



REPUBLIC OF KENYA



**Cheruyiot v Solar Panda Kenya Limited (Appeal E042 of 2024)
[2025] KEELRC 605 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 605 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E042 OF 2024
J RIKA, J
FEBRUARY 28, 2025**

BETWEEN

JOSEPH KIBE CHERUYIOT APPELLANT

AND

SOLAR PANDA KENYA LIMITED RESPONDENT

*([An Appeal from the Ruling / Order of the Hon. Senior Resident
Magistrate Nakuru, Lina Akoth, delivered on 27th May 2024, in
Nakuru C.M. E.L.R.C Miscellaneous Application No. E009 of 2024])*

JUDGMENT

1. The Record of Appeal filed by the Appellant herein, on 24th July 2024 is defective.
2. The Index, indicates the Appeal Number as E035 of 2023, Daniel Ng'ang'a v. Timsales Limited.
3. The Memorandum of Appeal indicates Appeal Number E042 of 2024, between Joseph Kibe Cheruyiot v. Solar Panda Kenya Limited.
4. The pleadings and proceedings in the Record of Appeal, show that Joseph Kibe Cheruyiot was employed by the Respondent, Solar Panda Kenya Limited.
5. He sustained work injury, and pursued work injury benefit, at the Directorate of Occupational Health and Safety Services.
6. The Director awarded him Kshs. 827,567 under *Work Injury Benefits Act*, 2007.
7. The award was not satisfied, and Cheruyiot sought the assistance of the Chief Magistrate's Court [Trial], through the Miscellaneous Application indicated above.



8. The Trial Court found that although there was an objection to the assessment made by the Director, that objection was filed late. However, it was for the Director to determine how the late objection would be dealt with, and the Trial Court ruled it could therefore, not overlook the late objection pending at the Directorate, and adopt the award as its Judgment.
9. Cheruyiot appeals against the Ruling of the Trial Court, relying on 9 Grounds of Appeal, which can be reduced to 1 Ground: that, the Trial Court erred, in finding that there was an objection pending before the Directorate, and that it could therefore not adopt the award as its own Judgment.
10. Parties agreed that the Appeal is considered on the strength of the Record of Appeal and Submissions. They confirmed filing and exchange of Submissions on 30th January 2025.

The Court Finds: -

11. The Record of Appeal as pointed out at paragraphs 1, 2 and 3 above, is defective.
12. Rule 15 [3] [a] of the E&LRC (Procedure) Rules, 2024, requires that a Record of Appeal shall contain a table of contents.
13. The table of contents filed by the Appellant does not have the correct details of the Parties; the correct Ruling/ Order being appealed against; the correct Court and Magistrate, whose decision is appealed against; and the correct case number from the Trial Court, subject matter of the Appeal.
14. The Supreme Court in *Bwana Mohamed Bwana v. Silvano Buko Bonaya & Others* (2015) e-KLR, held that a Court cannot exercise its adjudicatory powers, where an Appeal is incompetent and defective.
15. Even assuming that the rest of the pleadings and proceedings consistently capture the correct details of the Parties and the Appeal, and even were it to be assumed that the defect in the Record of Appeal is more of a procedural than a substantive defect, there is nothing to establish that the Trial Court erred, in declining to adopt the Director's award. Both Parties acknowledge that there is an objection, perhaps a late objection to the assessment, pending before the Director.
16. Whether it was filed outside the 60-day period under WIBA, and whether there is a valid objection, are matters for the Director to determine.
17. In *Lameck Nyakundi Anyona v. W.J.J. Kenya Construction Company Limited* [2022] e-KLR, the Court declined to adopt an award made by the Director as its Judgment, remitting the matter to the Director, to deal with an objection which was pending before him, and to deal with all matters he had omitted to deal with.
18. In the Supreme Court of Kenya decision, *Petition (Application) No. 4 of 2021, United Millers Limited v. The Kenya Bureau of Standards & 5 Others*, it was emphasized that where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their jurisdiction, and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance. [see also *High Court in Wahome v. Public Health Officers & Technicians Council & Another* (2023) KEHC 2680 (KLR).
19. The Trial Court cannot have erred, by upholding the doctrine of exhaustion. A catena of decisions of Superior Courts have endorsed the doctrine, in line with the decision of the Supreme Court above.
20. The Appellant ought to return to the Director and argue his case against the belated objection there. Once that objection has been dealt with, he may re-approach the bench.

It is ordered: -



- a. The Record of Appeal is defective.
- b. The Appeal is declined.
- c. Parties are referred back to the Directorate of Occupational Safety and Health, who shall determine whether there is a valid objection before him, and whether he should reassess the award granted to the Appellant.
- d. The Appellant may renew his Application before the Trial Court, once the Director has ruled on the objection.
- e. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28TH DAY OF FEBRUARY 2025.

JAMES RIKA

JUDGE

