

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

(Before Hon. Lady Justice Monica Mbaru)

MISCELLANEOUS APPLICATION NO. E088 OF 2025

NZULA KIASYO MWENDA

**REBECCA WANJA MWENDA [Suing for and on behalf of Simon Maina
Mwenda – deceased].....APPLICANTS**

VERSUS

COAST PROFESSIONAL FREIGHTERS LIMITED....1ST RESPONDENT

KENYA ORIENT INSURANCE LIMITED.....2ND RESPONDENT

RULING

The Applicant filed an application dated 3rd September 2025, seeking that the court adopt the Director of Occupational Safety and Health Services' (DOSHS) award made on 14th October 2019 as the court's judgment. The Applicant is seeking the award from DOSHS, as per the court's decree, for Ksh. 1,344,000 together with reasonable burial costs of Ksh. 546,800 plus costs and interests at 14% from the date of the award.

The application is supported by the Supporting Affidavit of Nzula Kiasyo Mwenda, who avers that she is the 1st Applicant and has obtained **Letters of**

Administration Ad Litem in Mombasa Misc. Succession Cause No. 430 of 2019 over the estate of the deceased, Simon Maina Mwenda.

Nzula avers that the deceased sustained work-related injuries on 6th August 2019 while in the employment of the Respondent as a Port Clerk. The incident was reported to DOSH, who made inquiries and assessed the claim. On 14th October 2019, the DOSH awarded compensation of Ksh. 1,334,000, and notice issued to the Respondent, who has failed to make payment to the Estate of the deceased.

Nzula also avers that, following the death of the deceased, there was a burial, and under section 34 of the Work Injury Benefits Act (WIBA), the Respondent should pay the reasonable expenses incurred in Ksh. 5546,800.

Despite notice and demand to make payment, the Respondent has failed to comply. The orders sought should be issued.

The 1st Respondent filed the Replying Affidavit of Patrick Mutune Kiasyo, a director, who avers that they are family, that the 1st Applicant is his brother, and that the 2nd Applicant is his niece, and that they filed the suit before consulting him.

Mutune avers that the deceased was the son of the 1st Applicant, and he was the uncle, and hence the employment. The deceased was involved in a fatal road accident when his motorcycle collided with a vehicle, and he should not be

blamed for the accident. The Applicants accused him of causing the death, and the application for compensation is mala fides.

Mutune avers that he spent over Ksh. 400,000 to assist the family in airlifting the deceased body from Nairobi and toward burial out of goodwill. He also had WIBA insurance for all employees and was paid Ksh. 1,115,970 for the deceased, which was paid to the 1st Applicant through various cheques, which have since been cashed in settlement. The Applicants have concealed these facts from the court in order to seek double payment.

The DOSH award and what the Applicants have been paid is over and above. The orders sought are unlawful and should be dismissed with costs.

The 1st Respondent has since settled the entire claim through various cheques to the Applicants. There is no valid or pending claim to be satisfied based on the instant application, and the application should be dismissed with costs.

Mutune also avers that they have since obtained bank statements to confirm that the Applicants cashed the cheques issued in full payment of the DOSH award. The application herein is overtaken by events.

In reply, the 2nd Respondent filed the Replying Affidavit of Amin Said Amin, the relationship branch supervisor, who avers that it has never employed the deceased. There is no award in favour of the Applicants against the 2nd Respondent, who was sued by DOSH.

Said Amin avers that the court lacks jurisdiction over the matter at this time and should be dismissed.

Said Amin avers that the Applicants have no valid claim against the 1st Respondent for any work-related injuries to the deceased, as the claim has since been satisfied, as evidenced by the various receipts and payments. The current application is a scheme fraud and should be dismissed.

In reply, the Applicants filed the Supplementary Affidavit of Nzula, who avers that the Respondents' alleged payments do not relate to the Applicants. There are payments for:

Cheque No. 036150 for Ksh. 167,667 on 13 November 2020.

Cheque No. 036161 for Ksh. 250,000 on 2 December 2020.

Cheque No. 036178 for Ksh. 46,303 on 14 December 2020.

Cheque No. 036238 for Ksh. 250,000 on 3 March 2021.

Cheque No. 036283 for Ksh. 250,000 on 11 May 2021.

Nzula avers that the only payment related to her is the deposit slip for Ksh. 152,000, which the 1st Respondent paid to her. Thus, the alleged payments are not correct, and the DOSH award is due.

Determination

These proceedings should essentially be for the enforcement of the DOSH award where the amount has not been settled within the timelines envisaged under the WIBA.

In this case, the Applicants assert that the DOSH award of Ksh. 1,344,000 plus burial costs of Ksh. 546,800 has not been paid to the estate of the deceased.

The Respondents assert that the full award has since been settled. They submitted evidence from the bank and cheque deposits for:

Cheque No. 036150 for Ksh. 167,667 on 13 November 2020.

Cheque No. 036161 for Ksh. 250,000 on 2 December 2020.

Cheque No. 036178 for Ksh. 46,303 on 14 December 2020.

Cheque No. 036238 for Ksh. 250,000 on 3 March 2021.

Cheque No. 036283 for Ksh. 250,000 on 11 May 2021.

The bank records confirm these cheques have been cashed.

The total paid is Ksh. 963,970.

The cheques submitted for payment show that:

The sum of Ksh. 46,303 was paid to the firm of ***Munyithia, Mutungi & Muzna Co. Advocates*** on 11 December 2020;

The sum of Ksh. 250,000 was paid to the Applicant on 8 May 2021,

The sum of Ksh. 250,000 was paid to the Applicant on 1 March 2021,

The sum of Ksh. 250 was the amount paid on 1 December 2020, and

The sum of Ksh. 167,667 was paid to the Applicant on 12 November 2020.

In her Supplementary Affidavit, the Applicant acknowledges the payment of Ksh. 152,000 on 20 July 2021.

The cheque amount of Ksh. 963,970 plus the Ksh. 152,000 paid in cash, the total paid is **Ksh. 1,115,970**.

The Applicants are claiming the DOSH award of Ksh. 1,344,000. The due balance would thus be **Ksh.228, 030**.

The Applicants claim burial costs of Ksh. 546,800.

However, the 1st Respondent, through the Affidavit of Mutune Kiasyo, confirms that he covered all burial costs, including the airlift of the deceased to Nairobi.

These averments have not been contested.

However, all DOSH payments should ultimately be processed through the same office for completeness and formalization. In this case, the Respondents have submitted evidence of various payments. The notice from DOSH remains unsatisfied despite the noted payments.

What is apparent to the court, upon the Applicants obtaining a Letter of Administration on the estate of the deceased, in **Letters of Administration Ad Litem in Mombasa Misc. Succession Cause No. 430 of 2019**, they took a record 7 years to address the DOSH award. Part of the payments was made by cheque to a different firm of advocates, rather than to the current advocates representing the Applicants. Over the years, several changes must have taken place, including various payments to the Applicants in cash and by cheque.

Thus, with burial costs taken care of by the 1st Respondent, the parties shall revert to DOSH for confirmation of payment of the award issued on 14th October 2019. Upon confirmation, the DOSH office shall issue a demand notice to the Respondents to settle any difference, if at all due.

Accordingly, orders sought in the application dated 3rd September 2025 shall not issue. The parties shall be assisted by DOSH, Mombasa, in reconciling accounts. The order of the DOSH office shall suffice. Each party bears its costs.

Orders accordingly.

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

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistant:

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