



**Kinyanjui v Mutuku & another (Suing as the Personal Representative and Administrator of the Estate of the Deceased Bonface Kyungu Nzioka) ((Suing as the Personal Representative and Administrator of the Estate of the Deceased Bonface Kyungu Nzioka)); Director of Occupational Safety and Health Services (Intended Interested Party) (Appeal E218 of 2024) [2025] KEELRC 1589 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1589 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E218 OF 2024**

**JW KELI, J  
MAY 23, 2025**

**BETWEEN**

**PATRICK MUNGAI KINYANJUI ..... APPELLANT**

**AND**

**NORAH KATUMB MUTUKU AND MALIANA SYOMBUA NZIOKA (SUING AS THE PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE DECEASED BONFACE KYUNGU NZIOKA) ... RESPONDENT (SUING AS THE PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE DECEASED BONFACE KYUNGU NZIOKA)**

**AND**

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH SERVICES ..... INTENDED INTERESTED PARTY**

**RULING**

1. The Respondent/Applicant filed an application by way of Notice of Motion dated 16<sup>th</sup> October 2024 brought Under Order 1 Rule 10 of the Civil Procedure Rules 2010, and Sections 1A, 1B, 3A of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, and all other enabling provisions of the law for Orders: -
  1. That this Honourable Court be pleased to enjoin the Director of Occupational Safety and Health Services as an interested party in this suit.
  2. That this Honourable Court be pleased to grant leave to the interested party to file any relevant documents that may be relevant in this matter and to participate in this appeal.



3. That the costs of the application be in the cause.
2. Grounds of the application
  - a. The Appeal herein is against the decision of the Interested Party assessing compensation to the Respondent/Applicant for a fatal injury sustained on 20th June 2018 at Kshs. 2,880,000/-. The decision of the Interested Party was delivered on 6th July 2022.
  - b. The Respondent reported the matter to the Director of Occupational Safety and Health Services after a lot of resistance on the Respondent's part, culminating in the filing of form DOSH 1 by the Appellant.
  - c. Prior to filing the Appeal, the Appellant filed an Objection against the decision of the Interested Party, which was considered by the Interested Party and dismissed.
  - d. That the process of filing the DOSH 1 form, collecting all relevant information from the parties and reaching the various decisions was done by the Interested Party, hence the Interested Party has information that will help the Court determine this appeal. It is necessary that the Interested Party is allowed to come to court so as to elaborate on his decision and avail all the information in his possession.
  - e. That the Respondent will suffer irreparably if the Appeal is heard and determined without the Interested Party's participation, but the Appellant will not suffer any prejudice if the Interested Party is enjoined.
3. The application was supported by the Affidavit of Faith Mutio Mutuku dated 16<sup>th</sup> October 2024 where she annexed the DOSH 1 form; the demand letter for payment of the award; a Notice of Motion application dated 3rd April 2023 seeking enforcement of the decision of the Interested Party; a Replying Affidavit dated 22nd May 2023 filed in response to the Notice of Motion application; the Ruling of the Court delivered on 24th November 2023 in respect of the aforesaid Notice of Motion application; letters dated 1st December 2023 and 29th April 2024 to the Interested Party forwarding the Ruling and Objection lodged by the Appellant; the Objection; and a letter dated 8th July 2024 from the Interested Party communicating its decision in respect of the Objection.
4. The application was opposed by the Appellant/Respondent who filed a Statement of Grounds of Opposition dated 24th October 2024 to the effect that the Director of Occupational Safety and Health Services determined the matter as adjudicator and made a decision as a quasi-judicial body hence does not have any personal interest or stake in the matter. The Appellant/Respondent also argued that the Respondent/Applicant has not shown any identifiable interest of the Director in this matter contrary to the legal principles on joinder of a party; that the Respondent/Applicant has not demonstrated how the Director will be affected by the decision of this Court; and that the Director will not suffer any prejudice in case of non-joinder. The Appellant/Respondent dubbed the application as misconceived, a non-starter, bad in law and an abuse of the Court process since one of the grounds of appeal is that the Director lacked jurisdiction to determine the matter.
5. The court directed the application be canvassed by way of written submissions and both parties filed.



