



**Kamau v Rhombus Concrete Limited (Miscellaneous Application  
E022 of 2025) [2025] KEELRC 1243 (KLR) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1243 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E022 OF 2025**

**AK NZEI, J**

**MAY 2, 2025**

**BETWEEN**

**GACHOKA KAMAU ..... APPLICANT**

**AND**

**RHOMBUS CONCRETE LIMITED ..... RESPONDENT**

**RULING**

1. The application before me is the Applicant's Notice of Motion dated 29<sup>th</sup> January, 2025. The Applicant seeks the following Orders:-
  - a. That this Court do adopt as a Judgment of the Court the assessment/award of the Director of Occupational Safety and Health Services, Athi River, made on 23<sup>rd</sup> April, 2024.
  - b. That a decree do issue for the sum of Kshs.323,146/= being the Director's award/assessment made on 23<sup>rd</sup> April, 2024.
  - c. Interest on the assessed sum at Court rates (14%) from the date of the award (23<sup>rd</sup> April, 2024) until payment in full.
  - d. That costs of the application be awarded to the Applicant.
2. The application sets out on its face the grounds on which it is based, and is anchored on the Applicant's supporting affidavit sworn on 29<sup>th</sup> January, 2025 whereby it is deponed, inter alia:-
  - a. that the Applicant was employed by the Respondent as a Plant Mechanic and that on 18<sup>th</sup> April, 2023, he sustained work-related injuries.
  - b. that the incident was reported to the Director of Occupational Safety and Health Services, Athi River, vide DOSH Form 1.



- c. that compensation payable to the Applicant was subsequently assessed at Kshs.323,146/= with DOSH/WIBA 4 being issued on 23<sup>rd</sup> April, 2024; requiring the Respondent to effect payment within 90 days.
  - d. that the Respondent did not lodge any objection or an appeal (against the award).
  - e. that due to delay by the Respondent in payment, the Director demanded payment vide a letter dated 12<sup>th</sup> November, 2024, but there was no response by the Respondent.
3. Documents annexed to the Applicant’s said supporting affidavit are copies of Form(s) DOSH/WIBA 1, DOSH/WIBA 4 and the Director’s demand letter (to the Respondent) dated 12<sup>th</sup> November, 2024.
  4. The Respondent did not oppose the Applicant’s application herein, though shown to have been physically served with the same on 7<sup>th</sup> February, 2025 and an affidavit of service filed. The Respondent was subsequently served with a hearing notice on the application, but did not attend Court. The application stands unopposed.
  5. The twin issues for determination are whether this Court is seized of Jurisdiction to hear and to determine the application and if so, whether the orders sought are merited by the Applicant.
  6. The *Work Injury Benefits Act* is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (the Director) to employees who suffer work injuries or occupational deceases 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 *Work Injury Benefits Act* (the Act) 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, and the employer has refused to pay.
  7. 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 enquiries 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.”

8. 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.”

9. I find merit in the Applicant's Notice of Motion dated 29<sup>th</sup> January, 2025, and the same is hereby allowed in the following terms:-

- a. The Director's award of Kshs.323,146/= to the Applicant, dated 23<sup>rd</sup> April, 2024, is hereby adopted by this Court and accordingly, Judgment is hereby entered for the Applicant against the Respondent in the said sum of Kshs.323,146/=.
- 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 filing the application herein until payment in full.
- d. Costs of these proceedings are awarded to the Applicant.

10. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF MAY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

**Order**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Miss Kanazi for the Applicant

No appearance for the Respondent

