

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA

MISC. APPLICATION NO. E011 OF 2025

FLORENCE ANN ATEKA.....1ST APPLICANT
MODECAI ANYANGA ONG'AYO.....2ND APPLICANT
ELVIS ONG'AYO ATEKA.....3RD APPLICANT
ZADDOCK ONG'AYO ATEKA.....4TH APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF KAKAMEGA.....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. The applicants through Keverenge A. A. Advocates filed a notice of motion (the application) dated 16th September 2025 seeking for the following orders –

- 1. THAT judgment be entered in favour of the applicants as per the award of the Director in the sum of Kshs. 6,566,400.00 (Six million five hundred and sixty-six thousands four hundred shillings).***

- 2. THAT a decree be issued in accordance with the assessment and award of the Director of Occupational Health and Safety with accrued interest thereon.**
 - 3. THAT interest to accrue on the Director's award thereon at 14% from the date when the award was communicated to the Respondent on 14th September, 2020 till payment in full.**
 - 4. THAT costs of the application be paid to the applicant.**
2. The application is expressed to be brought under **Rule 28 (1)(b) and 31 of the Employment and Labour Relations Court (Procedure) Rules, 2016, section 121, 24(5), 87 of the Employment and Labour Relations Act, Section 26 and 52 of the Work Injury Benefits Act, Sections 1A, 1B, & 3A of the Civil Procedure Act and Article 162(2) of the Constitution and all enabling provisions of law.)**
 3. The application is based on the grounds on the face of it and supported with the affidavits of the 1st, 2nd, and 3rd applicants sworn on even date with several annexures thereto.
 4. Upon service of the application, the respondent through Arwanda & Associates Advocates filed grounds of opposition dated 15th October 2025 and a replying affidavit sworn by Prisca Otipa, the Chief Officer in charge of the Department of Public Service of the respondent, on 22nd October 2025 with several annexures thereto in opposition to the application.
 5. By consent and upon directions by the court, the application was canvassed by way of written submissions. Mr. Keverenge for the

applicants filed written submissions dated 17th November 2025 and Mr. Arwanda for the respondent filed submissions dated 15th October 2025.

II. THE EVIDENCE

6. In the supporting affidavit by the 1st applicant, it is deposed that the deponent is the widow of the late Francis Ateka Ang'ayo (the deceased) who was until his death an employee of the respondent as an assistant animal officer I. The other applicants are children of the deceased who were dependent on him.
7. It is deposed that the deceased died on 24th June 2020 as a result of an occupational accident. The accident was reported to the Directorate of Occupational Safety and Health (DOSHS), Kakamega County, as per the annexed notification of the death at work by the respondent.
8. It is further deposed that DOSHS assessed the loss and made an award of Kshs6,566,400/= in compensation to the applicants. The respondent was notified of the award and demanded to settle the same vide a notice by DOSHS dated 14th September 2020. This award neither objected to nor appealed by the respondent but yet no payment has been made. A copy of the demand notice is attached as evidence.
9. It is deposed that the respondent has severally acknowledged the debt yet failed to act towards settlement prompting the applicants to file this application in court to enforce payment.

10. The supporting affidavits by the 2nd and 3rd applicants were aligned to the contents of the supporting affidavit by the 1st applicant summarized above. They annexed a copy of certificate of their dependency on the deceased.
11. In its response as embodied in the replying affidavit, it is deposed for the respondent that the deceased died while he was an employee of the respondent as an assistant livestock health officer. It is acknowledged that DOSH assessed the claim and awarded as pleaded by the applicants.
12. It is further deposed that the respondent was insured with Monarch Insurance against claims such as the one lodged by the applicants. It is stated that the insurer prepared a discharge-voucher to settle the claim that was executed by the 1st applicant and the respondent on 17th October 2022.
13. It is deposed that further negotiations ensued and the 1st applicant allegedly accepted to be paid a sum of Kshs4,000,000/= in a discharge-voucher executed on 25th January 2024.
14. It is deposed that the insurer failed to settle the award as agreed in the discharge-voucher. It is further deposed that it is the insurer who is liable to settle the claim and should have been joined in this application.
15. It is further deposed that the applicants ought to have filed a substantive cause in enforcing payment rather than filing an application. It is further deposed that if at all any payment is due and

payable, the insurer should be held liable. Copies of the insurance contract, the discharge-vouchers, and various correspondences between the insured and the insurer are attached as evidence.

