



**Ochola v Chen Mechanical Works Limited (Miscellaneous Application  
E281 of 2024) [2025] KEELRC 3 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E281 OF 2024**

**S RADIDO, J  
JANUARY 16, 2025**

**BETWEEN**

**DAVID OCHIENG OCHOLA ..... APPLICANT**

**AND**

**CHEN MECHANICAL WORKS LIMITED ..... RESPONDENT**

**RULING**

1. David Ochieng Ochola (the applicant) was injured in the course of work and Chen Mechanical Works Ltd (the Respondent) made a report to the Director, of Occupational Safety and Health around 5 December 2022.
2. The applicant lost both hands and part of the forearms in the accident and the attending doctor made a finding of 100% permanent incapacity.
3. The Director, Occupational Safety and Health in furtherance of his statutory duty under the [Work Injury Benefits Act](#) assessed the compensation due to the applicant as Kshs 3,433,200/-. The Director sent a demand for payment to the Respondent on or around 25 July 2023.
4. The Respondent did not make payment and the applicant sought the advice of an advocate. The advocate made a formal demand and when no payment was forthcoming, the applicant moved to Court on 25 September 2024, seeking orders:
  - i. That the Court adopt the assessment of the Director of Occupational Safety and Health, Nairobi as an order of the Court.
  - ii. That a decree be issued in accordance with the assessment of the Director of Occupational Safety and Health, Nairobi for the sum of Kshs Three Million Four Hundred and Thirty-Three Thousand Two Hundred Only (Kshs 3,433,200/-).



- iii. That this Honourable be pleased to award interest on the amount from the date of assessment until payment in full.
  - iv. That this Honourable Court be pleased to award any other relief this Court may deem fit and just to grant.
  - v. Costs of this application be awarded the applicant.
5. The Respondent filed a replying affidavit on 4 November 2024. In the affidavit, the Respondent's Health Safety and Environment Manager deponed that the Respondent notified its insurers of the compensation assessed by the Directorate but the insurer opted to pay Kshs 2,103,202/- out of the assessed sum of Kshs 3,433,200/-; that it deducted Kshs 1,068,367/- out of the payment by the insurer on account of salary advances and medical expenses it had paid on behalf of the applicant, and that it paid the balance of Kshs 1,034,835/- to the applicant.
  6. The Respondent also filed a Chamber Summons on 5 November 2024 seeking orders:
    - i. That the Respondent be granted leave to issue a Third-Party Notice against the First Assurance Company Ltd as per the Draft attached to the application.
    - ii. That the annexed Third-Party Notice be deemed as properly filed.
    - iii. That the costs of this application be provided for.
  7. The major reason given for the application was that it was intended to seek an indemnity and or contribution from the Third-Party.
  8. The Court gave directions on 5 November 2024.
  9. Consequently, the applicant filed a further affidavit opposing the Summons on 11 November 2024.
  10. In the further affidavit, the applicant indicated he would not oppose the joinder of First Assurance Co Ltd but denied that the Respondent had paid for his medical expenses; he was not privy to any arrangements between the Respondent and its insurer the Intended Third Party; any deductions from the compensation would be illegal; he did not sign any documents before the Respondent after losing both hands. The applicant admitted receiving Kshs 1,034,835/- on account of terminal dues.
  11. The applicant filed his submissions on 22 November 2024 and the Respondent on 13 December 2024.
  12. The Court has considered the Motion and Summons, affidavits and submissions

### **Third-Party Notice**

13. The Respondent requested the Court to allow the inclusion of its insurers, First Assurance Co Ltd as a Third Party. The main reason given was that it sought to seek an indemnity or contribution from the insurer because it had been paying premiums to First Assurance Co Ltd.
14. The Respondent did not file a complete copy of the contract/policy it had with the intended Third-Party.
15. However, a copy of the extract filed in Court on Benefits indicated:
  - B) Permanent Total Disablement
    - Percentages as set out in the First Schedule of *Work Injury Benefits Act*, 2007 subject to the maximum amounts set out under the limit of liability above.



16. The above provision leaves no doubt in the mind of this Court that any claims of indemnity or contribution as between the Respondent and its insurers should not and cannot be resolved in these proceedings.
17. The Court also notes that despite the express orders of the Court, there is no evidence on record that the intended Third-Party was served with the Summons on or before 10 November 2024.
18. The orders sought in the Summons are declined with no order on costs.

### **Motion for adoption of assessment**

19. The Director performed a statutory function in assessing the compensation due to the applicant and the assessed amount was Kshs 3,433,200/-. The whole of that amount was payable to the applicant.
20. The applicant admitted receiving Kshs 1,034,835/- as terminal benefits.
21. The Respondent asserted that the payment was the assessed compensation due to the applicant and contended that the applicant had come to Court with unclean hands ( Kibishi Hardware & Electrical Ltd & 2 Ors v Equity Bank (Kenya) Ltd (2024) KEHC 15644 (KLR).
22. The applicant did not place before the Court any evidence suggesting that the payment he received was in respect to terminal dues and the Court discounts the assertion and finds the payment was towards compensation for injury in the workplace.
23. The Respondent also contended that it made deductions from part of the payment made to the applicant on account of salaries paid when the applicant was hospitalised/out of work, and for medical expenses (Kshs 485,767/-).
24. The Medical Treatment Rules, 1977 make it mandatory for an employer to pay for the treatment costs of an employee who gets ill or injured in the workplace.
25. In light of that requirement, it was illegal/unlawful for the Respondent to deduct Kshs 485,767/- from any dues or benefits payable to the applicant.
26. The Compensation payable to an employee under the [Work Injury Benefits Act](#) envisages and includes an element to cover the difference between monthly earnings at the time of the accident and subsequent earnings.
27. The Respondent was thus within its rights to deduct the advanced salary of Kshs 504,600/-.

### **Orders**

28. Flowing from the above:
  - (a) The Summons dated 4 November 2024 is dismissed with costs.
  - (b) The Motion dated 23 September 2024 is allowed in the following terms:
    - i. The Court adopts the assessment of the Director of Occupational Safety and Health in the sum of Kshs 3,433,200/- less payment of Kshs 1,034,835/- already paid and further less advance salary of Kshs 504,600/-.
    - ii. The applicant is entitled to Kshs 2,825,165/-.
29. The applicant to have interest on the outstanding compensation from today until payment in full together with costs.



**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**RADIDO STEPHEN, MCIArb**

**JUDGE**

**Appearances**

For applicant Bee Mutuku Advocates

For Respondent Patrick Otieno & Co. Advocates

Court Assistant Wangu

