



**Nyamu v China Wu Yi Company Limited (Cause E287 of 2024)  
[2025] KEELRC 990 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 990 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E287 OF 2024  
AK NZEI, J  
MARCH 28, 2025**

**BETWEEN**

**STELLA NAFULA NYAMU ..... APPLICANT**

**AND**

**CHINA WU YI COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The application before me for determination is the Applicant's Notice of Motion dated 24<sup>th</sup> September, 2024 and expressed to be brought under Sections 1A and 1B of the [Civil Procedure Act](#), Sections 87 and 90 of the [Employment Act](#) and Sections 10, 16 and 51 of the [Work Injury Benefits Act](#). The Applicant seeks the following reliefs:-
  - a. That this Court be pleased to adopt as Judgment of the Court the award of the Director of Occupational Safety and Health Services dated 19<sup>th</sup> December, 2023.
  - b. That Judgment be entered for the Applicant against the Respondent for Kshs.805,072/= being the amount assessed under the [Work Injury Benefits Act](#).
  - c. That the Court be pleased to award interest at Court rates on the amount/award from the date of assessment until payment in full.
  - d. That the Court be pleased to award any other relief that the Court deems fit and just to award.
  - e. That costs of the application be awarded to the Applicant.
2. The application sets out on its face the grounds on which it is anchored, which grounds are amplified in the Applicant's affidavit sworn on 24<sup>th</sup> September, 2024 in support of the application. It is deponed in the said supporting affidavit:-



- a. that the Applicant was employed by the Respondent as a Labourer (as stated in the filed DOSH Form 1), and that on 20<sup>th</sup> April, 2022, the Applicant was injured on the spinal cord while performing her duties; and sustained compression fracture of LI with mild retropulsion of the fracture and bone marrow contusion of T12 and LI (as shown in a medical summary dated 21<sup>st</sup> April, 2022).
  - b. that on 19<sup>th</sup> December, 2023, the Occupational Safety and Health Officer assessed the Applicant's permanent incapacity at 35% and the benefits payable to her under the [Work Injury Benefits Act](#) at Kshs.805,072/=. (As shown in DOSH Form 4 dated 19<sup>th</sup> December, 2023).
  - c. that the Respondent did not appeal, or honour (pay) despite several follow ups and demand letters.
  - d. that the Applicant's right to compensation is in accordance with the law, hence the prayers in the application.
3. Documents annexed to the Applicant's said supporting affidavit are copies of a duly filled DOSH Form 1, a medical summary on the Applicant dated 21<sup>st</sup> April, 2022, duly filled and signed DOSH/WIBA 4 Form dated 19<sup>th</sup> December, 2023, a letter by the (Nairobi) County Occupational Safety and Health Officer confirming authenticity of the WIBA/DOSH 4 Form, and a letter by the Director-WIBA dated 13<sup>th</sup> May, 2024 (addressed to the Applicant) indicating/confirming that no appeal under Section 51(1) and (2) of the [Work Injury Benefits Act](#) (WIBA) had been lodged against the demanded (sum) within sixty (60) days from the 19<sup>th</sup> December, 2023; among other documents.
  4. In Response to the Application, the Respondent filed a replying affidavit of Kevin Nabangi Wanjala sworn on 26<sup>th</sup> November, 2024. It is deponed in the said replying affidavit:-
    - a. that the Applicant was an employee of the Respondent company, was on 20<sup>th</sup> April, 2022 injured at the work place, and was treated and discharged from hospital.
    - b. that the Applicant did not suffer 35% permanent incapacity as averred by her, but suffered a compression wedge fracture of LI with no spinal canal stenosis, with 5% permanent disability as per Dr. Wambugu's 2<sup>nd</sup> Medical examination report dated 14<sup>th</sup> March, 2024 (copy annexed to the replying affidavit).
    - c. that this Court lacks Jurisdiction to enforce awards of the Director of Occupational Safety and Health Services as Section 52(2) of the [Work Injury Benefits Act](#) grants the Employment and Labour Relations Court Appellate Jurisdiction.
    - d. that this Court should decline the request to enforce the award by the Director of Occupational Safety and Health Services dated 23<sup>rd</sup> December, 2023, as the Court lacks jurisdiction to enforce the same.
  5. On 29<sup>th</sup> November, 2024, I directed parties herein to file written submissions on the application. Submissions have since been filed.
  6. The [Work Injury Benefits Act](#) is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (the Director) to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not oust this Court's Jurisdiction to enforce such awards; and especially when the Director's decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the [Work Injury](#)



