



REPUBLIC OF KENYA



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**Wambui v Kheis Industries Limited (Employment and Labour Relations Appeal
E056 of 2024) [2025] KEELRC 113 (KLR) (24 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 113 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E056 OF 2024**

**AN MWAURE, J
JANUARY 24, 2025**

BETWEEN

MARTIN IKUBU WAMBUI APPELLANT

AND

KHEIS INDUSTRIES LIMITED RESPONDENT

(Being an Appeal from the Ruling and order of the Honourable Dr. Priscah Nyotah, Principal Magistrate delivered on 10th July 2024 in Nakuru MCELRC Misc App No. E015 of 2024)

JUDGMENT

1. The Appellant being dissatisfied by the ruling and order of the Honourable Principal Magistrate Dr. Priscah Nyotah filed this appeal vide a Memorandum of Appeal dated 23rd July 2024 on grounds that: -
 1. The learned magistrate erred in law and in fact in dismissing the Appellant's application dated 21st March 2024 before her seeking enforcement orders respecting the Director's award dated 6th December 2023 in favour of the Appellant against the Respondent for Kshs. 584,100/= for grounds that she had no jurisdiction to determine the matter notwithstanding clear statutory provisions conferring her with the requisite jurisdiction.
 2. The learned magistrate's ruling aforesaid cannot stand in view of the clear provisions of legal notice number 9243 of 5th August 2011 and legal notice number 6024 of 22nd June 2018.
 3. The learned magistrate's ruling cannot stand in view of the clear provisions of the Magistrate's Courts *Act No. 26 of 2015* especially section 9 thereof conferring a magistrate's court with jurisdiction to hear and determine employment and labour relations issues where she has the requisite pecuniary jurisdiction.



4. The learned magistrate's ruling cannot stand in view of the clear pronouncement by the Court of Appeal in *Law Society of Kenya Nairobi Branch vs Malindi Law Society and 6 others* [2017] eKLR.
 5. The learned magistrate's ruling cannot stand in view of the numerous judicial pronouncements stipulating in no uncertain terms that a magistrate's court has jurisdiction to issue enforcement orders in respect of an award by the Directorate of Occupational Safety and Health in favour of employees respecting work related injuries.
 6. The learned magistrate's conclusions have no basis in law and amount to denying justice to the Appellant.
2. The Appellant prays that:
1. The learned trial magistrate ruling dated 10th July 2024 be reviewed and set aside.
 2. This Honourable Court be pleased to adopt the award dated 6th December 2023 for Kshs.584,100/= by the Directorate of Occupational Safety and Health in favour of the Appellant against the Respondent as an order of this court.
 3. This Honourable Court be pleased to order the Respondent to forthwith pay to the Appellant a sum of Kshs.584,100/= as assessed and awarded by the Directorate of Occupational Safety and Health under the *Work Injury Benefits Act* 2007 in award dated 6th December 2023.
 4. This Honourable Court be pleased to order the Respondent to pay to the Appellant interest on the said sum of Kshs.584,100/= at 14% per annum from 6th December 2023 to date of full payment.
 5. The costs of this appeal and the costs of the cause before the lower court be borne by the Respondent.
 6. Such further or order or relief as this Honourable court may be pleased to grant.
3. Both parties canvassed the appeal by way of written submission.

Appellant's submissions

4. The Appellant submitted that magistrates ranked as senior resident magistrates and above have jurisdiction to handle employment and labour relations matters, including the enforcement of awards from the Director of Occupational Health and Safety. The Appellant also submitted that this Honourable Court's jurisdiction is anchored on section 12 of the *Employment and Labour Relations Court Act*.
5. The Appellant submitted that the employer's failure to pay compensation determined by the Director of Occupational Health and Safety is a form of negligence or a statutory breach of the employment contract. This situation falls within the jurisdiction of this Honourable Court, as stated in section 87(2) of the *Employment Act*, which addresses claims between employers and employees regarding neglect or refusal to fulfil a contract of service.
6. The Appellant further submitted that the magistrate's court jurisdiction to handle employment matters is set out in section 9(b) of the Magistrates Act which states that a Magistrate's court shall be in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act whose pecuniary limits is set out under section 7(1) by hearing and determining claims relating to employment and labour relations.



