

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC MISCELLANEOUS APPLICATION NO. E239 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

ELVIS **NJENGA**
KIMANI.....APPLICANT

VS

NUCLEAR POWER AND ENERGY
AGENCY.....RES
PONDENT

RULING

- 1 The Applicant filed a Notice of Motion application dated 16th July 2025 seeking orders: -
- a) *THAT this Honourable Court be pleased to adopt the award issued by the Director of Occupational Safety and Health dated 29th November, 2024, as a judgment of this Court.*
 - b) *THAT a decree be issued in favour of the Applicant in the sum of Kshs. 17,048,684.00, pursuant to the award of the Director of Occupational Safety and Health Services.*
 - c) *THAT interest on (b) herein at Court rates from the date of the Director’s award until full payment.*
 - d) *THAT the costs of this Application be borne by the Respondent.*

e) Any other such relief(s) as this Honourable Court deems just and equitable.

Applicant's Case

- 2 The Applicant avers that he is currently employed by the Respondent as a Principal Engineer.
- 3 He states that on or about 18th July, 2024, he was involved in a road traffic accident in the course of work-related travel and sustained personal injuries arising out of and in the course of employment.
- 4 The Applicant asserts that the Respondent was duly notified of the accident and complied with its statutory obligation by reporting the same to the Directorate of Occupational Safety and Health Services (DOSHS) vide ML/DOSH Form 1 for assessment and/or determination of the claim. Subsequently, he underwent medical examination by a designated medical practitioner to determine the nature and extent of the injuries sustained.
- 5 It is the Applicant's case that upon consideration of the claim, the Director of Occupational Safety and Health Services found him entitled to compensation and issued an award in his favour in the sum of Kshs. 17,048,684.00. The Director issued a demand for payment to the Respondent dated 29th November, 2024 vide ML/DOSH/WIBA/Form 4, but the Respondent has refused and/or neglected to satisfy the award.

- 6 The Applicant avers that under Section 26(4) of the Work Injury Benefits Act, the Respondent was obligated to settle the claim within 90 days, which period has since lapsed without payment or appeal. He further states that the Respondent failed to lodge any objection within the 60 days prescribed under Section 51 of the Act, rendering the award final and conclusive.
- 7 The Applicant asserts that the Respondent's failure to comply with the Director's award amounts to a violation of his statutory right to compensation under the Work Injury Benefits Act and a breach of his right to fair labour practices under Article 41 of the Constitution, thereby necessitating the present Application. He contends that this Court has jurisdiction to enforce the Director's award and ought to adopt the same as a decree of the Court in the interests of justice.
- 8 The Applicant further avers that the Respondent's claim that it was not served with the Director's award is false and misleading, stating that the award was duly served on 29th November, 2024 at about 4:37 p.m., and simultaneously forwarded to its insurer, as evidenced by email correspondence.
- 9 He states that on or about 24th January, 2025, the Respondent and its insurer engaged him in negotiations

but attempted to settle the claim at a figure significantly lower than the assessed award.

- 10 The Applicant contends that the accident arose out of and in the course of his employment and that the Director lawfully made such a determination within the mandate conferred under the Work Injury Benefits Act, which determination cannot be reopened through mere denials.
- 11 He asserts that the compensation was assessed strictly in accordance with the statutory formula and supported by medical evidence, and that the Respondent failed to invoke the statutory mechanisms for objection or appeal if dissatisfied.
- 12 The Applicant avers that the Respondent is seeking to secure a stay without a formal application while pursuing a similar relief in pending Judicial Review proceedings, which do not oust this Court's jurisdiction.
- 13 He contends that the Respondent's conduct demonstrates a deliberate attempt to delay and frustrate enforcement of the award by raising belated and unmeritorious challenges, including denial of service, disputing the work-related nature of the accident, and alleging excessiveness of the award.
- 14 The Applicant asserts that justice delayed is justice denied and urges the Court not to permit the Respondent to defeat or defer his entitlement through dilatory tactics,

and therefore prays that the Court disregards the Respondent's assertions, declines any stay of proceedings, and adopts the Director's award for enforcement.

