



**Mwasaha (Suing as the Legal Representative of the Estate of the Late Silas Chilango Jambo) & another v Suguna Foods Kenya Limited (Miscellaneous Application E003 of 2025) [2025] KEELRC 1337 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1337 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E003 OF 2025**

**AK NZEI, J**

**MAY 9, 2025**

**BETWEEN**

**LENNOX JAMBO MWASAHA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE SILAS CHILANGO JAMBO) ..... 1<sup>ST</sup> APPLICANT**

**ELVINER KAJIMBI JAMBO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE SILAS CHILANGO JAMBO) ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SUGUNA FOODS KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The application before me is the Applicants' Notice of Motion dated 20<sup>th</sup> December, 2024. The Applicants seeks the following Orders:-
  - a. That this Court be pleased to adopt as its Judgment the award of Thika County Occupational Health and Safety Officer of Kshs.8,160,000/= as against the Respondent.
  - b. That this Court be pleased to enter Judgment ordering the Respondent to pay the Applicants herein Kshs.8,160,000/= being the award assessed by the Director of Occupational Safety and Health Services under Work and Injury Benefits Act.
  - c. That the Court be pleased to award interest on the assessed amount until payment in full.
  - d. That costs of the application be borne by the Respondent.
2. The application, expressed to be brought under Article 162(2)(a) of *the Constitution* of Kenya, Sections 10 and 34 of the *Work Injury Benefits Act* and Section 12 of the *Employment and Labour Relations Court Act*, among other provisions of the law, sets out on its face the grounds on which it is based, and



is predicated on the supporting affidavit of Elviner Kajimbi Jambo (the 2<sup>nd</sup> Applicant herein) sworn on 20<sup>th</sup> December, 2024. It is deponed in the said affidavit:-

- a. that the Respondent herein retained the services of Silas Chilango Jambo (deceased) in 2021 as Deputy Manager-HR and Admin, earning a monthly salary of Kshs.85,000/=.
  - b. that on 18<sup>th</sup> November, 2021, in the course of his employment, the deceased was involved in a fatal road traffic accident and sustained severe head injuries, which led to his demise.
  - c. that having knowledge of the said accident, the Respondent declined and/or neglected to notify the Directorate of Occupational Safety and Health of the accident, until a demand was issued from the directorate, prompting the Respondent to file the relevant form (DOSH 1) with the Director.
  - d. that the Respondent prepared, filled and duly signed the statutory notice (DOSH FORM 1) dated 16<sup>th</sup> February, 2023, and sent it to the Director of Occupational Safety and Health Services (the Director) for assessment and action.
  - e. that the Director made an assessment and awarded compensation in the sum of Kshs.8,160,000/= under reference No. WIBA/KBU/691/022/023, which award is dated 15<sup>th</sup> March, 2023.
  - f. that despite demand and notice being served on the Respondent, the Respondent refused to pay the said money within 90 days from the date of the said notice and demand.
  - g. that the Respondent has not lodged an appeal against the said award, hence adoption [of the same] is necessary before execution [can issue].
  - h. that this Court has unlimited original and appellate jurisdiction on disputes relating to Employment and Labour Relations pursuant to Article 162(2)(a) of *the Constitution* of Kenya.
3. Documents annexed to the said supporting affidavit include copies of the deceased's employment offer letter dated 5<sup>th</sup> April, 2021, Dosh Form 1, the Director's letter to the Respondent dated 7<sup>th</sup> February, 2023 calling upon the Respondent to formally report the accident (involving the deceased) that occurred on 18<sup>th</sup> November, 2021 by filing Part 1 of the Dosh Form 1; a Limited Grant of Letters of Administration duly issued to the Applicants on 6<sup>th</sup> November, 2024 by the High Court at Kiambu, a death certificate on the deceased, DOSH WIBA 4 dated 15<sup>th</sup> March, 2023 duly issued by the Director on 15<sup>th</sup> March, 2023 (containing the assessment of Kshs.8,160,000/=), and the Director's letter dated 16<sup>th</sup> May, 2023 asking for payment of the said assessed award.
4. The application is opposed by the Respondent vide a replying affidavit of Victor Muhya, the Respondent's Head of Human Resource Management and Administration, sworn on 26<sup>th</sup> February, 2025. It is deponed in the said affidavit:-
- a. that the claim was lodged by the Applicants outside the stipulated timelines under Section 26 of the *Work Injury Benefits Act*; which provides that the claim must be made within twelve months after the date of the accident or in case of death, within twelve months from the date of death.
  - b. that the cause of the deceased's death was a result of road traffic accident, riding on his personal motorbike after work, hence the matter herein is purely an RTA case.
  - c. that in assessing the award herein, the Director applied the wrong provisions of the *Work Injury Benefits Act* (WIBA).



