



**Ainea v Haraka Enterprises Limited (Miscellaneous Civil Application
E057 of 2024) [2025] KEELRC 985 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 985 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E057 OF 2024**

J RIKA, J

MARCH 28, 2025

BETWEEN

ELIAKIM NDOLO AINEA APPLICANT

AND

HARAKA ENTERPRISES LIMITED RESPONDENT

RULING

1. The Applicant was an Employee of the Respondent.
2. He was injured while at work, on 11th October 2023.
3. He was awarded work injury benefit for 50% permanent disability by the Director Work Injury, on 10th July 2024.
4. The Respondent has not satisfied the award, warranting the Applicant to approach the Court, through his Miscellaneous Application, dated 31st October 2024, seeking enforcement of the award.
5. He invokes various laws, in making the Application, including Order 51 Rule 1 of the Civil Procedure Rules; Sections 1A, 1B and 3A of the *Civil Procedure Act*; and Sections 10, 16, 30, 34, 37, 40 and 51 of the substantive law, the *Work Injury Benefits Act*, 2007.
6. The Application is founded on the Applicant's Affidavit, sworn on 31st October 2024. He retraces the history of the dispute, from the date he was injured at work, to the date the Director awarded him work injury benefit at Kshs. 724,992.
7. He prays the Court to order the Respondent to pay to him the above amount, as assessed and awarded by the Director, with interest at 14% per annum, from 4th July 2024.
8. The Respondent is opposed to the Application through the Affidavit of its General Manager, James Kamau, sworn on 20th January 2025.



9. Kamau acknowledges that the award was made in favour of the Applicant by the Director, and that his company is in receipt of the award.
10. He denies that the Respondent has failed, refused or neglected to honour the award. He does not deny that the Applicant was employed by the Respondent. He states that there was contributory negligence on the part of the Applicant, or on the part of 3rd Parties. He states that the Respondent's Insurer has not been provided with sufficient documentation to validate the Claim.
11. Kamau lastly, states that the Respondent was not granted an opportunity to be heard by the Director, and that jurisdiction of the Court on enforcement of the award, has been improperly invoked.
12. Parties agreed to have the Application considered and determined on the strength of their Affidavits. The Application was last mentioned on 24th January 2025.

The Court Finds:

13. The Applicant relies entirely on the *Civil Procedure Act* and the Civil Procedure Rules, in approaching the E&LRC.
14. He does not say anything about Section 2 of the *Civil Procedure Act*, which defines the Court, to mean the High Court, or a Subordinate Court, in exercise of its civil jurisdiction.
15. He invokes Section 1A of the *Civil Procedure Act*, defining the overriding objective of the Act and the Rules, as facilitation of the just, expeditious, proportionate and affordable resolution of civil disputes governed by the *Civil Procedure Act*; Section 1B which imposes on the Court, as defined in Section 2, the obligation to administer justice efficiently, timeously, and fairly; and Section 3A which confers inherent jurisdiction on the Court, to make such orders, as are necessary for the ends of justice, and to prevent abuse of the process of the Court.
16. The other procedural rule invoked by the Applicant is Order 51 Rule 1, which requires that all Applications are made by way of Notice of Motion, unless the Court directs otherwise.
17. The Applicant invokes both procedural and substantive provisions of the *Work Injury Benefits Act, 2007*.
18. Section 10 enjoins an Employer to pay compensation to an Employee who is injured in the course of employment; Section 16 bars substitution of compensation with other remedy; Section 30 regulates computation of compensation on permanent disablement of an Employee; Section 34 is on computation of compensation upon death of an Employee; Section 40 regulates compensation in event of the Employee becoming diseased in the course of employment; while Section 51 is a procedural law, governing how objections to the award of the Director, are to be made and resolved.
19. The *Employment and Labour Relations Court Act*, Cap 234 B, the Laws of Kenya, and the Employment and Labour Relations Court [Procedure] Rules, 2024 apply to the proceedings of this Court.
20. The Applicant has opted not to invoke the relevant Act, or the Rules.
21. Section 2 of the E&LRC Act, defines the Court, to mean the Employment and Labour Relations Court.
22. The Court, would also include a Subordinate Court, exercising its employment and labour relations jurisdiction, pursuant to gazette notice number 6024 of 2nd June 2018.



