



Githu v Jiangxi Transportation Engineering Group Limited (Miscellaneous Application E031 of 2023) [2026] KEELRC 574 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 574 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E031 OF 2023**

AK NZEI, J

FEBRUARY 27, 2026

BETWEEN

GODFREY WAIREGI GITHU APPLICANT

AND

JIANGXI TRANSPORTATION ENGINEERING GROUP LIMITED RESPONDENT

RULING

1. The application before me for determination is the Applicant's Notice of Motion dated 11th February, 2025. The Applicant seeks the following Orders:-
 - a. That the Court be pleased to adopt as a Judgment of the Court the award of the Director of Occupational Safety and Health Office dated 14th February, 2022.
 - b. That Judgment be entered for the Applicant against the Respondent for Kshs.971,395/= being the amount assessed under the *Work Injury Benefits Act*.
 - c. That the Court be pleased to award interest at Court rates on the amount/award from the date of assessment until payment in full.
 - d. That the Court be pleased to award any other relief that it deems fit and just to grant.
2. The application sets out on its face the general grounds on which it is brought, and is anchored on the Applicant's affidavit sworn on 11th February, 2025 in support of the application. It is deponed in the affidavit:-
 - a. that at all times relevant to the claim, the Applicant was in the Respondent's employment as a driver and was, while on duty, injured whereby he sustained a deep cut and a degloving tissue loss.



- b. that on 14th February, 2022, the Occupational Safety and Health Officer assessed the Applicant's permanent incapacity at 30%, and the benefits payable to him under the [Work Injury Benefits Act](#) at Kshs.971,395/=.
 - c. that the Respondent failed to either appeal or pay the said assessed sum of Kshs.971,395/=.
3. Documents annexed to the said supporting affidavits are copies of a notice by employer of an occupational accident, Form DOSH/WIBA 4 (duly filled and signed by the County Occupational Safety and Health Officer) dated 14th February, 2022, a letter by the Director of Occupational Safety and Health Services (Director) dated 29th July, 2024 confirming that no objection had been lodged against the sum assessed and demanded from the Respondent herein, and a demand letter by the Applicant's Advocates dated 29th January, 2025.
4. The application is opposed by the Respondent vide a replying affidavit of Wang Dingtao, the Respondent's Site Agent, sworn on 6th May, 2025. It is deponed in the said replying affidavit:-
 - a. that the Applicant was an employee of the Respondent, and that he sustained an injury on 23rd July, 2021 while performing his duties as a driver.
 - b. that the Occupational Safety and Health Officer initially (on 14th February, 2022) assessed the benefits payable to the Applicant under the [Work Injury Benefits Act](#) at Kshs.971,395/=.
 - c. that dissatisfied with the said assessment, the Respondent requested for a review of the award.
 - d. that the Director of Work Injury Benefits Administration accepted the Respondent's request for review, set aside the initial assessment of Kshs.971,395/= and directed the Applicant to attend a fresh Work Injury Evaluation Clinic.
 - e. that in compliance with the Director's directives, the Respondent booked the Applicant for a Work Injury Evaluation Clinic (WIEC) on 20th January, 2025 and ensured transport and logistical arrangements were made, but the Applicant refused and/or neglected to attend the Work Injury Evaluation Clinic (WIEC) without any justifiable reason.
 - f. that Section 25(1) of the [Work Injury Benefits Act](#) provides that when directed by the Director or an employer, a worker who is claiming, has received, or is owed compensation, must undergo a medical assessment performed by a doctor designated by the Director or employer.
 - g. that as a consequence (of the Applicant's refusal) the Director of Work Injury Benefits Administration issued a final decision on 25th March, 2025 which revoked the initial assessment of Kshs.971,395/= and declared [that] the Applicant was no longer entitled to compensation under the [Work Injury Benefits Act](#) due to his refusal to attend the evaluation.
5. Documents annexed to the said replying affidavit include copies of a letter by the Director – Work Injury Benefits Administration to the Respondent dated 10th December, 2024, and the said Director's letter to the Applicant dated 25th March, 2025.
6. Section 25(1) of the [Work Injury Benefits Act](#) provides as follows:-
 - “(1) An employee who claims compensation or to whom compensation has been paid or is payable, shall when required by the Director or the employer as the case may be, after reasonable notice, submit himself at the time and



place mentioned in the notice to an examination by the medical practitioner designated by the Director or the employer with the approval of the Director.”

