



**Karanja v Master Star Co Ltd & another (Cause E418 of 2022)  
[2025] KEELRC 1636 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1636 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E418 OF 2022**

**SC RUTTO, J**

**MAY 30, 2025**

**BETWEEN**

**JOHN KARANJA ..... CLAIMANT**

**AND**

**MASTER STAR CO LTD ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF OCCUPATIONAL SAFETY & HEALTH  
SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Through a Statement of Claim which was further amended on 23<sup>rd</sup> January 2025, the Claimant avers that at all material times to this suit, he was an employee of the 1<sup>st</sup> Respondent.
2. The Claimant further avers that on or about the 12<sup>th</sup> of July 2021, while in the course of his employment, driving motor vehicle Registration number UAR 074Z along Mai Mahiu-Limuru Road the said vehicle was involved in an accident whereby it skidded off the road and overturned as a result of which he sustained very serious injuries.
3. It is the Claimant's assertion that the 1<sup>st</sup> Respondent had a duty to him both under common law and statute to ensure his safety while in the course of the employment, which it did not fulfill. Consequently, the Claimant prays for Judgment against the Respondent as follows:
  - a. An order directed to the 1<sup>st</sup> Respondent to pay to the Claimant the award made by 2<sup>nd</sup> Respondent together with special damages (Kshs. 1,446,923.60/=)
  - b. In the alternative, an assessment by the court of general damages payable to the claimant for the accident of 12<sup>th</sup> July 2021 and further a direction to the 1<sup>st</sup> Respondent to pay the damages so assessed by the court.
  - c. Costs of the suit with interest.



- d. Any further or better relief that the court may deem fit to grant.
4. The 1<sup>st</sup> Respondent neither entered appearance nor filed a Defence despite being served with the Notice of Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by Felix Omondi Owino on 14<sup>th</sup> August 2023, confirming service upon the 1<sup>st</sup> Respondent.
  5. It is worth mentioning that in the course of these proceedings, the 2<sup>nd</sup> Respondent assessed the injuries sustained by the Claimant and to that effect, made an award in the sum of Kshs 1,389,863.00 as the amount compensable to the Claimant. Consequently, the Claimant withdrew the claim against the 2<sup>nd</sup> Respondent and proceeded to amend the Statement of Claim appropriately.
  6. Being satisfied with the return of service with respect to the 1<sup>st</sup> Respondent, the Court directed that the matter proceeds as an undefended cause. Subsequently, the matter was set down for formal proof hearing on 18<sup>th</sup> February 2025, during which the Claimant testified in support of his case.
  7. During the hearing, the Claimant adopted his witness statement to constitute his evidence in chief. He further produced the bundle of documents filed in support of his Claim, together with the opinion of the 2<sup>nd</sup> Respondent as exhibits before Court.
  8. In his witness statement, the Claimant averred that an unidentified boda boda rider crossed into the path of his vehicle as he was driving and as he tried to avoid him, the truck he was driving skidded and overturned. As a result, he sustained very serious spinal injuries which to date remain unhealed and which have caused him a lot of inconvenience as he cannot work.
  9. The Claimant further averred that he has spent huge sums of money on hospital bills and he has experienced lots of pain and suffering.
  10. The Claimant further stated that the accident was reported at the Tigoni police station and to his employer.

### **Submissions**

11. Upon close of the hearing, the Claimant filed written submissions which the court has considered. It was the Claimant's submission that under Section 16 of the *Work Injury Benefits Act*, a party is at liberty to approach this Court within 12 months after the date of the incident, so long as he has taken the precautions to follow the steps envisaged under the Act.
12. It was the Claimant's further submission that he is entitled to approach this Court to enforce the award by the 2<sup>nd</sup> Respondent, hence he is properly before this Court.
13. The Claimant urged the Court to make its own assessment under the common law on the basis that the 1<sup>st</sup> Respondent, as his employer, did not bother to report the matter to the 2<sup>nd</sup> Respondent and did not respond to the claim, hence had no defense on the matter.

### **Analysis and Determination**

14. To my mind, the singular issue for determination is whether the Claimant is entitled to the reliefs sought.
15. The Claimant has asked the Court to adopt the award by the Directorate of Occupational Safety & Health Services (Director) and award him special damages, and in the alternative, assess general damages payable to him.



