



Lachlan Kenya Ltd v Director of Occupational Safety and Health Services; Lusaka (Interested Party) (Petition E027 of 2025) [2025] KEELRC 763 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 763 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E027 OF 2025**

S RADIDO, J

MARCH 12, 2025

**IN THE MATTER OF RULES 3(4) AND 4 OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

LACHLAN KENYA LTD PETITIONER

AND

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH
SERVICES RESPONDENT**

AND

KIM JACKSON DANIEL LUSAKA INTERESTED PARTY

RULING

1. For determination is a Motion dated 24 February 2025 by Lachlan Kenya Ltd (the Petitioner) seeking orders:
 - i. ...
 - ii. That this Honourable Court be pleased to grant a stay of proceedings in Nairobi ELRC Miscellaneous Application No. E265 of 2023 pending the hearing and determination of this application.
 - iii. That this Honourable Court be pleased to grant a stay of the proceedings in Nairobi ELRC Miscellaneous Application No. E265 of 2023 pending the hearing and determination of the Petition dated 24th February 2025.



- iv. That this Honourable Court be pleased to arrest the Ruling in Nairobi Miscellaneous Application No. E265 of 2023 scheduled for delivery on 13th March 2025 pending the hearing and determination of this application.
 - v. That this Honourable Court be pleased to arrest the Ruling in Nairobi Miscellaneous Application No. E265 of 2023 scheduled for delivery on 13th March 2025 pending the hearing and determination of the Petition dated 24th February 2025.
 - vi. That the costs of this application be borne by the Respondent and Interested Party.
 - vii. That this Honourable Court be pleased to grant any further orders in the interest of justice.
2. The grounds in support of the Motion were that the Interested Party had filed Nairobi Miscellaneous Application No. E265 of 2023 seeking enforcement of an award made by the Respondent; that the award was not processed as required under the *Work Injury Benefits Act*; the Respondent had declined to investigate reports of fraud concerning the award; there was withholding of material facts made to the Respondent on 10 December 2024; the Petitioner had lodged an objection against the award on 15 January 2025 and 14 days had lapsed without a response; the failure to respond curtailed the Petitioner's right to appeal under section 52(2) of the *Work Injury Benefits Act* and rights to fair administrative action; the Ruling in Nairobi Miscellaneous Application No. E265 of 2023 was scheduled for 13 March 2025 and unless stayed, the Petitioner stood to suffer irreparable loss; the parties had not exhausted the statutory mechanisms in place; the Petition raised arguable points and had high chances of success; the Petition would be rendered nugatory if a stay order was not granted and that the Interested Party stood to suffer no prejudice.
 3. When the Petition and Motion were placed before the Judicial Review and Labour Rights Division, the Presiding Judge directed the Petitioner to serve ahead of the inter-partes hearing on 10 March 2025.
 4. When the parties appeared before the Presiding Judge on 10 March 2025, he directed that the Petition and Motion be placed before this Court considering that similar issues were raised to those in the file scheduled for Ruling on 13 March 2025.
 5. The parties duly appeared before this Court.
 6. Unfortunately, the Respondent and Interested Party had not filed responses to the Motion within the timelines set by the Presiding Judge, Judicial Review and Labour Rights Division.
 7. Nevertheless, the Court directed that the Motion be urged and allowed the Respondent and Interested Party to make oral submissions.
 8. The Court has reviewed the record, Motion and oral submissions and can make the following determinations.
 9. One, the Interested Party was allegedly injured in the course of work on or around 19 September 2022, and a report was made to the Respondent and it made an award of Kshs 14,599,468/- on 28 September 2022.
 10. Two, the Petitioner's insurers, Old Mutual Life Assurance Kenya Ltd became aware of the injury claim on or around 30 September 2022.
 11. Third, the Insurers reimbursed the Interested Party some expenses incurred around 25 November 2022.



12. Four, the Interested Party underwent medical examination at the behest of the Petitioner's Insurers on or around 24 November 2022 and 6 October 2023. The medical review established that some of the Interested Party's injuries were not sustained in the accident and that he did not sustain permanent disability.
13. Five, the Petitioner's Insurers declined to pay the award as assessed by the Respondent and this prompted the Interested Party to file Nairobi Miscellaneous Application No. E265 of 2023.
14. Six, on 15 May 2024, the Petitioner filed a Motion seeking a stay of the proceedings herein pending the determination of an Objection dated 6 May 2024, stated to have been lodged with the Respondent.
15. The primary grounds in support of the Motion filed on 15 May 2024 were that the compensation claim had not been processed as contemplated under the *Work Injury Benefits Act*; the Interested Party had withheld material facts from the Respondent; the Petitioner had lodged an Objection to the award but the Respondent had failed to respond; the enforcement proceedings had commenced; the Petitioner's right to fair administrative action was under threat; the parties had not exhausted statutory dispute resolution avenues; the proceedings would deprive the Petitioner of a right of appeal; the claim was based on fraudulent documents and that the Objection had high chances of success.
16. Seven, in a Ruling delivered on 18 July 2024, the Court stayed the proceedings pending the determination of the Objection by the Petitioner.
17. Eight, on or around 10 December 2024, the Respondent rejected the Objection on the ground that it was filed outside the prescribed time and further that no report or evidence of fraud had been presented.
18. Nine, the Petitioner subjected some of the documents used to assess the compensation due to the Interested Party to forensic examination and a forensic report was released on or around 12 July 2024.
19. Ten, the Petitioner raised another Objection to the award on or around 14 January 2025.
20. Eleven, most of the grounds raised in support of the instant Motion are a replica/copy-paste of the grounds which were advanced by the Petitioner in the earlier Motion seeking a stay of proceedings and which the Court determined.
21. Twelve, all the issues advanced in the instant Motion and Petition were raised in the Petitioner's replying affidavit sworn on 7 May 2024 in opposition to the Interested Party's Motion dated 10 November 2023 and which Motion is coming up for Ruling on 13 March 2025.
22. Lastly, by failing to file the instant Motion/Petition in the file where Ruling had been scheduled for 13 March 2025, and filing it in a different Division of the Court, the Petitioner was seeking to short-circuit legitimate court proceedings knowing that the instant Motion would be placed before a different Court.

Orders

23. In light of the above, the Court declines to exercise its discretion in favour of the Petitioner and the Motion dated 24 February 2025 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 12TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE



Appearances

For Petitioner Ms Tambo instructed by Anne Babu & Co. Advocates

For Respondent Ms Aluoch, State Counsel, Office of the Hon Attorney General

For Interested Party Ms Ombogo instructed by

Court Assistant Wangu

