



Mwambia v Kenya Power & Lighting Company Limited (Miscellaneous Application E009 of 2024) [2025] KEELRC 778 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 778 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E009 OF 2024
ON MAKAU, J
MARCH 12, 2025**

BETWEEN

DAVID GUANTAI MWAMBIA APPLICANT

AND

KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

RULING

1. This ruling relates to the respondent's Notice of Preliminary Objection dated 16th January 2025 which raises the following grounds against the applicant's Notice of Motion dated 30th October 2024: -
 - a. The application is improperly before this court.
 - b. The court lacks jurisdiction to enforce decisions of the Director of Safety and Health (DOSH).
2. Ms Bett submitted for the respondent that this court is only clothed with appellate jurisdiction over Work Injury matters pursuant to section 51 and 52 of the Work Injury Benefit Act (WIBA). For emphasis, she cited the case of S.K.Macharia v Kenya Commercial Bank Ltd (2012) eKLR and Lameck Nyakundi Anyoro v WSS Kenya Construction Ltd (2022)eKLR.
3. She further submitted that there was no valid award for adoption by the court since the Assessment filed did not bear official stamp of the DOSH and it was not even done by the DOSH. For emphasis, reliance was placed on Duncan Ayiecha Ogetto v E.A Cans and Closures Ltd (2024) eKLR where the court struck out the claim for lack of stamp on the assessment, which was also not done by the Director.
4. Ms.Otieno for the applicant submitted that WIBA is silent on the manner of enforcement of Awards of the Director but clarified that several courts have held that parliament did not contemplate that awards of the Director be in vain and therefore courts have come on board to fill the lacuna. Further that the preamble to the WIBA provides a guide.



5. He cited the case of Samuel Wambua Mbithuka v Metro Concepts E.A Ltd & another (2021) eKLR and Boniface Lucira v Prime Qualifiers (2021) eKLR where the court held that it had jurisdiction to enforce awards made by the Director if not challenged on appeal. Consequently, it was submitted that the application was properly before the court.

Determination

6. The issues for determination are: -
 - a. Whether the court lacks jurisdiction to determine the impugned motion.
 - b. Whether the application is fatally defective for want of a valid Award of the DOSH.

Jurisdiction

7. I agree with the respondent that WIBA does not expressly confer jurisdiction to this court to adopt and enforce awards made by the DOSH. It is also correct to observe that the Act does not also confer the jurisdiction to any other court.
8. However, my view in the past and now has been that Article 162(2)(a) read with section 12 of the [Employment and Labour Relations Court Act](#) expressly confer original and unlimited jurisdiction upon this court, to determine employment and labour relations disputes between employers and employees. There can never be any dispute that claims under WIBA arise from a contract of employment between an employer and an employee.
9. It follows that this court is clothed with jurisdiction to enforce an award by DOSH where either party has not challenged it under section 51 and 52 of WIBA. It must be appreciated that the procedure for adopting an award for enforcement is a non-litigious one and therefore it is different from the appellate jurisdiction invoked under section 52 of WIBA. Consequently, the objection on account of jurisdiction fails.

Fatal defect

10. The respondent alleged that the application is defective because the award in issue was not made by the Director and it bears no stamp of the DOSH. The applicant did not say any word to rebut the foregoing allegation.
11. I have perused Assessment Form DOSH/WIBA 4 dated 9th August 2023. It was addressed to the respondent's office in Nyeri and was signed by the Senior Occupational Safety and Health Officer Mr. Muchiri N. John. However, it has no visible official stamp. The question that begs for answer is whether the lack of official stamp and the fact that it was prepared by Senior Occupational Safety and Health Officer rendered the award fatally defective.
12. The wording of the Form DOSH 4 does not make it mandatory that it must be filled and signed by the Director. In my view, any Occupational Safety and Health officer in the Directorate can fill the form, sign and stamp with an official stamp. Further, it is my considered opinion that failure to stamp the form is not fatal since it does not change the fact that the applicant was involved in the material accident which was reported by the employer vide Form DOSH 1. Also, the omission does not change the fact that the incapacity suffered and the compensation payable were assessed as indicated in the Form DOSH 4.
13. The court exists to do justice and not to send litigants away from the seat of justice for omissions which can be cured. In the instant case, the omission was not done by the applicant but by the Occupational



Health and Safety Officer. The same can be cured by filing a supplementary affidavit annexing a duly stamped copy of form DOSH 4.

14. I have considered the decision of this court in the case of Duncan Ayiecha Ogetto v East Africa Cans and Closures Ltd, supra, and find that the facts are not on all fours with the instant case. In the said case the main problem was that Form DOSH 1 was almost blank.
15. Having considered the grounds of objection and the rival submissions presented, I find and hold that the objection is not sustainable and it is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF MARCH, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

