

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

ELRC MISC /E108/2025

THOMAS ONYANGO MUGA.....
.....APPLICANT

VS

SAGALA GENERAL CONSTRUCTORS LIMITED

AND CORPORATE INSURANCE CO.LTD.....RESPONDENTS

RULING

By his Notice of Motion Application dated 16th September 2025, the Applicant seeks that the Director of Occupational Safety and Health Services' assessment and award made on 30th November 2021 be adopted as a Judgment of this Court to facilitate its enforcement.

2. The Applicant stated that at all material times he was an employee of the 1st Respondent as a Machine attendant, and that on 12th August, 2021, while in the course of his employment, he sustained workplace injuries.
3. Subsequently, the incident was reported to the Director of Occupational Safety and Health Service, Mombasa, and upon assessment of his injuries, he was found to have suffered 25% permanent incapacity. Consequently, on 30th November, 2021, it was directed that the Respondent pay him KShs. 1,248,000 as compensation for the injuries.
4. Per the relevant statutory provisions, the 1st Respondent was supposed to pay the above-stated amount within 90 days of receipt of the notification of the assessment and requirement to pay the awarded sum to the Director, for transmission to him.
5. He further stated that if the Applicant was aggrieved by the assessment and award, he was required by the stipulations of the Work Injury Benefits Act to object to the same within 60 days and, in any case, appeal to this court.
6. Despite receiving notification of the Director's award on 6th September, 2025, the 1st Respondent neither settled the above-mentioned amount nor objected to or appealed against it within the statutory period. Hence, the instant application.
7. The 1st Respondent opposed the application through an affidavit sworn by one James Mkala, its Director. He contended that the Applicant was not at any material time an employee of the Respondent. The Applicant was neither on its payroll nor engaged under any contract of service or apprenticeship, and therefore, the Work Injury Benefits Act does not apply to the alleged incident.

8. It was further stated that the alleged incident did not occur, and that if it did, then the same was occasioned solely by the Applicant's own negligence, recklessness, and disregard of safety

instructions and procedures; as such, the 1st Respondent cannot be held liable under the said Act.

9. Further, the Director did not at any time issue any hearing notice, request representations, or summon the 1st Respondent to attend the assessment proceedings or inquiry in relation to the alleged accident or inquiry. This violated its constitutional right to a fair hearing under Article 50[1] of the Constitution.

Contrary to the tenets of natural justice, the Respondent was condemned unheard.

10. As such, if the award exists, the same is irregular and void ab initio, having been issued in violation of due process and the Respondent's right to a fair hearing. The 1st Respondent would suffer immense prejudice if the Director's award is adopted, as that would amount to condemning it unheard.

11. I have carefully considered the Applicant's application, the grounds upon which it is anchored and the response thereto by the 1st Respondent. The following emerges to me for certain;

i. The Respondent does not in any sufficient manner or appropriately deny the occurrence of the workplace accident that led to the Applicant's injuries. It is either that the accident occurred, or it did not. It does not help the 1st Respondent that the deponent of the replying affidavit at paragraph 4 decided to contend in the alternative.

ii. The 1st Respondent did not object to the Director's award or appeal against the same, nor even attempt to go through the relevant mechanisms, for instance, judicial review, to dislodge the award.

iii. The matters/grounds raised in the replying affidavit can be good staff for judicial review proceedings, if the 1st Respondent is aggrieved as he suggests, not for the instant proceedings.

iv. The award of the Director has not been settled to date.

12. Having stated as I have hereinabove, and more particularly that the Director's assessment has not been assailed in any of the ways provided for in the law.

13. Consequently, the Applicant's application dated 16th September 2025, is hereby allowed. The Director's award of KShs. 1,248,000 is adopted as a Judgment of this Court. The awarded amount shall attract interest at Court rates from the date of the award [31.11.2021], till full payment.

14. Each party to bear its own costs. The Applicant dragged the 2nd Respondent into this matter unnecessarily.

15. Orders accordingly.

READ SIGNED AND DATED THIS 16TH DAY OF APRIL 2026.

**OCHARO KEBIRA
JUDGE**