- d. that the awarded sum is excessive and should be reviewed by the Court in view of the fact that the death was caused by an unfortunate road accident when the deceased was riding his own motorbike.
5. It is to be noted that in matters regarding work injury claims, whether or not the work injury or occupational disease in issue resulted in the death of an employee, the issues of liability and assessment of and/or quantum the compensation payable are within the exclusive province of the Director of Occupational Safety and Health Services. The timelines set out in Section 26 of WIBA relate to lodging of a claim with the Director pursuant to Section 21 of the Act.
6. Section 23(1) of the Act (WIBA) provides as follows:-
- “(1) After having received notice of an accident or having learned that an employee has been injured in an accident, the Director shall make such inquiries as are necessary to decide upon any claim or liability in accordance with this Act.”
7. Section 16 of the Act (WIBA) 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.” (Emphasis added).
8. Once the Director decides on the aforesaid issues of liability and quantum of compensation payable, any person aggrieved by the Director’s decision can only challenge the same pursuant to the provisions of Sections 51 and 52 of the Act.
9. The Applicants have deponed herein that the Respondent did not object to and/or appeal against the Director’s decision made on 15<sup>th</sup> March, 2023 regarding the compensation payable by the Respondent to the estate of the deceased employee. The Respondent has not rebutted that averment, and has not demonstrated and/or alleged payment by it of the assessed compensation.
10. This Court’s duty is limited to enforcing the Director’s award dated 15<sup>th</sup> March, 2023. The application herein was filed in Court less than two years from the date of the Director’s award/decision on assessment of the compensation payable. It was filed within time.
11. For record purposes, the *Work Injury Benefits Act* is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (the Director) are to be enforced. At the same time, the said Act does not oust this Court’s Jurisdiction to enforce such awards, and especially when the Director’s decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act (WIBA) has not been objected to pursuant to Section 51 of the Act, or has been objected to and the objections and/or appeals from such objections have been determined in favour of the injured employee or the estate of a deceased employee (where work injury and/or occupational disease resulted in the death of an employee), and the employer has refused to pay.
12. This Court stated as follows in the case of *Marcus Curvey Ojango – vs – Kenya Revenue Authority* [2024] eKLR:-
- “Pursuant to Article 162(2)(a) of *the Constitution* of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where that Jurisdiction is expressly ousted by the statute over particular matters specified in that statute.



A good example of such a statutory provision is Section 16 of the *Work Injury Benefits Act* (WIBA) which expressly ousts courts' jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such inquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.”

13. Further, this Court stated as follows in *Amir Swaleh Omar – vs – Mackezie Maritime (E.A) Limited* [2022] eKLR:-

“

“ 17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of Jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of WIBA, the assessed sum becomes the injured employee's right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director's assessment, and issuance of a decree which can then be executed to realise that right.

19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine.

Article 50(1) of *the Constitution* of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”

14. Having stated the foregoing, and having considered written submissions filed by both parties herein, I find merit in the Applicants' Notice of Motion dated 20<sup>th</sup> December, 2024, and I allow the same in the following terms:-

- a. The Director's award of Kshs.8,160,000/= dated 15<sup>th</sup> March, 2023 regarding Silas Chilango Jambo (deceased) is hereby adopted by this Court and accordingly, Judgement is hereby entered for the Applicants against the Respondent in the said sum of Kshs.8,160,000/=.
- b. A decree shall issue, and shall be enforceable in accordance with this Court's Rules of Procedure.



- c. The decreed sum shall attract interest at Court rates, to be computed from the date of this Ruling until payment in full.
- d. Costs of these proceedings are awarded to the Applicants, to be agreed or taxed.

15. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

