



**National Gender & Equality Commission v Director of Occupational Safety and Health Services & another (Civil Appeal E020 of 2022) [2025] KEELRC 276 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 276 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CIVIL APPEAL E020 OF 2022  
L NDOLO, J  
FEBRUARY 6, 2025**

**BETWEEN**

**NATIONAL GENDER & EQUALITY COMMISSION ..... APPELLANT**

**AND**

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH SERVICES ..... 1<sup>ST</sup> RESPONDENT**

**JOHN NZOMO NZIOKA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling determines the 2<sup>nd</sup> Respondent's objection dated 7<sup>th</sup> June 2024, in response to the Appellant's Memorandum of Appeal. By his objection, the 2<sup>nd</sup> Respondent seeks the following orders:
  - a. That the appeal be dismissed for offending Sections 51 and 52 of the [Work Injury Benefits Act](#);
  - b. A finding that the appeal is incompetent, misconceived and frivolous.
2. The objection is supported by an affidavit sworn by the 2<sup>nd</sup> Respondent and is premised on the following grounds:
  - a. That the Memorandum of Appeal dated 18<sup>th</sup> February 2022 and filed on 21<sup>st</sup> February 2022, was filed without due regard to the laid down procedure and/or sequence of challenging the decision of the 1<sup>st</sup> Respondent rendered on 29<sup>th</sup> April 2021 as stipulated under Sections 51 and 52 of the [Work Injury Benefits Act](#);
  - b. That the appeal was filed outside the prescribed statutory period without leave of the Court;
  - c. That the time for lodging any objection against the decision of the 1<sup>st</sup> Respondent lapsed on 27<sup>th</sup> June 2021;



- d. That the firm of K. Ochieng & Associates Advocates who have filed the appeal acted without instructions from the employer, the purported Appellant herein;
  - e. That the appeal was instituted in bad faith as the 2<sup>nd</sup> Respondent was not served and/or notified of the Memorandum of Appeal and only became aware of it 6 months after its filing, through an email from APA Insurance Limited, who is not a party in the matter;
  - f. That as at 29<sup>th</sup> April 2021, the 2<sup>nd</sup> Respondent's employer was ready and willing to settle the award of KShs. 5,976,735 and had submitted the relevant records to the Insurance Company;
  - g. The appeal is unfounded in law and is an abuse of the court process;
  - h. That the delay in settling the award is prejudicial to the 2<sup>nd</sup> Respondent;
  - i. That it is in the interest of justice that the objection be allowed.
3. A replying affidavit was sworn by Festus Kithinji on 30<sup>th</sup> October 2024. Kithinji, who describes himself as a Claims Officer in the employment of the Appellant's insurer, APA Insurance Limited, contests the objection for want of legal foundation. Kithinji states that the objection raises contested matters of fact which cannot be determined in limine.
  4. While denying the assertion by the 2<sup>nd</sup> Respondent that the appeal was filed out of time, Kithinji faults the 1<sup>st</sup> Respondent for failing to address issues raised in an objection dated 14<sup>th</sup> October 2021.
  5. In concluding his affidavit, Kithinji makes reference to an investigation report arising from an investigation commissioned by his employer, which is said to have returned findings on possible criminal fraud.
  6. My perusal of the pleadings and submissions filed by the parties reveals that there are many contested matters of fact, which cannot be determined by way of an objection. What is more, there are serious allegations bordering on fraud, made against the 2<sup>nd</sup> Respondent.
  7. For this reason and without determining the merit of the appeal at this stage, I decline to issue any orders that would summarily extinguish the appeal as sought by the 2<sup>nd</sup> Respondent.
  8. The objection is therefore overruled with no order for costs. The appeal will proceed to hearing on merit.
  9. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ochieng for the Appellant

Mr. Bosire for the 1<sup>st</sup> Respondent

Mr. John Nzomo Nzioka (the 2<sup>nd</sup> Respondent in person)

