



**Kivuli v Professional Marketing Services Limited (Miscellaneous Application
E298 of 2024) [2025] KEELRC 681 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 681 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E298 OF 2024**

**L NDOLO, J
MARCH 6, 2025**

BETWEEN

ANITA NZISA KIVULI APPLICANT

AND

PROFESSIONAL MARKETING SERVICES LIMITED RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 15th October 2024, by which the Applicant asks the Court to adopt the assessment of the Director of Occupational Safety and Health Services made on 5th June 2023.
2. The application is supported by the Applicant's own affidavit and is based on the grounds that:
 - a. On 22nd April 2024, the Applicant, being in the employ of the Respondent, as General Manager, was in her office undertaking her usual duties, when at around 3.00 pm a tree fell on her office roof, causing the ceiling to cave in and land on her;
 - b. As a result, the Applicant sustained multiple injuries being; blunt trauma to the left shoulder, chest and back;
 - c. The Applicant was immediately rushed to Avenue Hospital at the Junction Mall Branch, where she was treated and discharged with 6 days' off on bed rest;
 - d. On 30th April 2024, the Applicant went back to Avenue Hospital for review and was certified ready to resume work, while continuing with medical treatment and physiotherapy;
 - e. The Respondent, through the Acting Human Resource Officer, Rosemary Wambui, reported the matter to the Director of Occupational Safety and Health Services;



- f. The Director of Occupational Safety and Health Services assessed compensation to the Applicant in the sum of Kshs. 903,323;
 - g. Through the Respondent's insurer, Fidelity Insurance Shield Insurance Co. Ltd, the Applicant was subjected to a further medical examination by Dr. Ashwin Madhiwala;
 - h. The second medical examination confirmed the Applicant's injuries but no further action has been taken by the Respondent;
 - i. At the expiry of the Applicant's contract in June 2024, the Respondent opted not to renew it and the Applicant is currently without employment;
 - j. This Court is clothed with the requisite jurisdiction to grant the orders sought;
 - k. It is in the interest of justice that the orders sought be granted.
3. The Respondent filed a replying affidavit sworn by Joanne Muthoni Mwangi on 28th October 2024.
 4. Mwangi, who describes herself as Director and Chief Executive Officer of the Respondent, admits that the Applicant was injured at work on 22nd April 2024.
 5. She depones that the Respondent received DOSH Form 1 being, a report of the accident, the injury suffered by the Applicant and the doctor's report as well as DOSH Form 4 being the assessment of compensation.
 6. With regard to the DOSH Form 1, Mwangi points out that Part III has not been completed and the issuer of the document is unclear.
 7. Mwangi states that on 4th July 2024, the Respondent received an email from Laiason Insurance Group, pointing out a discrepancy in the DOSH 4 Form dated 5th June 2024, which was based on a medical report dated 6th June 2024. Attached to the email was a letter from Fidelity Insurance, claiming breach of the principle of utmost good faith, and declining to honour the claim.
 8. It is deponed that on 16th July 2024, the Respondent received another DOSH 4 Form dated 7th June 2024, with an indication that the DOSH 4 Form dated 5th June 2024 had an error.
 9. The Insurance Company is said to have taken issue with the assessment by the Director of Occupational Safety and Health Services, based on 3% permanent disability, which was not supported by the medical report.
 10. Mwangi states that the Applicant was subjected to a second medical examination, subsequent to which an objection to the assessment was submitted to the Director of Occupational Safety and Health Services.
 11. According to the Respondent, despite confirmation of receipt of the objection, the Director of Occupational Safety and Health Services was yet to respond to the objection.
 12. The Respondent concludes that the present application is premature as the processes before the Director of Occupational Safety and Health Services have not been completed.
 13. The Respondent also filed a Notice of Preliminary Objection dated 28th October 2024 citing the following grounds:
 - a. The Court has no jurisdiction to determine the application as filed as the Court's jurisdiction flows only on appeal in accordance with Section 52(2) of the [Work Injury Benefits Act](#);



- b. The matter is still pending determination before the Director of Occupational Safety and Health Services as no response to the Respondent's objection has been received in accordance with Section 52 of the Act.
14. By her application, the Applicant asks the Court to adopt an award by the Director of Occupational Safety and Health. This Court has taken the position that the jurisdiction donated to this Court under the *Work Injury Benefits Act*, is appellate only.
15. In my decision in Akhoya (Suing as the administrator of the Estate of Brian Mutambi Amakobe) (Deceased) v Uhuru Heights Limited [2024] KEELRC 244 (KLR) I stated as follows:
- “As far as work injury claims are concerned, the only jurisdiction granted to the Employment and Labour Relations Court is appellate and there can be no room to expand this jurisdiction to cover issues which arise in the course of processing of claims before the Director.”
16. In this case, it is evident that the processes before the Director of Occupational Safety and Health have not been completed.
17. The application is therefore not properly before the Court and the only thing to do is to strike it out, which I hereby do.
18. Each party will bear their own costs.
- Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF MARCH 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Masake for the Applicant

Mr. Maitai for the Respondent

