



Muindi v Director of Occupational Safety & Health Services & another (Employment and Labour Relations Appeal E143 of 2024) [2025] KEELRC 1163 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1163 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
EMPLOYMENT AND LABOUR RELATIONS APPEAL E143 OF 2024**

**K OCHARO, J
APRIL 24, 2025**

BETWEEN

STEPHEN MUTHI MUINDI APPELLANT

AND

**DIRECTOR OF OCCUPATIONAL SAFETY & HEALTH
SERVICES 1ST RESPONDENT**

PRIDE-INN PARADISE BEACH RESORT LIMITED 2ND RESPONDENT

RULING

Background

1. By a Memorandum of Appeal dated 10th July 2024, the Appellant challenged the decision of the 1st Respondent dated 20th June 2024, setting out the following grounds;
 - a. That the Director erred in law by admitting an objection by the 2nd Respondent filed out of the stipulated time of sixty days contrary to Section 51 of the [Work Injury Benefits Act](#).
 - b. That the Director erred in law and fact by failing to find that the objection by the 2nd Respondent dated 23rd March 2023, opposing the Director's award of 11th January 2023, was filed out of time.
 - c. That the Director erred in law and fact by revising the award contained in DOSH/WIBA 4 dated 11th January, 2023.
 - d. By reviewing and/or revising the award of 11th January 2023, the Director of Occupational Safety and Health Services acted in overt breach of the statutory provisions of the law. Therefore, the revised award of 20th June 2024 made per incuriam, spurious and hence bad in law.



2. The 1st Respondent filed a Notice of Preliminary Objection seeking that the appeal herein be struck out, on the following grounds;
 - a. That the appeal is incompetent, bad in law, misconceived and otherwise an abuse of the court process.
 - b. That the appeal offends the express provisions of Section 51 of the *Work Injury Benefits Act* Cap 236 Laws of Kenya.
3. On the 6th of November 2024, this Court directed that the preliminary objection be canvassed by way of written submissions and set timelines for filing the same. The parties complied. Their respective submissions are on record.

The 1st Respondent's Submissions.

4. The 1st Respondent submitted that, upon being dissatisfied with the Director's award dated 20th June 2024, through the Memorandum of Appeal herein, the Appellant challenged the decision and sought that the award be set aside and, in place thereof, that of 11th January 2023 be restored.
5. The Appellant didn't formally object to the Director's award dated 20th June 2024. Therefore, there has been no written answer from the Director to the Appellant to warrant an Appeal as contemplated by sections 51 and 52 of the *Work Injury Benefits Act*.
6. The Appellant didn't allow the process contemplated in the above-stated provisions to run its full course before approaching this court by way of an appeal.

The Appellant's submissions

7. The Appellant submitted that under Section 51[1] of the Act, any party aggrieved by the decision of the Director on any matter may, within 60 days, lodge an objection with the Director. In the instant case, the 2nd Respondent was the party that was aggrieved by the Director's decision of 11th January, 2023. It is imperative to note that the objection was filed on 23rd March 2023, therefore outside the 60 days contemplated under the provision.
8. The Appellant submitted that a keen consideration of the provisions of Section 52 of the Act reveals that it doesn't provide for either party to file an objection at any given time more than once. He cites the decision in *Haji v CG Retread [MSA] Limited [Miscellaneous Application 006 of 2024] [2024] KEELRC 784 [11 April 2024] [Ruling]*, to support this position.
9. The 2nd Respondent raised an objection against the award by the 1st Respondent, and it was only fair that an appeal be filed after the award was reviewed.
10. The Preliminary objection is not taken correctly, as it won't dispose of the appeal altogether. The issue as to whether the objection by the 2nd Respondent was filed out of time will not be disposed of.

Analysis and Determination

11. The points raised by the 1st Respondent aren't complex. They are straightforward to comprehend. The Respondent raises two clear preliminary points in objection to the Appellant's appeal. Thus, whether the Appellant bypassed a statutory process in filing the appeal, and if so, does this Court have jurisdiction to entertain the appeal? The Appellant's response thereto, in my view, appears to be evasive and totally insufficient.



12. One cannot afford to read sections 51 and 52 of the *Work Injury Benefits Act* in isolation from each other as the Appellant has attempted to do in his submissions.

13. Sections provides:-

“ 51. Objections and Appeals against decisions of the Director.

1. Any person aggrieved by a decision of the Director on any matter under this Act may, within sixty days of such decision, lodge an objection with the Director against such decision.
2. The objection shall be in writing in the prescribed form accompanied by the particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.

52. Director’s reply

1. The Director shall, within 14 days after receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
2. An objector may, within thirty days of the Director’s reply being received by him, appeal to the Industrial Court against such decision.”

14. Plainly, the only person who can approach the Employment and Labour Relations Court under the provisions of section 52 is one who engages the Director by way of an objection under section 51, and after the Director has rendered a decision on their objection. In the circumstances of this matter, the Appellant wasn’t. The 2nd Respondent was.

15. Undoubtedly, the Appellant was aggrieved by the Director’s decision[s] on an objection initiated by the 2nd Respondent. To reach this court as he has done, he was legally required to file an objection first pursuant to section 51, grieving about the matters he raised in his Memorandum of Appeal, and allow the Director to make his decision, and communicate it as contemplated under section 52. Only then could his right of appeal to this court crystallise.

16. In conclusion, I hold that the appeal herein was filed prematurely and that this Court’s jurisdiction has been improperly engaged. The appeal is struck out with costs.

READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 24TH APRIL, 2025.

OCHARO KEBIRA

JUDGE

