



Masinde v Kanini Haraka Enterprises Limited (Miscellaneous Application E058 of 2024) [2025] KEELRC 111 (KLR) (24 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 111 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E058 OF 2024
AN MWAURE, J
JANUARY 24, 2025**

BETWEEN

DOMINIC CHAVAI MASINDE APPLICANT

AND

KANINI HARAKA ENTERPRISES LIMITED RESPONDENT

RULING

1. The Applicant herein filed a Notice of Motion dated 31st October 2024 under Certificate of Urgency seeking orders that:
 1. Spent
 2. The Honourable Court be pleased to order the Respondent to forthwith pay to the Applicant a sum of Kshs.527,554/= as assessed and awarded by the Directorate of Occupation Health and Safety under the *Work Injury Benefits Act* (WIBA) 2007 in an award dated 4th July 2024
 3. This Honourable Court be pleased to order the Respondent to pay to the Applicant interest on the said sum of Kshs.527,554/= at 14% P.A from 4th July 2024 to date of full payment.
 4. The costs of this cause be borne by the Respondent.
2. The application is supported by the Applicant's affidavit sworn on even date with one annexure thereto.
3. In the supporting affidavit, the Applicant avers that he sustained a serious work related injury on 11th October 2023 at the Respondent's premises.
4. The Applicant avers that the Respondent reported the accident and filled the requisite documents from the Director of Occupational Health and Safety Services and submitted them.



5. The Applicant avers that he sustained a fracture on the left acetabulum, and right pubic ramus with other injuries awarding a permanent disability of 35%.
6. The Applicant avers that the Director of Occupational Health and Safety Services assessed and awarded a sum of Kshs.527,554/= on 4th July 2024.
7. The Applicant avers that the Respondent has been reminded on several occasions to honour the award, but it remains adamant and has failed in the enforcement of the award.
8. The Applicant avers that this Honourable Court has jurisdiction to enforce orders in regard to awards made by the Director of Occupational Health and Safety Services.
9. The Applicant avers that his health requires immediate attention, thus requesting enforcement of the award to access funds for medication.
10. The Respondent on the other hand was served with the application and did not put in any response in opposing the application.

Determination

11. The issue for determination before this Honourable Court (ELRC) is whether it has jurisdiction to enforce awards from the Director of Occupational Health and Safety Services and whether the Applicant is entitled to the orders sought.
12. In the case of *Samson Chweya Mwendabole V Protective Custody Limited* [2021] KEELRC 1809 (KLR) the court held that:

“...However, this Court being endowed with unlimited original and appellate jurisdiction in disputes related to employment and labour relations pursuant to Article 162(2) of the *Constitution* and Section 12 of the *Employment and Labour Relations Court Act*, the Court has inherent jurisdiction to adopt as judgment the Director’s award for purposes of execution. This jurisdiction should not be confused with appellate jurisdiction which is expressly donated under Section 52(2) of the WIBA in respect of the director’s reply to objection made under Section 51(1) of WIBA. It would appear that the former jurisdiction, which I now invoke, can be exercised by the Court where there is no challenge mounted against the Director’s award by any party by way of objection or appeal under Sections 51(1) and 52(2) of the WIBA respectively. In this case, it is common ground that the Respondent did not object to the award under Section 51(1) of the WIBA...”
13. Based on the referenced case above, this court has jurisdiction to enforce and adopt awards from the Director of Occupational Health and Safety Services as denoted from its original and appellate jurisdiction provided under article 162(2) of the *Constitution* and Section 12 of *Employment and Labour Relations Court Act*.
14. Therefore, this court holds that it has jurisdiction to enforce and adopt awards from the Director of Occupational Health and Safety Services. The Respondent has not applied for the setting aside of the award and so the amounts are still due and owing.
15. In view of the foregoing, this court allows the Notice of Motion dated 31st October 2024 on the following terms:
 - a. The assessment made by the Director of Occupational Safety and Health Services dated 4th July 2024 in the sum of Kshs.527,554/= granted in favour of the Applicant against the Respondent



is hereby adopted as a Judgment of this Court and the Respondent is ordered to pay the said sum of Kshs.527,554/= to the applicant plus interest at 14% per annum from 4th July 2024 till full payment.

b. Costs of the application are awarded to the Applicant.

16. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF JANUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