23. This Court and the designated Magistrates Courts, does not exercise a civil jurisdiction; it exercises a specialized jurisdiction, with a specialized procedural regime. This jurisdiction was inherited from the Industrial Court of Kenya, a specialized dispute resolution mechanism, that for long existed outside the civil jurisdiction.
24. The E&LRC Act, like the *Civil Procedure Act*, defines its principal objective. Under Section 3, the principal objective is to facilitate the just, efficient, and proportionate resolution of disputes governed by the Act. The only difference with the *Civil Procedure Act* is that, the E&LRC Act describes the objective as ‘principal’, while the *Civil Procedure Act* defines it as, ‘overriding.’
25. Section 3[2] of the E&LRC Act, enjoins the Court in the exercise of its powers under the Act, or the interpretation of the rights of individuals and parties, to give effect to the principal objective.
26. Section 3 [3], states that parties and their representatives, as the case may be, shall assist the Court to further the principal objective, and to this end, participate in the proceedings of the Court, and to comply with the directions and orders of the Court.
27. It is out of place, for the Applicant to invoke Sections 1A, 1B and 3A of the *Civil Procedure Act*. The relevant law would be Section 3 of the E&LRC Act.
28. Although governed by different procedural regimes, the Civil Courts and the E&LRC, derive judicial authority from the people, under Article 159 of *the Constitution*, and are constitutionally bound by the principles enumerated under Article 159 [2] and [3] of *the Constitution*.
29. The E&LRC [Procedure] Rules 2024, only allow the E&LRC to apply the Civil Procedure Rules, to the extent stated in the E&LRC [Procedure] Rules, 2024. Rule 73 [2] for instance, states that rules on execution of an order, or decree of the Court, shall be in accordance with the Civil Procedure Rules. A Party therefore, ought not to approach this Court, invoking wholesale, the *Civil Procedure Act* and the Civil Procedure Rules, without regard to the E&LRC Act, and the E&LRC [Procedure] Rules, 2024.
30. Rule 45 of the E&LRC [Procedure] Rules, 2024, states that an Application shall be presented to this Court by way of notice of motion. It is not proper for the Applicant to invoke Order 51 Rule 1 of the Civil Procedure Rules.
31. The *Work Injury Benefits Act*, adopts a procedure in settlement of work injury claims, that has minimal judicial intervention. The regime was created by tripartite partners- the Government, Labour [represented by Trade Union Centre, COTU-K], and Employers [represented by Federation of Kenya Employers, FKE], aided by the International Labour Organization [ILO]. The historical context of the Act, is captured in Supreme Court of Kenya decision, *Law Society of Kenya v Attorney-General & Another* [2019] KESC 16 [KLR]. It is a work injury compensatory and dispute resolution mechanism, that was intended to simplify work injury claims. The Courts were viewed as bureaucratic, for injured workers to access quick and effective remedies.
32. The Director of Work Injury, investigates work injury, and determines compensation to be paid to the injured, diseased or deceased Employee.
33. The role of the Courts is limited. Section 17 stipulates that an Employee may claim compensation in accordance with the Act, and may also institute action for damages in a Court against a 3rd party.
34. Section 17 [1] [b] allows an Employer or his Insurer, to institute an action in Court against a 3rd party, for recovery of compensation that an Employer or his Insurer, as the case may be, is obliged to pay under this Act.



