



Walala v Guardian Coach Limited; Directorate of Occupational Safety and Health Services (Respondent) (Judicial Review Application E065 of 2024 & Miscellaneous Application E345 of 2024 (Consolidated)) [2025] KEELRC 792 (KLR) (14 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 792 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

JUDICIAL REVIEW APPLICATION E065 OF 2024 & MISCELLANEOUS APPLICATION E345 OF 2024 (CONSOLIDATED)

B ONGAYA, J

MARCH 14, 2025

(FORMERLY ELRC MISC. APPLICATION NO.E054 OF 2024)

IN THE MATTER OF THE WORK INJURY BENEFITS ACT

-AND-

IN THE MATTER OF AN APPLICATION TO ADOPT AN AWARD BY THE DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH SERVICES

BETWEEN

EDWIN OTSIENO WALALA APPLICANT

AND

THE GUARDIAN COACH LIMITED EXPARTE APPLICANT

AND

DIRECTORATE OF OCCUPATIONAL SAFETY AND HEALTH SERVICES RESPONDENT

JUDGMENT

1. The employee Edwin Otsieno Walala filed Miscellaneous Application No. E054 of 2024 at Machakos through Calistus Nyegenye & Company Advocates. The application was by the notice of motion dated 14.11.2024 under Articles 50, 162(2)(a) of *the Constitution* of Kenya 2010, sections 1A, 1B and 3A of the *Civil Procedure Act*, section 12 of the *Employment and Labour Relations Court Act*, section 26(4) and (6) of the *Work Injury Benefits Act* and, the inherent powers of the Court. The application seeks adoption of the award by the Directorate of Occupational Safety and Health (DOSHS) award of Kshs.2, 271,230.77 given on 07.08.2024 as a judgment of the Court, a decree to issue accordingly plus interest



a costs. The employee's case is that while working for the employer (ex-parte applicant) as a driver, he sustained an injury leading to 45% permanent disability of his right hand. The award by DOSH was made and despite service including by demand letter by counsel dated 04.10.2024, the ex-parte applicant, the employer, has failed to pay. The application for adoption of the award was served upon the employer.

2. Instead of filing a replying affidavit to oppose the employee's adoption application, the employer as ex-parte applicant filed an application dated 25.11.2024 for judicial review orders and through Mose Nyambega & Company Advocates. Leave was obtained on 26.11.2024 and the notice of motion for judicial review orders was dated 25.11.2021. The ex-parte applicant prayed for orders as follows:
 - a. An order of certiorari to quash the DOSH award of Kshs.2, 271,230.77 awarded to the employee on 07.08.2024.
 - b. An order of Mandamus compelling DOSH to investigate, authenticate, verify and determine the source of the injuries constituting the DOSH award subject of Miscellaneous Application No. E054 of 2024 at Machakos (the consolidated proceedings herein) so as to objectively adjudicate on liability and culpability of the employer, the ex-parte applicant.
 - c. An order of Prohibition directing this Court not to proceed with Miscellaneous Application No. E054 of 2024 at Machakos in the current format and prayers until the background information and process authenticating the employee's claim is revisited, ascertained, both in liability and quantum.
 - d. An order of prohibition against the DOSH by itself or by its agents or servants or officers from proceeding with the said matter unless and until the criminal case pending at Busia law courts pertinent to altercation and allegations of assault by officers from Bumala Police Station against the employee.
 - e. Costs incidental to the proceedings be paid by the respondent, DOSH.
 - f. Any other relief the Honourable Court deems just, fair and expedient in the circumstances.
3. The ex-parte applicant's case was based upon the following grounds:
 - a. The DOSH award was arbitrary and in breach of the right to be heard leading to unfair conclusions.
 - b. The injury was not a pure work or occupational injury and not purely under the [Work Injury Benefits Act](#) (WIBA).
 - c. The DOSH award of Kshs.2, 271,230.77 was made without the requisite fair process and on the basis of inaccurate and extraneous consideration.
 - d. The employee's claim herein was as a result of self-inflicted physical fight and tussle with police officers on 18.01.2024 along Busia-Kisumu Road and it was not attributable to work injury.
 - e. DOSH failed to inform the ex-parte applicant about the award made on 07.08.2024 on time to enable the ex-parte applicant to seek counsel and appeal against the same within 60 days per section 26(4) of the WIBA.
 - f. Between 07.08.2024 and notification to the ex-parte applicant on 07.10.2024, 60 days had lapsed and the ex-parte applicant could not appeal per section 26(4) of WIBA.



