

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**  
**CONSTITUTIONAL PETITION NO. E003 OF 2025**

IN THE MATTER OF: ARTICLES 2(1)(2), 10 (2a, b, c), 20 (1) (2) (3) (4), 21 (1), 22 (1), 23 (1)(3), 25(c), 27(1) (2), 40(1a,b), 40(3), 47 (1)(2), 48, 50 (1), 73, 165 (3a,b,d(ii)), 258(1), 259 (1) (a,b,d) OF THE CONSTITUTION OF KENYA, 2010 AS READ TOGETHER WITH RULES 4, 5, 8, 9, 10, 11 & 14 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS), PRACTICE AND PROCEDURE RULES 2013.

**AND**

IN THE MATTER OF: ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLES 20(2), 21(1), 25(c), 27 (1) & (2);40 1(a,b), 40 (3); 47(1) & (2); 48; AND 50 (1) OF THE CONSTITUTION OF KENYA, 2010.

**AND**

IN THE MATTER OF: THE WORK INJURIES BENEFITS ACT, CAP. 236 LAWS OF KENYA.

**AND**

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015

**BETWEEN**

**HOSANI EAST AFRICA LIMITED.....PETITIONER**

**VERSUS**

**DIRECTOR OF OCCUPATIONAL SAFETY**

**AND HEALTH SERVICES-LAIKIPIA COUNTY.....1<sup>ST</sup>**

**RESPONDENT VERONICAH WAHU NDERI.....2<sup>ND</sup>**

**RESPONDENT**

**JUDGMENT**

1. The Petitioner avers that on 16<sup>th</sup> September 2022, it arranged for the transportation of its motor grader, registration number KHMA 346T, from Murang'a to its project site at Kinamba House Water Pans in Nyahururu, Laikipia County. For this purpose, it engaged a third party who provided motor vehicle registration number KBU 998H/ZD 8661, being a specialised trailer (low loader) with a low deck height used for transporting heavy equipment and machinery.
  
2. The Petitioner further avers that it issued clear and unequivocal instructions to its employee, the late Ronald Maina Kamau (deceased), to oversee the loading of the motor grader at the point of departure and its offloading upon arrival at the destination.
  
3. It is the Petitioner's case that the deceased was required to supervise the transportation remotely while travelling separately in a hired vehicle, the cost of which was to be met by the Petitioner.

4. The Petitioner states that on 17<sup>th</sup> September 2022, prior to departure, the deceased confirmed to its manager that all logistical arrangements had been finalised, including the hiring of a taxi for his personal travel to Nyahururu.
5. The Petitioner contends that, without its knowledge or approval, the deceased opted to travel on board the low loader transporting the motor grader, a decision it characterises as unauthorised, personal, and outside the scope of his employment.
6. The Petitioner avers that in the early hours of 18<sup>th</sup> September 2022, an accident occurred in which the motor grader, while mounted on the low loader, collided with the cab of the vehicle, resulting in fatal injuries to the deceased.
7. The Petitioner further states that, in compliance with Section 22(2) of the Work Injury Benefits Act (WIBA), it reported the accident to the 1<sup>st</sup> Respondent on 30<sup>th</sup> November 2022 by submitting Form ML/DOSH/FORM 1 dated 29<sup>th</sup> November 2022.
8. The Petitioner contends that on the same date, 30<sup>th</sup> November 2022, the 1<sup>st</sup> Respondent proceeded to issue an award without conducting any inquiry, investigation, or assessment of the circumstances of the accident or the Petitioner's liability, contrary to Section 23(1) of WIBA.

9. It further contends that although the award bears the date of 30<sup>th</sup> November 2022, it was signed on 29<sup>th</sup> November 2022, which, in its view, defies logic and legal principles.

10. The Petitioner avers that by a letter dated 22<sup>nd</sup> December 2022, it formally objected to the award and sought its review. It avers that despite raising substantive grounds, the 1<sup>st</sup> Respondent failed or neglected to respond, thereby denying it an avenue for appeal.

11. The Petitioner further avers that on 9<sup>th</sup> September 2024, it received a demand from the 1<sup>st</sup> Respondent for settlement of the award, notwithstanding the unresolved objection.

