



**Kinoti v One Acre Fund (Miscellaneous Application E007 of 2024)
[2025] KEELRC 1366 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1366 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E007 OF 2024**

ON MAKAU, J

MAY 9, 2025

BETWEEN

MERCY MAKENA KINOTI APPLICANT

AND

ONE ACRE FUND RESPONDENT

RULING

1. By a Notice of Motion dated 19th June 2024, the applicant sought the following orders: -
 - a. That this Honourable Court be pleased to make a declaration that the Respondent pay the claimant the award amount of Kshs.642,265.50 being the compensation award by the Director of Occupational Safety and Health Services to the Claimant.
 - b. That the compensation of Kshs.642,265.50 by the Director of Occupational Safety and Health services to the claimant be adopted as the Judgment of this court.
 - c. That costs of the application be paid by the Respondent.
 - d. Interest on prayer 2 and 3 above.
2. The application is supported by Affidavit sworn on 19th June 2024 and it is opposed by the respondent vide the Replying Affidavit sworn by its Legal Counsel Celestine Mikhala Barasa on 18th October 2024. Both parties also filed written submissions to dispose of the application.
3. The applicant's case is that she was employed by the respondent as a Field Officer for over 4 years. On 25th June 2022 he was injured while in the cause of employment and suffered 25percent permanent incapacity as was assessed on 15th May 2023 by Dr.Gakuya of St.Teresa Mission Hospital-Kiirua. On 16th May 2023 the County Occupational safety and Health Officer assessed compensation payable to the applicant at Kshs.642,265.50.



4. It is further applicant's case that the respondent failed to pay the assessed damages upon demand and thereby necessitating filing of the instant motion. He prayed for the orders sought in the application, plus costs and interest.
5. The respondent's case is that the court lacks jurisdiction to entertain the motion herein but admitted the occurrence of the accident. It is further respondent's case that a second medical review done on request by its insurer, revealed that the applicant suffered 2percent permanent incapacity and he was paid Kshs.101,397 and signed a discharge voucher. Therefore, it prayed for the suit to be dismissed with costs.
6. The applicant mainly submitted that the court has jurisdiction to entertain the application while the respondent submitted that the court lacked original jurisdiction over WIBA matters. It further submitted that the applicant received Kshs.101,397 based on a 2percent permanent incapacity and signed a discharge voucher which bars her from pursuing further claims.
7. For emphasis, it cited *Trinity Prime Investment Limited vs Lion of Kenya Insurance Company Ltd* (2015) eKLR and *Southern Cross Company (SECO) v David Anzani Ombeba* (2015) eKLR where it was held that a discharge voucher is binding contract unless vitiated by fraud, misrepresentation of other factors.
8. Finally, it was submitted that the second review of the applicant yielded assessment of 2percent degree of permanent incapacity and therefore the demand by the Director for payment of Kshs.642,265.50 was erroneous and without merits in view of consent settlement between the parties.

Determination

9. The issues for determination are:
 - a. Whether the court has jurisdiction to determine the application.
 - b. Whether the discharge signed by the applicant bars her from further claims against the respondent.
 - c. Whether the orders sought should be granted.

Jurisdiction

10. I have held in the past and I dare repeat herein that this court has unlimited jurisdiction to determine all disputes involving Employment and Labour Relations. A claim founded on WIBA is obviously founded on an employment relationship between an employer and an employee. Consequently, the answer to the first question is in the affirmative.

Discharge voucher

11. One year after the assessment of the damages payable by the Director, the respondent prepared a Discharge Voucher for payment of Kshs.101,397 as full and final settlement of the applicant's claims and damages. The Discharge Voucher is dated 19th September 2023 and there is a signature by the unnamed Insured Beneficiary on 13th May 2024.
12. In the *Trinity Prime Investment Ltd* cited by the respondent, the Court of Appeal held: -

“The execution of the discharge voucher, we agree with the learned Judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant



accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”

13. The foregoing notwithstanding, I find that the Discharge voucher in the instant case was on a “without prejudice” basis and therefore not admissible. Even if payment was made and received, the same is deemed to have been done on without prejudice basis. Consequently, the said voucher did not constitute a settlement agreement as contemplated in the case cited above since in my view it was a conditional settlement.

Reliefs

14. In view of the foregoing conclusion, I allow the application as prayed but the decreed sum shall be paid less the sum of Kshs.101,397 paid on the basis of the said Discharge Voucher.

DATED, SIGNED AND DELIVERED AT NYERI THIS 9TH DAY OF MAY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

