



**Kereu v Accurate Mills Limited (Miscellaneous Cause E162 of 2023)
[2025] KEELRC 20 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 20 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E162 OF 2023**

**JW KELI, J
JANUARY 14, 2025**

BETWEEN

GEOFFREY OMWANDO KEREU APPLICANT

AND

ACCURATE MILLS LIMITED RESPONDENT

RULING

1. The Applicant vide application by way of Notice of Motion dated 19th June 2024 brought under Sections 79G and 95 of the Civil Procedure Act, Order 42 Rule 6, Order 51 Rule I of the Civil Procedure Rules, 2010 and rule 17(1) of the Employment and Labour Relations Rules, 2016 and all the enabling provisions of the law sought the following Orders:-
 - a. This Honorable Court be pleased to review its previous Court directions/orders issued on 21st February, 2024.
 - b. The Applicant be granted leave to proceed and orally address court on the Application dated 7th August, 2023, in highlighting the written submissions.
 - c. Costs be in the cause.

2. Grounds of the application

- a. That this honorable court be pleased to review its previous Court directions/orders issued on 21st February, 2024.
- b. That there is need for oral submissions on the issues before the court as respects the contradictions in the presented DOSH Forms for clarity and emphasis.
- c. That the oral submission is intended to avoid misapprehension and mix-up of facts.



3. The application was further supported by the affidavit of Namada Simoni Advocate for the Applicant, sworn on 5th September 2024, to the effect that the court reviews its directions issued on the 21st February 2024 and grant leave for the application dated 7th August 2023 to be canvassed orally. The reason for the request was that the parties had presented before the court different awards for compensation of the Applicant (DOSH Form 4). The Applicant produced as GOK-2 and GOK 3 copies of DOSH / WIBA Form 4 and the Respondent had produced as exhibit AB2 another DOSH Form 4. The deponent stated that the oral hearing was necessary to avoid misapprehension and mix-up of facts.
4. The application was opposed by the Respondent through the replying affidavit of Cynthia Nafula Walubengo sworn on the 5th October 2024 in opposition to the application. The Respondent stated that it was not clear whether the applicant wished to give oral evidence or highlight submissions. That the prayer to highlight submissions could not be granted as the applicant had not filed written submissions to the application despite being ordered to do so on the 20th December 2023. That there was inordinate unexplained delay in making the instant application. That the said DOSH forms were all in possession of the applicant as at the time the court gave direction on the 23rd October 2023.

Decision

5. The instant application was canvassed by way of written submissions. The court noted that the submissions by both parties were similar in content to the pleadings highlighted above.
6. The applicant first approached this Court by way of Notice of Motion dated 7th August 2023 seeking for the adoption of the award of the Director of Occupational Safety and Health dated 11th December 2020 in the sum of KSHS. 1,205,452.80.
7. In response, the Respondent through the replying affidavit of Avraj Bhachu dated 15th December 2023 opposed the application on the basis that the award sought to be adopted had been revised by the Director following their request for re-assessment downwards to Kshs. 226,022.40 vide DOSH Form 4 dated 27th April 2021. That they had since paid the applicant the full amount and produced as exhibit AB3 WIBA certificate of payment received by the County Occupational Safety & Health Officer on the 2nd June 2021.
8. On the 20th December 2023 Justice Ocharo Kebira directed the first application be canvassed by way of written submissions. The court noted that the applicant did not file the submissions. There is indeed no such submissions on record for highlighting and as such the Order cannot be granted as sought. The applicant relied on the provisions of section 16 of the *Employment and Labour Relations Court Act* to wit:-

“ 16. Review of orders of the Court The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.”

and section 20(1) of the *Act* to wit:-

“In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities.”



The applicant further relied on the decision in *Philip Keipto Chemwolo & Mumias Sugar Company Limited v Augustine Kubende* [1986] KECA 87 (KLR) where Justice Apaloo JA stated:-

“I think a distinguished equity judge has said:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.”

I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”

The applicant in citing the decision did not submit on the context to which he sought the court to apply the authority. The court cannot make assumptions as to the intentions of a party. The authority relates to mistakes by a litigant. What mistake was the applicant referring to that could be addressed by costs? The court had no idea.

9. The jurisdiction of the court on WIBA matters is as stated under section 52 of *Work Benefits Act*, 2007. Section 51 provides for objection to decision or award of the DOSH as follows:-

“51. Objections and appeals against decisions of the Director

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 against such decision.
2. The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the 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.”

10. On receipt of the decision of the Director on the objection If still aggrieved a party may approach the court in accordance with section 52 of the *Act*. Section 52 states-

- “1. The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a 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.”

11. The court holds that the jurisdiction to deal with any grievance on the award /decision by the Director of Occupational Safety and Health can only be invoked under section 52(2) of *WIBA*. The role of the court of adopting awards does not include making a decision on the validity of the award where there is more than one award like in the instant case. Any party dissatisfied by decision of Director is required to file objection to the DOSH as per section 51 of *WIBA*. The court holds that it lacks jurisdiction to decide on issues of contradictory awards under a miscellaneous application as that would be outside



its given appellate jurisdiction under section 52 of *WIBA*(*supra*). This Court finds that the invitation to viva voce hearing apparently to clarify on the different awards under a miscellaneous application would take the court outside its lawful jurisdiction under section 52 *WIBA*.

12. In the upshot, for the foregoing reasons, the application dated 5th September 2024 is held to be without merit as the applicant never filed written submissions as directed by the Court in the application dated 7th August 2023. The Applicant has not filed written submissions to be granted leave to highlight. Further, the court lacks jurisdiction to decide on the contradictory awards presented by the parties. That is the role of Director of Occupational Safety and Health according to section 51 of *WIBA*.
13. In the upshot, the application dated September 5, 2024 is dismissed with costs to the Respondent in the cause. The parties are to take directions on the application dated August 7, 2023.
14. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF JANUARY, 2025.

**JEMIMAH KELL,
JUDGE.**

In the presence of:

Court Assistant: Caleb

Appellant : - Kerubo h/b Mwaniki

Respondent: Kemumo h/b Namada