III. SUBMISSIONS

16. Counsel for the applicants identified the following three issues for determination –

- a) *Whether this court has jurisdiction and powers to adopt the assessment of the Director of Occupational Safety and Health (DOSHS).*
- b) *Whether this court should award interest on the director's award from the date the award was made and communicated to the respondent.*
- c) *Whether the respondents should pay costs of this application.*

17. On the first issue, it is submitted this court (Nderitu J) has held in the past that it has the requisite jurisdiction to hear and determine the issues raised in this application. Counsel cited ***Langi V County Government of Nakuru (2023) KEELRC 2155 (KLR) & Luvizu V Timsales Limited (2024) KEELRC 857 (KLR)*** wherein this court held that lack of provisions in the procedure to be adopted in bringing a matter such as this one to court should not be a bar to a rewarded applicant approaching court in any manner or style to obtain justice.

18. It is further submitted that based on the evidence from both sides, an award was made in favour of the applicants in the sum of Kshs6,566,400/= and no objection or appeal was lodged by the respondent against that award. It is submitted that since the award was made on 20th August 2021 no payment or offer has been made towards settlement of the same. It is submitted that the amount is now legally due and payable and the court is urged to allow the application to enable enforcement of the award.

19. On the second issue, the court is urged to award interest on the money from the date of award till payment in full as it was held in ***Luvizu V Timsales Limited (supra)***.

20. Further, the court is urged to award the costs of the proceedings to the applicants.

21. Counsel for the respondent identified the following three issues for the determination by the court –

1. *The honourable court lacks jurisdiction under WIBA to adopt DOSH award as judgment of the court for want of procedure*
2. *Whether the existence of a revised award creates a substantive dispute thus barring summary adoption.*
3. *Whether the prayer for interests is applicable.*

22. It is submitted that the application herein does not fall within the jurisdiction of this court as spelt out in ***Article 162 of the Constitution & Section 12 of the Employment and Labour***

Relations Court Act. It is submitted that the law does not provide for

the procedure of adoption and enforcement of the awards by the Directorate of Safety and Health (DOSHS). Counsel cited *Charles v Cheto (2025) KECA 784 (KLR)* stating that the applicants ought to have filed the matter in court by way of an ordinary claim.

23. On the second issue, it is submitted that by the applicants negotiating with the insurer and agreeing on a lower award, the obligation to settle the award shifted to the insurer and the respondent was thus discharged from liability. It is emphasized that the applicants are only entitled to the new negotiated and agreed amount and no more.
24. On the third issue, it is submitted that the court may only award interest as from the time of judgment.

IV. ISSUES FOR DETERMINATION

25. The factual background leading to this application has been set out by the parties and their respective counsel as per the summary in the preceding parts of this ruling. The gist of the application is that the applicants were awarded by DOSHS as alluded to above and four years thereafter the respondent has neither settled the award nor made acceptable or reasonable proposals on the settlement of the same. It is also not in dispute that the respondent neither objected to the award nor appealed the same notwithstanding that it was duly notified and demanded to settle the same.
26. However, the respondent is now opposed to the award alleging that the same was taken up by the insurer and that the applicants

renegotiated the same with the insurer whereby the same was reduced from Kshs6,566,400/= to Kshs4,000,000/=. Further, the respondent argues that it is the insurer who is now liable to settle the award. The respondent is further opposed to the application on the basis that this court lacks jurisdiction to grant the orders sought.

27. Upon the court considering the evidence availed by way of affidavits and the arguments advanced in the submissions from both sides, the following issues commend themselves to the court for determination-

- (i) Is this court (ELRC) clothed with the necessary and requisite jurisdiction to hear and determine the issues raised in the application?***
- (ii) If (i) above is in the affirmative, should the application be granted as prayed?***
- (iii) If (ii) above is in the affirmative, who is liable to settle the award?***
- (iv) Are the applicant's entitled to the award of Kshs6,566,400/= or the allegedly renegotiated sum of Kshs4,000,000/=?***
- (v) For what period should the award attract interest?***
- (vi) Costs.***

28. The College of Judges of this court (ELRC) has in the past had a rather divided approach in regard to the jurisdiction of the court to determine the issues raised in this application as evidenced by the authorities cited by counsel for both sides. Counsel for the applicants cited decisions in support of the court in having jurisdiction over the

subject matter while counsel for the respondent cited decisions to the contrary. Specifically, counsel for the applicant cited two decisions by this court (Nderitu J) wherein I held that the court has jurisdiction in adopting awards made by the DOSH for enforcement and execution.

