



**Obaki v Bhachu Industries Ltd & another (Miscellaneous Application  
E027 of 2024) [2025] KEELRC 711 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 711 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
MISCELLANEOUS APPLICATION E027 OF 2024**

**B ONGAYA, J  
MARCH 7, 2025**

**BETWEEN**

**EVANS NYAKUNDI OBAKI ..... APPLICANT**

**AND**

**BHACHU INDUSTRIES LTD ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTORATE OF OCCUPATIONAL SAFETY AND HEALTH  
SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant is the employer, Bhachu Industries Ltd. It filed the application for review dated 19.11.2024 through K.Mberia & Partners Advocates LLP. It was under sections 1A, 1B, 3, 3A of the Civil Procedure Act, order 42 rule 6(3), order 45 rule 1, and order 51 rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of law. The prayer is for the Court to review and set aside the judgment entered against the applicant on 25.10.2024; and, for costs to be provided for. The application was based upon the supporting affidavit of Amritpal Singh Bahra sworn on 19.11.2024 and his further affidavit sworn on 27.11.2024 and upon the following grounds:
  - a. The applicant did not object to adoption of the DOSH award herein as judgment of the Court in the sum of Kshs.789, 021.00 assessed under Work Injury Benefits Act, 2007 (WIBA) and per the application dated 18.07.2024. The judgment was entered on 25.10.2024.
  - b. On 18.11.2024 new information emerged that the employee, 1<sup>st</sup> respondent herein, upon being injured on 31.08.2020 was treated at Access Afya and a DOSH form was completed by the doctor who attended to him stating that he was not entitled to any compensation.
  - c. The parties were not aware of that position when the judgment was entered on 25.10.2024. The adopted award per judgment is based upon a second DOSH form the 1<sup>st</sup> respondent obtained fraudulently.



- d. The application is without delay because the information emerged on 18.11.2024 and the application filed on 19.11.2024.
2. The employee, 1<sup>st</sup> respondent filed his replying affidavit sworn on 21.11.2024 and through Mwakio, Kirwa & Company Advocates. The claimant urged as follows:
    - a. The application is fatally defective, bad in law and an abuse of Court process. It is an afterthought.
    - b. He was injured on 31.08.2020 and the applicant filed DOSH form 1 and forwarded to the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent referred him to Brooks medical care on 08.09.2020 and a medical report prepared awarding him 25%. Thereafter he visited the 2<sup>nd</sup> respondent and was given DOSH Form 4 on 31.01.2024 and delivered it to the applicant to pay the award. The respondent declined to pay and the instant case was filed.
    - c. He never attended Access Afya on 15.09.2020 as alleged for the applicant. The medical report exhibited is fake. It is impossible that 0% is assessed for an injury of a deep cut wound on both lower limbs. The injuries were permanent and severe.
    - d. The application be struck out with costs.
  3. The applicant filed the supplementary affidavit sworn on 27.11.2024. It was repeated that the assessment of the injury on 24.09.2020 found that no compensation under WIBA was needed. It was urged that the employee herein was injured in 2020, he was treated at Athi River Shalom Community Hospital and Access Afya, he was assessed at DOSH office in Nairobi branch, it was found no compensation was due, no award was made, the employee went to DOSH offices at Athi River 4-years later and got an award subject of instant proceedings. It was alleged that the 1<sup>st</sup> respondent, the employee, has committed perjury blatantly.
  4. The parties did not file submission and they opted to rely on the material on record. The Court has considered the parties' respective positions and returns as follows:
    - a. The applicant admits that it did not oppose the application dated 18.07.2024 by which the Court was moved to adopt as judgment of the DOSH award in the sum of Kshs.789, 021.00.
    - b. The applicant has not explained why it failed to invoke the objection and appeal procedures prescribed in the [Work Injury Benefits Act, 2007 \(WIBA\)](#) to challenge the impugned DOSH award.
    - c. The applicant has failed to state when it became aware of the alleged new information said to justify a review. The alleged new information was all along in the possession of the applicant and could with due diligence have relied on it to object to the impugned award. The Court finds that the alleged new information ought to have been presented to court, with due diligence, prior to adoption of the impugned award as judgment of the Court and, in any event, it would properly be useful information in the objection proceedings under WIBA and not an application to adopt the award like in the instant proceedings.
    - d. The Court therefore returns that application for review is liable to fail with costs.

In conclusion, the application for review dated 19.11.2024 is hereby dismissed with costs, and, the Deputy Registrar to return the Court file to the Machakos Sub-registry, forthwith.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7<sup>TH</sup> MARCH, 2025**



**BYRAM ONGAYA  
PRINCIPAL JUDGE**