Respondent's Case

- 15 In opposition to the application, the Respondent filed a replying affidavit dated 19th September 2025, sworn by its Manager Human Resource and Administration, Benedict Njuguna.
- 16 The Respondent states that on 29th November 2024, the Director of Occupational Safety and Health Services rendered an award in Work Injury Benefit Claim Reference No. WIBA/NRB/03221/2024 in favour of the Applicant in the sum of KShs. 17,048,684.
- 17 The Respondent avers that although the Applicant was its employee at the material time, the accident in question occurred on 18th July 2024 at about 3:40 a.m. while the Applicant was driving his personal vehicle, wholly outside the scope of employment.
- 18 The Respondent contends that it was never served with the said award within the statutory timelines under Section 51(1) of the Work Injury Benefits Act and only became aware of it on 21st July 2025 upon being served with pleadings in ELRC Misc. Application No. E239 of 2025. It asserts that by then, the statutory 60-day period for

lodging an objection had lapsed, thereby extinguishing its right of objection through no fault of its own.

- 19 The Respondent asserts that the Director acted in excess of jurisdiction by entertaining and awarding compensation for an accident that did not arise out of and in the course of employment as required under Section 3 of the Work Injury Benefits Act, thereby rendering the award ultra vires, null, and in contravention of the doctrine of legality under Article 10 of the Constitution.
- 20 The Respondent avers that the failure by DOSH and the Applicant to serve the award and supporting documents within time deprived it of the statutory right to object under Section 51(1) of WIBA and amounted to a breach of the principles of natural justice, particularly the rule of *audi alteram partem*, and violated its right to fair administrative action under Article 47 of the Constitution.
- 21 It is the Respondent's case that the award was made without affording it an opportunity to be heard, therefore, procedurally unfair, unreasonable, and oppressive. It contends that the decision imposing liability in the sum of KShs. 17,048,684, in circumstances where the accident did not occur in the course of employment, is irrational, arbitrary, and unreasonable within the meaning of Section 7(2)(c), (i) and (k) of the Fair Administrative Action Act.

- 22 The Respondent avers that the impugned decision infringed on its constitutional rights to fair administrative action and access to justice under Article 47 and 48 of the Constitution, and unless quashed, it will expose it, as a public agency, to unlawful financial liability contrary to constitutional principles on prudent use of public resources.
- 23 The Respondent states that it has filed a Judicial Review Application before this court being *ELRC JR No. E058 OF 2025; State Law Office and The Nuclear Power and Energy Agency VS the Director of Occupational Safety and Health Services and Eng. Elvis Njenga Kimani AND 2 Others* dated 17th September 2025 seeking orders of certiorari to quash the Director's decision, and an interim stay of proceedings in Nairobi ELRC Misc. Application No. E239 of 2025 pending determination of the said application, which matter is scheduled for *inter partes* hearing.
- 24 The Respondent contends that the award is exaggerated, unsupported by any legal foundation, and that it intends to seek leave to appeal or challenge the award now that it has come to its attention.
- 25 The Respondent avers that unless the orders sought are granted, it will suffer irreparable prejudice and the proceedings will be rendered nugatory. It therefore urges this Court to grant an order of stay of these proceedings

pending the determination of the Judicial Review application and to dismiss the Applicant's Application.

- 26 It is the Respondent's case that it is directly concerned with the application of the Work Injury Benefits Act framework to the present claim and that its participation is necessary to aid the Court in evaluating the propriety and enforceability of the impugned award.

Applicant's Submissions

- 27 The Applicant submitted that the jurisdiction of this Court is grounded in Article 162(2)(a) of the Constitution, which mandates the establishment of courts with the status of the High Court to determine disputes relating to employment and labour relations, and that pursuant thereto, the Employment and Labour Relations Court Act was enacted.
- 28 He submitted that Article 162(2)(a) of the Constitution as read with Section 12(1)(a) of the Employment and Labour Relations Court Act affirms the exclusive and unlimited original jurisdiction of this Court in employment and labour relations disputes, including the authority to entertain and enforce determinations arising under the Work Injury Benefits Act (WIBA), 2007, such as awards issued by the Director of Occupational Safety and Health Services. It cited ***Wanyama v Jubilee Insurance Co Limited &***

another [2023] KEELRC 2183 (KLR), where the Court held:

“Under article 162 (2)(a) of the Constitution and section 12 of the Employment and Labour Relations Court Act, this court has exclusive jurisdiction to deal with employment disputes between an employer and an employee, which no doubt, this case is.”

