

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS

ELRC MISC E017 OF 2025

ISSAC JUMA MUNYAO.....APPLICANT

-VERSUS

BHACHU INDUSTRIES LIMITED.....RESPONDENT

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The applicant filed a Notice of Motion dated 2nd May 2025 seeking adoption and enforcement of the Director of Occupational Safety and Health Services (DOSHS) award dated 26th June 2024 issued pursuant to the Work Injury Benefits Act, Cap. 236 (WIBA).
2. The Applicant relied on the Application and a Further Affidavit dated November 6, 2025, on record, and urged this Honourable Court to uphold the Director's decision and find that the Respondent's actions are purposefully deliberate in delaying enforcement.

3. The application was opposed by the respondent on the basis of being premature, the award having been set aside following an objection by the respondent. (**ASB6** was the response by DOSH to the objection)
  
4. The application was canvassed by way of written submissions. Both parties filed,

#### The applicant's submissions

5. Validity, Lawfulness, and Enforceability of the Director's award - The Director's award issued on 24th June 2024 is valid and enforceable. Under sections 23 and 25 of WIBA, the Director of Occupational Safety and Health Services has exclusive jurisdiction to hear work injury claims and issue awards. An award issued by the Director remains binding unless set aside, reviewed, or varied in accordance with the statutory procedure and cannot be invalidated by mere dissatisfaction or correspondence from the Respondent. The Respondent has not demonstrated any lawful challenge or appeal, and therefore the award remains subsisting and enforceable. In *John Kariuki v. ABC Limited* [2022] ELRC 45 – The Court held that a Director's award remains valid until lawfully overturned. ii. Effect of the Respondent's objection. The Respondent lodged an objection to the assessment. The only resultant directive was the requirement for a second medical assessment which the Respondent failed to prosecute, as it did not notify nor facilitate the Claimant's attendance. The Respondent's objection does not operate as a stay or suspension of the Director's award. WIBA provides specific procedures for review or appeal. The objection does not suspend enforcement, does not quash or invalidate the

award and constitutes an abuse of process if relied upon to delay enforcement. It is a cardinal principle of equity and justice that a party cannot benefit from its own inaction. The Respondent cannot weaponize delays it created to defeat a statutory award. Our Courts have condemned such conduct as an afterthought intended solely to delay enforcement. In *Nicholas Kiptoo Arap Korir Salat Versus IEBC & 7 Others*, the Court held that procedural actions must not defeat substantive justice. Similarly, in *Mumo Matemu Versus Trusted Society of Human Rights Alliance* it was held that Courts must prevent abuse of process designed to defeat legitimate claims. We therefore humbly submit that the Respondent cannot rely on its own inaction to avoid liability. Having failed to pursue the said objection to its logical conclusion, it is estopped from denying enforcement. The principles of expeditious justice and statutory intent under WIBA protect the rights of injured workers to timely compensation. iii. Adoption of the Director's award. This Honourable Court is duty-bound to adopt and enforce valid awards. Once satisfied that the award was lawfully issued and remains unchallenged, it is bound to adopt it. Section 26 (6) of the Work Injury Benefits Act (WIBA) expressly provides that where an employer fails to pay compensation as assessed by the Director, the same may be recovered as a civil debt. The Courts have consistently held that adoption proceedings do not open liability or quantum already determined by DOSH. Thus, this Court is properly seized of jurisdiction to adopt and enforce the Director's award.

6. For the foregoing reasons, the Applicant respectfully submits that: The Director's award dated 24th June 2024 is valid, lawful, and enforceable; The Respondent's objection has

no legal effect in suspending or invalidating the award; The Respondent cannot rely on its own inaction to frustrate enforcement; This Honourable Court should adopt and enforce the Director's award.

The respondent's submissions.

7. Whether the Ist Respondent has satisfied the procedures enshrined under Section 51 and 52 of the Work Injury Benefit Act, Cap 236- the legal provisions pertaining to an Appeal of an award of the Director in DOSHS is well founded in Section 51 and 52 of the Act and they provide as follows; "51. Objections and appeals against decisions of the Director (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. 52. Director's reply (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, and shall within the samee period send a copy of the statement to any other person affected by the decision. (2) An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision.'" The decision of the Director was rendered on the 24th of June, 2024. Aggrieved by this decision, the 1st

