



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

(ON Makau J on 12<sup>th</sup> March, 2026)

**MISCELLANEOUS APPLICATION NO. E287 OF 2025**

**STEPHEN** **ODUOR**  
**NGESA.....APPLICANT/RESPONDENT**

**-VERSUS-**

**MAHESH & TIRTH CONSTRUCTION COMPANY**  
**LIMITED.....RESPONDENT/APPLICAN**  
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**RULING**

**Introduction**

1. This Ruling relates to the Notice of Motion Application dated 18<sup>th</sup> December 2025, filed by the Respondent/Applicant, Mahesh & Tirth Construction Company Limited. The application seeks the following orders:-

***a) That this Honourable court be pleased to review and set aside the order that it issued on 8<sup>th</sup> December 2025.***

***b) That the Respondent/Applicant be granted leave to file a response and supporting documents in this matter.***

***c) That this Honourable Court be pleased to hear and determine this matter on its merits.***

***d) That the costs of this application be provided for.***

2. The Application is supported by an affidavit sworn on 18<sup>th</sup> December 2025 by the Applicant's officer in charge of health and safety, one Benjamin Wanjala and it is opposed by the Respondent, Stephen Oduor Ngesa, through a Replying Affidavit sworn on 30<sup>th</sup> December 2025. The Application was disposed of by written submissions.

3. The background of the Application is fairly simple. The Respondent had an accident on 29<sup>th</sup> May 2023 while in the course of employment by the respondent and he suffered a crush on his left thumb. The cause of the injury was

machine. He was treated and the accident was reported to Directorate of Occupational Safety and Health.

4. The Applicant's Project Manager, one Benjamin Wanjala filled DOSH Form 1 acknowledging the Respondent's accident and also his salary. He signed the form by his hand and stamped with the company official stamp. The form was further filled by Dr. Stephen Oduor Ngesa of Bristol Park Hospital on 14<sup>th</sup> February 2025 where he assessed the respondent's permanent incapacity at 5% due to loss of the tip of the thumb. He signed and stamped the form with the official stamp of the Hospital.

5. Subsequently, the Assistant Director of Occupational Safety and Health Officer, Athi River Sub-County assessed compensation for the respondent at Kshs. 111,988 and on 25<sup>th</sup> February 2025 wrote to the applicant demanding payment of the said compensation on behalf of the Respondent. The demand was not honoured and the Respondent instructed counsel who served another demand letter on 10<sup>th</sup> June 2025 but it was also ignored.

6. The Respondent moved the court by a Notice of Motion 8<sup>th</sup> August 2025, urging the court to adopt the DOSH Award as Judgment and award interest plus costs. The matter was mentioned before the Deputy Registrar on 8<sup>th</sup> October 2025 when Applicant was granted time to file a response, and the matter was scheduled for hearing before the Judge on 8<sup>th</sup> December 2025. No response was filed and on 8<sup>th</sup> December 2025, the court entered judgment in his favour, adopting the DOSH award as prayed.

7. On 18<sup>th</sup> December 2025, the applicant brought the instant motion contending that the delay to file response to the Respondent's motion was inadvertent as it took longer than expected to retrieve the claimant's file from the company archives. The applicant further avers that upon retrieving the file, they discovered an initial medical assessment indicating a 0% permanent incapacity, which contradicts the percentage adopted by the Assistant Director in arriving at the compensation payable. The application is also supported by a certificate of urgency sworn by C.K. Kiplagat, Advocate on even date.

8. The Respondent contested this narrative, stating that he is not aware of any document showing 0% incapacity and averred that such assessment was inconceivable considering that his injury was a crush injury to his left thumb with loss of the fingertip. He contended further the Applicant has never raised any objection or appeal against the DOSH award, and therefore the same remains valid and enforceable.
9. Having considered the instant application, the replying affidavit, the submissions filed by both parties, and the annexures thereto, the main issues for determination are:-
- a) Whether this Honourable Court has jurisdiction to interfere with a DOSH award that was never appealed or objected to under the Work Injury Benefits Act.
  - b) Whether the Applicant has satisfied the legal threshold for the grant of review orders as prayed.
  - c) Who should bear the costs of this application?

## **Analysis**

### **Jurisdiction**

10. The more fundamental issue, is whether this Court has jurisdiction to interfere with a DOSH award through a review application when the statutory mechanisms for challenging it were never invoked. The respondent contention is that the court lacks such powers. The Work Injury Benefits Act (WIBA), Cap 236, provides a comprehensive statutory procedure for handling workplace injury claims. Sections 51 and 52 of the Act are explicit. They provide as follows: -

***“51. (1) Any person aggrieved by a 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.***

***52. (1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to...***

***(2) An objector may, within thirty days of the***

***Director's reply being received by him, appeal to the Industrial Court against such decision."***

11. This statutory framework establishes a clear, hierarchical, and exclusive path for challenging a DOSH award. An aggrieved party must first object to the Director within 60 days. Upon the Director's reply, an aggrieved party may then appeal to this Court within 30 days. This process is not optional but it is mandatory. The Applicant in this case did not object within 60 days and therefore it lost the right to further adjudication over the said claim.
  
12. The jurisprudence from this Court and the Court of Appeal on this point is consistent and unequivocal. In **Charles v Cheto (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR)**, the Court of Appeal affirmed the finality of DOSH processes unless challenged through the prescribed channels. The court held that unless by way of appeal under Section 52 of WIBA, it is not open to the court to consider the merits of the Director's award or go on a fact-finding mission. This jurisdiction is the preserve of the Director.

13. In **Mutuku v Excel Chemicals Limited (Miscellaneous Application E174 of 2023) [2025] KEELRC 1035 (KLR)**, Keli J held that jurisdiction to entertain grievances on a DOSH award lies only where WIBA's procedures have been invoked. The court pronounced itself thus:-

***“The court holds that the jurisdiction to deal with any grievance on the award/decision by the Director of Occupational Safety and Health(DOSH) can only be invoked under section 52(2) of WIBA. The role of the court of adopting awards does not include making a decision on the validity of the award where there is more than one award like in the instant case.”***

14. It appears clear that any party dissatisfied by decision of Director is required to file objection to the DOSH as per section 51 of WIBA. He/she cannot directly challenge the decision in the court as it lacks jurisdiction to decide on issues unless moved by way of an appeal under section 52 of WIBA.

15. The Applicant in this case is invoking a novel jurisdiction which is akin to objecting or appealing the WIBA decision through the back door. What is being alleged now ought to have been raised by an objection within 60 days after the Directorate served a demand for payment and not in the instant Motion.
16. Even if it was raised during the request for entry of judgment, the court would still have dismissed the challenge by the employer since the horse had already bolted. To entertain the invitation by the employer now would be to sanction a collateral appeal and to undermine the statutory framework deliberately established by Parliament.
17. In light of the foregoing, I find that this Honourable Court lacks jurisdiction to interrogate the merits of a DOSH award outside the mandatory objection and appeal mechanisms set out under Sections 51 and 52 of the Work Injury Benefits Act. The application before the Court is therefore, legally untenable and it is dismissed with costs for being an abuse of the court process.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN  
COURT AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2026.**

**ONESMUS MAKAU**

**JUDGE**

**Appearance:**

Kiplagat for the Applicant

Kangethe for the Respondent