35. Section 26 stipulates that an Employer or his Insurer, shall settle work injury compensation claims, within 90 days of the lodging of the Claim. If an Employer or his Insurer fails to pay, the Director may refer an Employer and his Insurer to the prosecution authorities, where the Court may upon trial, impose a fine of not more than Kshs. 500,000 or impose an imprisonment term not exceeding 1 year, or a sentence inclusive of the fine and imprisonment.
36. Section 51 [1] allows any person, aggrieved by the decision of the Director, on any matter under the Act, to lodge an objection with the Director, within 60 days against such decision.
37. Section 51[2] requires that the objection shall be in writing, and shall contain the particulars, concise statement of the circumstances in which the objection is made, and the relief or order which the objector claims, or the question which he desires to have determined.
38. Section 52 [1] calls on the Director to reply to the objection within 14 days. He is to provide a written answer, varying or upholding his decision, and giving reasons for the decision, and within the same period send a copy of the statement to any other person affected by the decision.
39. Section 52 [2] allows an objector, to within 30 days of the decision on the objection, appeal to the E&LRC against the decision of the Director.
40. These are the limited ways, in which the Court can exercise work injury jurisdiction. The Supreme Court in *LSK v the Attorney-General* [supra] held that the compensation and dispute resolution mechanisms set out by the Act, ought to be left to run their course, before a Court intervenes.
41. The Applicant's complaint is that the Respondent has failed to pay to him, what was awarded by the Director.
42. The Respondent has given its reasons, why it has failed to satisfy the award of the Director.
43. Both Parties are not happy with the award. The Applicant is disaffected, because the award has not been satisfied. The Respondent objects to the award, on among other grounds, that it was not heard by the Director, and that its Insurer has not been provided with documents to validate the Claim.
44. What the Parties have done in this Application, is to present an objection to the Director's award before the Court, belatedly.
45. They ought to go back to the Director, and canvass the objection there. The Applicant may seek the Director's assistance on enforcement, while the Respondent will have its opportunity to argue its objection.
46. The Act contemplates enforcement by the Director, including through criminal prosecution of recalcitrant Employers. The Director is mandated to vary the award, and give directions on its enforcement. He is mandated to grant orders and reliefs under Section 51 [2] of the Act. He has review and enforcement jurisdiction. Any person, aggrieved by his award, can seek review, through what the *Work Injury Benefits Act*, characterizes as objection proceedings. Any person, includes the awardee.
47. The assessment of the Director is an administrative decision, and objection under Section 51 of the *Work Injury Benefits Act*, is a form of review mechanism of an administrative decision, contemplated under Section 4[3] of the *Fair Administrative Action Act*.
48. Review mechanisms in all procedural regimes, including the Civil Procedure Rules and the E&LRC [Procedure] Rules, 2024, are open to all persons, aggrieved by the decision. This includes the decision-holder, the awardee in awards of the Director of Work Injury. Both the Applicant and the Respondent herein, are allowed by the law, to seek review before the Director, on any aspect of the award.