Respondent immediately filed an Objection on the 9th of July, 2024 with the Director of DOSHS. Within a span of 14 days. Indeed the 1st Respondent complied with the directions in Section 51 of the Act without fail. That with keen and intent assurance, we can confirm that the Director of DOSHS responded to the said above objection within 14 days as prescribed by Law allowing the objection. The Applicant herein is yet to be taken for a second medical examination to ascertain the extent of his injuries. As it stands, the 1st Respondent has complied with Section 52 (1) of the Act. The matter is pending determination before the Director of DOSHS after the second medical Page 2 of 4 examination is conducted, hence our position that the said suit before this Honourable Court is premature and impetuous in nature. ii. Whether this Court has Jurisdiction to hear the merits of this suit. It is trite law that this Court is not a Court of Merit but is only tasked with adoption of awards or deal with Appeals of the Director's decision pursuant to Section 52 (2) of the Act. It is outrightly clear that the matter is still not yet fully determined before the Director of DOSHS as there is still the issue of the objection to deal with. The Court must restrain itself from taking over the role of the Director contrary to the Act's provisions. We wish to cite the decision of O. Makau J in the case of *Cyrus Ombuna Machina v Safaricom Limited* [2020] eKLR in which he held as follows: "12. The claimant has urged the court to spare the claim and refer it to the Director under WIBA. The respondent prays that I dismiss the claim against her. Dismissing the claim without considering its merits would be a miscarriage of justice. I will also not strike it out because as at 2017 when the suit was filed, the law in place allowed him to file the suit in court by dint of the judgment of the High Court in *Petition 15 of 2008*. I therefore refer the dispute to the Director under WIBA to hear and determine it under the relevant

provisions of WIBA." It is our contention that this Honourable Court lacks the Jurisdiction to hear matters of merit, especially with the matter still pending at the Objection stage.

### Decision

8. The applicant was a former employee of the respondent. He sustained a work injury. The injury was assessed by DOSH as 10% permanent incapacity, and an award of Kshs. 238,660.43 was issued (DOO3). DOSH sent a demand for payment to the respondent, and the applicant's advocate also made a demand. The applicant seeks the adoption of the court order and the award of interest. Conversely, the respondent asserts that the matter is premature, as it is at the objection stage following DOSH's decision on their objection. The objection was pursuant to section 51 of WIBA to wit- '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 an objection 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.'

9. The DOSH vide letter of 10<sup>th</sup> July 2024 issued a decision on the objection as follows- 'RE: OBJECTION TO THE DECISION OF THE DIRECTOR IN RELATION TO INJURY SUSTAINED BY MR. ISAA JUMA MUNYAO. Reference is made to your

letter dated 9th July 2024 on the above subject matter. The Directorate of Occupational  
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safety and health services (DOSHS) is mandated to ensure safety, health and welfare of workers in all workplaces. The Directorate enforces the occupational safety and health Act, (OSHA,2007), WIBA 2007, and their subsidiary legislations and implements the national policy on Occupational safety and health to ensure safe and healthy workers in all workplaces. Your objection to the decision of the Director in relation to injury sustained by Mr. Isaac Juma Munyao is hereby allowed. By a copy of this letter, Mr. Isaac Juma Munyao, is hereby requested to attend our clinic, in Safety House, commercial street, industrial area, either on Mondays or Thursdays for a second medical opinion. ‘(emphasis given).The court finds that the award is thus not enforceable as the objection was allowed. The objection challenged the assessed percentage of the applicant’s permanent incapacity , and the respondent sought a second medical opinion. The applicant admitted he was not subjected to second medical opinion. The law allows objection(section 51 of WIBA, above). The decision on the objection was for the applicant to under go A second medical opinion. The court finds there is no valid award to enforce. The process before DOSH must be exhausted, and a final decision must be made by DOSH after the applicant undergoes a 2nd medical opinion, as stated in the decision.

10. I upheld the decision in *Cyrus Ombuna Machina v Safaricom Limited* [2020] eKLR in which Justice O. Makau held as follows: "12. The claimant has urged the court to spare the claim and refer it to the Director under WIBA. The respondent prays that I dismiss the claim against her. Dismissing the claim without considering its merits would be a miscarriage of justice. I will also not strike it out because as at 2017 when the suit was

filed, the law in place allowed him to file the suit in court by dint of the judgment of the High Court in Petition 15 of 2008. I therefore refer the dispute to the Director under WIBA to hear and determine it under the relevant provisions of WIBA." The court, having found there is no valid decision to adopt, refers the dispute back to DOSH for compliance with the objection decision. I make no order as to costs in the application.

11. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13<sup>TH</sup>  
MARCH, 2025.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Applicant– Ms Muranga h/b Ms Mutuku

Respondent- Kori