## Decision

### Whether the Director of Occupational Safety and Health Services should be joined as an Interested Party in this matter.

6. The Court herein is called upon to grant the Intended Interested Party leave to be joined in this appeal. The role of interested parties was discussed by the Supreme Court in *Trusted Society of Human Rights Alliance vs. Mumo Matemo & 5 Others* [2014] eKLR in which the said Court expressed itself as follows:

“Black’s Law Dictionary, 9<sup>th</sup> Edition, defines “intervener” (at page 897) thus:

“One who voluntarily enters a pending lawsuit because of a personal stake in it” (emphasis provided); and defines “Interested Party” (at p.1232) thus:

“A party who has a recognizable stake (and therefore standing) in a matter”.

Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom. Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

7. In considering the foregoing, the Honourable Court in *Yash Pal Ghai & Another v Judicial Service Commission & Another* [2016] eKLR held that:

19 It is therefore clear that in determining whether or not to join a person as an interested party certain criterion must be met by the applicant and these include:

- a. Whether the Applicant has a ‘stake/interest’ directly in the case, in the sense that he or she is one who will be affected by the decision of the Court when it is made, either way.
- b. Whether the applicant’s interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.

20 The word “direct” is defined by Black’s Law Dictionary, 9<sup>th</sup> Edn. page 525 as “straight; undeviating, a direct line, straightforward, immediate.”

21 The first question for determination is therefore the applicant’s interest in these proceedings.” I uphold the foregoing jurisprudence to apply in the instant application.

8. In the present case, the Director of Occupational Safety and Health Services was the adjudicator of the dispute between parties on the compensation to be awarded to the Respondent by the Appellant, pursuant to Section 22 of the *Work Injury Benefits Act* Cap 236 of the Laws of Kenya. The Director rendered his decision and issued form DOSH 4 “Demand for Payment of Work Injury Benefit” to the Appellant/Respondent on 14<sup>th</sup> June 2022. Subsequently, following receipt of the Objection lodged by the Appellant/Respondent to his decision, the Director gave a written answer to the Objection



dated 8th July 2024 (Exhibit marked “FMM-7” attached to the Applicant’s Supporting Affidavit dated 16th October 2024).

9. It is my finding that once the Director considered the Appellant/Respondent’s Objection and gave an answer to, he became functus officio leaving the Appellant/Respondent with no other remedy but to appeal the decision of the Director before this Court, pursuant to Section 52 (2) of the [Work Injury Benefits Act](#) Cap 236 of the Laws of Kenya.
10. I shall now consider whether this case meets the criteria for joining a party set out in the Yash Pal Ghai case (supra). As an adjudicator, who is now functus officio, I cannot hold that the Director has a direct stake or interest in this case, by any stretch of the imagination. Further, the Director will Not be affected by the Court’s decision in this matter. Having no direct interest in the matter, the third criteria of whether the applicant’s interest will not be well articulated unless he himself or she herself appears in the proceedings does not apply.
11. While I have taken cognizance of the Respondent/Applicant’s argument that the Intended Interested Party has information in his knowledge and possession that will assist this court to determine the appeal, I disagree that this information is solely in the Intended Interested Party’s possession, since Section 21,22, and 23 (3) of the [Work Injury Benefits Act](#) Cap 236 of the Laws of Kenya envision a situation where the employer and employee furnish the Director with all the information/particulars that he requires to make an inquiry. All the documentary evidence in respect of this case is therefore in the possession of the parties to this appeal, and can be provided to this court by them. Notice to produce documents or summons to witnesses is always an option available to a party as may be necessary in pursuit of their case.
12. For the above reasons, I decline to grant the prayers sought in the Notice of Motion dated 16th October 2024, and hereby dismiss the same. Costs shall be in the cause.
13. Mention on 4<sup>th</sup> June 2025 for further directions in the appeal.
14. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF MAY, 2025.**

**J.W. KELI,**

**JUDGE.**

In the presence of:

Court Assistant: Otieno

Appellant : - Ms. Sila

Respondent: Ms.Owino h/b Ms. Mutuku

