



**Wamotsa v Kitui Flour Mills Limited (Miscellaneous Application  
E099 of 2024) [2025] KEELRC 1432 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1432 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E099 OF 2024**

**M MBARŪ, J  
JANUARY 30, 2025**

**BETWEEN**

**ELPHAS SAHANI WAMOTSA ..... APPLICANT**

**AND**

**KITUI FLOUR MILLS LIMITED ..... RESPONDENT**

**RULING**

1. The applicant filed an application dated 27 September 2024 seeking orders that the court be pleased to adopt the award of the Director of Occupational Safety and Health Services (Director) made on 19 June 2024 as the judgment of the court and a decree be issued for the sum of Ksh.1, 747,654, together with medical expenses incurred at Ksh.50, 200, together with costs.
2. The application is supported by the applicant's affidavit, which avers that he was employed by the respondent as a loader when he sustained work-related injuries on 17 December 2024, which rendered him permanently disabled. The matter was reported to the Director, and on 19 June 2024, an assessment and award of Ksh.1, 747,654 was issued. The respondent was directed to make payment within 90 days, which they have failed to do, and such an amount is due with interest and costs.
3. The applicant avers that due to injuries suffered following the work-related injuries on 17 December 2024, he has incurred other medical costs of Ksh.50, 200, which the respondent should pay.
4. In reply, the respondent filed the Replying Affidavit of Faith N. Sowayi, the legal officer, who avers that the application is an abuse of the court process. The applicant suffered work-related injuries, and the Director assessed the same and awarded Ksh.1, 747,654. The applicant's advocate wrote a letter dated 24 September 2-24 informing the respondent of the award and payment was done at Ksh.167, 654. The respondent further paid Ksh.1 580,302 through cheque based on section 28(4) of *WIBA* less the Temporary Total Disability sum paid through a letter dated 26 September 2024 for Ksh.680 302 and Ksh.900 000.



5. The award payable to the applicant has been paid in full, and he has continued to receive his salaries and allowances. His advocate acknowledged receipt of Ksh.1, 580,302 in full and final settlement of compensation for work injury through a letter dated 3 October 2024. The applicant herein should be dismissed with costs.
6. The applicant filed his Supplementary Affidavit and avers that his advocate on record is M/s Odunga & Associates Advocates. Following court directions on 16 October 2024, whereas he had not instructed other advocates, on 3 October 2024, he received a phone call from M/s Mungoma & Company Advocates that money had been paid through the office. He made enquiries, but he was only paid on 25 October 2024 less Ksh.167, 352, and later, the cheque for Ksh.630, 261 was reversed unpaid.  
The respondent has not made full payment as directed by the Director.
7. The respondent also filed a Further Affidavit by Sowayi, who avers that the applicant confirmed through his advocates that he was issued postdated cheques on 15 October 2024. The respondent has made full payment of the Director's award.

### **Determination**

8. The right to be represented by an advocate of one's choice is entrenched in our laws. Under the [Employment and Labour Relations Court Act](#), a party can be represented by his advocates of choice or attend in person.
9. In this case, the applicant asserts his advocates are M/s Odunga & Associates Advocates. However, M/s Mungoma & Company Advocates have been in contact with the respondent on his behalf and settled the matter. Indeed, the applicant received cheques from these advocates and banked them. He did not ask that the same be directed to his new advocates.
10. The gist of the demand letter dated 24 September 2024 from M/s Mungoma & Company Advocates is that they acted for and on the applicant's behalf. The respondent received this letter on 25 September 2024. The payment was made on 3 October 2024. The applicant banked the cheques on 15 October 2024.  
The matter herein was filed on 27 September 2024.
11. The applicant avers in his affidavit that he suffered a work injury on 17 December 2024. There is no demand letter to the respondent seeking payment of the Director's award from his current advocate, M/s Odunga & Associates Advocates.
12. The work-related injury that M/s Mungoma & Company Advocates addressed occurred on 17 December 2022. This matter has since been fully settled between the respondent and the applicant's then-advocates, M/s Mungoma & Company Advocates. The applicant has received payments, and where one cheque bounced, such a matter is to be resolved between him and the issuing advocates, M/s Mungoma & Company Advocates.
13. The applicant is further seeking payment for follow-up Ksh.50, 200 treatment. There is no record or evidence of treatment and such costs. In any event, the purpose of these proceedings is single and specific—the enforcement of the Director's award. Where there are subsequent expenses incurred by the applicant outside the Director's award, such cannot be subject to these proceedings without notice and demand to the respondent to pay and the rationale for the same.



14. The applicant's full payment by the respondent through M/s Mungoma & Company Advocates should have resolved his choice of advocate outside court. These proceedings were unnecessary, and the applicant shall, therefore, meet the costs due to the respondent.
15. Accordingly, the application dated 27 September 2024 is without merit and is hereby dismissed. Costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 30 DAY OF JANUARY 2025.**

**M. MBARŪ**

**JUDGE**

