

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT ELDORET
MISCELLANEOUS NO. E006 OF 2025

DAVID CHEGE MWANGI.....
APPLICANT

VERSUS

TRANSGEN AGENCIES LIMITED..... RESPONDENT

RULING

1. Vide a Notice of Motion dated 12th February 2025 filed under the provisions of sections 1,1A, 3 and 3A of the Civil Procedure Act, Section 26 of the Work Injury Benefits Act, Section 12 of the Employment and Labour Relations Court Act, Rule 28 & 31 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and Article 162(2) of the Constitution and all enabling provisions of the law, the Applicant seeks the following orders against the Respondent: -

a) THAT this Honourable Court be pleased to adopt as a judgment of this court the award of Kshs. 691,600/= (Kenya Shillings Six Hundred and Ninety-One Thousand

Six Hundred Only) by the County Occupational Safety and Health Officer on the 5th November, 2024 made in favour of the Applicant against the Respondent.

- b) THAT judgment be entered for the Applicant against the Respondent and decree be issued in accordance with the assessment by the County Occupational Safety and Health Officer of Kshs. 691,600/= (Kenya Shillings Six Hundred and Ninety-One Thousand Six Hundred Only) being the work injury compensation assessed under the Work Injury Benefits Act.
- c) THAT this Honourable Court be pleased to award interest on the above amount from the date of assessment until payment in full.
- d) THAT this Honourable Court be pleased to award any other relief as it may deem fit and just to grant.
- e) THAT the costs of this application be awarded to the Applicant.

2. The grounds in support of the application are that: -

- a) That the Applicant herein was an employee of the Respondent and sometime on or about 8th March 2024 at

Nyaru Area in Keiyo South. while in the course of discharging his duties, he was involved in an accident occasioning him severe personal injuries.

- b) That the Applicant reported the accident to the Office of the County Occupational Safety and Health Officer pursuant to the provisions of the Work Injury Benefits Act
- c) That the County Occupational Safety and Health Officer made an award Kshs. 691,600 (Kenya Shillings Six Hundred and Ninety-One Thousand Six Hundred Only) on the 5th November, 2024 in favour of the Applicant against the Respondent.
- d) That the County Occupational Safety and Health Officer Respondent attempted to notify the Respondent of the award and inform him to settle and/or challenge the same but he was unreachable, adamant and/or dismissive.
- e) That in a bid to ensure that the Respondent was duly made aware of the said award, the County Occupational Safety and Health Officer advised the Applicant to effect service of the said award, which the Applicant did by

serving the Respondent through its representative/supervisor.

- f) That the statutory time frame for compensation and settlement of an award has been breached as it is now over Ninety (90) days since the award was made on the 5th November, 2024 in favour of the Applicant against the Respondent.
- g) That the Respondent has failed, refused and/or ignored the County Occupational Safety and Health Officer's award despite being fully aware of the said award and in the circumstances, this Honourable Court should adopt the Director's award and issue decree for the foretasted sums against the Respondent herein.
- h) That the ends of justice will be met if the orders sought are granted.
- i) That no prejudice will be suffered by the Plaintiff/Respondent if the orders sought are granted as justice must not only be done, but must be seen to be done.

j) That the application has been brought in good faith.

k) That this Honourable Court has powers to grant the orders sought in the best interests of justice so as to prevent a miscarriage of justice from occurring as justice demands ought to be seen.

3. The application is further supported by the affidavit of Applicant in which he depones that he was employed by the Respondent as an artisan worker and tasked with stringing High Tension Electric Conductors on the electricity power lines manned by Rural Electrification and Renewable Energy Corporation (REREC). He avers that on 8th March 2024 while stringing High Tension Electric Conductor on top of an electric pole under the supervision of the Respondent's employee, his safety harness snapped as a result of which he fell to the ground and suffered severe injuries.

4. The Applicant states that he reported the accident to the Director of Occupational Safety and Health Services and lodged a claim pursuant to the provisions of the Work Injury Benefits Act.

5. The Director thereafter awarded the Applicant compensation at Kshs. 691,600.
6. The Applicant depones that the Respondent has failed, refused and ignored the County Occupational Safety and Health Officer's award despite being fully aware of the said award.
7. The Court was thus urged to adopt the Director's award and enter judgment for the Applicant against the Respondent in the sum awarded.
8. In opposition, the Respondent filed a Replying Affidavit sworn on 29th October 2025 by its Director, William Gachie, who deponed that he had been notified of an accident involving the Applicant, who was at the material time unknown to him and had allegedly worked for the Respondent for a period of less than one week.
9. He further deponed that the Respondent had engaged a subcontractor who was responsible for sourcing casual labourers for the project, and that the project had stalled pending the availability of materials and instructions from the client. He added that no work had been authorised on the material day.