16. Under the *Work Injury Benefits Act*, there is no mechanism for enforcement of an award emanating from the Director against a reluctant employer. The Court was confronted with a similar issue in the case of *Samson Chweya Mwendabole v Protective Custody Limited* [2021] KEELRC 1809 (KLR) in which it held as follows:

“...There is a lacuna in law with respect to procedure for enforcement of the awards made by the Director under WIBA. However, this court being endowed with unlimited original and appellate jurisdiction in disputes related to employment and labour relations pursuant to Article 162(2) (a) of the Constitution and section 12 of the Employment and Labour Relations Court Act, I hold that it has the inherent jurisdiction to adopt as judgement the Director’s award for purposes of execution. This jurisdiction should not be confused with appellate jurisdiction which is expressly donated under section 52 (2) of the WIBA in respect of the Directors reply to objection made under section 51(1) of the WIBA.”  
Underlined for emphasis

17. And further, in the case of *Richard Akama Nyambane v ICG Maltauro Spa* [2020] KEELRC 847 (KLR), the Court reckoned thus:

“As held in the cited case of *Ruth Wambui Mwangi & another versus Alfarah Wholesalers Limited* [2017] eKLR, upon Directorate of Occupational Safety and Health Services (DOSHS) making the work injury assessment under *Occupational Safety and Health Act, 2007* on the award by the Director under WIBA, there is no enforcement mechanism and this being the court with mandate to address employment and labour relations claims and for connected purposes, the practice has been to file such claims under the provisions of section 89 of the Act as the *Work Injury Benefits Act, 2007* read with the *Occupational Safety and Health Act, 2007* do not outline the enforcement mechanism and procedures save to address work place injury assessment and award by the Director.”

18. A similar position was taken by the court in the case of *Mwangata v Shyam General Merchants Limited* (Cause E086 of 2024) [2025] KEELRC 616 (KLR) (16 January 2025) (Ruling) with the Court holding as follows:

“Absent an objection and/or appeal by the respondent against the award dated May 30, 2023, this court’s jurisdiction to enforce the said award in the face of the respondent’s non-settlement of the same, has matured.”

19. This Court is persuaded and adopts the above precedents hence finds that it has jurisdiction to enforce the award made by the Director under the *Work Injury Benefits Act*.
20. In the instant case, there is no dispute that there is an award made by the 2<sup>nd</sup> Respondent in the Claimant’s favour on 2<sup>nd</sup> December 2024. Further, there is no evidence on the Court’s record that the said award has been challenged through the mechanisms provided under the *Work Injury Benefits Act*. What’s more, there is no evidence that the 1<sup>st</sup> Respondent has settled the said award.
21. In light of the foregoing reasons, the Court finds that the Claimant is entitled to the award of Kshs 1,389,863.00 being the award made by the 2<sup>nd</sup> Respondent on 2<sup>nd</sup> December 2024 in his favour.



22. The relief with respect to the award of special and general damages is declined by dint of Section 16 of the Work Injury Benefits Act, which provides as follows:

“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.”

23. My construction of the above statutory provisions is that an employee or their dependant is restricted from suing their employer for damages related to work-related accidents or diseases that result in disablement or death. Accordingly, the legal remedies for work-related injuries are limited and fundamentally, any recourse for work-related injuries is through the mechanisms established under the Work Injury Benefits Act as opposed to the Court.

24. This position is fortified by the holding in the case of Jiwani Impex Limited v Ngoro [2024] KEELRC 1366 (KLR) in which the Court held that:

“The remedies sought in the claim are unavailable common law remedies. The work injuries to the respondent arose when WIBA had been enacted and should be compensated under WIBA. Section 16 of WIBA restricts compensation for work injury to the mechanisms under the Act and the compensation the respondent is entitled to is strictly under WIBA, Section 28 to 37 and only the Director who has jurisdiction to investigate, calculate and make an award. Section 16 of WIBA excluded the common law remedies sought by the respondent in his claim.” Underlined for emphasis

25. Still on this issue, the Supreme Court of Kenya held as follows in the case of Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR):

“The intention of section 16 of WIBA was not to limit access to courts but to create a statutory mechanism where any claim by an employee under the Act was subjected, initially, to a process of dispute resolution starting with an investigation and award by Director of Occupational Safety and Health Services (the Director).”

26. Flowing from the foregoing, it is clear that the claim with respect to special and general damages cannot be sustained hence is declined.

27. Accordingly, the Claimant’s Claim only succeeds to the extent that the Court adopts the 2<sup>nd</sup> Respondent’s award in the sum of Kshs 1,389,863.00 as the judgment of this court. The Court further awards interest on the said sum at court rates from the date of this decision until payment in full.

28. The 1<sup>st</sup> Respondent shall also bear the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2025.**

**STELLA RUTTO**

**JUDGE**

In the presence of:-

For the Claimant Mr. Gachoka

For the 1<sup>st</sup> Respondent No appearance



Court Assistant Millicent

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

