



**Omuchele v Shreerang Enterprises Limited (Employment and Labour Relations Appeal E256 of 2024) [2025] KEELRC 1524 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1524 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E256 OF 2024**

**JW KELI, J**

**MAY 23, 2025**

**BETWEEN**

**MESHACK AMETA OMCHELE ..... APPELLANT**

**AND**

**SHREERANG ENTERPRISES LIMITED ..... RESPONDENT**

*(Being an Appeal from the Decision/Answer of the Director of Occupational Safety and Health Services dated the 5<sup>th</sup> of August, 2024 in Claim Reference Number ML & SP/DOSHS/WIBA/KBU/296/2024)*

**JUDGMENT**

1. The Appellant herein, being dissatisfied with the Decision/Answer of the Director of Occupational Safety and Health Services dated the 5th of August, 2024 in Claim Reference Number ML & SP/DOSHS/WIBA/KBU/296/2024 between the parties filed a memorandum of appeal dated the 3<sup>rd</sup> of September 2024 seeking the following orders:-
  - a. The Appeal be allowed.
  - b. The Decision/Answer of the Director of Occupational Safety and Health Services in respect of Claim Reference Number ML & SP/DOSHS/WIBA/KBU/296/2024 dated 5th August, 2024 be varied/corrected to reflect that the Amended “Demand for Payment” (DOSH/WIBA 4) dated 29<sup>th</sup> August, 2024 should also reflect the Multiplier to be 312 Months when calculating the Appellant’s compensation.
  - c. The Amended Demand for Payment (DOSH/WIBA 4) be adopted as a judgment of this Court for enforcement purposes.
  - d. The costs of this Appeal be provided for.



## Grounds Of The Appeal

2. That the Director of Occupational Safety & Health Services erred in law and in fact by failing to consider the multiplier to be adopted when computing compensation for loss of dependency yet it was an issue submitted for consideration.

## Background To The Appeal

3. A claim was filed before the Director of Occupational Safety and Health in relation to the Appellant and against the Respondent vide MLSSS/DOSH/FORM 1 seeking compensation for a work injury sustained by the Appellant on 3<sup>rd</sup> June 2023 at the Respondent's work site at Kikuyu, whereby the Appellant fell from the second story of a building and injured his spinal chord (pages 3-4 of the ROA dated 6<sup>th</sup> November 2024).
4. The Appellant's Claim was supported by hospital records filed with the Director of Occupational Safety and Health Services (see pages 5-17 of the ROA dated 6<sup>th</sup> November 2024).
5. The Director of Occupational Safety and Health Services delivered his Decision and issued form DOSH/WIBA/4 "Demand for Payment of Work Injury Benefit", on 24<sup>th</sup> June 2024, designating the Appellant's disability at 100% and awarding compensation of Kshs. 1,209,600.00 calculated as follows:- 11,700.00 (Monthly Total Earnings) x 96 months x 100 (Disablement) (page 18 of ROA dated 6<sup>th</sup> November 2024).
6. Being dissatisfied with the award issued by the Director, the Appellant lodged an Objection on 12<sup>th</sup> July 2024 vide form DOSH/WIBA 12 "Objection to the Decision of the Director of Occupational Safety and Health Services", taking issue with the monthly salary of Kshs. 11,700.00 used to tabulate the award; the number of years (8) used to determine loss of earnings; and the total award of Kshs. 1,209,600.00 (pages 19-20 of ROA dated 6<sup>th</sup> November 2024).
7. The Director of Occupational Safety and Health Services considered the Appellant's Objection as aforesaid, and delivered a Decision/Answer dated 5<sup>th</sup> August 2024 vacating the "Demand for Payment" (DOSH/WIBA 4) issued on 24<sup>th</sup> June 2024. He issued an Amended "Demand for Payment" (DOSH/WIBA 4) based on:  
  
Permanent Incapacity (100%), Monthly Earnings (Kshs. 15,201.65) and Sick Offs (192 Days) (pages 3-4 of Supplementary ROA dated 27<sup>th</sup> February 2025).

## Determination

8. The appeal was canvassed by way of written submissions. Only the appellant filed.
9. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-  
"The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."



10. Further in on principles for appeal decisions in Mbogo V Shah [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94: “I Think It Is Well Settled That This Court Will Not Interfere With The Exercise Of Its Discretion By An Inferior Court Unless It Is Satisfied That Its Decision Is Clearly Wrong, Because It Has Misdirected Itself Or Because It Has Acted On Matters On Which It Should Not Have Acted Or Because It Has Failed To Take Into Consideration Matters Which It Should Have Taken Into Consideration And In Doing So Arrived At A Wrong Conclusion.”

### Issues for determination

11. The issue for determination was whether the appeal was merited. The court took into account the submissions of the appellant and the provision of the Work Injury Benefits Act (Chapter 236 The Laws of Kenya)

### Decision

12. The appeal is against the award of DOSH dated 24<sup>th</sup> June 2024 where the Director on finding 100% permanent disability applying the wages of 450 per day of the appellant’s employment as casual applied the multiplier of 96 months to award total sum of Kshs. 1,123,200 and further 192 days to cater for period of sick off total award of KSHS. 86,400.
13. The appeal sought the following reliefs:- The Decision/Answer of the Director of Occupational Safety and Health Services in respect of Claim Reference Number ML & SP/DOSHS/WIBA/KBU/296/2024 dated 5th August, 2024 be varied/corrected to reflect that the Amended “Demand for Payment” (DOSH/WIBA 4) dated 29<sup>th</sup> August, 2024 should also reflect the Multiplier to be 312 Months when calculating the Appellant’s compensation and the Amended Demand for Payment (DOSH/WIBA 4) be adopted as a judgment of this Court for enforcement purposes. Essentially, the appeal was on the multiplier and applicable wages. The appellant brought up the issue of wages to be Kshs. 15,201 (under minimum wages regulations)alleging he was a general labourer hence the tabulation should be amended to reflect the minimum wage.
14. The Director in tabulation is guided by the provisions of section 30 of WIBA to wit:- ‘30. Compensation for permanent disablement-
- (1) Compensation for permanent disablement shall be calculated on the basis of ninety-six months earnings subject to the minimum and maximum amounts determined by the Minister, after consultation with the Board, and set out in the Third Schedule.
  - (2) If an employee has sustained an injury specified in the first column of the First Schedule, the employee shall for the purposes of this Act, be deemed to be permanently disabled to the degree set out in the second column of the First Schedule.
  - (3) If an employee sustains an injury not specified in the First Schedule which leads to permanent disablement, the employee shall be paid such percentage of disablement in respect thereof as in the opinion of a medical doctor will not lead to a result contrary to the guidelines of the First Schedule.
  - (4) If an injury or serious disablement contemplated in paragraph (a) or (b) has unusually serious consequences for an employee as a result of the special nature of the employee’s occupation, the Director may determine such higher percentage as the Director shall deem equitable.
  - (5) No payment for temporary disablement in accordance with the provisions section 29 shall be deducted from compensation payable under this section.”



15. The court was not satisfied that a different multiplier was applicable outside section 30 of WIBA. The Director draws his assessment powers on work injury claims from WIBA and acting to the contrary would be without jurisdiction. Jurisdiction flows from either the Constitution and the legislation or both as observed by the Supreme court in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] e KLR( paragraph 68). The court holds that the Director was legally bound to apply and applied correctly the multiplier of 96 months as per section 30 WIBA above.
16. The other issue is applicable wages. The Director was guided by Dosh /Form 1 at page 3 and 4 of the appeal in the assessment. The form indicated the appellant was a casual earning Kshs. 450 per day. Nowhere in Form 1 was it stated the appellant was a general labourer. In the assessment, the Director is bound to apply the wages stated in Form 1. The Director has no jurisdiction outside WIBA. The jurisdiction to determine unfair labour practices of underpayment lies in a claim before the Court. The Director rightly applied the wages disclosed in Form 1, which were not denied as having been paid to the applicant as at time of injury (page 3 of the record of appeal.)
17. The court finds no basis to disturb the award of DOSH 24<sup>th</sup> June 2024(Mbogo v Shah). The appeal is dismissed for lack of merit, The award of DOSH of 24<sup>th</sup> June 2024 is upheld and adopted as judgment of the Court. The Respondent to settle the claim as awarded by Dosh on the 24<sup>th</sup> June 2024 for the sum of Kshs. 1,209,600 by deposit of the total sum with the DOSH in 30 days.
18. I make no orders as to costs in the appeal.
19. The file is marked as closed.
20. It is so Ordered.

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

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant : Ms. Malobo h/b Gombo

Respondent:- No appearance