12. According to the Petitioner, the process culminating in the issuance of the award was fraught with glaring irregularities, procedural improprieties, and violations of both statutory and constitutional provisions.

13. The Petitioner also contends that following the issuance of the award, the 2<sup>nd</sup> Respondent, allegedly acting on the basis of unlawfully obtained letters of administration ad litem, assumed the role of administrator of the deceased's estate and instituted proceedings against the Petitioner in ***ELRC Misc. E002 of 2025, namely Veronica Wahu Nderi (suing on behalf of the estate of Ronald***

*Maina Kamau) v Hosan East Africa Limited*, seeking to have the award adopted as an order of the Court for purposes of execution.

14. It is against this background that the Petitioner seeks the reliefs set out in the Petition:

- a) **A declaration be and is hereby issued that the award issued by the 1<sup>st</sup> Respondent on 30<sup>th</sup> November 2022 is null and void.**
- b) **A declaration that the 1<sup>st</sup> Respondent is in violation of the Petitioner's rights under Articles 20(2), 21(1), 25(c), 27 (1) & (2), 47(1) & (2), 48; and 50 (1) of the Constitution of Kenya 2010.**
- c) **A declaration that the Petitioner's right to own property under Article 40 1 (a & b), 40 (3) of the Constitution is threatened by the 2<sup>nd</sup> Respondent.**
- d) **A prohibitory injunction prohibiting the 2<sup>nd</sup> Respondent by herself or her agents, or any other person acting under her authority, from enforcing the alleged award and/or conducting execution proceedings against the Petitioner in pursuance of the sum awarded on 30<sup>th</sup> November 2022.**
- e) **An order prohibiting the implementation, execution, or any form of enforcement of the impugned award dated 30<sup>th</sup> November 2022, including but not limited to any attempts to demand, recover, or**

**collect any sums purportedly arising therefrom against the Petitioner.**

- f) An award for general damages for breach of the Petitioner's rights under Articles 20(2), 21(1), 25 (c), 27(1) & (2), 47(1) & (2) 48; and 50 (1) of the Constitution of Kenya, 2010.**
- g) An award for exemplary damages and aggravated damages under Article 23(3) of the Constitution of Kenya, 2010.**
- h) Interest on the sums awarded above from the date of filing this Petition until payment in full.**

15. The 1<sup>st</sup> Respondent opposed the Petition through a Replying Affidavit sworn on 9<sup>th</sup> May 2025 by its Assistant Director, **Tom Opiyo**.

16. Mr. Opiyo denies that the 1<sup>st</sup> Respondent failed and/or refused to consider any claims or concerns relating to the Petitioner's work injury claim. To this end, he has proceeded to detail the process of claim lodgment and compensation.

17. He further avers that on 30<sup>th</sup> November 2022, the 1<sup>st</sup> Respondent received a notice from the Petitioner reporting a fatal occupational accident that had occurred on 18<sup>th</sup> September 2022, submitted in the prescribed Form ML/DOSH/FORM 1, concerning the deceased. He states that although the

notification was made outside the statutory timeline under WIBA, it was nonetheless received and acknowledged. He further states that the form was delivered by a managerial employee of the Petitioner, who confirmed that the deceased sustained fatal injuries in the course of employment.

18. Mr. Opiyo further avers that the prescribed form was accompanied by supporting documents, including a post-mortem report, a burial permit, and the deceased's national identification card. On the basis of these materials, the 1<sup>st</sup> Respondent formed the view that the accident was fatal.

19. He adds that the Petitioner's managerial employee expressed regret for the delayed reporting and requested expedited processing of benefits for the deceased's dependants. He further states that the employee contacted the Petitioner by phone while at the 1<sup>st</sup> Respondent's office, and that the Petitioner similarly expressed regret and requested computation of compensation payable to the dependants.

20. Mr. Opiyo avers that, given the fatal nature of the accident amounting to 100% permanent incapacity, the 1<sup>st</sup> Respondent proceeded to compute the compensation due in accordance with WIBA, arriving at a sum of Kshs 5,760,000/- payable to the dependants.

21.He states that a formal demand was issued to the Petitioner through the prescribed Form DOSH/WIBA 4 dated 30<sup>th</sup> November 2022, indicating the computed compensation.

