



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutinda v Ufanisi Freighters [K] Limited (Miscellaneous Application E091 of 2024) [2025] KEELRC 598 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 598 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**  
**MISCELLANEOUS APPLICATION E091 OF 2024**  
**K OCHARO, J**  
**JANUARY 16, 2025**

**BETWEEN**

**JOSEPH KYAMBIA MUTINDA ..... APPLICANT**

**AND**

**UFANISI FREIGHTERS [K] LIMITED ..... RESPONDENT**

**RULING**

**Introduction**

1. Through his Notice of Motion Application dated 9<sup>th</sup> August 2024, the Applicant seeks: -
  - i. That this Court be pleased to adopt the assessment of the Director of Occupational Safety and Health Services as a Judgment of this Court.
  - ii. That a decree be issued in accordance with the assessment of the Director of Occupational Health and Safety for the sum of Kenya Shillings Seventy-Five Thousand Six Hundred [Kshs. 75,600].
  - iii. That costs of the application be paid by Respondent.
2. The Respondent opposed the application through a replying affidavit of Kelvin Maina, an Assistant Legal Officer, at the Respondent's Insurer's.

**The Application**

3. The Applicant stated that at all material times, he was an employee of the Respondent as a general labourer. Further, on 22<sup>nd</sup> December 2021 while working for the latter, he got involved in a workplace accident as a result of which he sustained severe injuries.



4. The accident was reported to the Director of Occupational Safety and Health Services, Mombasa. On 2<sup>nd</sup> August, 2022 the Director assessed compensation for the injuries at KShs. 75, 600, and on the same day, he [the Applicant] served the Respondent with a notification of the assessment for purposes of compensation.
5. He further stated that the decision of the Director of Safety and Health Services wasn't objected to or appealed against at any time or at all.
6. The Respondent failed to settle the amounts awarded by the Director within the 60 days stipulated in law or at all, despite the notification and several demands.
7. It is imperative for this Court to issue the orders sought to facilitate execution of the award by the Director.

### **The Response**

8. In response to the Application, the Respondent admitted that the Applicant indeed was involved in a workplace accident as a consequence of which he suffered injuries to his person. Further, on 2<sup>nd</sup> August 2022, the Director of Occupational Safety and Health Services assessed compensation payable to the Applicant for the injuries, at KShs. 75,600.
9. However, upon an application for review and further investigations, the Director for County Occupational Safety and Health Services reviewed the matter on 21<sup>st</sup> June 2023 and revised the awarded figures downwards to KShs. 34,560 as sufficient compensation for the injuries sustained by the Applicant. It is willing and ready to settle this sum.

### **Analysis and Determination**

10. The single issue that emerges for determination in the instant application, is whether the Applicant is entitled to the orders sought. In my view, it is now trite that though the *Work Injury Benefits Act, 2007*, doesn't provide for how the awards of the Director shall be enforced, this Court has the power to issue a facilitative order[s] like those sought in the application to enable enforcement of the awards. This approach is aligned with the Court's duty to ensure that the Constitutional right to access to justice for the citizenry is not unnecessarily impeded, and the maxim that equity will not suffer a wrong without a remedy.
11. There is no dispute that the Applicant suffered injuries to his person following a workplace accident. Further, the accident was reported the Director of Occupational Safety and Health services who assessed compensation for the injuries at KShs. 75,600. The Claimant contended the Respondent did not assail the award either by way of an objection or an appeal as provided for under the Act aforementioned.
12. Inarguably, the *Work Injury Benefits Act* provides for various processes that are time bound, inter alia, processes post assessment of compensation payable to the injured worker. Relevant to the instant application are the processes of objecting to the award, appealing against the award, and payment of the awarded sum by the Insurer of the employer.
13. Section 51 of the *Act* provides;
  - “(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.



- (2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.”

14. Section 52 stipulates: -

“(1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.

(2) An objector may, within thirty days of the Director’s reply being received by him, appeal to the Industrial Court against such decision.”

15. The Respondent alleged that upon its application, the Director reviewed the award downwards. However, this Court notes that the Respondent is very silent as regards the date when the alleged application was made to the Director and under what provision of the law such an application was made, if at all it was.

16. Section 51 of the Act, is very express on how the process assailing the Director’s decision should be initiated and within which period. The Respondent didn’t assert and demonstrate that it moved the Director via an objection contemplated in the provisions of the section, within the prescribed manner, and time.

17. I note that the alleged review was done on 21<sup>st</sup> June 2023, approximately 10 months after the Directors award of 2<sup>nd</sup> August 2022. Considering the timelines set out in Section 51 of the Act, including that that the Director shall reply to the objection within 14 days of receipt of the same, one is left with no doubt that these were actions that were undertaken without consideration of the requirements of the law, and thus were of no effect. As such, I hold that the award of 2<sup>nd</sup> August 2023, was never disturbed by the Director.

18. This Court hasn’t lost sight of the fact that the Respondent hasn’t placed forth any document from which it can be discerned that the Director made any the statement contemplated in Section 52[1], with reasons for the alleged review.

19. In the upshot, and geared towards enabling the Applicant realize the fruits of the award by the Director, I am impelled to allow the application herein. Consequently: -

- i. The Director’s award is hereby adopted as a Judgment of this Court.
- ii. A decree shall issue for the sum of Kenya shillings Seventy-five thousand, six hundred [KShs. 75,600].
- iii. The costs of this application shall be borne by the Respondent.

20. Orders accordingly.

**READ, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**OCHARO KEBIRA**

**JUDGE**



In the presence of:

..... For the Applicant

..... For the Respondent