29. In the two decisions, I took the liberty to explain in detail why I hold the view that the court has jurisdiction over the subject matter. I do not wish to reiterate or reproduce them here. While the dichotomy within the College of Judges of the Court is of itself not a healthy thing, and I hope the obscurity is cleared as soon as possible by way of clear legislation, the divergent views given by various judges on the subject matter enrich the jurisprudence.
30. However, this court has no reason and has not been persuaded to change the position that it took in *Langi V County Government of Nakuru (supra) & Luvizu V Timsales Limited (supra)*.
31. It is admitted by both sides, and the court readily admits, that there are no provisions on how an award by DOSH should be enforced. However, it would be an absurdity for anyone to contemplate that a holder of an award from DOSH has no remedy in law in enforcement and execution of the same where the employer fails, refuses, and or neglects to voluntarily and willingly settle the award. That is not one of the jurisdictional issues vested in the magistracy vide Legal Notice No. While it is correct to argue that had the respondent appealed or objected to the award to DOSH either party dissatisfied with the

outcome thereof should have had a right of appeal to this court, that does not and cannot take away the right of the applicants herein to approach this court to have the award adopted as a judgment of the court for the purposes of enforcement and execution.

32. By parity of the reasoning in the two decisions cited above and for the accompanying reasons, I find and hold that the application herein is properly before this court for the hearing and determination of the same on merits.
33. On the second issue, it is the undisputed evidence on record that after the applicant was injured and died DOSH investigated the claim, assessed the same, and made the award. The respondent does not dispute the fact that it was informed of the accident and even submitted the necessary claim Form DOSH 1 duly signed by its representative/agent.
34. It is also not in dispute that the respondent was informed of the award and it was demanded of it to settle the same in a notice dated 14th September 2020. Further, it is not in dispute that the respondent neither objected to nor appealed the award made.
35. However, in a belated, misguided, and misplaced objection to the award, the respondent now argues that the award was subsequently reduced by way of an agreement between the 1st applicant and the insurer, Monarch Insurance Company Limited. It is important to note that the respondent neither objected to nor appealed the award as

provided for in the law. The award as made by DOSH remains in force to this day.

36. In the circumstances, any amendment, revision, or interference with the award in any other manner other than as provided for in the law was illegal, null, and void. In any event, the alleged amendment or revision of the award by way of reduction thereof was not entered into between the applicants and the respondent who were essentially the primary parties in the matter before DOSH. The insurer was neither the employer nor had it a contract of liability with the applicants. Further, even if there was entered such an arrangement which in any event was illegal, the insurer failed, refused, and or neglected to settle the same and the *status quo ante* obtained holding the respondent liable to settle the claim.
37. Moreover, the respondent did not join the said insurer as a party in this application for the court to determine the issue of its liability. In any event, the relationship between the respondent and the insurer was a contractual commercial relationship that does not lie within the purview of the jurisdiction of this court. In my considered view, this argument by the respondent is an attempt to objecting to and or appealing the award through the backdoor.
38. The bottom-line is that the accident was investigated by DOSH and confirmed to fall within the purview of WIBA and an award was accordingly made in plain sight of the respondent who neither objected to nor appealed the same. The court finds no reason to

interfere with or vary the finding and the conclusion made by DOSH on the foregoing facts as presented by both sides.

39. For all the foregoing reasons the application is allowed in the terms hereunder.

VI. ORDERS

- (i) The notice of motion by the applicants dated 16th September 2025 is hereby allowed as hereunder.*
- (ii) Consequently, the assessment by DOSH dated 20th August 2021 in the sum of Kshs6,566,400/= against the respondent is upheld and adopted as a judgment of this court.*
- (iii) The above amount shall attract interest at court rates from the date of this ruling till payment in full.*
- (iv) Costs to the applicant.*
- (v) A decree shall issue accordingly.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 19TH DAY OF MARCH 2026.**

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DAVID NDERITU
JUDGE