



**Nduwa v Bash Hauliers Limited (Miscellaneous Application  
E126 of 2024) [2025] KEELRC 321 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 321 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E126 OF 2024**

**M MBARŪ, J  
FEBRUARY 6, 2025**

**BETWEEN**

**MARTIN NZILANI NDUWA ..... APPLICANT**

**AND**

**BASH HAULIERS LIMITED ..... RESPONDENT**

**RULING**

1. The applicant filed an application dated 25 November 2024 under the provisions of Section 10(1) and (2), 26(4) and (6) of the [Work Injury Benefits Act](#) seeking orders;

The court be pleased to adopt the assessment of the Director of Occupational Health and Safety as an order of the court as contained in the WIBA 4 form dated 22 August 2024.

A decree be issued in accordance with the assessment of the Director of Occupational Health and Safety for the sum of Ksh.1, 981,303.20 Costs of the application amounting to Ksh.200, 000 be paid by the respondent.

2. The applicant supports the application through his supporting affidavit and avers that he was employed by the respondent as a turnman on 4 February 2020, but on 18 October 2023, while at work for the respondent, he was involved in an accident and sustained severe injuries. He was treated at different hospitals and then assessed by the Director of Occupational Safety and Health Services and DOSH/ WIBA 4 issued; the Director awarded Ksh.1,981,303.20 in the assessment dated 22 August 2024, which was issued to the respondent who has refused to effect payments. There was a legal duty to make the payments for work injury, but the respondent has violated Section 26 of the WIBA, which requires an employer or insurer who fails to pay compensation upon work injury to commit an offence.
3. Under section 26(4) of the WIBA, an employer or insurer whose claim for compensation is made by the Director should settle the same within 90 days. Since the accident occurred without payment, the 90



days have lapsed, hence these proceedings. These proceedings should be allowed with costs of Ksh.200,000.

4. The respondent filed a response and a Replying Affidavit of Christopher Mukhovi, the legal officer under M/s Fidelity Insurance Company Limited, aversing that the Director assessed an award of Ksh. 1,981,303.20 as per DOSH 1 dated 20 August 2024, where the deceased was earning a salary of Ksh.25,304 per month. By dint of the salary earned by the deceased, the court lacks jurisdiction to entertain the action herein in the first instance.
5. The court has jurisdiction over disputes arising from employment contracts where the employee's gross monthly salary exceeds Ksh.80,000 under Section 12(1)(a) of the *Employment and Labour Relations Court Act*, 2011, and Section 87 of the *Employment Act*.
6. Mukhovi avers that the legislative framework confers exclusive jurisdiction to the court in high-value employment disputes while matters involving lower salaries below Ksh.80,000 fall within the purview of the magistrates courts as stipulated under Section 29(3) (a) of the Magistrates Court Act. The proceedings herein are not enforceable because the action is time-barred and the Court lacks jurisdiction, therefore, the application dated 25 November 2024 should be dismissed with costs.
7. The applicant filed his Further Affidavit averring that under Section 26(4) of the WIBA, the court is vested with jurisdiction to compel the respondent or through its insurers to pay per the DOSH award by the Director. The court has original jurisdiction under Article 162(2) of *the Constitution* to hear and determine all employment and labour relations claims.
8. The respondent has not challenged the Director's assessment and award of 22 August 2024 through objections or appeals and is liable to pay the compensation under Section 10 of the WIBA.  
  
Both parties attended and made oral submissions in court.
9. The applicant submitted that he is not deceased, as the respondent alleged. He was earning Ksh.25,400 per month, but upon the award by the Director, the respondent did not object or appeal. Under Section 26(4) and (6) of the WIBA, the respondent is liable to make payments with costs.
10. Gazette Notice No.6024 of 2018 does not override Article 162(2) of *the Constitution*, which gives the court jurisdiction to hear employment and labour relations disputes. This is a work injury benefits claim, not an employment dispute, where WIBA applies, not the *Employment Act*. The respondent has not paid the applicant as directed by the Director in the award of 22 August 2024.
11. The respondent submitted that under Gazette Notice No.6024 of 2018, the jurisdiction of the court to hear employment claims was donated to the magistrate's court. All claims under Ksh.80,000 should be filed before the magistrate's court; hence, this court lacks the requisite jurisdiction to hear the application premised on the applicant's monthly salary being Ksh.25,400.
12. The respondent submitted that the 90 days within which the respondent was to make payments of the award has since lapsed. Under Section 90 of the *Employment Act*, the application is time-barred by operation of the law. No application was filed within 12 months since the accident and injury to the applicant occurred. In the case of *Elijah Kisyanga Ndende V Manager Zakhem International Construction Ltd (2022) eKLR*, where the court held that an application seeking to enforce the award of the Director should be filed within 90 days.