49. There is no room for awardees to file Miscellaneous Applications, or full-blown Claims before the E&LRC, seeking execution of awards of the Director.
50. When the E&LRC assumes jurisdiction in such Miscellaneous Applications or Claims, it engages in judicial craft and innovation. The Supreme Court, in *S.K. Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR; Petition No. E023 of 2022, *Isaac Aluoch Polo Aluochier v Independent Electoral & Boundaries Commission & 17 Others*; and, the Court of Appeal in *Rift Valley Railways [Kenya] Limited v Hawkins Wagunza Musonye & Another* [2016] e-KLR, underscored that a Court can only exercise jurisdiction as conferred by *the Constitution* or a Statute. It cannot expand its jurisdiction through judicial craft or innovation. It cannot be conferred jurisdiction by the parties appearing before it.
51. The E&LRC in a catena of decisions, has clearly and uniformly stated that there is no clear enforcement mechanism of awards of the Director of Work Injury, under the Act, but sought to redress the lacuna through what the Supreme Court and the Court of Appeal in the above decisions, termed as improper assumption of jurisdiction.
52. In *Richard Wambui Mwangi & Another v Alfarah Wholesalers Limited* [2017] e-KLR, the E&LRC concluded that there was no enforcement mechanism under the *Work Injury Benefits Act*, but held that it is mandated to address employment and labour relations claims, under the E&LRC Act, and could therefore enforce awards of the Director of Work Injury, received by the Court, other than on Appeal.
53. A new Rule, Rule 69 of the E&LRC [Procedure] Rules, 2024, has recently been introduced, seemingly to prop the judicial thinking in *Wambui Mwangi v Alfarah Wholesalers Limited* [supra], and to aid the Court and Litigants fill the enforcement lacunae.
54. The Rule states that, where Parties have entered into a conciliation, negotiation or mediation agreement, or are bound by an arbitral award or a lawful decision reached in Alternative Justice System, a party may file the award, decision or agreement for adoption and enforcement, as an order of the Court.
55. The Rule states that the application, shall be a miscellaneous application, supported by an affidavit, exhibiting the award, decision of agreement.
56. The ERLRC can only enforce its Judgment on Appeal, after the review/ objection proceedings under the *Work Injury Benefits Act*, are concluded. This is what the substantive Act provides.
57. Rule 69 of the E&LRC [Procedure] Rules, has not amended Sections 51 and 52 of the *Work Injury Benefits Act*. The Rules are subsidiary legislation. They do not create, expand or limit the jurisdiction of the Court, under the *Work Injury Benefits Act*, or any other Act. As held by Superior Courts in the decisions cited above, jurisdiction of the Court is given by *the Constitution* or Statute, not by subsidiary legislation.
58. Parliament intended that this Court and other Courts exercising civil and criminal jurisdictions, only come in, in limited ways highlighted above, in the administration of work injury benefit regime.
59. The Respondent admits receiving the award, but states that its Insurer, does not have documentation to validate payment.
60. It is for the Director, to enquire into this, and to vail his proceedings, documents, assessment and award to the Respondent's Insurer, and if need be, summon the said Insurer in reviewing the award, and impress on the Respondent and its Insurer to pay up, or face criminal prosecution.



61. In Peter Mutua Kaloki v China State Construction & Engineering Corp [Kenya] & Another [2022] KEERC 960 [KLR], the Applicant sought execution of his work injury award from the Court, invoking Section 26 [6] of the *Work Injury Benefits Act*, which allows for criminal prosecution of defaulting Employers.
62. The E&LRC held that the provision addresses criminal liability, and that the Applicant could move the Director of Work Injury, to initiate prosecution of the defaulting Employer.
63. In Peter Mutua Kaloki above, as well as Lameck Nyakundi Anyona v W.J.J. Kenya Construction Company Limited [2022] e-KLR, the E&LRC, held that its role, is confined to hearing appeals, from the decision of the Director on objection. It is not to execute awards of the Director.
64. Failure by the Applicant to enforce the award, and objection by the Respondent to satisfy the award, in the respectful view of the Court, means that the Director needs to revisit the award, exercise his review jurisdiction, and grant the necessary orders or reliefs, to aid in the implementation of the award, or if persuaded, vary or set aside the award. He is mandated by the Act to issue orders and reliefs, and take such action as he deems appropriate, in implementing the *Work Injury Benefits Act*.
65. Section 53 [1] of the Act states that: -

“There shall be a Director of Work Injury Benefits, who shall be responsible for the management of this Act.”
66. Section 53 [2] states that the Director of Work Injury, shall perform the following functions: -
 - a. Register Employers;
 - b. Supervise the implementation of this Act;
 - c. Ensure all Employers insure their Employees;
 - d. Receive reports of accidents and carry out investigations into such accidents; and,
 - e. Ensure that Employees who are injured, are compensated in accordance with the provisions of this Act.
67. The Director of Work Injury is the administrator of the *Work Injury Benefits Act*. He is mandated by the law, to ensure that Employees who are injured, who become diseased or deceased in the course of employment, are compensated by their Employers.

It Is Ordered

- a. The Application dated 31st October 2024 is referred to the Director of Work Injury.
- b. The Affidavits filed by the respective parties in this Application shall be treated as an objection filed before the Director of Work Injury.
- c. The Director Work Injury, shall hear the parties and grant such orders or reliefs, as he may deem fit.
- d. Parties are at liberty to return to this Court on Appeal, if necessary, as stipulated under the *Work Injury Benefits Act*, within 30 days of receiving the Director’s decision.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28TH MARCH 2025.

JAMES RIKA



JUDGE

