



REPUBLIC OF KENYA



Mutunga & another (Suing as wife and brother in the Estate of Moriasi Simon Vigne) v Paksa Construction Limited (Miscellaneous Application E129 of 2025) [2026] KEELRC 906 (KLR) (10 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 906 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E129 OF 2025**

**AK NZEI, J
APRIL 10, 2026**

BETWEEN

**QUEEN ELIZABETH MUTUNGA AND 1ST APPLICANT
ZACHARY OCHOGO BOSIRE 2ND APPLICANT
SUING AS WIFE AND BROTHER IN THE ESTATE OF MORIASI SIMON
VIGNE**

AND

PAKSA CONSTRUCTION LIMITED RESPONDENT

RULING

1. The proceedings herein were initiated by the Applicants (Queen Elizabeth Mutunga and Zachary Ochogo Bosire – as personal representatives of Moriasi Simon Vigne – deceased) vide a Notice of Motion dated 12th May, 2025; in which the Applicants seek the following substantive Orders:-
 - a. That the Court adopts the award of Kshs.2,995,200/= as per WIBA FORM 4.
 - b. That the Court orders the Respondent to pay the [said] Kshs.2,995,200/= to the Applicants.
 - c. That costs of the application be provided for.
2. The application is supported by supporting affidavits of the two Applicants, both sworn on 12th May, 2025. It is deponed in the said supporting affidavits:-
 - a. that prior to his death, the deceased was working as a carpenter with Paska Construction Limited (whose head office is located at Upperhill Nairobi), earning a salary of Kshs.31,200/=.
 - b. that the deceased died on 13th January, 2024 while on duty dismantling a scaffolding within Nairobi City County.



- c. that the Respondent (being the employer) duly filled and served DOSH FORM 1.
 - d. that Kshs.2,995,200/= was awarded and DOSH FORM 4 was duly filled on 12th October, 2024; and was served on the employer and the Insurer, Monarch Insurance Company, but no action was taken.
 - e. that a reminder was made to both the employer and the insurer on 22nd January, 2025.
3. Documents annexed to the said supporting affidavits include copies of DOSH/WIBA FORM 1 (duly filled and signed by the Employer – Paska Construction Limited), DOSH/WIBA/ FORM 4 dated 12th October, 2024 (duly filled and signed by the Director, Occupational Health and Safety), death certificate on the deceased, and a Limited Grant of Letters of Administration Ad Litem issued on 5th May, 2025 in favour of the Applicants herein, among other documents.
 4. The Respondent responded to the foregoing application vide a replying affidavit of James Njiru (the Respondent’s Accounting Manager) sworn on 25th July, 2025. It is deponed in the said replying affidavit:-
 - a. that the deceased (Moriassi Simon Vigne) was employed by the Respondent as a carpenter at a construction site in Parklands area, where he tragically lost his life.
 - b. that at the material time, the Respondent had procured a Work Injury Benefits Act (WIBA) insurance from The Monarch Insurance Company under Policy No. HDO/1101/000667/2023 which covered the claim by the Applicants.
 - c. that the said insurance company is contractually obligated to indemnify the Respondent against claims arising out of accidents that may occur during construction, and that the claim herein falls within the scope covered by The Monarch Insurance Company Limited.
 5. Documents annexed to the said replying affidavit include copies of an insurance policy and email correspondence.
 6. Further, the Respondent filed a Notice of Motion dated 25th July, 2025 seeking the following substantive Orders:-
 - a. That the Respondent/Applicant be granted leave to issue Third Party Notice against The Monarch Insurance Company Limited; and the same be served against the said Intended Third Party.
 - b. That costs of the application be provided for.
 7. The application is based on the supporting affidavit of James Njiru (the Respondent’s Accounting Manager) sworn on 25th July, 2025 and substantially restating the matters stated in paragraph 4 of this Ruling.
 8. The said application is opposed by the Applicants vide a replying affidavit of Queen Elizabeth Mutunga (the 1st Respondent) sworn on 29th July, 2025, the contents of which I have noted.
 9. Both parties filed written submissions on the two applications herein (the Applicants’ Notice of Motion dated 12th May, 2025 and the Respondent’s Notice of Motion dated 25th July, 2025) pursuant to the Court’s directions in that regard. The said two applications are now before me for determination; and I will first determine the Respondent’s Notice of Motion dated 25th July, 2025.