22.Mr. Opiyo further avers that the 1<sup>st</sup> Respondent commenced the process of identifying the deceased's dependants, culminating in the issuance of dependency certificates listing the beneficiaries.

23.He states that upon expiry of the statutory 90-day period without settlement of the assessed compensation, the 1<sup>st</sup> Respondent issued a reminder to the Petitioner by letter dated 6<sup>th</sup> September 2024.

24.Mr. Opiyo contends that the Petitioner did not raise any valid objection or dispute regarding the claim, save for a letter dated 22<sup>nd</sup> December 2022, which was neither submitted in the prescribed form nor supported by requisite particulars.

25.Consequently, in the absence of a proper objection, the 1<sup>st</sup> Respondent upheld its determination that Kshs 5,760,000/- was the amount payable to the dependants of the deceased.

26. He further avers that the Petitioner failed to lodge any objection, dispute, or appeal in the prescribed form within the statutory period of 60 days as required under WIBA, and that any subsequent attempt to do so was rejected for being out of time.

27. Mr. Opiyo maintains that WIBA does not provide for the denial of compensation to an injured employee or dependants on the basis that the employee failed to follow instructions. He contends that compensation remains payable notwithstanding allegations of disobedience or self-inflicted injury, and that such circumstances do not absolve the Petitioner of liability.

28. He further asserts that the Petitioner failed in its duty under the Occupational Safety and Health Act to ensure safe systems and procedures of work, thereby exposing the deceased to risk, which resulted in the fatal injuries sustained while supervising the transportation of the motor grader.

29. Mr. Opiyo maintains that the Petitioner did not follow due process in lodging an objection before the 1<sup>st</sup> Respondent, thereby denying it an opportunity to review, vary, or uphold its decision in light of the alleged grounds.

30. He denies that the 1<sup>st</sup> Respondent violated any constitutional provisions, the Fair Administrative Action Act, 2015, or WIBA, and contends that it acted lawfully,

while attributing fault to the Petitioner for failing to adhere to the prescribed dispute resolution procedures.

31. In a rejoinder, the Petitioner filed a Further Affidavit sworn on 30<sup>th</sup> July 2025 by its Managing Director, **Francis Njora Nyota**, who deposes that the 1<sup>st</sup> Respondent, through its Replying Affidavit, effectively admits that it did not conduct any inquiry or investigation into the circumstances of the accident as required by law.

32. He further avers that the 1<sup>st</sup> Respondent acknowledges that it did not render any determination or reasoned decision in response to the Petitioner's formal objection dated 22<sup>nd</sup> December 2022, either within the statutory timeframe or at all.

33. Mr. Njora states that, on the advice of the Petitioner's advocates, which he believes to be sound, the failure by the 1<sup>st</sup> Respondent to issue a written and reasoned decision constitutes a violation of Section 4 of the Fair Administrative Action Act and infringes the Petitioner's constitutional rights as pleaded.

34. The 2<sup>nd</sup> Respondent, **Veronica Wahu Nderi**, opposed the Petition through a Replying Affidavit sworn on 8<sup>th</sup> May 2025.

35. Ms. Wahu avers, on advice of counsel, that the Petitioner has engaged in forum shopping, arguing that since there are proceedings pending in another court concerning the same award, the issues raised herein ought to be canvassed in that forum.

36. In a Further Affidavit sworn on 24<sup>th</sup> October 2025, Ms. Wahu deposes that she is the widow of the deceased, who died in the course of employment on 18<sup>th</sup> September 2022 following the accident in question.

37. She states that after the accident was reported by the Petitioner to the 1<sup>st</sup> Respondent via Form ML/DOSH/FORM 1, an award of Kshs 5,760,000/- was assessed in favour of the deceased's dependants, which remains unpaid.

38. She further avers, on legal advice of her counsel, that Section 26(4) of WIBA requires settlement of such claims within 90 days, and that due to the Petitioner's failure to comply, she instituted enforcement proceedings through *Miscellaneous Cause E023 of 2025*, which remains pending.

39. Ms. Wahu contends that although the Petitioner claims its objection dated 22<sup>nd</sup> December 2022 was not considered, the same was not lodged in the prescribed form as required under WIBA, but merely as a letter.