10. The Respondent asserts that the Applicant had not been assigned any duties on the day of the accident and was not authorized to be on site, particularly as the grid lines were live and no clearance had been issued.
11. The Respondent avers that the accident occurred within a restricted work area requiring coordination with Kenya Power and the Rural Electrification and Renewable Energy Corporation (REREC) due to the risks associated with live power lines. It is further alleged that the Applicant utilized his own safety equipment, namely a personal harness, which broke while he attempted to climb the pole, resulting in the fall and subsequent injuries.
12. It is the Respondent's case that its supervisor responded promptly, facilitated medical treatment for the Applicant, and ensured that he received care up to Moi Teaching and Referral Hospital at the Respondent's expense.
13. The Respondent further avers that the accident was reported to the relevant labour and safety offices and that the requisite DOSH forms were duly completed.

14. The Respondent contends that it was not notified of the assessment proceedings and was thereby denied an opportunity to participate in violation of its right to a fair hearing.
15. The Respondent further avers that upon becoming aware of the award, it initiated steps to challenge the same and instituted Judicial Review proceedings in this court, ELRCJR/E007/2025, which suit is pending determination.
16. In the end, the court was urged to dismiss the instant application and to grant the Respondent a chance to be heard.
17. The application was canvassed by way of written submissions. The Applicant's submissions are dated 12th November 2025 whereas the Respondent's submissions are dated 2nd December 2025.

DETERMINATION

18. I have carefully considered the Notice of Motion dated 12th February 2025, the rival affidavits on record and the submissions on record. The only issue that presents itself for determination is whether this Court should adopt the award of

the County Occupational Safety and Health Officer dated 5th November 2024 as a judgment of the Court.

19. From the material on record, it is evident that the Applicant lodged a claim under the provisions of the Work Injury Benefits Act following an accident that occurred on 8th March 2024, and that the County Occupational Safety and Health Officer subsequently made an award in favour of the Applicant in the sum of Kshs. 691,600/= on 5th November 2024.
20. The Applicant asserts that it has filed the instant application after the Respondent failed to pay the awarded amount and thus seeks that the said is adopted as an order of this court.
21. The Respondent opposes the application on several grounds, principally that: The Applicant was not its employee; that the accident occurred outside authorised working conditions; and that it was not afforded an opportunity to participate in the proceedings before the Director, thereby violating its right to a fair hearing as a result of which it contends that it has instituted Judicial Review proceedings before this court challenging the award.

22. Section 10 of the Work Injury Benefits Act provides for compensation to employees injured in the course of employment as follows:

10. Right to compensation

(1) An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.

(2) An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.

(3) An employee is not entitled to compensation if an accident, not resulting in serious disablement or death, is caused by the deliberate and wilful misconduct of the employee.

(4) For the purposes of this Act, an occupational accident or disease resulting in serious disablement or death of an employee is deemed to have arisen out of and in the course of employment if the accident was due to an act done by the employee for the purpose of, in the interests of or in

connection with, the business of the employer despite the fact that the employee was, at the time of the accident acting—

(a) in contravention of any law or any instructions by or on behalf of his employer; or

(b) without any instructions from his employer.

(5) For the purposes of this Act, the conveyance of an employee to or from the employee's place of employment for the purpose of the employee's employment by means of a vehicle provided by the employer for the purpose of conveying employees is deemed to be in the course of the employee's employment.

(6) For the purposes of this section, an injury shall only be deemed to result in serious disablement if the employee suffers a degree of permanent disablement of forty percent or more.

23. Section 26 of the Act provides for lodging of claims for compensation as follows:

26. Claim for compensation

(1) A claim for compensation in accordance with this Act shall be lodged by or on behalf of the claimant in the prescribed manner within twelve months after the date of the accident or, in the case of death, within twelve months after the date of death.

(2) If a claim for compensation is not lodged in accordance with subsection (1), the claim for compensation may not be considered under this Act, except where the accident concerned has been reported in accordance with section 21.

(3) If an employer fails to report an accident or to provide information requested by the Director as specified in the request, the Director may—

(a) conduct an investigation and recover the cost of the investigation from the employer as a debt due from the employer; or

(b) levy a penalty on the employer.

(4) An employer or insurer against whom a claim for compensation is lodged by the Director under this section, shall settle the claim within ninety days of the lodging of the claim.

