



Paluma Engineering Limited v Thini (Suing as the representative of the Estate of Henry Thini Wainaina - Deceased) & another (Miscellaneous Application E030 of 2024) [2025] KEELRC 509 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 509 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
MISCELLANEOUS APPLICATION E030 OF 2024
MA ONYANGO, J
FEBRUARY 20, 2025**

BETWEEN

PALUMA ENGINEERING LIMITED APPLICANT

AND

JOSEPH WAINAINA THINI (SUING AS THE REPRESENTATIVE OF THE ESTATE OF HENRY THINI WAINAINA - DECEASED) 1ST RESPONDENT

INTIME CONTRACTORS WORLDWIDE LIMITED 2ND RESPONDENT

RULING

1. The application dated 27th August 2024 has been brought under Articles 50, 162 and 165 of *the Constitution*, Sections 28, 30, 37, 51 and 52 of the *Work Injury Benefits Act*, Sections 12(5) of the *Employment and Labour Relations Court Act* and Order 22 and 50 of the Civil Procedure Rules. It seeks the following orders:
 - i. Spent
 - ii. That pending the hearing and hearing of this application, this court be pleased to grant an order of stay, staying the orders dated 23rd August 2024 issued by the Chief Magistrate Court at Eldoret in Civil Miscellaneous Application case No. E142 of 2024
 - iii. That the honourable court be pleased to issue an order quashing the orders dated 23rd August 2024 issued by the Chief Magistrate Court at Eldoret in Civil Miscellaneous Application No. E142 of 2024
 - iv. Costs of this application be provided for.
2. The grounds in support of application are that:



- a. The Applicant has been served with an order dated 23 August 2024 by the 1st Respondent ordering it to pay Kshs. 2,304,000 to the 1st Respondent's advocates with immediate effect
 - b. The said order was issued illegally and irregularly by the subordinate court in the Chief Magistrate Court at Eldoret in Civil Miscellaneous Application case No. E142 of 2024;
 - c. The order by the subordinate court purportedly adopted an award issued by the Director of Occupational Safety and Health Services Uasin Gishu County on the 10th November 2022 in Claim No. WIBA/ELD/2843 a claim that the Applicant was not a party to, is not mentioned in the proceedings therein and was not aware of until it was served with the order mentioned herein and the accompanying documents;
 - d. The Applicant is statutory barred from appealing to the Director of Occupational Safety and Health Services Uasin Gishu County since the decision was rendered almost two years ago, and in any case the Applicant was not party to the proceedings before the Director;
 - e. Thus the order by the subordinate court dated 23rd August 2024 which enjoined the Applicant as a party in a miscellaneous application and issued orders against it without its participation were illegally and irregularly issued, and should be stayed and later on quashed by this honourable court;
 - f. The Applicant has an arguable appeal with a high chance of succeeding;
 - g. The Applicant is reasonably apprehensive that the 1st Respondent will seek to execute the order mentioned herein above against it, if the said order is not stayed at the first instant and thereafter quashed for being illegally and irregularly issued;
 - h. The Applicant's appeal herein will be rendered nugatory should the 1st Respondent execute the subordinate court's orders against the Applicant before the appeal is heard;
 - i. That the Applicant's right to a fair hearing guaranteed under Article 50(1) of *the constitution* was gravely violated by the 1st Respondent and the subordinate court while issuing the above order;
 - j. This court is enjoined to interfere with the above proceedings by the subordinate court and remedy the grave injustice occasioned to the Applicant
 - k. The court has inherent and statutory powers to grant the prayers sought herein.
3. The application is supported by the affidavit of Ruiru James Njoroge, Counsel for the Applicant, sworn on 27th August 2024 which reiterates the contents on the grounds of the application.
 4. The application is opposed. The 1st Respondent filed a Replying Affidavit sworn on 13th September 2024 in which he avers that he is the father to the deceased and that on 6th May 2022, the deceased was working with the Respondents in erecting a steel tank in Uasin Gishu County which collapsed causing his death. The 1st Respondent contends that the deceased was an employee of the Applicant.
 5. He further avers that the incident was reported to the Directorate of Occupational Safety and Health Services and investigations commenced. That the Applicant and 2nd Respondent were notified and they also provided statements and that the claim that the Applicant was never involved in the proceedings at the Directorate of Occupational Safety and Health Services is false as it is evident from the foregoing that Director notified the Applicant.



