

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E462 OF 2025

JOYCE MUSIMBI KANGU ASIRIGWA & ZIPORAH ASIRIGWA

(suing for and on behalf of the estate of

James Musomi Asirigwa, deceased).....APPLICANT

VERSUS

ASWA DEVELOPERS & CONTRACTORS LIMITED.....1ST
RESPONDENT

UAP INSURANCE COMPANY LIMITED.....2ND RESPONDENT

RULING

1. By a Notice of Motion dated 14th November 2025, the Applicants seek the following orders against the Respondents:

1) The Honourable Court be pleased to adopt as judgment of the Court, the assessment/award of the Director of Occupational Safety and Health Services, Nairobi made on 13th February, 2020.

2) A Decree do issue against the Respondents jointly and severally for;

a) The sum of Kshs. 1,497,600/= being the Director's award/assessment made on 13th February, 2020;

b) Reasonable burial expenses for Kshs. 612,540/-; and

c) Interests on the assessed/awarded sum at court rates (14%) from the date of the award (13th February, 2020) until payment in full.

2. The Motion is supported by the grounds set out therein and the averments contained in the Supporting Affidavit of **Joyce Musimbi Kagu**, one of the Applicants. The Applicants aver that at the time the deceased sustained work-related injuries on 10th October 2019, which ultimately led to his death, he was employed by the 1st Respondent as a construction worker.
3. They aver that the incident was reported to the Directorate of Occupational Safety and Health Services (Directorate) in Nairobi via DOSH/FORM 1. Upon assessment, the deceased was found to have suffered 100% permanent incapacity. Consequently, on 13th February 2020, DOSH/WIBA 4 was issued, requiring the 1st Respondent to compensate the estate of the deceased in the sum of Kshs. 1,497,600/=.
4. The Applicants aver that, being a fatal claim, the Respondents were obligated to effect payment within 90 days of the assessment.

5. They contend that despite these statutory timelines, the Respondents were notified of the assessment in February 2020 but failed to lodge any appeal as required by law.
6. According to the Applicants, the Respondents have demonstrated no intention to settle the claim, thereby occasioning grave injustice to them and to the estate of the deceased.
7. The 1st Respondent opposed the Motion through a Replying Affidavit sworn on 12th January 2026 by its Director, **Stephen Wang'ombe Kinuthia**.
8. Mr. Kinuthia deposes that in compliance with Section 7 of the Work Injuries Benefits Act (WIBA), the 1st Respondent procured an insurance policy from the 2nd Respondent, under policy number 020/112/001907/2009, covering the period 22nd December 2018 to 21st December 2019. He states that the policy was arranged through the 2nd Respondent's disclosed agent, **Messrs Homeland Insurance Brokers Limited**, to whom the 1st Respondent remitted the full premium of Kshs. 219,249/=.
9. He confirms that the deceased was engaged by the 1st Respondent as a casual labourer and that on or about 10th June 2019 he sustained fatal injuries in the

course of his employment. He avers that the accident was reported to the 2nd Respondent through its disclosed agent on the same day, and that on 18th June 2019, additional information and supporting documents were requested and subsequently provided, with receipt duly acknowledged.

10.Mr. Kinuthia states that although the report was forwarded to the 2nd Respondent and acknowledged, the 2nd Respondent has nevertheless failed or refused to settle the claim despite the existence of a valid insurance cover, thereby acting in breach of its contractual obligations.

11.He further states, on the advice of counsel, which he believes to be true, that insurance contracts are contracts of *uberrimae fidei*, imposing a heightened obligation on the insurer to act honestly, fairly, and reasonably when administering and settling claims.

12.Mr. Kinuthia contends that once the accident was reported and the requisite documentation provided, the 2nd Respondent assumed a legal and contractual duty to promptly and objectively assess, process, and honour the claim without undue delay or reliance on extraneous matters.

13. He avers that the 1st Respondent fully complied with all its obligations under the policy, including payment of premiums, timely notification of the accident, and submission of all requested documents, and that the Applicants were therefore entitled to indemnity under the policy.

14. He adds that the 2nd Respondent cannot lawfully repudiate or delay liability on the basis of internal administrative issues, disputes with its disclosed agent, or questions regarding premium remittance, as such matters neither affect the insured risk nor absolve the insurer once cover has attached.

15. In Mr. Kinuthia's view, the failure or refusal by the 2nd Respondent to settle the claim despite acknowledging coverage amounts to a breach of the insurance contract and violates the duty of utmost good faith owed to both the insured and the policy beneficiaries.

16. He argues that the 2nd Respondent's conduct has caused undue hardship to the Applicants, exposed the 1st Respondent to unnecessary litigation, and undermined the statutory purpose of WIBA, which is to ensure timely compensation for workers or their dependants in cases of workplace injury or death.

