



Wandera v Endmor Steel Millers Limited (Miscellaneous Case E304 of 2024) [2025] KEELRC 265 (KLR) (31 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 265 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE E304 OF 2024**

**AK NZEI, J
JANUARY 31, 2025**

BETWEEN

ALLAN BONFACE WANDERA APPLICANT

AND

ENDMOR STEEL MILLERS LIMITED RESPONDENT

RULING

1. The Application before me is the Applicant’s Notice of Motion dated 30th October, 2024. The Applicant seeks the following Orders:-
 - a. That this court adopts the assessment of the Director of Occupational Safety and Health Services as a Judgment of the Court.
 - b. That a decree for Kshs.255,877/= do issue in accordance with the assessment of the Director of Occupational Safety and Health Services.
 - c. That the Honourable Court be pleased to award interest at court rates, to be paid by the Respondent from 14th March, 2024 when the award was made till payment in full.
 - d. That costs of the application be borne by the Respondent.
2. The application, expressed to be brought under Article 162(2)(a) of the *Constitution* of Kenya, Section 12 of the *Employment and Labour Relations Court Act* and Rules 28 and 31 of the *Employment and Labour Relations Court [Procedure] Rules*, is based on the Applicant’s supporting affidavit sworn on 30th October, 2024. It is deponed in the said affidavit:-
 - a. that the Applicant was employed by the Respondent as a Mould Operator, and was on 20th February, 2017 involved in an industrial accident whereby he sustained burn wounds on his right leg.



- b. that the Respondent reported the accident to the Director of Occupational Safety and Health Services (“the Director”) by completing the DOSH Form 1.
 - c. that the Applicant was treated and the decree of his permanent incapacity was assessed at 5%, and that this formed the basis of the assessment by the Director.
 - d. that on conducting investigations, the Director awarded the Claimant a sum of Kshs.255,877/= in compensation for the said industrial injuries.
 - e. that on 24th March, 2024, the Director sent copies of DOSH/WIBA 4 and the Medical Report to the Respondent, but the Respondent adamantly refused and/or failed to pay the assessed sum, despite several reminders.
 - f. that ninety days have long lapsed since the demand for payment was made. That the Respondent has neither objected to nor appealed against the Director’s assessment/award; and is obligated to settle the assessed sum.
3. Documents annexed to the Applicant’s said supporting affidavit include copies of WIBA/DOSH FORM I, DOSH/WIBA 4 and a medical report.
 4. The Respondent entered appearance on 6th November, 2024, but is not shown to have filed any response to the application. The application is, therefore, unopposed.
 5. The *Work Injury Benefits Act* (WIBA) is silent on how awards of compensation made by the Director to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not oust this Court’s Jurisdiction to enforce such awards; and especially where the Director’s decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act has not been objected to pursuant to Section 51 of the *Act* (WIBA); or has been objected to and the objections and/or appeals thereon have been determined in favour of the injured employee, and the employer has refused to pay.
 6. I stated as follows in *Marcus Curvey Ojango v Kenya Revenue Authority* [2024] eKLR:-

“Pursuant to Article 162(2)(a) of the *Constitution* of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where that Jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such a statutory provision is Section 16 of the *Work Injury Benefits Act* (WIBA) which expressly ousts courts’ jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.”
 7. Failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine. Article 50(1) of the *Constitution* of Kenya 2010 provides as follows:-

“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”



8. In sum, this court has Jurisdiction to enforce awards of compensation made by the Director, and which are not the subject of objections or appeals pursuant to Sections 51 and 52 of the WIBA, or where objections have been made and have been determined in favour of an employee; and the determination is not the subject of an appeal to this court pursuant to Section 52(1) of the Act (WIBA).
9. Consequently, the Applicant's Notice of Motion dated 30th October, 2024 is hereby allowed in the following terms:-
 - a. The award of Kshs.255,877/= made by the Director of Occupational Safety and Health Services in favour of the Applicant on 14th March, 2024 is hereby adopted by this court, and Judgment is hereby entered for the Applicant against the Respondent in the said sum of Kshs.255,877/=.
 - b. A decree shall issue accordingly.
 - c. The Applicant is awarded interest on the decreed sum, to be calculated at court rates as from 14th March, 2024, being the date of the Director's award and demand for payment.
 - d. Each party shall bear its own costs of the application.
10. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF JANUARY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Momanyi for the Applicant

Miss Wambui for the Respondent