The Notice of Motion dated 25th July, 2025

10. As already stated in paragraph 6 of this Ruling, the Respondent is asking this Court to grant it leave to issue and serve a Third Party Notice on its Insurer, Monarch Insurance Company Limited, and states in the affidavit sworn on its behalf in support of the application that the said insurance company is;

“4. . . . Contractually obligated to indemnify the Respondent against claims arising out of accidents that may occur during construction.

5. That if the Applicant is entitled to any compensation for damages arising from the accident, this claim falls within the scope covered by The Monarch Insurance Company Limited, and therefore, any liability if at all, that may be established against the Respondent is rightly and lawfully recoverable from The Monarch Insurance Company.”

11. It ought to be noted that under the *Work Injury Benefits Act* (WIBA), determination of the issues of liability and assessment of compensation payable to employees who sustain work related injuries falls within the province of the Director of Occupational Safety and Health Services (the Director). Section 23(1) of the said Act provides as follows:-

“(1) After having received notice of an accident or having learned that an employee has been injured in an accident, the Director shall make such inquiries as are necessary to decide upon any claim or liability in accordance with this Act.”

12. Once the Director makes his decision on the aforesaid twin issues of liability and assessment of compensation/damages payable to an injured employee and/or to the estate of a deceased employee where death results from work injuries, any person and/or entity aggrieved by such decision can only challenge the same pursuant to Sections 51 and 52 of the WIBA.

13. The Respondent, against which the Director is shown to have made an award of Kshs.2,995,200/= on 12th October, 2024, is not shown to have objected to that decision pursuant to Section 51 of the WIBA, or to have appealed against any decision arising from such objection pursuant to Section 52 of the said Act.

14. In view of the foregoing, this Court’s duty herein is limited to enforcing the Director’s said award/ decision, which has long vested; and has no jurisdiction to determine issues liability in WIBA matters. The Respondent’s Notice of Motion dated 25th July, 2025 cannot succeed, and is hereby dismissed with no order as to costs.

The Notice of Motion dated 12th May, 2025

15. Orders sought in the Notice of Motion dated 12th May, 2025 are already set out in paragraph 1 of this Ruling. There having been no objection to the Director’s decision on liability and assessment of compensation payable to the Applicants, and the Respondent having failed to pay the assessed sum of Kshs.2,995,200/= upon demand by the Director as evidenced by the DOSH/WIBA/FORM 4 dated 12th October, 2024, the Applicants have rightly and lawfully moved this Court to enforce the Director’s said decision; and the Court is obligated to enforce the same.



16. This Court stated as follows in my decision in the case of Amir Swaleh Omar – vs – Mackenzie Maritime (E.A) Limited [2022] eKLR:-

“

“ 17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of Jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of WIBA, the assessed sum becomes the injured employee’s right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director’s assessment, and issuance of a decree which can then be executed to realise that right.

19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine.

Article 50(1) of *the Constitution* of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”

17. In view of all the foregoing, the Applicant’s Notice of Motion dated 12th May, 2025 must succeed, and is hereby allowed in the following terms:-

- a. The Director’s award dated 12th October, 2024 is hereby adopted by this Court and accordingly, Judgment is hereby entered for the Applicants against the Respondent in the sum of Kshs.2,995,200/=, being the sum awarded by the Director.
- b. Costs of the application shall be paid to the Applicants by the Respondent, to be agreed or taxed.
- c. A decree shall issue in accordance with the Civil Procedure Rules, pursuant to Section 13 of the *Employment and Labour Relations Court Act*.

18. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF APRIL 2026

AGNES KITIKU NZEI



JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Amenity for the Applicants

Miss Anisa for the Respondent

