

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

(Before Hon. Lady Justice Monica Mbaru)

MISCELLANEOUS APPLICATION NO. E124 OF 2025

**BEYONCE MUSENYA MWANGANGI [Suing for and on behalf of
David Mavuti Ngonzi – deceased].....APPLICANT**

VERSUS

KYEGA HAULIERS (K) LIMITED.....1st RESPONDENT

APA INSURANCE COMPANY LIMITED..... 2ND RESPONDENT

RULING

The ruling herein relates to the Applicant's application dated 28th October 2025. The Applicant seeks to enforce the award made by the Director of Occupational Safety and Health Services (DOSHS) on 14th January 2019 for the sum of Ksh. 3,220,224 awarded upon fatal work injury on 4th January 2018 to the deceased, David Mavuti Ngonzi.

The Applicant is also seeking payment of the burial costs of Ksh. 705,940 that were used towards the burial of the deceased.

The Applicant filed her Affidavit and avers that the deceased David Mavuti Ngonzi was employed by the Respondent as a driver until 4th January 2018,

when he suffered fatal injuries while at work. The accident was reported to DOSH, who assessed the case and, on 14 January 2019, awarded KSH. 3,220,224.

Notice issued to the Respondent who failed to make payments. The family also spent Ksh. 705,940 in burial costs, but the Respondent has refused to make payment. The award should be adopted as the court's judgment for the sum of Ksh. 3,220,224 plus burial costs for Ksh. 705,940.

The Applicant avers that she is the widow of the deceased and that through the Grant of Letters ad Litem issued on 23 October 2025 in Mombasa Misc. Succession Cause No. E128 of 2025, she obtained a limited grant over the estate of the deceased.

In reply, the 1st Respondent filed the Replying Affidavit of Samson Dola, the insurance officer and avers that despite the Applicant being granted a Limited letter of Administration, this does not make her the dependent of the deceased or a beneficiary of the Estate of the Deceased under the Work Injury Benefits Act (WIBA).

The deceased died on 4 January 2018, and the Respondent, who was the employer, reported the incident to DOSH as required under the WIBA.

Upon the death of the deceased, the mother, Esther Ngonzi Yambu of ID No. 6129661, was the only person who approached the Respondent and claimed to be the sole dependent of the deceased. She submitted the death certificate of the deceased dated 6th June 2018. However, the Applicant has produced a death certificate issued on 24th July 2025, which is 7 years later.

The deceased mother supported her claim as the sole dependent of the deceased by producing a Certificate of Dependency dated 13th November 2018, issued by the office of the Assistant Chief, Kwakakulu sub-location, in Emali. The office confirmed that the deceased was from the location and the mother was the sole dependent.

Upon the DOSH assessment and award, the Respondent amicably settled the same upon payment of Ksh. 1,950,000, and the mother has since signed an acknowledgement to this effect on 28th April 2020. The deceased mother collected the said payment amounting to Ksh. 1,950,000, and the matter was marked as settled.

The application here is bad in law and fatally defective and filed contrary to section 4(1) (d) of the Limitations of Actions Act.

Both parties attended court and made oral submissions.

Determination

The sole issue for determination from the pleadings is whether the Applicant should be awarded the DOSH award of 14 January 2019, plus the burial costs following the work-related fatal injury to the deceased.

The 1st Respondent admitted that the deceased was an employee who suffered work-related fatal injuries on 4th January 2018. The DOSH assessed the award of Ksh. 3,220,224 on 14th January 2019, and upon the deceased's mother representing the Death Certificate, and Certificate of Dependency, a consent was agreed upon, and she was paid Ksh. 1,950,000 on 28th April 2020.

The 1st Respondent's case is also that the application is time-barred under section 4 of the Limitations of Actions Act.

The Applicant, on her part, asserts that, as the widow of the deceased, she has since obtained a limited grant over the deceased's estate in **Mombasa Mic. Succession Cause No. E168 of 2025**. The award and burial costs have not been paid.

Whereas the deceased died on 4 January 2018, the Applicant only obtained the Death Certificate in 2025 and also filed and obtained a Limited Grant in the same year. Following such a process, the deceased mother has since engaged the employer and received part of the DOSH award. She obtained two crucial records: the Death Certificate and the Certificate of Dependency.

The Applicant does not address the lapse from 4th January 2018 to 28th October 2025, during which she filed the application before the Court. Although the Limitation of Actions Act is not relevant to the DOSH enforcement proceedings, the award has since been addressed by the deceased mother based on the Certificate of Dependency.

The 1st Respondent asserts that the award has since been settled by consent for the sum of Ksh. 1,950,000 and paid on 28th April 2020. That this amount was paid to the deceased mother based on the Certificate of Dependency. The DOSH award was for Ksh. 3,220,224.

Under section 34(2) of the WIBA, the DOSH award due to a dependent of the deceased should not be deducted:

(2) No amount may be deducted from the compensation awarded under this section to a dependent in respect of any compensation awarded to the employee in respect of the same or any other accident.

The total sum of Ksh. 3,220,224, as awarded by DOSH, is due to the deceased mother upon production of the Certificate of Dependence. The same shall be paid less what has already been received, at Ksh. 1,950,000.

Accordingly, the application dated 28th October 2025 is without merit. Each party shall pay its costs.

Delivered in open court at Nairobi, this 23rd day of April 2026

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistant: Catherine and Omar

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