



**Musungu v SYKA Manpower Services Limited (Miscellaneous Application E006 of 2025) [2025] KEELRC 1233 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1233 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E006 OF 2025**

**M MBARŪ, J  
APRIL 30, 2025**

**BETWEEN**

**CLARENCE WALUKELA MUSUNGU ..... APPLICANT**

**AND**

**SYKA MANPOWER SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. The respondent, Syka Manpower Services Limited, filed an application dated 21 February 2025 seeking orders;
  1. Spent.
  2. The court be pleased to set aside the ruling delivered on 3 February 2025 and any consequential orders thereto;
  3. The court be pleased to set aside the ex parte proceedings conducted on 3 February 2025 and any consequential orders thereto;
  4. The court be pleased to reopen both parties cases and grant leave to the respondent/applicant to present its case on merit;
  5. Costs be in the cause.
2. The application is supported by the Affidavit of Regina Ileri, legal officer, Heritage Insurance Company. She avers that the applicant filed the matter on 21 January 2025 seeking the court to adopt the award by the Director of Occupational Safety and Health (DOSH). The matter was placed for hearing on 3 February 2025, and the respondent was absent. The applicant sought an erroneous award for DOSH, which was adopted.



3. The respondent was served with the application on 27 January 2025, but erroneously delayed relaying the documents to the insurer. The insurer received the application on 3 February 2025, when the matter was coming up in court. This was an inadvertent mistake of the respondent and not intended to delay justice.
4. In the affidavit, Ms Ireri avers that when they attended court, they discovered that the applicant's application had been allowed and the DOSH award adopted as the court's judgment. The applicant has secured a decree and is procuring a warrant of attachment against the respondent.
5. The matter proceeded without the respondent being heard, contrary to the rules of natural justice. The proceedings on 3 February 2025 should be set aside to allow the respondent to file a response. There is a good response since the applicant sought to enforce an erroneous DOSH award. The initial award of Ksh 39,300 was later revised to Ksh. 275,039 and to Ksh 1, 223,653 following reassessed injuries at 60% permanent disability. These reassessments and reviews are in error since the applicant had already entirely accepted payment. With the claim fully settled, these proceedings are barred by res judicata and statutory limitations. The respondent thus has a good response and should be allowed to state its case.
6. The applicant submitted that there was proper service, which is admitted. Due to internal lapses between the respondent and insurer, they failed to attend court or file a response. The applicant should not be made to suffer from such a lapse. Litigation must come to an end.

#### **Determination**

7. It is not disputed that the respondent was served with the application dated 17 January 2025. It came for hearing on 3 February 2025, and the respondent was absent.
8. With the application properly served and returns filed to confirm service, at the point of adopting the DOSH award, there was no response or any matter in objection.
9. With service admitted, the respondent did not act on the matter until 21 February 2025, when this application was drafted and filed on 25 February 2025.
10. To the application, the respondent has attached the draft replying Affidavit they would have wished to file in response to the applicant. The case is that the DOSH award assessed at ksh.39, 300 has since been revised upwards, and despite the insurer paying the full award, there are further reviews and reassessments.
11. The application dated 17 January 2025 sought to adopt the DOSH award of Ksh. 1,223,653, based on the assessment made by DOSH on 20 September 2024.
12. The background is that the applicant got injured at work on 20 February 2020 and reported the matter to DOSH on 3 May 2021. On 26 June 2024, he was assessed and awarded Ksh. 239,075. On 2 August 2024, he objected to the award and underwent a second assessment, leading to another assessment on 20 September 2024 at Ksh. 1,223,653.
13. Indeed, as the respondent contended, the applicant's assessments have significantly changed since the initial evaluation and award of Ksh. 239,075 to Ksh. 1,223,653 on 20 September 2024. The work injury occurred on 20 February 2020. It is imperative that the respondent's responses be considered and the matter heard holistically.
14. The applicant did not address that the respondent had fully settled the matter.
15. An enquiry into the matter is imperative.



16. Hearing the respondent's response will give the court a fair chance to gain a broad perspective on the matter. Hence, the truth reverberates.
17. However, the question of initial service having been confirmed, the respondent will meet the costs due to the applicant to allow for time to file the responses and have the matter heard afresh. The costs of Ksh. 15,000 shall suffice.
18. Accordingly, the judgment entered on 3 February 2025 is set aside with its orders; the respondent has 14 days to file a response to the application dated 17 January 2025 and pay Ksh. 15,000 to the applicant. A hearing date for the application will be allocated in court.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 30<sup>TH</sup> DAY OF APRIL 2025**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

