5th Day of March, 2026.

HELLEN WASILWA

JUDGE