7. The Appellant relied on the case of *Law Society of Kenya Nairobi Branch V Malindi Law Society and 6 Others* [2017] eKLR, the court held that the magistrate's courts have jurisdiction to hear employment and labor relations claims by validating sections 9(a) and (b) of the Magistrates Act. The court also held that Article 162(2) of the *Constitution* does not give exclusive jurisdiction to specialized courts for these cases, affirming that magistrates' courts have jurisdiction in employment and labor disputes. The court reasoned that if the *Constitution* intended to restrict Parliament from conferring such jurisdiction on magistrates' courts, it would have done so explicitly.
8. The Appellant submitted that magistrate's courts have jurisdiction to enforce awards from the Director of Occupational Safety and Health. In *Edwin Songoroh and another V Amony Yatich and another* [2021] eKLR the court held that a Director's award can be adopted by either the Magistrate's Court or the ELRC, subject to considerations of the court's pecuniary jurisdiction in relation to the dispute at hand.
9. The Appellant also submitted that section 29 (3) & (4) of the Employment and Labour Relations Court empowers the Chief Justice with authority to delegate jurisdiction of certain disputes to the magistrate. Vide Gazette Notice No. 6024 of 22nd June 2018 and Gazette Notice No. 9243 dated 5th July 2011 the Chief Justice appointed all magistrates of the rank of senior resident magistrate and above to handle WIBA matters. Therefore, the magistrate's courts have jurisdiction in enforcement procedures for awards by the Director of Occupational Safety and Health.
10. The Appellant relied on the case of *Bedford Micheni Bundi V Peritus Logistics Limited* [2020] eKLR where the court held that an employer's failure to pay compensation assessed by the Director of Occupational Safety and Health Services breaches a contractual obligation and falls within the court's jurisdiction. The Chief Justice delegated authority to Magistrates to handle employment disputes, including those involving compensation assessments, for employees earning less than Kshs.80,000/=per month. Consequently, the court found that the Magistrates Court erred in declining jurisdiction over the case, emphasizing that they possess the authority to adjudicate such matters.
11. The Appellant submitted that the trial magistrate had jurisdiction to enforce the award and urged this Honourable Court to enforce the award dated 6th December 2023 in the sum of Kshs.584,100/= in his favour as the trial magistrate erred in declining jurisdiction to enforce the award. In *Virginia Wangari Muita V Nyoro Construction Co. Ltd* [2020] eKLR the court held as follows:

“On the primary question of whether the Magistrates Courts have jurisdiction over disputes arising under the *Work Injury Benefits Act* (including enforcement of compensation awards), this Court in the *Bedford Micheni Bundi's* case concluded that although the jurisdiction belonged to this Court at the first instance, it had been delegated to Magistrates of the rank of Senior Resident Magistrate and above by the Chief Justice through Gazette Notice No. 6024 of 2018. The delegation has not been challenged successfully, to the knowledge of this Court.”
12. In *Austin Oduor Odira V Kenya Sweets Limited and another* [2021] eKLR the court held as follows:

“Upon an award of the Director, where the parties are satisfied, the WIBA has not established a framework for the enforcement mechanism. The court being seized of original jurisdiction with regard to employment and labour relations disputes has adopted a purposive approach of parties filing a claim to enforce the decision of the Director. Such approach is limited to the enforcement of the Director's award as where a party is dissatisfied with the award, an



appeal is permissible. See *Ruth Wambui Mwangi & Another Versus Alfarah Wholesalers (2017) eKLR*.

Without delving into the merits of the matter, this court is not appropriate forum to address the applicant's case as framed. The intended transfer would not achieve the desired results. The Chief Magistrate shall address the matter as appropriate."