6. It is the 1st Respondent's assertion that on 10th November 2022, upon completion of investigation, vide a letter from the Directorate of Occupational safety and Health Services, the 2nd Respondent was ordered to pay the compensation of Kshs. 2,304,000 within Ninety days and return DOSH WIBA 5 form duly signed, to the Directorate of Occupational Safety and Health Services.
7. According to the 1st Respondent, the 2nd Respondent did not object or file an appeal against the decision within the required time frame as provided by law. That on 8th May 2023, it sent a letter to the Directorate of Occupational Safety and Health Services clarifying that it was just a contractor and that the Applicant was in fact the employer of the Deceased. It is the 1st Respondent's further contention that in accordance to the said *Work Injury Benefits Act*, an employer is liable to pay compensation in accordance to the provisions of the Act.
8. It is therefore the 1st Respondent's case, that the Applicant's failure to comply with the orders to compensate a worker who died in the course of his duties is a contravention of the law. Further, that it is in the interest of justice that the instant application is dismissed and the Applicant be ordered to compensate the 1st Respondent for the deceased's death.
9. In a rejoinder, the Applicant filed a further affidavit sworn on 29th September 2024 by its Director, Paul Maina Mbugua. The deponent reiterated the contents of the supporting affidavit and averred that the 1st Respondent confirmed in his Replying Affidavit that the Applicant was not a party to the proceedings before the Director of Occupational Safety and Health Services and that the award by the said director was directed towards the 2nd Respondent.
10. According to the Applicant, the award from the Director of Occupational Safety and Health Services Uasin Gishu clearly mentioned the 2nd Respondent and not the Applicant herein and therefore the proceedings and the order by the subordinate court are irregular for enjoining the Applicant who was not a party to the proceedings before the Director of Occupational Safety and Health Services, Uasin Gishu County.
11. The application was canvassed by way of written submissions. The Applicant's submissions are dated 27th September 2024. It appears that the Respondents did not file any submissions.

Determination

12. I have carefully considered the application, the rival affidavits as well as the submissions on record. The issue for determination is whether the Applicant has satisfied the court that it has reasons justifying the grant of orders sought in its application.
13. The Applicant seeks stay of the trial court's orders issued on 24th August 2024 in Eldoret Civil Miscellaneous case No. E142 of 2024 pending the hearing and determination of the Appeal filed before this court on 27th August 2024.
14. The Applicant's case is that the trial court ordered it to pay Kshs 2,304,000 to the 1st Respondent's advocate. According to the Applicant, the said order was issued illegally and irregularly as the order related to adoption of an award of the Director of Occupational Safety and Health Services in Claim WIBA/ELB/2843, a claim that the Applicant was not a party to.
15. I have perused the said award which is annexed to the Applicant's supporting affidavit and marked as exhibit PMM3 and noted that it is addressed to the 2nd Respondent herein and not the Applicant.
16. I have further noted that by letter dated 10th November, 2022 the County Occupational Safety & Health Officer, Uasin Gishu wrote to the 2nd Respondent notifying it that the claim in respect of



HENRY THINI WAINAINA (deceased) had been processed for purposes of compensation and directing the 2nd Respondent to pay the same within 90 days.

17. There is a reply to the said notification dated 8th May, 2023 from Chelang'at Koskei & C Advocates on behalf of the 2nd Respondent in which the advocate states that the deceased was an employee of the Appellant herein and that the Appellant should be responsible to pay the compensation.
18. There is also an affidavit of Paul Maina Mbugua sworn on 3rd March, 2023 in which he states that he is a director of the Appellant. At paragraph 9 thereof he pleads that the deceased and the other employee who was injured in the same accident were both employees of the Appellant.
19. It is further pleaded that there was a Workmen and Occupational Safety Insurance Policy that covered the entire course and progress of the construction of the project where the deceased met his death.
20. In the Application herein all that I should be dealing with is whether the orders sought should be granted pending hearing and determination of the appeal herein. I should thus refrain from finally determining the issues that would fall for determination in the appeal which from the grounds of appeal, is whether or not the Appellant is liable to pay the compensation assessed that is the subject of the suit before the trial Magistrate.
21. The full proceedings before the trial court are not available to this court at this stage and the court does not have the grounds upon which the Appellant was enjoined to the suit.
22. From the foregoing it is the view of the court that prayer 2 of the application dated 27th August, 2024 is merited. It is also the position of the court that prayer 3 of the Application is for determination in the appeal.
23. I accordingly make the following orders:
 - a. An order of stay of execution of the orders dated 23rd August 2024 issued by the Chief Magistrates' Court at Eldoret in Civil Miscellaneous Application Case No. E142 of 2024 is hereby granted pending hearing and determination of the appeal herein
 - b. Costs of the application shall abide the outcome of the appeal.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 20TH DAY OF FEBRUARY, 2025.

M. ONYANGO

JUDGE

