



**Mutuku v Excel Chemicals Limited (Miscellaneous Application
E174 of 2023) [2025] KEELRC 1035 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1035 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E174 OF 2023**

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

BETWEEN

VINCENT KITHUSI MUTUKU APPLICANT

AND

EXCEL CHEMICALS LIMITED RESPONDENT

RULING

1. The Applicant applied by way of Notice of Motion dated 29th day of August, 2023 brought under Article 165 of the Constitution of Kenya, 2010, Section 12 of the Employment and Labour Relations Court Act and Sections 26 and 51 of The Work Injury Benefits Act and any other enabling provisions of the law for Orders that:-
 1. The Honourable Court do adopt the award of the Director of Occupational Safety and Health Services in the sum of Kshs. 111,546/- granted in favour of the Applicant against the Respondent as the judgement of the Court.
 2. That a Decree do issue accordingly for execution.
 3. The Respondent do equally pay the costs of this Application.

Grounds of the application

2. The Applicant was an employee of Excel Chemicals Limited the Respondent herein.
3. The Applicant suffered occupational injury in the course of his employment.
4. The injury was reported and processed under the Work Injury Benefits Act.
5. The Director of Occupational Safety and Health Services made an assessment of Kshs. 111,546/- as due and payable to the Applicant.



6. The Respondent has never lodged any objection against the Director's assessment.
7. The Director sent a demand for payment, but the Respondent has to date failed and refused to pay.
8. Demand for payment was done but the Respondent has bothered not to pay.
9. The application was supported by the affidavit of Vincent Kithusi Mutuku (the applicant) where he annexed the medical documents on the injuries suffered, (VKM-1), DOSH/Form 1 being notice to employer on the injury by DOSH (VKM-2) and DOSH /WIBA4 Form with assessment of compensation at Kshs. 111,546(VKM3). Demand letter for payment to the respondent which was copied to DOSH(VKM-4).
10. The application was opposed by the respondent through undated affidavit of Sharon Mukania who stated the application lacked merit as the award was of Kshs. 30,042 and not 111546 as alleged (SM1 was DOSH Form 4 Demand for payment of Kshs. 30,042 dated 2nd September 2020). That the award was pursuant to medical report at Mama Lucy Kibaki Hospital where no permanent incapacity was awarded (SM2). The award of Kshs. 111546.00 was pursuant to a revised award (SM3). That the revised award Indicated incapacity of 5% while the DOSH Form 1 had not been revised. That the Respondent could not settle the irregular demand for payment.

Decision

11. Two issues arise from the application and response, namely:-
 - a. Whether the court has jurisdiction to adopt the award
 - b. Whether the revised award for Kshs. 111546 was proper for adoption as judgment of the court.

Whether the court has jurisdiction to adopt the award as judgment of the court

12. The Respondent in written submissions contended that WIBA provides for appellate jurisdiction of the court under section 52(2) to wit:- ‘an objector may, within thirty days of the Director’s reply being received by him , appeal to the industrial court against such decision’. The respondent contended that the court lacked jurisdiction to adopt the award then sit as appellate court. The applicant relied on the decision in Peter Mutwa Kaloki v China State Construction & Engineering (K) & another and in Lameck Nyakundi Anyona v Wii Kenya construction Company Limited (2022)e KLR which expressed similar sentiments.
13. Conversely, the applicant submitted that, though no express provisions under WIBA exist for adoption of DOSH awards, the court had adopted unchallenged awards under WIBA to ensure justice is served and relied on the decision in Samson Chweya Mwandabole v Protective Custody Limited (2021) e KLR and in Lagat v Kenya Ordinance Factories Corporation 2024 e KLR.
14. The decisions cited by both parties are of the court. On the argument by the applicant that the court cannot adopt an award and hear an appeal is mistaken. The award can only be enforced if no appeal has been preferred under section 52(2) of WIBA like in the instant case hence the issue of conflict never arises.
15. I am persuaded that the issue of Work Injury claims arise from employment relationship and only this court has original jurisdiction over such matters. Once the employer refuses to settle the award it is only this court that can enforce the same and it would be absurd to leave a party without a remedy and more so by the court seat approached. The legislature ought to by now have amended WIBA to expressly provide for the court to adopt the awards of DOSH. Consequently, I am persuaded by



the decisions pro-adoption of the awards.(See Samson Chweya Mwandabole v Protective Custody Limited (2021) e KLR and Lagat v Kenya Ordinance Factories Corporation 2024 e KLR.)The court holds it had jurisdiction to adopt awards for compensation under WIBA.

Whether the revised award for Kshs. 111,546 was proper for adoption as judgment of the court.

16. The jurisdiction of the court on WIBA matters is as stated under section 52 of Work Benefits Act, 2007. Section 51 provides for objection to decision or award of the DOSH as follows:- “51. Objections and appeals against decisions of the Director
 - (1) Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.
 - (2) The objection shall be in writing in the prescribed form accompanied by particulars containing a 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.”
17. On receipt of the decision of the Director on the objection, if still aggrieved a party may approach the court in accordance with section 52 of the Act. Section 52 states-
 - (1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
 - (2) An objector may, within thirty days of the Director’s reply being received by him, appeal to the Industrial Court against such decision.”
18. The court holds that the jurisdiction to deal with any grievance on the award /decision by the Director of Occupational Safety and Health(DOSH) can only be invoked under section 52(2) of WIBA. The role of the court of adopting awards does not include making a decision on the validity of the award where there is more than one award like in the instant case. Any party dissatisfied by decision of Director is required to file objection to the DOSH as per section 51 of WIBA. The court holds that it lacks jurisdiction to decide on issues of contradictory awards under a miscellaneous application as that would be outside its given appellate jurisdiction under section 52 of WIBA(supra).
19. The court noted the same hospital on the 17th September 2020 assessed the applicant and found permanent disability of 5%. The said report referred to the DOSH Form 1. In the said form it was envisaged there would be final assessment of permanent disability which, the court holds was done vide medical report of 17th September 2020”VMK1”. The court finds the issue raised by the respondent of the FORM 1 not having been amended pursuant to re-assessment to be a mere technicality, taking into account the respondent was aware of the revised award and had not objected to DOSH.
20. In the upshot, the Application dated August 29, 2023 is allowed with costs to the applicant. The Honourable Court Hereby adopts the Award of the Director of Occupational Safety and Health Services in the sum of Kshs.111,546/- granted in favour of the Applicant against the Respondent as the judgment of the Court. A Decree to issue.
21. 30 day stay granted.



22. 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:- Mwanzia h/b Karanja

