



**Lusaka v Lachlan Kenya Ltd (Miscellaneous Application
E265 of 2023) [2025] KEELRC 794 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 794 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E265 OF 2023**

**S RADIDO, J
MARCH 13, 2025**

BETWEEN

KIM JACKSON DANIEL LUSAKA CLAIMANT

AND

LACHLAN KENYA LTD RESPONDENT

RULING

1. Kim Jackson Daniel Lusaka (the applicant) sued Lachlan Kenya Ltd (the Respondent) on 15 November 2023 seeking orders:
 - i. That the Honourable Court adopts the assessment of the Director of Occupational Safety and Health Services on permanent disablement as a judgment of the Court.
 - ii. That a decree for Kshs 14,599,469/- to issue in accordance with the assessment of the Director of Occupational Safety and Health Services against the Respondent together with interest from the date the award was granted.
 - iii. That a declaration to issue that the Respondent has committed an offence contrary to section 26(6) of the *Work Injury Benefits Act* for failing to pay the applicant.
 - iv. That the Court commits the Directors of the Respondent to one year in jail or fines them Kshs 500,000/- or both.
 - v. That costs of this application be provided for.
2. The grounds in support of the Motion were that the applicant, an employee of the Respondent had been injured in the course of work on 19 September 2022; a report was made to the Director of Occupational Safety and Health who assessed compensation at Kshs 14,599,468/-; the Respondent did not appeal or object to the assessment but had failed to pay despite being under an insurance cover.



3. The Respondent filed Grounds of Opposition and a replying affidavit opposing the Motion on 7 May 2024.
4. In the affidavit, the Respondent asserted that the report of the accident to the Director of Occupational Safety and Health was fraudulent as it had a forged signature of the Respondent's Administrative Assistant; the applicant had been reimbursed medical expenses arising out of the accident; the Respondent's medical practitioners had examined the applicant and established some of the injuries were not sustained from the accident and that the applicant did not sustain permanent disability; the applicant had separated with the Respondent and signed a discharge voucher and thus discharging it from any further claims; the Director of Occupational Safety and Health had not allowed the Respondent to make representations before the assessment; the Respondent had lodged an objection with the Director of Occupational Safety; that the DOSH assessment form did not have an official stamp and the particulars of the accident in the Police abstract and DOSH claim form were inconsistent.
5. On 18 July 2024, the Court stayed the proceedings herein pending the determination of the objection lodged by the Respondent by the Director of Occupational Safety and Health Services under the [*Work Injury Benefits Act*](#).
6. When the parties appeared before this Court on 5 November 2024, the Respondent informed the Court that the Director had not determined the Objection while the applicant stated that the Respondent had not filed an Objection within the stipulated timelines.
7. The Court directed the parties to appear for further directions on 27 January 2025.
8. On this day, the applicant informed the Court that the Director had made a decision on the Objection and that he wanted leave to file an affidavit exhibiting the decision.
9. The Court granted the leave and also directed the parties to file and exchange submissions.
10. The applicant filed a further affidavit and his submissions on 3 February 2025, and the Respondent on 10 February 2025.
11. In the further affidavit, the applicant asserted that it is the Respondent who reported the accident/injury to the Director, Occupational Safety and Health through an online platform and that the Director informed the Respondent of the award through the same system through email address info@lachlanafrika.com on 28 September 2022.
12. The affidavit further exhibited a letter from the Director, Occupational Safety and Health Services dated 10 December 2024 indicating that the Respondent had not lodged an Objection as envisaged under section 51(1) of the [*Work Injury Benefits Act*](#).
13. The Court has considered the Motion, affidavits and submissions and can make the following determinations.
14. First, the Respondent's Managing Director admitted in his replying affidavit that the applicant informed him on 19 September 2021 that he had been involved in an accident while on the way to work.
15. Under section of 21 of the [*Work Injury Benefits Act*](#), the Respondent had a statutory duty to report the accident to the Director, Occupational Safety and Health Services within 24 hours.
16. Second, the Separation Agreement dated 14 June 2023 was with respect to the separation of the parties through the resignation of the applicant and for the payment of final dues.



17. The compensation due under the *Work Injury Benefits Act* is circumscribed under the Act and the award cannot by the stretch of imagination be categorised as final dues.
18. There is nothing in the Separation Agreement to indicate that the applicant was waiving his statutory right to compensation for injuries sustained in the course of work.
19. The challenge based on the discharge is without merit.
20. Third, there is un rebutted evidence before the Court that the Directorate of Occupational Safety and Health Services used an online platform to receive reports of accidents/injuries in the workplace.
21. The Respondent through its Administrative Officer reported the accident/injury involving the applicant using the online platform and the same was acknowledged.
22. There is also un rebutted evidence on record that the Directorate of Occupational Safety and Health Services notified the Respondent of the assessment/award through an email based on the online platform on 28 September 2022.
23. Despite contending that the applicant forged the signature of the Respondent's Administrative Assistant in the form reporting the accident/injury, the Respondent did not place before this Court any affidavit from the Administrative Assistant claiming that her signature was forged.
24. Fourth, the Respondent did not deny that the Directorate of Occupational Safety and Health Services operates an online system for reporting and processing injury claims, or explain how and when the applicant would have infiltrated the system.
25. The Respondent, therefore, cannot feign ignorance of the processes by the Directorate culminating in the assessment/award of 28 September 2022.
26. Fifth, the Directorate of Occupational Safety and Health Services notified the Respondent of the assessment and award through email on 28 September 2022, and the said email address is outlined in correspondences from the Respondent placed before the Court.
27. The Respondent did not make an Objection within the prescribed 60 days after notification of the award through email/online platform and it cannot feign ignorance that an award had been made.
28. Sixth, the Respondent did not place before the Court any admissible evidence that the applicant forged the medical records from AAR Hospital, Syokimau or that the hospital disowned the report.
29. Seventh, the discrepancies in the Police Abstract and DOSH Form 1 on the time of the accident/injury do not detract from the fact that the applicant was involved in an accident and both the Respondent and its insurers were informed promptly by the applicant.
30. The Court had stayed these proceedings pending the determination of the Objection said to have been lodged by the Respondent before the Director, Occupational Safety and Health Services through a letter dated 6 May 2024.
31. In the objection, the Respondent requested for an extension of the time prescribed for the lodging of an Objection under section 51(1) of the *Work Injury Benefits Act*.
32. The Objection related to an award made on 28 September 2022. The Director has confirmed that the Objection was not lodged within the prescribed timelines.
33. In light of the above, the Court finds that there is no handicap to allowing the Motion dated 10 November 2023.



Orders

34. The Court allows the Motion dated 10 November 2023 in the following terms:
- i. That the Honourable Court hereby adopts the assessment of the Director of Occupational Safety and Health Services dated 28 September 2022.
 - ii. That a decree for Kshs 14,599,469/- to issue in accordance with the assessment of the Director of Occupational Safety and Health Services against the Respondent together with interest from the date the award was granted.
35. The applicant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Ombogo & Co. Advocates

For 1st Respondent Anne Babu & Co. Advocates

For 2nd Respondent did not participate

Court Assistant Wangu

