

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
MISC. APPLICATION NO. E012 OF 2025

GILBERT ALELA SERENJE APPLICANT
VERSUS
TEACHERS SERVICE COMMISSION RESPONDENT
(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. The applicant through Keverenget A. A. Advocates filed a notice of motion (the application) dated 26th September 2025 seeking for the following orders –

1. ***THAT this court adopts the assessment of the Director of Occupational Health and Safety dated 20th August, 2021 as an order of the court;***
2. ***THAT a decree be issued in accordance with the assessment of the Director of Occupational Health and Safety for the sum of Kenya Shillings Ksh. 1,984,665.60 (One million nine hundred and eighty-four thousand six hundred and sixty-five shillings only) with interest thereon at court rates from 20th August, 2021, when the award was made till payment in full;***

- 3. THAT costs of the application be paid by the respondents.**
2. The application is expressed to be brought pursuant to –
Rule 28(1)(b) and 31, 6(1)(a) and 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024, 2016, Section 12, 24(5), 87 of the Employment and Labour Relations Act, section 26, 52 and 51 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 affidavit of the applicant, sworn on even date, with several annexures thereto.
 4. Upon service of the application, the respondent through Patrick Mulaku Advocate filed a replying affidavit sworn by Chrisantose O. Ogonny, the Director Human Resource Management and Development, on 4th November 2025 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 applicant filed written submissions dated 17th October 2025 and Mr. Mulaku for the respondent filed submissions dated 4th November 2025.

II. THE EVIDENCE

6. As noted in the introductory part of this ruling above, in summary, the applicant is seeking that the assessment by the Directorate of

Occupational Health and Safety (DOSH) made on 20th August 2021 in the sum of Kshs1,984,665.60 be adopted by this court as a judgment and that a decree do issue for the purposes of enforcement. The applicant also seeks interest on the said award at court rates from the date of the award till payment in full. He is also seeking for costs of the application.

7. In the supporting affidavit it is deposed that the applicant was at all material times an employee of the respondent as a teacher. On 31st August 2018 while on duty he was involved in a road traffic accident suffering major injuries resulting in permanent disability. Attached to the affidavit is evidence of employment with the respondent and a certificate of disability.
8. It is deposed that on 17th August 2021 the respondent informed DOSH of the accident as required under the Work Injury Benefits Act (WIBA) and a copy of the said notice is annexed.
9. Subsequently, DOSH assessed the injury and the resultant disability and awarded the compensation in the award stated above which award was not challenged in any manner or style by the respondent. The respondent was notified of the award and demanded to settle the same vide a notice of 20th August 2021 but no payment was made.
10. It is deposed that this application has now been filed to enforce payment and settlement that the respondent has failed, refused, and or neglected to voluntarily do.

11. In the replying affidavit, it is admitted that the applicant was at the material times an employee of the respondent based at St. Bhakita Ebusirati Girls Secondary School.
12. However, it is denied vehemently that the applicant sustained the alleged injuries in the course of his employment or while on duty. It is deposed that his alleged duty-trip had not been approved by the employer or its representative and, in any event, the accident occurred while the applicant was riding on a motorcycle (boda boda).
13. It is further deposed that the accident occurred way outside the jurisdiction within which the applicant worked and no evidence was availed demonstrating that indeed the applicant was injured while at work, going to work, or while engaged in any work-related activity. It is deposed further that the foregoing position was communicated to the applicant vide a letter dated 15th October 2021. It is vehemently deposed that the accident was not covered under WIBA and the claim is thus illegal and unlawful.
14. The applicant filed a further affidavit sworn by himself on 17th November 2025 wherein it is deposed that the Principal of the school, on behalf of the respondent, admitted and acknowledged the accident to have occurred within the limits covered under WIBA in that the applicant was on his way to lead pupils on a Geographical study-tour of Mudete Tea Factory. A copy of the said letter is annexed.

15. It is further deposed that DOSH investigated the accident and concluded that the circumstances thereof were within the limits envisaged under WIBA and hence proceeded to assess the injury and the resultant disability culminating in the award as stated above. It is further deposed that the issues raised in the replying affidavit are an afterthought and overtaken by events as the respondent ought to have raised them with the DOSH or through an objection or an appeal to the award as envisaged under WIBA.

III. SUBMISSIONS

16. Counsel for the applicant submitted that the evidence on record confirms that the applicant was injured on his way to work to take students on a study-tour of Mudete Tea Factory. It is submitted that the facts and the circumstances confirming the foregoing were affirmed by the Principal of the school in a letter alluded to above. It is further submitted that the accident and the circumstances pertaining thereto were investigated by DOSH culminating in the assessment and the award made.

17. It is submitted that a demand notice was issued by DOSH to the respondent on 20th August 2021. Further, is submitted that the respondent did not challenge the award in any way or manner even upon being notified of the award and yet no payment has been made towards settlement thereof.