## Determination

13. The issues that emerge for determination herein include whether the court has jurisdiction to hear the application according to Gazette Notice No.6024 of 2018, whether the application is time-barred, and whether the orders sought should be issued.
14. On the application of Gazette Notice No.6024 of 2018, the Chief Justice, under the mandate given under Section 29 of the *Employment and Labour Relations Court Act*, Magistrates of the rank of Senior Resident Magistrates and above were appointed and designated to hear and determine the employment disputes within their respective areas of jurisdiction. The notice is specific and clear. The purpose and intent was to ensure access to justice.
15. The original jurisdiction to hear employment and labour relations disputes is with the court under article 162(2)(a) of *the Constitution* and the *Employment and Labour Relations Court Act*, as emphasized in the case of Muriuki & another (Suing as the legal representatives of Patrick Kibiru Muriithi) v Isinya Roses Limited [2023] KEELRC 788 (KLR). The power given to the Chief Justice to designate special magistrates to hear employment disputes under the *Employment Act* does not override Article 162(2) (a) of *the Constitution* or the *Employment and Labour Relations Court Act*.
16. Whereas an award made by the Director is in the resolution of an employment and labour dispute or claim, it settles an employment claim. The Director, in making an award, performs a quasi-judicial function. The parties to that process cannot approach the court without exhausting that process as such a premature move would conflict with the doctrine of exhaustion and contravention of Section 16 of the WIBA as held by the Supreme Court in Law Society of Kenya v Attorney General & COTU [2019] eKLR.
17. The WIBA, therefore, provides for objections or an appeal to be lodged with the Director. Where none is applied, the injured employee has the right to enforce the award of the Director as herein done. See Bornface Indolo Luciva V Prime Quantifiers Construction Company Limited (2021) eKLR.
18. This court has jurisdiction to hear enforcement applications arising from awards of the Director under the WIBA.
19. On the submissions that the application is time-barred under Section 90 of the *Employment Act* and that there was no action within 12 months, the award upon which the application is premised was issued on 22 August 2024. Injury [not death] of the application occurred on 18 October 2023, the basis of which the respondent, as the employer, reported to the Director on 24 October 2023, and the assessment was done on 22 August 2024. Under the WIBA, section 26(4) gives the employer 90 days to make payment upon DOSH/WIBA 4 being issued;
  - (4) An employer or insurer against whom a compensation claim is lodged By the Director, under this section, shall settle the claim within ninety days of the lodging of the claim.
20. Unlike the timelines under Section 90 of the *Employment Act* and the motions of WIBA upon the assessment and award by the Director, the employer has 90 days from the date of the claim to settle the payment where there are no objections or appeals.
21. The respondent has relied on the case of Elijah Kisyinga Ndende v Manager Zahkem International Construction Ltd [2022] KEELRC 383 (KLR). The court declined to issue an award in an application filed outside the provisions of Section 90 of the *Employment Act*. However, my reading of this division is that the application failed to state the date when the Respondent received the Director's decision (dated 24 June 2016) as the employer. The applicant was silent on this crucial issue in the application



and affidavit. Therefore, an application filed in 2022 to enforce an award issued in 2016 was found time-barred.

22. The case herein is different. The Directors Award is dated 22 August 2024. The respondent was notified immediately and has not effected payment. These proceedings were filed without delay.
23. The respondent's employment of the application is admitted, together with the fact that he suffered a work injury while working for the respondent. A report was made to the Director, who has assessed the compensation due at ksh.1, 981,303.20, which is due and payable to the application.
24. On the costs of ksh.200, 000 claimed by the applicant, this is not part of the award.
25. The WIBA intends to compensate the injured employee. Where no payment is made within the timelines stipulated under the WIBA, leading to proceedings as herein done, such should be taxed accordingly.
26. The application dated 25 November 2024 is hereby allowed, and the respondent shall pay the applicant ksh.1,981,303.20 in terms of DOSH/WIBA 4 dated 22 August 2024. The payment is to be made within 30 days, after which the same shall accrue costs as assessed by the court plus interests at court rates.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF FEBRUARY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

