

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

MISCELLANEOUS APPLICATION NO. E272 OF 2025

**ANTHONY MUTINDA MUIA.....
APPLICANT**

VERSUS

**EMPIRE FEEDS
LIMITED.....RESPONDENT**

RULING

Background

1. The Applicant filed the application dated 31st July 2025 seeking an order to adopt the award by the Director of Occupational Safety and Health Services (the Director) which was rendered on 25th February 2025 as a judgment of the court. The Respondent filed a Notice of Preliminary Objection to the application through which it raised the following objections:-
 - a) That the court has no jurisdiction to entertain the application.
 - b) That the Applicant did not accord it (the Respondent) the opportunity to object to the award within the sixty (60) days window provided under section 51(1) of *the Work Injury Benefits Act*.
 - c) That the application lacks merit as it is premised on false statements.

2. On 22nd September 2025, the court directed the parties to file submissions on the preliminary objection. It then fixed the matter for mention on 30th October 2025 to fix a ruling date on the preliminary objection.
3. In compliance with the directions, the parties filed and presented to court physical copies of their submissions. However, the Respondent appears to have misunderstood the court's directions on the matter since it (the Respondent) appears to have filed submissions which also address the merits of the application. That notwithstanding, the court will confine its decision on the preliminary objection.

Analysis

4. The law on preliminary objections is now well settled. A preliminary objection should only raise a pure point of law. It must not be anchored on facts (***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696***).
5. This disqualifies ground (c) in the Respondent's grounds of objection from being a preliminary objection. That ground requires the court to interrogate facts in order to resolve it. It therefore does not raise a pure point of law and is rejected on this ground.
6. Apart from the aforesaid ground, the Respondent contends that the court has no jurisdiction to entertain the motion to adopt the impugned award as its judgment. In the Respondent's view, the only jurisdiction which the court can

exercise under *the Work Injury Benefits Act* relates to entertaining appeals from awards by the Director.

7. The position taken by the Respondent on the issue of jurisdiction is flawed. The Court of Appeal has already affirmed the reality that this court is entitled to entertain a motion to adopt a Director's award as its judgment (***Charles v Cheto [2025] KECA 784 (KLR)***). That being the case, the objection to the court's jurisdiction to entertain the application fails.
8. Finally, the Respondent contends that the Applicant filed the application before it (the Respondent) had exercised its right to object to the award in terms of section 51 (1) of *the Work Injury Benefits Act*. It contends that the application was filed before the lapse of the sixty (60) days window within which it was to have lodged an objection to the award.
9. The material before court shows that the impugned award was rendered by the Director on 25th February 2025. On the other hand, the application to adopt it was filed on 31st July 2025. This was more than sixty (60) days from the date the award was rendered. As such, the aforesaid objection is unfounded and fails.

Determination

10. The upshot is that the preliminary objection is devoid of merit.
11. As such, it is dismissed.
12. Each party to bear own costs of the objection.

Dated, signed and delivered on the 30th day of April, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI