



**Khaemba v Walker Industries Limited (Miscellaneous Application
E282 of 2024) [2025] KEELRC 1147 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1147 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E282 OF 2024**

SC RUTTO, J

APRIL 9, 2025

BETWEEN

PETER WEKESA KHAEMBA APPLICANT

AND

WALKER INDUSTRIES LIMITED RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 19th September 2024, in which the Applicant seeks the following orders:
 1. That this Honourable Court be pleased to adopt as a judgment of this court the award made by the Directorate of Occupational Safety and Health Officer on 16th May 2024.
 2. That judgment be entered for the Applicant against the Respondent at Kenya Shillings Eight Hundred and Thirty Thousand and Twenty-Three Shillings (Kshs 830,023/=) being the amount assessed under the *Work Injury Benefits Act*.
 3. That the Honourable Court be pleased to award interest on the amount from the date of the assessment until payment in full.
 4. That this Honourable Court be pleased to award any other relief this court may deem fit and just to grant.
2. The Motion is premised on the grounds set out in its body and the Supporting Affidavit of Peter Wekesa Khaemba, the Applicant herein. Grounds in support of the Motion are that the Applicant was employed by the Respondent as a General Labourer and was injured in the course of employment on 2nd February 2024. He was treated and admitted at Nairobi West Hospital for one week from 7th February 2024 to 13th February 2024.



3. The Applicant deposes that he was assessed by the Directorate of Occupational Safety and Health Services (Director), who issued the statutory notices and demand for payment for the sum of Kshs 830,023/=. He contends that the Respondent has not made any efforts to settle the amount and that the statutory timeline for payment has lapsed and no appeal has been preferred by the Respondent.
4. In response to the Motion, the Respondent filed a Replying Affidavit sworn by its Human Resource Officer, Henry Majale Siata, on 9th October 2024. Mr. Siata deposes that the Respondent reported the Applicant's injuries/occupational accident to the Directorate on 8th February 2024, pursuant to the [Work Injury Benefits Act](#), 2007 ([WIBA](#)).
5. The Director assessed the Applicant's injuries and accordingly awarded compensation at Kshs 830,023/= on 16th May 2024. Aggrieved by the Director's award/compensation, the Respondent filed an objection dated 27th May 2024 and filed on 20th June 2024 before the Directorate challenging the award pursuant to provisions of section 51(1) of the [WIBA](#).
6. According to Mr. Siata, the Respondent properly lodged its objection to the Director's award within the 60-day statutory period as per the [WIBA](#).
7. He avers without prejudice that the Director is required to render his/her decision on the objection pursuant to Section 52 of the [WIBA](#). That the Director is yet to issue his decision on the objection.
8. Mr. Siata further avers that it is only after the Director's decision on the objection that the Respondent may either comply or appeal such decision/award.
9. Consequently, Mr. Siata has termed the Application to enforce the award premature and an abuse of the court process.
10. In a rejoinder, the Applicant filed a Further Affidavit sworn on 17th January 2025. It is the Applicant's deposition that he has been to the Directorate of Occupational Safety and Health in the Industrial area several times with a representative from his Advocates on record and has been informed that they do not have his appeal file or any file with his name.
11. It is the Applicant's contention that the Respondent has slept on its rights and is not interested in pursuing the appeal or knowing why the Director has not acted on their documents since they lodged the same on 20th June 2024.

Submissions

12. The Application was canvassed by way of written submissions. In support of the Application, the Applicant has submitted that there is no appeal lodged since it was not in conformity with the prescribed form and the timelines were mandatory and cannot be waived. The Applicant has further contended that the time provided under Sections 51 and 52 of the Act has already lapsed and the Director has since become functus officio.
13. The Respondent has submitted that disputes under the [WIBA](#) are administrative in nature and are only settled by the Director, as it is the office clothed with that jurisdiction. In the Respondent's view, the courts are involved only in matters arising from either enforcement proceedings, appeals, and if the Director delays/declines to issue an award.
14. It is the Respondent's submission that a party's intention to move the court in an appeal is based on the condition of the existence of an objection.



15. The Respondent has further submitted that the Applicant has misapprehended the procedure to be followed under the *WIBA*. In this regard, the Respondent has submitted that it is only the Director who can vary or uphold his initial decision with reasons given to the objector. That an appeal can only be filed in court to dispute the Director's reply to the objection. According to the Respondent, it has not filed any appeal in this court as there is a pending objection before the Director.
16. It is the Respondent's further submission that the court has no jurisdiction to determine whether the objection it has lodged is incomplete.
17. In the Respondent's view, the application is premature as there is an existing Objection. To this end, the Respondent has posited that the Applicant has put the cart before the horse by moving this court to adopt and enforce an award that is the subject of an objection. In support of this position, reliance has been placed on the case of *Samson Chweya Mwendabole v Protective Custody Limited* (2021) KEELRC 1809 (KLR) and *Peter Mutua Kaloki v China State Construction & Engineering Corp [Kenya] & another* (2022) KELERC 960 (KLR).
18. Referencing the decision in *Onchienku v China Communications Construction* [2023] KEELRC 21 [KLR], the Respondent posited that the Applicant ought to pursue the matter through a Judicial Review Motion to compel the Director to discharge his statutory mandate.

Analysis and Determination

19. I have considered the Application, the Affidavits by both parties, as well as the rival submissions, and the issue that stands out for determination is whether this court has jurisdiction to adopt the award made by the Director on 16th May 2024.
20. The crux of the Applicant's case is that the statutory timeline for payment has lapsed and no appeal has been preferred by the Respondent.
21. Refuting the Applicant's position, the Respondent has averred that it was aggrieved by the decision of the Director hence filed an objection dated 27th May 2024 challenging the award pursuant to Section 51(1) of the *WIBA*.
22. In support of its position, the Respondent annexed to the Replying Affidavit of Mr. Siata, a copy of DOSH/WIBA/12, constituting its objection to the award and compensation by the Director. Notably, the face of the Form indicates that it was received on 20th June 2024 at the Sub County-Directorate of Occupational Safety & Health Services, Athi River.
23. In terms of Section 51(1) of the *WIBA*, a party who is aggrieved with the assessment and award of compensation by the Director is allowed to lodge an objection within 60 days.
24. Based on the submitted objection(s), the Director is required to respond in writing within 14 days under Section 52(1) of the *WIBA*. In this regard, the Director may vary or uphold his initial decision with reasons given to the objector. The Director is further required to send a copy of the statement to any other person affected by the decision within the same period.
25. In the case herein, there is no evidence that the Director has rendered a decision on the Respondent's objection pursuant to Section 52(1) of the *WIBA*.
26. It is this Court's view that the process under the *WIBA* matures and an action crystallizes where no objection is filed against the award by the Director or where the Director renders a decision on an objection lodged under Section 51(1).



27. In the present case, it is evident that the Respondent has lodged an objection against the Director's award. The question as to whether the same is in the prescribed manner falls outside the purview of this court.
28. To this end, this court is of the respectful view that its jurisdiction can only be invoked upon the process contemplated under Sections 51 and 52(1) of the WIBA maturing. In this case, this process is yet to mature.
29. For the foregoing reasons, the court finds that the present Application is premature and, consequently, it has no jurisdiction to grant the orders sought herein. Accordingly, the Application dated September 19, 2024 is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF APRIL 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Munyungu for the Applicant

Mr. Mbugua for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