40. She further states that, in the absence of a valid objection and upon lapse of the statutory period, the 1<sup>st</sup> Respondent issued a reminder dated 6<sup>th</sup> September 2024 requiring settlement within 14 days.

41. She avers that despite this reminder, no payment was made, and therefore the Petitioner cannot legitimately allege violation of its constitutional rights, having failed to lodge a proper objection or communicate any intention to settle the claim.

### **Submissions**

42. The Petition was canvassed by way of written submissions. All parties except the 1<sup>st</sup> Respondent filed written submissions.

43. On its part, the Petitioner submitted that WIBA clearly separates the obligation to report an accident from any admission of liability. In its view, the act of reporting does not amount to evidence of fault but merely serves as a statutory trigger enabling the Director to initiate the investigative process contemplated under the Act.

44. Relying on the decision in ***Solanki v Nairobi Gymkhana & another (Petition E480 of 2023) [2025] KEHC 4387 (KLR)***, the Petitioner argued that an inquiry under Section 23(1) of WIBA is not a procedural formality but a central

statutory safeguard designed to ensure that awards are grounded on facts established through investigation, rather than assumptions or administrative convenience, and are consistent with the requirements of fair administrative action.

45. The Petitioner further contended that, had the Director complied with Section 23 of WIBA, critical facts would have emerged, namely, that the Petitioner had expressly instructed the deceased not to travel on the low loader, provided Kshs 35,000/- for alternative transport, and received confirmation from the deceased that he would travel separately, notwithstanding which he disregarded those instructions. According to the Petitioner, these facts were central to the issue of liability, particularly in determining whether the deceased was acting in the course of employment.

46. Citing the case of *Attorney General v Law Society of Kenya & Another [2017] KECA 176 (KLR)*, the Petitioner submitted that considerations of administrative efficiency cannot override constitutional safeguards, and that statutory powers must be exercised in a manner that is fair, transparent, and rational.

47. The Petitioner maintained that it was denied these fundamental protections, as no notice was issued, no inquiry conducted, and no opportunity afforded to present its case, yet liability was imposed without its participation. It therefore asserted that this amounted to a clear violation of its right to a fair hearing.

48. In the same vein, the Petitioner argued that the impugned award was not the result of any inquiry, evaluation, or statutory process, but rather a pre-determined computation made in the absence of factual and procedural engagement.

49. It was the Petitioner's further submission that the 1<sup>st</sup> Respondent not only denied it (Petitioner) an opportunity to be heard but also predetermined liability before it had properly submitted its statutory report. The Petitioner argued that the award was prepared, signed, and issued without any inquiry or engagement on its position, thereby amounting to blatant prejudice and a violation of the right to fair administrative action under Article 47.

50. Referring to the case of *Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others [2016] eKLR*, the Petitioner contended that the 1<sup>st</sup> Respondent failed to render a decision on the merits, failed to formally reject

the objection, and did not address the apparent irregularity of an award that was predated.

51. The Petitioner further submitted that the 1<sup>st</sup> Respondent's unexplained silence amounted to a clear abdication of the statutory duty imposed under Section 52(2) of WIBA and constituted a breach of its right to expeditious, lawful, and procedurally fair administrative action under Article 47 and Section 4 of the Fair Administrative Action Act.

52. According to the Petitioner, the 1<sup>st</sup> Respondent's conduct reflected a consistent pattern of constitutional violations, including infringement of the right to fair administrative action under Article 47, denial of access to justice and a fair hearing under Articles 48 and 50, and breach of the State's obligations under Articles 20, 21, and 27 of the Constitution.

53. On the other hand, the 2<sup>nd</sup> Respondent submitted that the Petitioner was required to follow the statutory procedure under Section 51 of WIBA by lodging an objection in the prescribed form within 60 days.

54. The 2<sup>nd</sup> Respondent argued that, having failed to comply, the letter relied upon by the Petitioner was invalid. In support of this position, reliance was placed on

the case of *Speaker of the National Assembly v Karume [1992] eKLR*, *Injera v Tradewinds Aviation Services Limited (Miscellaneous Application E212 of 2022) [2023] KEELRC 1325 (KLR)*, and *Atswenje v Butali Sugar Mills Ltd (Employment and Labour Relations Cause E004 of 2024) [2024] KEELRC 2636 (KLR)*.