17.Mr. Kinuthia asserts that unless the Court intervenes, the 2nd Respondent will unjustly benefit from its own breach of duty, to the detriment of the Applicants and contrary to principles of insurance law and equity.

18.The 2nd Respondent opposed the Motion through a Replying Affidavit sworn on 16th January 2026 by its legal officer, **Joyce Muthoka**.

19.Ms. Muthoka confirms that the 1st Respondent had taken out a work injury benefits policy for the period 22nd December 2018 to 21st December 2019, and that under the policy, the 1st Respondent was obligated to pay a premium of Kshs. 219,249/= before the insurer could assume liability.

20.Ms. Muthoka contends that the 1st Respondent failed to pay the outstanding premium necessary to activate the 2nd Respondent's obligation to indemnify it.

21.She asserts that due to non-payment of premiums during the relevant period, the 2nd Respondent had no obligation to indemnify the 1st Respondent in respect of the accident of 10th June 2019.

22.Ms. Muthoka further states that the 1st Respondent's broker, **Messrs Homeland Insurance Brokers Ltd.**, was repeatedly informed of the need for the 1st

Respondent to settle the outstanding premiums before the insurer could assume liability under the policy.

23. She maintains that the 2nd Respondent is under no obligation to indemnify the 1st Respondent due to its breach of conditions precedent under the policy.

24. Ms. Muthoka maintains that although the claim was reported, the 2nd Respondent requested compliance with the policy conditions precedent, which the 1st Respondent failed to observe.

Submissions

25. The Applicants and the 2nd Respondent filed written submissions, which the Court has duly considered.

Analysis and Determination

26. Having considered the Applicants' Notice of Motion, the Respondents' affidavits, and the submissions on record, the key issues for determination are:

(i) whether this Court should adopt the award issued by the Director on 13th February 2020, and (ii) if so, which of the Respondents is liable to satisfy that award.

27. It is undisputed that the deceased was an employee of the 1st Respondent and that he sustained work-related injuries on 10th October 2019, resulting in his death. It is equally uncontested that upon assessment, the Director issued an award in favour of the deceased's dependants in the sum of Kshs. 1,497,600/–.

28. As it stands, there is no evidence on record indicating that any objection was lodged before the Director, nor that an appeal was filed before this Court under Section 52(2) of WIBA challenging the Director's award. Accordingly, the award remains unchallenged.

29. In the circumstances, the Court finds no basis to decline the Applicants' request to adopt the Director's award issued on 13th February 2020.

30. In light of the foregoing finding, the next issue for determination is which of the Respondents is liable to satisfy the award.

31. It is common ground that the 1st Respondent had taken out an insurance policy with the 2nd Respondent covering the period 22nd December 2018 to 21st December 2019, which falls within the period when the deceased sustained the fatal injuries.

32. It is, however, instructive to note that the claim by the Applicants against the 1st Respondent is distinct from any claim that may arise between the 1st and 2nd Respondents under their insurance contract.

33. While Section 7 of WIBA requires employers to obtain and maintain insurance coverage for their employees, it should be appreciated that an employee or their dependants have no direct legal relationship with the insurer, as they are not parties to the insurance contract.

34. It is also worth noting that in this case, the Director's award was issued against the 1st Respondent, not the 2nd Respondent.

35. What's more, the Court's jurisdiction under WIBA is confined to hearing appeals against the Director's decisions and enforcing awards as between employees or their dependants and the employer. Needless to say, the jurisdiction does not extend to disputes between an employer and its insurer.

36. Consequently, any claim the 1st Respondent may have against the 2nd Respondent arising from the insurance policy must be pursued through a separate declaratory suit, and cannot be determined within these enforcement proceedings. Suffice to say, the 1st Respondent's arguments regarding its

insurance arrangement with the 2nd Respondent therefore fall outside the scope of this application.

37. Accordingly, the responsibility to satisfy the award issued by the Director in favour of the Applicants rests with the 1st Respondent, as the deceased's employer.

38. To this end, the Court allows the Applicants' Motion against the 1st Respondent and finds that they are entitled to compensation of **Kshs 1,497,600.00**, as assessed by the Director on 13th February 2020.

39. This amount shall accrue interest at court rates from the date of this Ruling until payment in full.

40. The 1st Respondent shall bear the costs of these proceedings.

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

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STELLA RUTTO
JUDGE

In the presence of:

For the Applicants	Ms. Kanazi instructed by Mr. Odunga
For the 1 st Respondent	Ms. Kiiru
For the 2 nd Respondent	Mr. Onderi
Court Assistant	Mohammed

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