



Tocho v Jamun City Construction Limited (Miscellaneous Cause E190 of 2024) [2025] KEELRC 418 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 418 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E190 OF 2024**

**AK NZEI, J
FEBRUARY 14, 2025**

BETWEEN

GIBSON CHUNGULI TOCHO APPLICANT

AND

JAMUN CITY CONSTRUCTION LIMITED RESPONDENT

RULING

1. Before me is the Applicant's Notice of Motion dated 14th June, 2024, and expressed to be brought under Section 12 of the *Employment and Labour Relations Court Act*, Sections 1A, 1B and 63(a) of the *Civil Procedure Act*, Sections 16, 37 and 51 of the *Work Injury Benefits Act* and Orders 2 and 51 of the Civil Procedure Rules. The Applicant seeks the following Orders:-
 - a. That this Court be pleased to adopt the assessment of the Director of Occupational Safety and Health Services made in Claim Reference No. WIBA/NRB/09821/2023 as a Judgment and decree of the court.
 - b. That the Court be pleased to enter Judgment for the Applicant against the Respondent for Kshs.460,800/= as assessed by the Director of Occupational Safety and Health Services made in Claim Reference No. WIBA/NRB/09821/2023.
 - c. That the Court be pleased to award the Applicant interest on the amount from the date of assessment until payment in full.
 - d. That costs of the application be borne by the Respondent.
 - e. Any other relief that the Court may deem fit and just to grant.
2. The application is based on the Applicant's supporting affidavit sworn on 14th June, 2024. It is deponed in the said affidavit:-



- a. that the Applicant was employed by the Respondent as a mason, and that on 30th October, 2022, the Applicant sustained injuries while in the course of his duties.
 - b. that DOSH Form 1 was duly filled, and the Director of Occupational Safety and Health Services [subsequently] assessed the compensation payable to the Applicant under the [Work Injury Benefits Act](#) (WIBA) and awarded the Applicant Kshs.460,800/=.
 - c. that the Respondent did not settle the said sum, despite various demands.
3. Documents annexed to the Claimant’s said supporting affidavit are copies of the Claimant’s Identity Card, DOSH Form 1 and DOSH/WIBA/Form 4.
 4. I have noted from the aforesaid documents exhibited by the Applicant that the Director of Occupational Safety and Health Services (Director) assessed the compensation payable to the Applicant under the [Work Injury Benefits Act](#) (WIBA), and on 31st October, 2023 awarded the Applicant Kshs.460,800/=. A demand for payment of the said sum is shown to have been sent to the Respondent by the Director on the aforesaid date, requiring the Respondent to pay the said sum.
 5. The Respondent did not file any response to the Applicant’s application, although service of Court Process is shown to have been duly effected on the Respondent, and affidavits of service filed. The application is, therefore, unopposed.
 6. The [Work Injury Benefits Act](#) (WIBA) is silent on how awards of compensation made by the Director to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not oust this Court’s Jurisdiction to enforce such awards, and especially where the Director’s decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act has not been objected to pursuant to Section 51(1) of the Act (WIBA); or has been objected to and the objections and/or appeals thereon have been determined in favour of the employee, and the employer has refused to pay.
 7. I recently stated as follows in the case of Marcus Curvey Ojango – vs – Kenya Revenue Authority [2024] eKLR:-

“Pursuant to Article 162(2)(a) of [the Constitution](#) of Kenya 2010, this Court has inherent Jurisdiction over all Employment and Labour Relations matters, except where that Jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such a statutory provision is Section 16 of the [Work Injury Benefits Act](#) (WIBA) which expressly ousts courts’ jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.”
 8. Failure and/or refusal by an employer to pay a duly assessed and demanded compensation, and against which no objection has been lodged in accordance with the provisions of WIBA, creates a dispute over a liquidated claim, which this Court can entertain and determine. Article 50(1) of [the Constitution](#) of Kenya 2010 provides as follows:-

“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”



9. Having said that, and having considered written submissions filed by Counsel for the Applicant, the Notice of Motion dated 14th June, 2024 is allowed in the following terms:-
- a. The award of Kshs.460,800/= made by the Director of Occupation Safety and Health Services on 31st October, 2023 in favour of the Applicant is hereby adopted by this Court, and Judgement is hereby entered for the Applicant against the Respondent in the sum of Kshs.460,800/=.
 - b. The Applicant is awarded interest on the decreed sum, to be calculated at court rates from the date of filing the application herein.
 - c. A decree shall issue, and shall be enforceable in accordance with this Court's rules of procedure.
 - d. Each party shall bear its own costs of the application.
10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Mr. Maina for the Applicant

No appearance for the Respondent

