



Namwela (Suing on her Behalf and Behalf of the Estate of the Late Simon Mzighe Kibura (Deceased)) v Modern Coast Coaches Limited (Miscellaneous Application E094 of 2024) [2025] KEELRC 780 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 780 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E094 OF 2024**

**M MBARŪ, J
MARCH 6, 2025**

BETWEEN

**FAITH WAMBWA NAMWELA APPLICANT
SUING ON HER BEHALF AND BEHALF OF THE ESTATE OF THE LATE
SIMON MZIGHE KIBURA (DECEASED)**

AND

MODERN COAST COACHES LIMITED RESPONDENT

RULING

1. The applicant filed an application dated 11 September 2024 seeking the adoption of the award by the Director of Occupational Safety and Health Services (Director) made on 16 August 2023 as the court's judgment. The Director made an award of Ksh.1, 728,000, which should be allowed with costs.
2. The applicant, and widow of the deceased employee, and avers, who have obtained a letter of administration ad litem to file and prosecute this application to recover the award to the Estate of the Deceased from the respondent. She avers that on 24 July 2022, the deceased, while working as a driver of the respondent, sustained severe fatal injuries from a traffic accident. On 16 August 2023, the Director assessed the compensation of 100% permanent incapacity based on the wage of Ksh.18, 000 per month, all due Ksh.1, 728,000.
3. The applicant averred that the respondent proposed to make a payment of Ksh.100,000 per month by cheque. Upon demanding an agreement with the Labour Officer, the respondent stated that all payments had been made through 18 postdated cheques that had yet to be paid. The applicant refused to sign the agreement as she had not been paid as stated, and the Director recommended an amendment to the agreement.



4. The respondent has not paid the award despite being aware of it and engaging in proposals to pay in instalments. Under the [Work Injury Benefits Act](#) (WIBA), the applicant was left with no option but to commence these proceedings as held in *Virginia Wangari Muita (Suing as the legal representative of the Estate of the late Philip Maina Mwangi (Deceased) on her behalf and behalf of the deceased Estate) v Nyoro Construction Co. Limited*.
5. In reply, the respondent filed the Replying Affidavit of Carren Jeruto, the operations officer, who avers that the deceased was not employed as a chief accountant or a driver, as alleged. The deceased did not die in the course of employment or while on duty, as alleged. The death was occasioned by injuries from an accident which was outside employment and while off duty. The respondent's vehicle was not involved. The respondent only realized that the deceased had died after he failed to report to work and, upon following up, learnt of his death from injuries sustained in an accident.
6. The alleged accident was occasioned by an accident outside work. Under WIBA, the respondent cannot be held liable for making compensation payments.
7. The respondent submitted DOSH 1 and was later informed of the Director's award. They could not appeal as they were not invited to the proceedings leading to the assessment of compensation. The applicant could not file the application earlier since the Director only made the award on 16 August 2023. The proceedings before the Director are illegal and meant to obtain monies illegally from the respondent. DOSH 1 form does not state that the accident occurred while the deceased was on duty; hence, there is no liability to pay.
8. The applicant submitted that the director had investigated the accident and awarded ksh.1, 728,000, which the respondent had failed to pay. On 13 March 2024, the respondent wrote to the County Occupational Safety and Health Officer, confirmed the applicant had been processed, and apologized for payment delays. The orders sought should be allowed as prayed with costs as held in *Odhiambo & Another v Quale Holding Ltd t/a Guyana Guest House [2022] eKLR*; *Samson Chweya Mwendabole v Protective Custody Limited [2021] eKLR*.
9. The respondent submitted that the events leading to the award of 16 August 2023 were that the deceased was an employee of the respondent as a chief accountant and driver. However, the deceased cannot have held two positions as alleged by the applicant. The respondent only learnt of the death when the deceased failed to report to work. Death occurred outside the workplace; hence, the respondent cannot be held liable. The court lacks jurisdiction over the matter as there is no employment relationship. The court is only clothed with jurisdiction as the appellate court and not the original forum for enforcing WIBA work-related injury claims as held in *Akhoya (Suing as the administrator of the Estate of Biran Mutambi Amakobe (Deceased) v Uhuru Heights Limited [2023] eKLR*.
10. Through the DOSH 1 Form, the respondent reported the accident and fatal injury of the deceased to the Director. The accident occurred on 24 July 2022, and the report stated that the respondent employed the deceased as a conductor.
11. Upon receipt of a work injury and death report, the Director is required under WIBA to investigate the circumstances, assess the compensation, and issue a demand notice to the employer to make payment within 90 days.
12. The compensation was assessed on 16 August 2023, and a notice was issued to the respondent.
13. Through a letter and notice dated 26 February 2024, the Director further reminded the respondent to pay Ksh.1, 728,000 within 90 days.



14. The respondent does not deny receipt of these notices save to urge the court that the deceased did not die in the course of his employment. He died outside employment, and he was not employed as an account or driver, as alleged.
15. Upon service of the notice under sections 28 and 30 of WIBA, an employer is allowed to pay the injured employee, make objections, or file an appeal.
16. In this case, no payment or objections were filed by the respondent.
17. The contestations should have been addressed with the Director upon receipt of the notice and demand to pay.
18. On the court's jurisdiction to enforce the Director's award, the court has original jurisdiction to hear work injury claims and not the lower courts. In the case of *Maisha Mabati Mills Ltd v Ondari & another* [2022] KEELRC 12932 (KLR), the court held that under article 162(2)(a) of *the constitution*, the jurisdiction of the court to hear and determine employment and labour relations court cannot be removed through other crafts. The court has original jurisdiction to hear work injury claims, not the lower courts. This position is affirmed in several different cases in *Wandera v Endmor Steel Millers Limited* [2025] KEELRC 265 (KLR); *Marcus Curvey Ojango v Kenya Revenue Authority* [2024] eKLR; and *Peter v Gitau* [2025] KEELRC 55 (KLR). To single out work injury claims and remove them from this court jurisdiction would be to visit injustice on the parties.
19. The respondent is served with the Director's notice and demand to pay Ksh.1, 728,000 and has failed to make payment. These proceedings are necessary and brought with good foundations.
20. Accordingly, the orders sought herein are with merit. The respondent shall pay the applicant Ksh.1, 728,000 in costs within 30 days from the date of the judgment, after which the same shall accrue interests at court rates.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