29 He further submitted that although there had been divergent judicial opinion on enforcement of the Director’s awards, the Court of Appeal in **Charles v Cheto [2025] KECA 784 (KLR)**, conclusively settled the issue by affirming that enforcement properly lies with the ELRC as follows:

“As the learned Judge correctly observed, there is a lacuna in the law with regard to the procedure for enforcement of the Director’s decision in that there is no express provision of the WIBA stipulating the procedure for enforcement. Be that as it may, Employment and Labour Relations Courts have aptly held that enforcement of the Director’s decisions properly lies with the ELRC as the court with the jurisdiction to deal with employment and labour relations claims and for connected purposes, and as provided for under sections 86 and 89 (formerly sections 87 and 90) of the [Employment Act](#) (Cap. 226).”

- 30 It was submitted that the Court of Appeal endorsed the ELRC's inherent jurisdiction to adopt the Director's award as a judgment, as expressed in ***Samson Chweya Mwendabole v Protective Custody Limited [2021] eKLR***.
- 31 On the nature and effect of the Director's award, the Applicant submitted that the award is not a mere administrative recommendation but a binding determination with statutory force under Sections 23, 24, 25 and 26 of WIBA, and once made, it is final and conclusive unless challenged under Sections 51 and 52 thereof.
- 32 He submitted that where no objection or appeal is lodged, the Director's award attains a finality akin to *res judicata* and precludes the Respondent from reopening of the dispute as held in ***Ouya v Avenue Health Care Ltd [2024] KEELRC 182 (KLR)***. The doctrine of preclusion was discussed in ***Mutegi v Teachers Service Commission & another [2023] KEELRC 2720 (KLR)***

"The 1st Respondent argues that the was not sustained as a result of a workplace injury, or in the course of the Applicant's duty. I am not convinced that these are matters that can be raised at this point in the proceedings. Appropriately, they could have been raised during the proceedings before the

Directors of Occupational Safety and Health, or by an appeal to this Court.”

33 It is the Applicant’s submissions that the Director’s award dated 29th November, 2024 assessing compensation at Kshs. 17,048,684.00 has crystallized into a binding liability, there having been no objection or appeal lodged within the statutory timelines.

34 On estoppel, the Applicant submitted that the Respondent is precluded from departing from its prior representations. He relied on ***Serah Njeri Mwobi v John Kimani Njoroge [2013] eKLR***, where it was held:

“The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.”

35 He submitted that the Respondent, through its Human Resources Policy and Procedure Manual dated August, 2020, undertook to maintain an insurance scheme covering all employees against work-related accidents, and further, by its letter referenced NuPEA/HRA/OL/Vol 3 and dated 24th October, 2024, wrote to the Director of Occupational Safety and Health Services, requesting finalization of the claim assessment to facilitate settlement by its insurer.

- 36 It was submitted that having made such representations, the Respondent cannot be permitted to depart therefrom so as to avoid compliance with the Director's award.
- 37 On the invocation of *res judicata*, the Applicant submitted that the judgment in ELRCJR/E058/2025 bars the Respondent from re-litigating issues that were conclusively determined therein, noting that the issues raised in the Respondent's submissions have already been adjudicated.
- 38 He submitted that this position is anchored on Section 7 of the Civil Procedure Act and supported by authorities including ***John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others [2014] eKLR*** and ***Kwale International Sugar Limited v EpcO Builders Limited [2025] KEHC 10050 (KLR)***.
- 39 It was the Applicant's submissions that by rehashing facts and issues determined in ELRC JR No. E058 of 2025, the Respondent offends the doctrine of *res judicata*, and the Court ought to decline the invitation to entertain the same and strike out the Respondent's submissions with costs.
- 40 The Applicant submitted that WIBA contemplates voluntary compliance with the Director's award, and where such compliance is not forthcoming, the law envisages enforcement by this Court to safeguard the

employee's right to compensation, and therefore urged the Court to adopt the Director's award as prayed.

Respondent's Submissions

- 41 The Respondent submitted on three issues: Whether the accident of 18th July 2024 arose out of and in the course of the Applicant's employment so as to attract liability under WIBA; Whether the DOSH's award was properly communicated to the Respondent in time to lodge an objection under Section 51 of WIBA; Whether the award is enforceable against the Respondent

- 42 On the first issue, the Respondent submitted that Section 2 of WIBA defines an accident as one arising out of and in the course and scope of employment, while Section 10(2) limits employer liability to injuries sustained while at work. It was further submitted that Section 10(5) only deems travel to or from work as being within the course of employment where the transport is provided by the employer.