13. In *Edwin Songoroh and another V Amony Yatich and another(supra)* where the court held that the magistrate's Courts have jurisdiction to adopt and enforce the Director's award. In *Arafa Amin Mohamed (suing as the Legal Representative to the Estate of Omar Khatib Abdulkadir-Deceased) V Dola Feeds (K) Limited [2022] eKLR* the court also held by adopting and enforcing the Director's award as an order of the court and awarded costs plus interest.
14. The Appellant urged this Honourable Court to allow the appeal by adopting the award dated 6th December 2023 in his favour against the Respondent as an order of this court.

Respondent's submissions

15. Being the first appeal, the Respondent relied on the case of *Kenya Ports Authority V Kuston (Kenya) Limited [2009] 2 EA 212* where the court held as follows:

"On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusion though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly, that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence."

16. In *Barnabas Biwott V Thomas Kipkorir Bundotich [2018] eKLR* the court stated as follows:

"This being a first appeal, it is the duty of the court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & another vs Associated Motor Boat Co. Ltd & others [1968] EA 123* this principle was enunciated thus:

..... this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen or heard the witnesses and should make due allowance in this respect..."

17. The Respondent reiterated the case of *Law Society of Kenya Nairobi Branch V Malindi Law Society and 6 others(supra)* stating that there is no relevance to the appeal.
18. The Respondent submitted that the WIBA does not have provisions for enforcement of DOSH awards and relied on the case of *Omutiti V Orpower 4 Inc [2023] KEELRC 1974 (KLR)* the court stated that:

"ELRC is created pursuant to Article 162(2) of the [Constitution](#) and established under Section 4 of the [Employment and Labour Relations Court Act](#). The composition of the court is spelt in Section 5 of the said Act. For the avoidance of doubt, the magistrates who exercise jurisdiction over employment and labour relations matters are not included in the body or institution of the ELRC. Such magistrates exercise that jurisdiction under the Magistrates Act following a gazette notice by the Chief Justice authorizing such magistrates to exercise



such jurisdiction in matters wherein the monthly gross salary does not exceed Kshs. 80,000/
=.

19. Flowing from the foregoing, it is clear and unambiguous that an application for adoption and enforcement of an award from the Director should be filed in the ELRC and not in a magistrate's court. Consequently, a magistrate has no jurisdiction to deal with a matter of adoption and enforcement of such an award.

In the considered view of this court, the trial court was right in refusing and declining to handle the suit before it for lack of jurisdiction. The learned magistrate was extremely polite and helpful to the Appellant advising that he did not dismiss the matter but rather directed the Appellant to file the matter in the proper forum or court. The trial court opted to be polite and avoided use of the proper term of the action it took which amounted to striking out the civil suit. The good magistrate repeated the same words in declining an application for review of the orders terminating the suit alluded to above.

What is as clear as sunlight is that an action for adoption and enforcement of an award by the Director should be filed in the ELRC and not before any other court. The learned magistrate was clearly without jurisdiction and he correctly declined to hear and determine the civil suit.”

20. In *Luvizu V Timsales Limited* [2024] KEELRC 857 (KLR) where the court stated that on appeal, the court can uphold, set aside, or modify an award. If the court upholds or varies the award, it has the jurisdiction to enforce it. If the award is not objected to and the employer fails to settle it, the employee can approach the court for enforcement. The award becomes a debt due from the employment relationship. The Employment and Labour Relations Court (ELRC) has jurisdiction to hear and determine such matters based on section 12 of the *Employment and Labour Relations Court Act* and section 87 of the *Employment Act*.
21. The Respondent cited the case of *Jared Ingling Obuya V Handicap International* [2021] KEELRC 1990 (KLR) the court stated that the *Work Injury Benefits Act* is silent on how decisions by the Director of Occupational Safety and Health Services (DOSHS) should be enforced. However, the court believes it was not the Legislator's intention for beneficiaries to be left without a remedy if an employer fails to implement the Director's compensation decision. The court must address this gap to fulfill the Act's purpose, which is to provide compensation for work-related injuries and diseases.
22. The Respondent submitted that the trial magistrate was correct in finding that she lacked jurisdiction to adopt and enforce a DOSHS award and that the appeal should be dismissed with costs. The Respondent relied on the case of *Owners of the Motor Vessel "Lilian S" V Caltex Oil (Kenya) Limited* [1989] eKLR the court stated that:

“..... jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

23. In conclusion, the Respondent urges this Honourable Court to dismiss the appeal with costs.

Analysis and determination

24. The court has meticulously gone through the memorandum of appeal, the written submissions filed by both parties as well as the authorities relied on and the law.



