

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

**MISC. APPLICATION NO. E151 OF 2025**

**RAYMOND MALUKI MUTUNJI ..... APPLICANT**

**VERSUS**

**MATHEW HIPOLITI LYAMUYA SOLUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**APA INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The applicant filed an application dated 16 December 2025 under the provisions of section 12 of the Employment and Labour Relations Court Act, Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, section 19(2) of the Work Injury Benefits Act, order 40 and 51 of the Civil Procedure Rules seeking order that the court do adopt the award of the Director, Occupational Safety and Health Services (DOSHS) made on 24 July 2025 as the order of the court. The application is also seeking the award of Ksh. 867,417.60 be paid with costs and interests from the date of the award.

The applicant's Supporting Affidavit supports the application, and he avers that he sustained a work-related injury on 16 February 2024 while employed by the 1<sup>st</sup> respondent as a casual worker. The incident was reported to DOSHS, who found 54% permanent disability and assessed compensation on 24 July 2024 at Ksh. 867,417.69. Despite being issued a notice to pay under the WIBA, the respondents have refused to pay.

The respondents have not filed any appeal or objections on the award, and under section 26(4) of the WIBA, such payment is now due with costs and interest from the date due.

The 2<sup>nd</sup> respondent is listed as the insurer of the 1<sup>st</sup> respondent and, hence, under the WIBA, is bound to make the payment for work injury. The respondents have jointly and severally failed to make payment despite notices being issued under DOSHS and the applicant.

In reply, the 1<sup>st</sup> respondent did not reply.

The 2<sup>nd</sup> respondent, APA Insurance Company Limited, filed the Replying Affidavit of Caroline Njeri Njuguna, an Advocate and legal officer, who avers that, being in charge of the claim, she is conversant with the matter and can make the reply.

The application by the applicant should be dismissed with costs against the 2<sup>nd</sup> respondent, as the court lacks jurisdiction to grant the orders set out against it. The applicant has no grounds, and orders ought not to be issued against the 2<sup>nd</sup> respondent.

Ms Njuguna asserts that the DOSHS form 1 dated 22 May 2025 does not indicate liability by the 2<sup>nd</sup> respondent as alleged. The 2<sup>nd</sup> respondent has neither issued, maintained, nor

covered the 1st respondent under any insurance policy under the WIBA. The claim that the notice issued in this regard is incorrect.

The 2<sup>nd</sup> respondent has not issued a policy cover or insured the 1<sup>st</sup> respondent for matters set out by the applicant. Where there is any cover for work injuries under any policy cover, the 2<sup>nd</sup> respondent is not privy to such contract.

Ms Njuguna avers that the only relationship the respondents have is in respect of a comprehensive Motor Commercial General Cartage Insurance Policy No. AB/807/0000157/000/03 was primarily issued under the Insurance (Motor Vehicle Third Party Risks) Act, which was in force from 18 August 2015 to 17 August 2016 and was not renewed. The claim against the 2<sup>nd</sup> respondent should be struck out with costs.

The applicant filed his Supplementary Affidavit and avers that the court has jurisdiction herein under the provisions of the WIBA, and that, despite notice to the respondents, they have not paid the award assessed for his work injury.

The applicant and the 2<sup>nd</sup> respondent attended court, made oral submissions, and reiterated the averments in the affidavits.

### **Determination**

The fact that the applicant was injured at work on 16 February 2024 is not contested.

The 1<sup>st</sup> respondent reported the work injury to DOSH. Under DOSH Form 1, clause 1(vii), the 1<sup>st</sup> respondent noted that there was WIBA policy cover under the 2<sup>nd</sup> respondent. Hence, upon DOSH's assessment of compensation, the requisite notice for payment was issued to both respondents. This is required under sections 17 and 26 of the WIBA.

However, as set out above, the 1<sup>st</sup> respondent did not attend these proceedings.

The 2<sup>nd</sup> respondent has attended, filed a response, and confirmed that the only insurance cover it maintains with the 1st respondent relates to a motor vehicle cover that ended on 17 August 2016 and has never been renewed. Without any challenge to these averments, the 1<sup>st</sup> respondent is liable to make the DOSH award and pay the applicant under section 26 of the WIBA.

The 2<sup>nd</sup> respondent is thus removed from these proceedings. There is no liability attached to the 2nd respondent in view of the averments set out in the Replying Affidavit of the legal officer, Ms Njuguna.

**Accordingly, judgment is hereby entered against the 1st respondent, Mathew Hipoliti Lyamuya Solutions, for the payment of Ksh. 867,417.60 to the applicant as directed by DOSH on 24 July 2025. The payment should be made within 45 days, after which costs shall accrue from this date until paid in full.**

Delivered in open court at Mombasa, this 19<sup>th</sup> day of March 2026.

M. MBARŨ

JUDGE

In the presence of:

Court Assistant: Omar

..... and .....