- 43 The Respondent argued that the Applicant was driving his personal motor vehicle and therefore the deeming provision under Section 10(5) is inapplicable. Reliance was placed on ***Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR)***, where the Supreme Court upheld the constitutionality and exclusivity of the WIBA regime, emphasizing that compensation is strictly

limited to injuries arising out of and in the course of employment.

- 44 The Respondent further submitted, borrowing from comparative jurisprudence in ***Smith v Stages [1989] 1 AC 928 (HL)***, the House of Lords clarified that travel to and from work is generally outside the course of employment unless it forms part of the work or is expressly required by the employer. It was argued that the accident occurred at about 4:10 a.m., outside official working hours, without any authorization or assigned duty, and that the emails relied upon by the Applicant were generated after the accident and relate to a meeting in which he had no role, rendering them irrelevant.
- 45 It is the Respondent's submission that even the Director's Supplementary Affidavit, upon further inquiry, confirmed that the journey was unauthorised, undertaken in a personal vehicle, at an abnormal time and along a detour, thus not occupational in nature.
- 46 On whether the award was properly communicated, the Respondent submitted that Section 51(1) of WIBA provides a mandatory sixty (60) day period within which an aggrieved party may lodge an objection. It was argued that although the award (DOSHS WIBA Form 4) was system-generated on 29th November 2024, no formal service of the quantified award or decision was effected upon the Respondent within the statutory period.

- 47 The Respondent submitted that it only became aware of the award after the lapse of the objection period and was thereby deprived of its statutory right to object and present its case before the Director. Reliance was placed on ***Charles v Cheto [2025] KECA 784 (KLR)***, where the Court of Appeal held that the 60-day objection period is mandatory and that where an employer becomes aware of the award after its lapse, the award cannot be enforced without first being challenged through judicial review.
- 48 The Respondent submitted that the failure of service, coupled with the automated nature of the DOSH system without human verification, amounted to a procedural irregularity that rendered the award unenforceable.
- 49 On enforceability, the Respondent argued that the award cannot be enforced as the accident falls outside the ambit of WIBA and the mandatory procedural requirements under Section 51 were not complied with. It maintained that enforcement in such circumstances would be contrary to statute and due process.
- 50 The Respondent submitted that it is not opposed to the Applicant receiving compensation but contended that the proper avenue lies under the Group Personal Accident policy maintained by the Respondent, which covers accidents occurring at any time irrespective of whether the employee is on duty.

- 51 It is the Respondent's submission that the accident did not arise out of and in the course of employment, that the award was not properly communicated within the statutory timelines, and that the same is therefore unenforceable. It urged the Court to dismiss the Applicant's Application with costs and direct the Applicant to pursue compensation under the Group Personal Accident policy.
- 52 I have examined all the averments and submissions of the parties herein. The application before me is for adoption of the award of the director WIBA dated 29th November 2024 as a judgment of this court. The respondents opposed this application averring that they were never served with the award within the stipulated time and only became aware of this on 21st July 2025 after the time within which to lodge an objection had passed. They also aver that the accident the subject matter of this application occurred outside of work and is therefore not covered under WIBA.
- 53 In determining this application, I have considered the fact that the issue of whether this accident fell within WIBA or not was determined by this court in JR No 058 of 2025 where this court made a finding in its ruling of 25/2/26 that the respondents themselves filled the WIBA form and reported the accident as falling under work injury claim. The matter is thus *res judicata* and I will decline to revisit it at this point.

54 As to whether the respondents were informed of the occurrence of this accident or not, this court also made a finding that the award was made and form 4 dated 29th November 2024 ref no WIBA/NRB/0321/2024 was generated and delivered to the applicant through the WIBA system on the same day at 16.31 hrs. The issue of the award not being notified to the respondents was thus determined vide this court's ruling in JR No 058/2025 and the respondents failed to object to the award as stipulated under section 51(1) of WIBA Act which states as follows:

p51.(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 an objection against such decision.

55 Having made the above findings, I find no reason which would bar this court from adopting the Director's award the same having not objected to and having not filed any appeal against the same. I therefore find that the application for adoption of the Director award is merited and the same is allowed as prayed. I adopt the award of the director to the tune of kshs 17,048,684/- as a judgment of this court in favour of the applicant. The same is awarded plus interest at court rates with effect from the date of this judgement.

**Dated, Signed and Delivered Virtually at Nairobi
this 13th Day of May, 2026.**

HELLEN WASILWA

JUDGE