Benefits Act (the Act) has not been objected to pursuant to Section 51 of the Act, or has been objected to and the objections and/or appeals from such objections have been determined in favour of the injured employee, and the employer has refused to pay. The twin issues for determination in this matter is whether this Court is seized of Jurisdiction to hear and to determine the application herein, and whether the orders sought are deserved.

7. I stated as follows in *Marcus Curvey Ojango – vs – Kenya Revenue Authority* [2024] eKLR:-

“Pursuant to Article 162(2)(a) of the Constitution of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where that Jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such a statutory provision is Section 16 of the Work Injury Benefits Act (WIBA) which expressly ousts courts’ jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.”

8. Further, this Court stated as follows in *Amir Swaleh Omar – vs – Mackezie Maritime (E.A) Limited* [2022] eKLR:-

“17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of Jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of WIBA, the assessed sum becomes the injured employee’s right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director’s assessment, and issuance of a decree which can then be executed to realise that right.

19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine. Article 50(1) of the Constitution of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing



before a court, or if appropriate, another independent and impartial tribunal or body.”

9. In the present case, the Respondent admits having been the Applicant’s employer, and admits that the Applicant suffered a work injury at the work place. The Respondent (the employer) did NOT object to the Director’s decision, either on the issue of liability or on the amount assessed by the Director as the compensation payable to the Applicant. The Respondent simply refused to pay and now alludes that this Court “has no jurisdiction to enforce the Director’s award.” The Respondent has not disputed the authenticity of any of the documents filed by the Applicant in support of the Application. The Respondent/the employer has only purported to come up with his doctor’s purported “assessment” of the Claimant’s degree of permanent incapacity. This is quite interesting as the issues of liability and quantum of the compensation payable were determined by the Director as mandated by the statute.
10. The Respondent did not object to the Director’s decision, on liability, and to the assessment of compensation payable to the Applicant, Kshs.805,072/= as contained in the duly signed Form DOSH/WIBA 4 dated 19<sup>th</sup> December, 2023.
11. I make a finding that this Court has jurisdiction to enforce the Director’s award of compensation dated 19<sup>th</sup> December, 2023, and that the Applicant deserves, and is entitled to be paid the amount of compensation assessed by the Director.
12. Under Section 12(1) of the *Employment and Labour Relations Court Act*, this Court has exclusive original and appellate jurisdiction to hear and to determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and provisions of the Act (the *Employment and Labour Relations Court Act*) or any other written law which extends jurisdiction to the court relating to employment and labour relations disputes including:-

“disputes relating to or arising out of employment between an employer and an employee.”
13. Consequently, and having considered written submissions filed on behalf of the parties herein, I allow the Applicant’s Notice of Motion dated 24<sup>th</sup> September, 2024 in the following terms:-
  - a. The Director’s award of Kshs.805,072/= made on 19<sup>th</sup> December, 2023 in favour of the Applicant is hereby adopted by this Court, and Judgment is hereby entered for the Applicant against the Respondent in the said sum of Kshs.805,072/=.
  - b. A decree shall issue, and shall be enforceable in accordance with this Court’s Rules of Procedure.
  - c. The decreed sum shall attract interest at Court rates from the date of this Ruling.
  - d. Costs of these proceedings are awarded to the Applicant, to be agreed or taxed.
14. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH 2025**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.



**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Makau for the Applicant

Miss Wanjiru Kariuki for the Respondent

