



Timsales Limited v Director of Occupational Safety and Health; Mburu (Interested Party) (Appeal E054 of 2024) [2025] KEELRC 1626 (KLR) (30 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1626 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E054 OF 2024**

**J RIKA, J
MAY 30, 2025**

BETWEEN

TIMSALES LIMITED APPELLANT

AND

DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH RESPONDENT

AND

PATRIC MBURU INTERESTED PARTY

JUDGMENT

1. The Interested Party was injured while working for the Appellant, and was granted work injury compensation, by the Respondent, under *Work Injury Benefits Act*.
2. The Appellant filed objection against the award, as stipulated under the Act, on 4th April 2024.
3. The objection was declined.
4. The Appellant lodged this Appeal, against the decision of the Respondent dated 4th July 2024, under Section 52 [2] of the *Work Injury Benefits Act*.
5. The Memorandum of Appeal is dated 15th July 2024.
6. The Interested Party filed an Application dated 29th November 2024, seeking an order that the Appeal struck out.
7. The Application is founded on the Affidavit of the Interested Party, sworn on 29th November 2024.
8. The Interested Party's main argument, is that the Respondent, was never a party to the dispute; the Respondent was the decision-maker, and cannot be named as a party on Appeal.



9. Parties agreed to have the Application considered and determined on the strength of their Submissions. They confirmed filing and exchange of Submissions, at the last mention before the Court, on 27th March 2025.
10. The Interested Party reiterates the contents of his Affidavit, in his Submissions. He emphasizes that, Parties should not be allowed to drag decision-makers to Court, to review their decision made at a different forum. The Appeal is an abuse of the appellate jurisdiction.
11. The Appellant submits that the Application is vexatious. The objection is baseless. The Respondent is a primary Party. As a decision-maker he is required to respond to the Appeal. The Interested Party has a stake in the outcome, but is not the decision-maker. He cannot assume the role of defending the Respondent. He is not a primary Party.

The Court Finds.

12. Section 51 of the *Work Injury Benefits Act*, refers to a decision of the Director.
13. The Director is a decision-maker, and not a party to the work injury dispute, under the Act.
14. He makes an award, and any aggrieved person, is allowed to file objection to the Director's decision, within 60 days of such decision.
15. Section 52 [1] mandates the Director to give a written decision on the objection, within 14 days of receiving the objection. The Director may vary or uphold his decision. He shall within the same period of 14 days, send a copy of his decision to any other party affected by the decision.
16. An Objector may within 30 days of receiving the decision, appeal against the decision to the E&LRC.
17. There is nowhere in this procedure, where the Director becomes a Party to the dispute. He is a decision-maker. His decision can be objected to, and appealed against, but nowhere does he become a party, to any of the proceedings.
18. If the Director is intended to be a party on Appeal, nothing would be easier than for the *Work Injury Benefits Act*, to specifically state so.
19. The E&LRC [Procedure] Rules 2024, define an "Appeal," under Rule 2, to mean an Appeal, made by any party, against an award, order, decision or decree of the Registrar of Trade Union, Cabinet Secretary, and Director of Occupational Safety and Health, Subordinate Courts, Tribunal or Commission, or any other body as may be prescribed under any written law, and includes a Cross-Appeal.
20. The definition distinguishes between a party, and a decision-maker. Rule 11 of the E&LRC [Procedure] Rules 2024, which regulates Appeals brought before the Court, does not contemplate that a decision-maker is transformed into a party, on appeal. We cannot have judicial or quasi-judicial officers dragged into the subject matter of the disputes they preside over.
21. If any written law allows for an Appeal to be lodged at the E&LRC, the decision-maker can only be named as a party to the Appeal, in the respectful view of the Court, through some express provision in the written law, which governs the dispute. There is no such provision in the *Work Injury Benefits Act*.
22. An Appeal is not an application for Judicial Review, where the decision-maker is normally made a party, to the proceedings.
23. Assuming the Appeal is successful, even on the prayer for costs alone, is the Appellant going to extract decree, and execute against a decision-maker, who was not a party to the work injury dispute?



24. How will the Director discharge his role as the administrator of the *Work Injury Benefits Act*, if he is deemed to be a disputant under the Act? The Act intends that he is above the fray, to be able to effectively discharge his mandate.
25. The Respondent is wrongly named as a party to the Appeal.
26. The Court does not think however, that the Appeal should be struck out. The Interested Party, who should have been named as the Respondent, is already a participant in the Appeal.
27. There were no other noticeable flaws in the procedure, leading up to the presentation of the Appeal.
28. The Appeal only needs to be amended, striking out the Respondent, and naming the Interested Party as a Respondent.

IT IS ORDERED.

29. The Court agrees with the Interested Party / Applicant, that the Director, Occupational Safety and Health is improperly joined to the Appeal.
30. The Appellant is granted 14 days to file and serve an amended Memorandum of Appeal.
31. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAKURU,
THIS 30TH DAY OF MAY 2025.**

JAMES RIKA

JUDGE