55. The 2<sup>nd</sup> Respondent maintained that, in the circumstances, she acted lawfully in proceeding with the enforcement of the award, given that the Petitioner neither lodged a proper objection nor complied with the award issued by the Director.

56. It was further submitted by the 2<sup>nd</sup> Respondent that although the Petitioner had a statutory right to object, it failed to exercise that right within the prescribed timelines, leading to the issuance of a reminder for settlement.

57. The 2<sup>nd</sup> Respondent further posited that no request for review was made and that the Petitioner did not comply with Sections 51 and 52 of WIBA. On this score, reliance was placed on the decision in *United Millers Limited v Kenya Bureau of Standards & 5 others (Petition (Application) 4 of 2021) [2021] KESC 72 (KLR)*, *Sumayya Athmani Hassan v Paul Masinde Simidi (2019)*, and *Walala v Guardian Coach Limited; Directorate of Occupational Safety and Health Services (Judicial Review Application E065 of 2024 &*

***Miscellaneous Application E345 of 2024 (Consolidated) [2025] KEELRC  
792 (KLR).***

58. The 2<sup>nd</sup> Respondent further submitted that, this not being an appeal under Section 52 of WIBA, the Court ought not to entertain issues on the merits, including the cause of death or the fairness of the assessment, as such matters fall within the scope of an appeal under the Act.

59. The 2<sup>nd</sup> Respondent further contended that the Petitioner, having failed to act within the statutory timelines, could not subsequently allege violation of its constitutional rights arising from its own non-compliance.

60. It was also submitted by the 2<sup>nd</sup> Respondent that a constitutional petition cannot be invoked to circumvent the statutory dispute resolution mechanisms provided under WIBA, particularly where the grievance concerns the issuance of an award and alleged procedural deficiencies.

61. According to the 2<sup>nd</sup> Respondent, the present Petition is, in substance, a disguised appeal, as it seeks to quash a WIBA award and invite the Court to re-evaluate issues falling squarely within Sections 23–30, 51, and 52 of the Act.

62. Relying on the case of *Anarita Karimi Njeru v Republic [1979] eKLR*, the 2<sup>nd</sup> Respondent submitted that the Petitioner had not demonstrated any violation of Article 47, given that the Director acted on documents the Petitioner duly submitted as an employer.

63. Placing reliance on the case of *Judicial Service Commission v Mbalu Mutava [2015] eKLR*, the 2<sup>nd</sup> Respondent submitted that processes undertaken by the Directorate of Occupational Safety and Health Services are administrative in nature and not adversarial proceedings, and therefore the Petitioner cannot invoke Article 50.

64. The 2<sup>nd</sup> Respondent further submitted that there was no violation of Article 40 on the right to property, as obligations arising under WIBA are statutory in nature and do not amount to deprivation of property. In support of this argument, reliance was placed on the case of *Kenya Power & Lighting Co. Ltd v Wanjiru Wambui [2019] eKLR*.

### **Analysis and Determination**

65. Having considered the Petition, the responses by the Respondents, the affidavits on record, and the parties' respective submissions, the Court finds that the sole

issue for determination is whether there has been a violation of the Petitioner's constitutional rights.

66. It is not in dispute that the deceased was an employee of the Petitioner and that he was involved in a fatal accident on 18<sup>th</sup> September 2022, which resulted in his death.

67. It is equally common ground that the Petitioner reported the accident to the 1<sup>st</sup> Respondent pursuant to **Section 22(1) of WIBA**, following which the 1<sup>st</sup> Respondent issued an award in favour of the deceased's dependants in the sum of Kshs 5,760,000/-.

68. The Petitioner contends that the 1<sup>st</sup> Respondent issued the award without conducting any inquiry, investigation, or assessment of the circumstances surrounding the accident, in contravention of **Section 23(1) of WIBA**. It argues that this omission rendered the award arbitrary and procedurally flawed, and that its report made under **Section 22(1) of WIBA** was improperly misconstrued as an admission of liability.

69. The Petitioner further avers that the 1<sup>st</sup> Respondent failed to consider or respond to its objection, thereby denying it an avenue for appeal.