- g. The impugned DOSH award had placed the ex-parte applicant under pressure for execution and yet the award is contemptuous, malicious, unfair, unjust, made with impunity and in blatant disregard of the ex-parte applicant.
 - h. The application should therefore be allowed on the basis of the verifying affidavit of David Ong'era and the statutory statement on record.
4. The employee Edwin Otsieno Okoth Walala filed his replying sworn on 15.01.2025 to oppose the judicial review motion. He stated as follows:
- a. The injuries he sustained on 09.03.2023 were not self-inflicted but were as a result of a road traffic accident occurring when he was driving the ex-parte applicant's motor vehicle.
 - b. It is the applicant who filed the DOSH Form 1 and it is an afterthought to allege the injuries were self-inflicted.
 - c. The demand letter by his counsel to the ex-parte applicant to pay the award was dated 04.10.2024 and no response was received from the ex-parte applicant.
 - d. The court case pending at Busia has no relevance and cannot come between the employee and the due compensation per the DOSH award.
 - e. The ex-parte applicant deliberately failed to object to the assessment per the DOSH award.
5. The respondent, DOSH, filed the replying affidavit of Justus Bosire Nyakegosworn on 21.02.2024. it was stated and urged as follows:
- a. The respondent received a notification in the prescribed form ML/DOSH Form 1 from the employer namely Guardian Coach Limited, the ex-parte applicant highlighting occurrence of an occupational accident on 09.03.2023 involving its worker Edwin Otsieno Okoth and the form is duly exhibited. It highlighted the cause of injuries as accident and there was no mention of self-infliction by the employee. No documents, investigation report or medical report was presented by the ex-parte applicant to show injuries were self-inflicted as now alleged.
 - b. Part II of the form had been duly completed by a medical practitioner (Doctor) at Kenyatta National Hospital showing permanent incapacity of 45% as per exhibited Form.
 - c. Based on the award of 45% permanent incapacity and the temporary incapacity of 4 months computation was done on 07.08.2024 per sections 28 and 30 of the WIBA yielding a sum of Kshs.2, 271,230.77 as the amount compensable to the injuries sustained by the employee herein.
 - d. A demand was raised per Form DOSH/WIBA 4 dated 07.08.2024 and sent to the ex-parte applicant indicating the assessment and award of the Kshs.2, 271,230.77 payable to the employee. Thereafter, the ex-parte applicant did not raise an objection or dispute or concern from the ex-parte applicant seeking a review of the DOSH decision on the awarded amount. To date the ex-parte applicant has not settled the amount as awarded by DOSH.
 - e. No objection to the award has been received in the prescribed manner or form.
 - f. Section 10 of WIBA prescribes that the injured worker be compensated for injuries of more than 40% permanent incapacity.
 - g. Sixty days from the date of the DOSH decision for lodging an objection per section 51 of WIBA have since lapsed and the ex-parte applicant has not attempted to lodge an objection



- f. The ex-parte applicant will pay costs of the respondent and the employee because costs follow the event and especially that the ex-parte applicant abused process by filing the judicial review proceedings.
- g. The employee's application will succeed with costs payable by the ex-parte applicant or employer.

In conclusion the adoption of award application and the judicial review application are hereby determined and judgment entered with the following orders:

- a. The assessment by DOSH dated 07.08.2024 in favour of Edwin Otsieno Walala in the sum of Kshs.2, 271,230.77 is hereby adopted as a judgment of the Court and the Guardian Coach Limited to pay the amount by 01.05.2025 failing interest to be payable thereon at Court rates from the date of filing the application for adoption of the award until full payment.
- b. The Guardian Coach Limited to pay the applicant's costs of the adoption application.
- c. The judicial review application is dismissed with orders the Guardian Coach Limited to pay costs of the respondent and interested party in that application.
- d. A decree to issue accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 14TH MARCH, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