25. As the first appellant, this Honourable Court has a duty to re-evaluate the case and come up with its own conclusion- see *Selle V Associated Motor Boat Company Ltd* [1968] E.A.
26. The main issue for determination is whether the magistrate Courts have jurisdiction to adopt and enforce the award of the Director, Occupational Safety and Health under WIBA.
27. In *Law Society of Kenya Nairobi Branch V Malindi Law Society and 6 others* (supra) where the court held that the magistrate courts have jurisdiction to hear and determine matters in regard to employment and labour matter as well as environment matters.
28. Thereafter the Chief Justice vide Gazette Notice No. 6024 of 22nd June 2018 appointed magistrates of the rank of senior resident magistrate and above as special magistrates to handle employment and labour relations matters. Therefore, the learned magistrate had jurisdiction to adopt and enforce the award from the Director of Occupational Safety and Health through the case of *Law Society of Kenya Nairobi Branch V Malindi Law Society and 6 others* (supra) and Gazette Notice No. 6024 of 22nd June 2018.
29. In *Edwin Songoroh and Another V Amony Yatich and Another* (supra) cited the case of *Virginia Wangari Muita V Nyoro Construction Limited* [2020] eKLR the court stated as follows:

Second, the WIBA does not provide for the procedure for enforcement of the decision by the Director. It is the Court's considered view that such procedure ought to be provided for in the regulations to be made by the Cabinet Secretary under section 56 of the WIBA or the rules of this Court made under Part V of the *Employment and Labour Relations Court Act*, 2011 (ELRCA). The Court considers that such regulations having not been made, it is proper that this judgment be served upon the Cabinet Secretary responsible for labour, the Attorney General and the Registrar of the Employment and Labour Relations Court (in his capacity as Secretary under section 26 of the ELRCA) for appropriate action. For the time being that the procedure is not expressly provided, the Court considers that the Director's decision would be enforceable by way of a miscellaneous application or memorandum of claim and exhibiting the Director's decision for enforcement by this Court."

30. In the case of *Virginia Wangari Muita -vs- Nyoro Construction Limited* (2020) eKLR the court held that:

“In the absence of rules or regulations or Statutory Procedures on enforcement of the Director's decision the court holds that the 1st Respondent was entitled to move the Principal Magistrate's court by way of Miscellaneous application as was done.”

31. In *Makumbi V Shengli Engineering Constructions (Group) Company Limited* [2022] KEELRC 12764 (KLR) the court allowed the appeal by setting aside the orders issued in the lower court and adopting the Director's decision.
32. The court is aware of the fact that there is no clear statutory framework of adoption of Directors' awards. At the same time the Decree-holder cannot be left without a remedy due to legislative lacuna. The trial Magistrate clearly does not have jurisdiction to adopt the award of the Director of Safety and Health.

At the same time the appellant has a judgment which has not been set aside or appealed against it. It would be going against article 159 (2)(d) of the *Constitution* that provide that Justice shall be administered without undue technicalities to fail to adopt the DOSH award.



33. This court therefore while conceding the trial Magistrate was right to refer the applicant to the Employment and Labour Relations Court for adoption of his award nevertheless finds it is provident for this court to adopt the award dated 6th December 2023 of Kshs.584,100/= by the Directorate of Occupational Safety and Health in favour of the appellant as an order of this court. The court has Jurisdiction under article 162(2) of the Constitution and Section 12 of Employment and Labour Relations Court Act.

The trial magistrate however has not been extended Jurisdiction to award DOSH orders under the Chief Justice's Gazette Notice No. 6024 of 2018.

34. The court therefore orders the Respondent to pay the said sums of Kshs.584,100/= to the appellant and interest from 6th December, 2023 at 14% per annum until final payment.

35. The costs of the suit in the lower court are not awarded to any party but the costs of this appeal will be borne by the Respondent.

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

