



**Omari v Kenya Ports Authority (Miscellaneous Application
E025 of 2025) [2025] KEELRC 1068 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1068 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E025 OF 2025**

M MBARŪ, J

APRIL 3, 2025

BETWEEN

SAIDI KOMBO OMARI APPLICANT

AND

KENYA PORTS AUTHORITY RESPONDENT

RULING

1. The applicant filed an application dated 14 February 2025 seeking orders,
 1. Spent.
 2. The court be pleased to adopt as judgment of the court, the assessment/award of the Director of Occupational Safety and Health Services, Mombasa made on 2 November 2023, as the judgment of the court.
 3. A decree do issue for,
 - a. The sum of Ksh.3,792,227 being the Director’s award made on 2 November 2023;
 - b. Interests thereon compounded annually at court rates from the date of the award until paid in full.
 4. Costs of this application be paid by the respondent.
2. The applicant supports the application in his affidavit and avers that he has been an employee of the respondent as a Harbor Foreman, where he sustained a work-related injury on 28 December 2022. The incident was reported to the DOSH, and he was assessed, and it was established that he suffered 40% incapacity. On 2 November 2023, DOSH notified the respondent to pay Ksh. 3,792,227.73 In compensation. There has been no payment within the notice period.



3. The respondent did not file any objections to the DOSH award or an appeal challenging the award. These proceedings seek to enforce the DOSH award with costs and interest.
4. In reply, the respondent filed the Replying Affidavit of Mary Ng'ang'a, the legal officer of M/s Jubilee Allianz Insurance Company Limited, the respondent's insurer. She avers that the applicant seeks to enforce an award over a settled dispute. Upon injury on 28 December 2022 while at work, the applicant was assessed by DOSH, who awarded Ksh.3, 792,227 based on 40% permanent incapacity on 2 November 2023. The respondent objected to the award and referred the applicant to Dr. Salim K. Noorani to ascertain the precise degree of permanent incapacity, thereby challenging the initial assessment.
5. Based on the medical assessment by Dr. Salim K. Noorani, dated 15 November 2023, who assessed the incapacity at 20%, the award payable based on 20% incapacity, based on the re-examination, is Ksh.1, 997,475.
6. The respondent compensated the applicant through a payment voucher for Ksh.1, 997,475. The proceedings herein are an abuse of the court process, and the instant applicant should be dismissed with costs.
7. The applicant filed his Supplementary Affidavit and avers that despite the respondent being served with the DOSH award of 2 November 2023, there were no objections or appeals.
8. Based on the DOSH award, the respondent opted for a second assessment by Dr. Noorani on 15 November 2023, which reduced the incapacity from 40% to 20%. However, the respondent did not revert to the DOSH with any formal objection to have the award reviewed. The second assessment was not addressed within the statutory provisions which grant the DOSH the power to make an award. There is no evidence of any payment or part payment of the DOSH award, as alleged.
9. Both parties attended and made oral submissions.
10. Work-related injuries, accidents, and deaths are regulated under the *Work Injury Benefits Act* (WIBA), as held in *Attorney General v Law Society of Kenya & another* [2017] KECA 176 (KLR).
11. Upon work injury, the employer must report to DOSH for assessment and award of compensation as held in *Ng'ang'a v Timsales Limited* [2025] KEELRC 824 (KLR). This process is regulated under the WIBA. See *Law Society of Kenya v Attorney General & another* [2019] KESC 16 (KLR).
12. Upon the DOSH's assessment, an aggrieved employer is allowed to file objections or an appeal under the provisions of Section 52(1) or file an appeal to the court under Section 52(2) of the *WIBA*.
13. In this case, the DOSH award was issued on 2 November 2023, and a notice was issued to the respondent. There were no objections or appeals. The respondent opted to undertake a second medical assessment, which was not submitted to the DOSH to reconcile the new assessment with the initial assessment and issue a notice and award.
14. The motions of Section 16 of the *WIBA* are mandatory. The employer cannot decide on a second assessment without the approval of DOSH,
15. No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.



16. To allow the DOSH to address any matter arising from a work injury, under Section 23 of the [WIBA](#), inquiries are allowed. Opting to operate outside the law negates the purpose of the WIBA.
17. The respondent has not filed any evidence of part payment of the DOSH award of Ksh. 3,792,227.73 as alleged by MS Nga'ng'a in the Replying Affidavit. The attached payment voucher dated 13 February 2024 is not for the applicant. A payment voucher is not final evidence of the transmission of funds to a person.
18. The applicant's application was analyzed, and the award of DOSH dated 2 November 2023 has not been settled for the sum of Ksh. 3,792,227.73, which is due.
19. The application dated 14 February 2025 is hereby allowed. The following orders are hereby issued;
 - a. The sum of Ksh.3,792,227 being the Director's award made on 2 November 2023 is hereby awarded;
 - b. The respondent shall pay within 30 days from the date hereof, after which the same shall accrue costs from the date of the judgment.

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davies Wekesa