7. In view of all the foregoing, issues that fall for determination, in my view, are as follows:-
 - a. Whether there exists a decision/award by the Director of Occupational Safety and Health Services in favour of the Applicant.
 - b. Whether this Court is seized of Jurisdiction to enforce the Director’s award.
 - c. Whether the orders sought by the Applicant are merited.
8. On the first issue, the Director of Occupational Safety and Health Services computed and determined the amount of compensation payable to the Applicant by his employer (the Respondent) for the injuries sustained by him in an undisputed occupational accident. The Director’s decision on the Claimant’s degree of permanent disablement and the amount of compensation payable thereon is contained in a DOSH/WIBA 4 document dated 14th February, 2022 and duly signed and sealed (stamped) by the Director. A copy of the said document, addressed to the Respondent by the Director, is annexed to the Applicant’s supporting affidavit as aforesaid.
9. The Respondent has not denied having received the Director’s said decision and demand to pay the assessed sum of Kshs.971,395/=.
10. Section 51 of the Work Injury Benefits Act (WIBA) provides as follows:-
 - “(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.
 - (2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.”
11. The Respondent is not shown to have lodged any objection against the Director’s decision made on 14th February, 2022, either within sixty days as provided in Section 51 of the WIBA or at all. Once made, the Director’s decision on any matter under the Act can only be challenged as provided in Section 51 of the said Act.
12. The Director’s decision dated 14th February, 2022 is not shown to have been set aside and/or varied pursuant to a lawful and valid objection pursuant to Section 51 of WIBA, or pursuant to an appeal under Section 52(2) of the Act. The Director’s decision dated 14th February, 2022 still exists, and I so find.
13. Section 25(1) of the Act does not, in my view, refer to a situation where the Director’s decision on liability and quantum of compensation payable has been made. It refers to the decision making process, when an injured employee or an employee who has suffered an occupational disease is still undergoing medical examination(s) to inform the Director’s decision on assessment of the degree of permanent disablement and calculation of compensation payable pursuant to Sections 28 and 30 of the Act. Section 28 of the Act refers to periodical payments made to an employee who suffers temporary total disablement that incapacitates him for three days or a longer period, not exceeding twelve months. This puts such an employee in a situation where he receives periodical payments of compensation as treatment continues. Such is an “employee to whom compensation has been paid, and to whom



- compensation is payable” as envisaged in Section 25(1) of the Act; and who, at the same time, may be required either by the Director or by the Employer to undergo a medical examination.
14. Unlike the foregoing scenario, the Director in the present case made his decision on the Applicant’s degree of permanent disablement and compensation payable to him on 14th February, 2022, and communicated the decision to the Respondent on the same date, with a demand to pay.
 15. The *Work Injury Benefits Act* does not give the Director any power to unilaterally “revoke” his decision, once made, as was purported to be done vide the letters dated 10th December, 2024 and 25th March, 2025 respectively, over two years from the date of the decision.
 16. Of great interest is the letter to the Respondent dated 10th December, 2024, written over two and a half years after the date of the Director’s said decision, informing the Respondent that the Director had received the Respondent’s request for review dated 3rd December, 2024 and “. . . Our decision dated 14th February, 2022 is set aside.”
 17. The foregoing letter was an illegality and a nullity, as there could not have been a valid “request for review of the Director’s” decision outside of the time frame set out in Section 51 of the *Work Injury Benefits Act*, and without the Court’s leave. The Applicant is not shown to have been part of the purported “setting aside” process.
 18. Further, whereas the Director’s award/decision dated 14th February, 2022 was made by the Director of Occupational Safety and Health Services as defined in Section 2 of the WIBA, the aforesaid two letters are shown to have been written by the Director – Work Injury Benefits Administration.
 19. On the second issue, the *Work Injury Benefits Act* is silent on how the Director’s awards of compensation to injured employees or employees who suffer occupational diseases are to be enforced. At the same, the 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 WIBA has not been objected to, or has been unsuccessfully objected to, and the employer has failed to pay.
 20. This Court has inherent jurisdiction, both original and appellate, over all matters relating to employment and labour relations, except where such jurisdiction is expressly ousted by the statute (written law) over a particular matter or issue specifically specified in the ousting statute. For example, Sections 16 and 23 of WIBA are clear on the fact that issues of liability and quantum of damages are to be determined by the Director of Occupational Safety and Health Services (Director).
 21. Section 12(1)(a) of the *Employment and Labour Relations Court Act* gives this Court exclusive jurisdiction, both original and appellate, to determine all disputes referred to it in accordance with Article 162(2) of *the Constitution*, including “disputes relating to, and arising out of employment between an employer and an employee.”
 22. On the other hand, the preamble to the *Employment and Labour Relations Court Act* provides as follows:-

“An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.”
 23. Any dispute relating to or connected to an employment relationship between an employer and an employee falls within the purview of this Court’s Jurisdiction.



24. It was stated as follows in this Court’s decision in the case of 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 inquiries 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.”

25. Further, I stated as follows in this Court’s decision in Amir Swaleh Omar – vs – Mackezie Maritime (E.A) Limited [2022] eKLR:-

“

“17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of Jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of WIBA, the assessed sum becomes the injured employee’s right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director’s assessment, and issuance of a decree which can then be executed to realise that right.

19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine.

Article 50(1) of *the Constitution* of Kenya 2010 provides:-

“Every person has the 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.”

26. Having said that, and having considered written submissions filed herein, I return a finding that this Court is seized of jurisdiction to hear and to determine the application herein.



27. On the third issue, it is my finding that the Orders sought by the Applicant are merited, and I hereby allow the Notice of Motion dated 11th February, 2025 in the following terms:-
- a. The award made by the Director of Occupational Safety and Health Services on 14th February, 2022 is hereby adopted by this Court and, accordingly, Judgment is hereby entered for the Applicant against the Respondent in the sum of Kshs.971,935/=, being the amount awarded by the Director.
 - 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 awarded costs of these proceedings, to be agreed or taxed.
28. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH 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.

Appearance:

Mr. Makau for the Applicant

Miss Githinji for the Respondent