18. Counsel for the applicant isolated the following issues for consideration and determination by the court –

- a) Whether this court has jurisdiction and powers to adopt the assessment of the DOSH.***
- b) Whether the applicant's injury was as a result of an accident in the course of work***
- c) Whether this court should award interest on the director's award from the date the award was made and communicated to the respondent.***
- d) Whether the respondents should pay costs of this application.***

19. In regard to issue (a) it is submitted that this court has the jurisdiction to hear and determine the issues raised in the application and grant the orders sought. Counsel has implored this court to follow its own two decisions in ***Langi V County Government of Nakuru (2023) KEELRC 2155 (KLR) & Luvizu V Timsales Limited (2024) KEELRC 857 (KLR).***

20. On the second issue, it is submitted the respondent having failed to appeal or object to the award within 60 days of the notice of demand served upon it by the DOSH, the award became binding, due, payable, and enforceable. It is submitted that the issues now raised by the respondent are an afterthought and coming up too late in the day. It is submitted that this court cannot sit on appeal of the award yet the

respondent has not exhausted the appeal process provided for under ***Section 51 of WIBA***.

21. It is reiterated, and the court is reminded, that the applicant was injured while on duty going on a study-tour with students as confirmed by the letter from the Principal of the school who is essentially an agent of the respondent. In any event, it is submitted that the DOSH investigated the claim and established that the same was within the jurisdiction delineated under ***WIBA*** and on that basis assessed the injury and disability culminating in the lawful award.
22. On the third issue, it is submitted that it is the respondent who has deliberately and without any justification delayed settlement of the award for over four years and hence should be ordered to pay interest on the same since it was made. It is submitted that the court should award interest at court rates from the date the award was made till payment in full just like the court ordered in the two decisions cited above.
23. On costs, the court is urged to award the same to the applicant who has been pushed to file the matter in court after the respondent adamantly failed, refused, and or neglected to settle the award for an inordinately lengthy period.
24. Counsel for the respondent reiterated that the accident that involved the applicant did not occur in the course of his duties as an employee

of the respondent. It is thus argued that the applicant was in those circumstances not covered under **WIBA**.

25. Counsel isolated the following issues for determination by the court

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- a. *Whether the court has jurisdiction to entertain the application.*
- b. *Whether it is mandatory for the court to adopt an award by the Director of Occupational Safety & Health.*
- c. *Whether the Applicant is entitled to reliefs sought.*

26. On the first issue, it is submitted that this court lacks jurisdiction to entertain the application. The court is urged to be persuaded by the decisions of Rika J. in ***Peter Mutua Karoki V China State Construction & Engineering Corp (Kenya) & Another (2022)***; Nzioki Wa Makau J. in ***Evans Kaganane Anyiti V Dunhill Building Constructor Limited & Another (2021)***; and, Dr. Gakeri J. in ***Musembi V Great Yaduo Industry Limited (2022) KEELRC 13025 (KLR)*** to the effect that this court can only interact with an award from DOSH by way of an appeal.

27. On the second issue, it is reiterated that the applicant was neither at work nor going to work or furthering his official duties when he was involved in the accident giving rise to these proceedings. It is argued that DOSH lacked jurisdiction to investigate and assess the claim let alone making the award. The court is urged to investigate the circumstances under which the applicant was injured and make the

finding that the same did not fall within the purview of **WIBA** and hence set aside the award and dismiss the application with costs.

IV. ISSUES FOR DETERMINATION

28. 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 part of this ruling. The gist of the application is that the applicant was awarded by DOSH as alluded to in the foregoing parts of this ruling 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 of the same and demanded to settle the same.
29. However, the respondent is now opposed to the award alleging that the same was made in error on the basis that the applicant was injured not in the course of his duties as an employee of the respondent in the capacity of a teacher. The respondent is further opposed to the application on the basis that this court lacks jurisdiction to grant the orders sought.
30. In consideration of 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

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(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) Costs.

31. The College of Judges of this court (ELRC) has 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 applicant cited decisions in support of the court 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.

32. 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 is good in enriching the jurisprudence and adds value.

33. However, this court has no reason to change the position that it took in *Langi V County Government of Nakuru (supra) & Luvizu V Timsales Limited (supra)*.

34. It is admitted by both sides, and the court readily admits, that there are no procedural provisions on how an award by DOSH should be enforced. However, it is an absurdity to hold that a holder of an award from DOSH has no remedy in law in enforcement and execution of the same. That is not one of the jurisdictional issues vested in the magistracy. While it is correct 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 applicant herein in approaching this court to have the award adopted as a judgment of the court for the purposes of enforcement and execution.

35. By parity of the reasoning in the above two cited decisions and for the reasons stated above, I hold that the application herein is properly before this court for hearing and determination on merits.

36. On the second issue, it is the undisputed evidence on record that after the applicant was injured as alluded to elsewhere in this ruling 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, Sub-County Director, Emuhaya.

37. 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 20th August 2021. Further, it is not in dispute that the respondent neither objected to nor appealed the award made.
38. However, in a belated and misplaced objection to the award, the respondent now argues that the award was made in error as the applicant was allegedly not injured while at work or on duty. In my considered view, this argument by the respondent is an attempt to objecting to and or appealing the award through the backdoor.
39. The fact of whether the applicant was injured on duty or while at work was settled by the respondent itself when the principal of the school where the applicant was teaching confirmed in a letter dated 23rd August 2021 that indeed the applicant was injured “***while traveling to school to take students for a Geography Field study to Mudete Tea Factory***”. For all intents and purposes the principal of the school is an agent of the respondent and the supervisor to the applicant. No evidence to the contrary was availed by the respondent.
40. 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.

41. For all the foregoing reasons the application is allowed as prayed.

VI. ORDERS

- (i) The notice of motion by the applicant dated 26th September 2025 is hereby allowed as prayed.*
- (ii) Consequently, the assessment by DOSH dated 20th August 2021 in the sum of Kshs1,984,665.60 is 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