70. On this basis, the Petitioner asserts that the 1<sup>st</sup> Respondent violated its rights to fair administrative action, access to justice, and a fair hearing.

71. In its response, the 1<sup>st</sup> Respondent maintains that upon receipt of the accident report, the Petitioner's representative furnished supporting documentation, including a post-mortem report, burial permit, and the deceased's national identity card, thereby providing a sufficient basis to conclude that the accident was fatal.

72. The 1<sup>st</sup> Respondent further avers that the Petitioner's representative acknowledged the delay in reporting the accident and requested that the processing of benefits due to the deceased's dependants be expedited.

73. **Section 23(1) of WIBA** vests the Director with the authority, upon receipt of a notice of an accident, to undertake such inquiries as may be necessary. The provision states as follows:

***“23(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.”***

74. It is evident that Section 23(1) aforementioned is couched in mandatory terms and is intended to guide the 1<sup>st</sup> Respondent in determining claims for compensation and attendant liability.

75. Notably, the 1<sup>st</sup> Respondent did not indicate or suggest that it conducted any inquiry or investigation into the circumstances of the accident.

76. From the Replying Affidavit of Mr. Opiyo, it is apparent that the 1<sup>st</sup> Respondent relied primarily on the report submitted by the Petitioner, together with the accompanying documents, in determining both liability and the extent thereof.

77. It is also worth pointing out that, in his Replying Affidavit, Mr. Opiyo outlined the standard procedure for claim processing, stating thus: *“Upon receipt of notice of occurrence of an accident at work (ML/DOSH FORM 1), the Directorate proceeds to investigate the accident.”*

78. This demonstrates that the 1<sup>st</sup> Respondent recognises the necessity of conducting investigations as an essential step in the determination of a work injury claim and the corresponding compensation.

79. As acknowledged in the case of ***Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR)***, the inquiries undertaken by the Director are, in essence, preliminary investigations.

80. In the present case, it would appear that upon receipt of the accident report and supporting documentation, the 1<sup>st</sup> Respondent was satisfied as to the Petitioner's liability and consequently did not undertake any inquiry or investigation as contemplated under Section 23 of WIBA, nor did it engage the Petitioner beyond the documentation submitted.

81. Notably, Mr. Opiyo stated in his affidavit that the Petitioner failed in its duty under the Occupational Safety and Health Act to ensure safe systems and procedures of work, thereby exposing the deceased to risk, which resulted in the fatal injuries sustained while supervising the transportation of the motor grader.

82. Indeed, it is difficult to comprehend the basis of Mr. Opiyo's assertions in the absence of any investigations into the accident.

83. It is not in dispute that an award made by the Director under WIBA constitutes an administrative action.

84. The Fair Administrative Actions Act defines an administrative action to mean **any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.**

85. Therefore, it follows that the 1<sup>st</sup> Respondent was under an obligation to accord the Petitioner an opportunity to present its representations regarding the accident involving the deceased prior to making any award. Within the framework established under WIBA, such an opportunity ought to have arisen at the investigative stage, during which the Petitioner would have furnished details on the nature, cause, and consequences of the accident.

86. **Article 47 of the Constitution** guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.

87. In the absence of any evidence demonstrating that the Director engaged the Petitioner through an investigative process prior to determining the claim and assessing compensation, the Court finds that the resultant award fell short of the requirements of procedural fairness.

88. To this end, the Court finds that the 1<sup>st</sup> Respondent violated the Petitioner's right to fair administrative action as guaranteed under Article 47 of the Constitution.

89. If I may add, an investigation conducted under Section 23 of WIBA also serves to ensure that employers adhere to the prescribed occupational health and safety

standards, and to facilitate improvement of such standards in order to prevent workplace injuries. Accordingly, the procedure cannot be regarded as a mere technicality.

90. The Petitioner further contends that the 1<sup>st</sup> Respondent failed to respond to its objection, thereby denying it an avenue for appeal.

91. While Mr. Opiyo concedes that the 1<sup>st</sup> Respondent received the Petitioner's letter dated 22<sup>nd</sup> December 2022, he maintains that the same was not in the prescribed form nor was it accompanied by the requisite particulars to warrant consideration.

