



REPUBLIC OF KENYA



KENYA LAW
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**Kereu v Accurate Mills Limited (Miscellaneous Application
E162 of 2023) [2025] KEELRC 1018 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1018 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E162 OF 2023**

**JW KELI, J
MARCH 28, 2025**

BETWEEN

GEOFFREY OMWANDO KEREU APPLICANT

AND

ACCURATE MILLS LIMITED RESPONDENT

RULING

1. The applicant applied by way of Notice of Motion dated 7th day of August, 2023 brought under Article 165 of the Constitution of Kenya, Section 12 of the Employment and Labour Relations Court Act, Section 26 and Section 51 of the Work Injury Benefits Act and any other enabling provisions of the law for Orders that:-
 - a) The Honourable Court do adopt the award of the Director of Occupational Safety and Health Services in the sum of Kshs 1,205,452.80/- granted in favour of the Applicant against the Respondent as the judgement of the Court.
 - b) That a Decree do issue accordingly for execution.
 - c) The Respondent do equally pay the costs of this Application.

Grounds of the application

2. The Applicant was an employee of Accurate Mills Limited the Respondent herein.
3. The Applicant suffered injury while in the course of his employment.
4. The Applicant reported the injury and it was processed as stipulated in the Work Injury Benefits Act.
5. The Director of Occupational Safety and Health Services made an assessment of injury compensation of Kshs 1,205,452.80/= as due payable to the Applicant.



6. The Respondent did not object to or appeal the Director's decision within 60 days as by law required, and has not paid the assessed sum or any part thereof.
7. The application was supported by the sworn affidavit of Geoffrey Omwando Kereu dated 7th August 2023 where he attached the medical notes, Dosh Form 4 awarding him Kshs 1,205,452.80 and demand letter dated 11th December 2020.
8. The respondent in opposition to the application filed replying affidavit of Avraj Bhachu dated 15th December 2023 and asserted that the application had since been reviewed by DOSH following their request for re-assessment and the same was reviewed to Kshs 226,022.40. They annexed revised DOSH Form 4 dated 27th April 2021. The deponent further produced evidence of payment of the said money to the employee/applicant where he thumb stamped on the 26th May 2021 (exhibits AB2 and AB3 were the revised form and the certificate of payment by DOSH).
9. In response to the foregoing, the applicant's advocate filed Notice of Motion application seeking for review of orders of the court by Justice Ocharo (The Order was for filing of written submission in this application) and for leave to address the court orally on the instant application alleging contradictory awards. The application as supported by the affidavit of his advocate, Namada Simoni. The court considered the application and dismissed the same vide ruling dated 14th January 2025.

Decision

10. The court as stated in ruling dated 14th January 2025 that the miscellaneous application was to enforce the decision of the DOSH. The uncontroverted evidence before the court produced vide replying affidavit of Avraj Bhachu dated 15th December 2023 was that the award sought to be enforced had since been revised by DOSH to Kshs 226,022.40 vide revised DOSH Form 4 dated 27th April 2021 (AB2). The same had since been paid and the certificate of payment produced as AB3. The injured employee did not dispute the payment. The advocate's affidavit had no probative value in the application as the payment was received by the client directly as per AB3.
11. In the circumstances, the court finds the application seeking to enforce the Award of 11th December 2020 not tenable given the uncontroverted revised and settled award of 27th April 2021.
12. The application is dismissed with costs to the respondent.
13. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant:- Otieno

Applicant : -Amemba h/b Namada

Respondent:- Kerubo h/b Mwaniki