(5) The Director shall, within thirty days of receipt of the money claimed under subsection (1), pay the money to the employee who made the claim or his dependants.

(6) An employer or an insurer who fails to pay the compensation claimed under this subsection commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

24. The compensation payable is calculated in the manner provided in section 34 of the Act as follows:

30. Compensation for permanent disablement

(1) Compensation for permanent disablement shall be calculated on the basis of ninety-six months earnings subject to the minimum and maximum amounts determined by the Minister, after consultation with the Board, and set out in the Third Schedule.

(2) If an employee has sustained an injury specified in the first column of the First Schedule, the employee shall for the purposes of this Act, be deemed to be permanently disabled

to the degree set out in the second column of the First Schedule.

(3) If an employee sustains an injury not specified in the First Schedule which leads to permanent disablement, the employee shall be paid such percentage of disablement in respect thereof as in the opinion of a medical doctor will not lead to a result contrary to the guidelines of the First Schedule.

(4) If an injury or serious disablement contemplated in paragraph (a) or (b) has unusually serious consequences for an employee as a result of the special nature of the employee's occupation, the Director may determine such higher percentage as the Director shall deem equitable.

(5) No payment for temporary disablement in accordance with the provisions of section 29 shall be deducted from compensation payable under this section.

25. In the replying affidavit of William Gachie, a director of the Respondent, sworn on 29th October, 2025, he acknowledges that he was notified of the accident involving the Applicant whom he avers was engaged by a subcontractor of the

Respondent. he further acknowledges that the Applicant "... had barely worked for the company for a week." He further deposes that the subcontractor would source for casual workers to carry out stringing of wires and conductors on the power grid lines.

26. The allegations that the Applicant had no instructions to work at the time he was involved in the accident in which he sustained the injuries that are subject to this suit are not backed by any evidence of such instructions.
27. The Affiant further does not explain how the Applicant accessed the premises in which he sustained injuries if indeed there were no instructions to the Applicant to work in the extremely dangerous assignment at which he sustained the material injuries.
28. The averments by Mr. Gachie that the Applicant was using his own safety gear and not the company harness, apart from not being backed by any evidence, is in fact testimony to the negligence of the Respondent as work in such dangerous environments is subject to the provisions of section 96 of the

Occupational Safety and Health Act in which a permit to work is required. The section provides:

Permit to Work

96.(1) An employer shall issue a permit to work to any employee, likely to be exposed to hazardous work processes or hazardous working environment, including such work processes as the maintenance and repair of boilers, dock work, confined spaces, and the maintenance of machinery and equipment, electrical energy installations, indicating the necessary precautions to be taken.

(2) In this section 'permit to work' means a written notice, which sets out the work to be done, the hazards involved and the precautions to be taken before the work commences in order to secure the safety and health of the employee.

29. Sections 6 and 18 of the Act further impose duties on both employers and occupiers of premises to ensure safety of all persons working in the premises, whether or not such persons are their employees.
30. From the evidence on record, the Respondent was responsible for ensuring safety of the Applicant and is therefore liable

under section 10 of Work Injury Benefits Act to compensate the Applicant for the injuries sustained in the course of employment.

31. The length of service of the Applicant is immaterial, the only relevant consideration being that he was injured in the course of employment.
32. The allegation by the Respondent that it was not given an opportunity to defend itself at the Director's level is further not material as the Director did not have a duty to hear the parties, his duty having been to assess compensation based on the medical reports submitted to him. Once the medical assessment is done, the tabulation is based on the degree of injury in accordance with section 34 of the Work Injury Benefits Act.
33. The only recourse the Respondent had was to file an objection or appeal as provided in section 51 of the Work Injury Benefits Act as follows:

51. Objections and appeals against decisions of the Director

(1) Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such

decision, lodge an objection with the Director against such decision.

(2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.

34. In the instant case there appears to have been no objection to the Directors award in the manner and within the time prescribed in section 51 of the Act.
35. The Respondent cannot claim lack of knowledge of the compensation having been aware of the accident, taken the Applicant to hospital and settled his medical bills. The Respondent was further notified of the assessment of compensation but failed to pay as deposed in paragraph 10 of the Replying affidavit.
36. In the premises, I find that the Applicant has satisfied the threshold for adoption of the award.
37. For the reasons stated herein above, I adopt the award of the Director of Occupational Safety and Health dated 5th November

2024 as an order of this court and enter judgment for the Applicant against the Respondent in the sum of Kshs. 691,600.

38. The Respondent shall pay the Applicant's costs of this application.
39. Interest shall accrue from date of filing of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 16TH DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**