92. From Mr. Opiyo's deposition, it is apparent that the 1<sup>st</sup> Respondent declined to act on the Petitioner's letter on the basis that it was not lodged in the prescribed format.

93. A review of the said letter, annexed to the Supporting Affidavit of Mr. Njora, demonstrates that it unequivocally communicated the Petitioner's intention to challenge the award issued by the 1<sup>st</sup> Respondent.

94. In those circumstances, even if the objection was procedurally deficient, fairness required that the Petitioner be notified of the defect and afforded an

opportunity to regularise the same, rather than having its grievance disregarded altogether.

95. In any event, **Article 159(2)(d) of the Constitution** provides that justice shall be administered without undue regard to procedural technicalities.

96. Accordingly, as an administrative body exercising quasi-judicial functions, the 1<sup>st</sup> Respondent was bound by **Article 159 (2) (d) of the Constitution**, and it ought not to have elevated procedural technicalities at the expense of substantive justice, thereby undermining the Petitioner's right to be heard.

97. Further, **Article 47(2) of the Constitution** provides that where a person's right or fundamental freedom has been or is likely to be adversely affected by administrative action, that person is entitled to written reasons for the action.

98. Similarly, **Section 4(3)(d) of the Fair Administrative Action Act** requires that where an administrative action is likely to adversely affect a person's rights or fundamental freedoms, the administrator shall furnish the affected person with a statement of reasons for the decision.

99. Fundamentally, the 1<sup>st</sup> Respondent had a constitutional and statutory obligation to respond to the Petitioner's objection, notwithstanding that it was lodged in a manner that was not prescribed.

100. Indeed, the 1<sup>st</sup> Respondent's decision not to consider the Petitioner's objection constituted an administrative action in itself, which ought to have been duly communicated to the Petitioner.

101. The net effect of the 1<sup>st</sup> Respondent's failure to respond to the Petitioner's letter dated 22<sup>nd</sup> December 2022 is that the Petitioner was left unaware of the reasons for the non-consideration of its objection, and it is more than probable that it only became privy to those reasons through the 1<sup>st</sup> Respondent's response in these proceedings.

102. To the extent that the 1<sup>st</sup> Respondent failed to furnish the Petitioner with written reasons for the rejection or non-consideration of its objection, the Court finds that it did not act within the confines of **Article 47 of the Constitution** and the **Fair Administrative Action Act**.

103. What's more, the 1<sup>st</sup> Respondent's failure to provide reasons for its non-consideration of the Petitioner's objection had significant ramifications, as it effectively impeded the Petitioner's right of appeal. Put differently, there was

no decision or reasons upon which to ground an appeal under **Section 52 (2) of the WIBA**. This, in turn, undermined the Petitioner's right of access to justice under **Article 48 of the Constitution**.

### **Disposition**

104. In sum, the Court finds that the Petition is merited and hereby issues the following declarations and orders:

- a) A declaration is hereby issued that the 1<sup>st</sup> Respondent violated the Petitioner's constitutional rights to fair administrative action and access to justice as guaranteed under Articles 47 and 48 of the Constitution.**
- b) The award issued by the 1<sup>st</sup> Respondent on 30<sup>th</sup> November 2022 is hereby quashed.**
- c) Consequent to the order in (b), an order of prohibition is hereby issued restraining the enforcement of the award dated 30<sup>th</sup> November 2022.**
- d) The 1<sup>st</sup> Respondent is hereby directed to conduct an inquiry and investigation into the accident involving the deceased, as envisaged under Section 23 of the WIBA.**
- e) Upon conclusion of the said investigation, the 1<sup>st</sup> Respondent shall reconsider and determine the claim afresh.**

**f) Each party shall bear its own costs.**

**DATED, SIGNED and DELIVERED at NYERI this 17<sup>th</sup> day of April 2026.**

.....

**STELLA RUTTO**

**JUDGE**

**In the presence of:**

Ms. Nyandwaro for the Petitioner

Ms. Warigia instructed by Ms. Mumbi for the 1<sup>st</sup> Respondent

Ms. Wasike for the 2<sup>nd</sup> Respondent

Ndati Court Assistant

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court.

In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**