



**Akinyi & another (As the Administrators of the Estate of Joel Odhiambo
- Deceased) v Quale Holdings Limited t/a Guyana Guest House (Cause
E068 of 2021) [2025] KEELRC 1947 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1947 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E068 OF 2021**

M MBARŪ, J

JUNE 30, 2025

BETWEEN

MILLICENT AKINYI 1ST CLAIMANT

SHARON ANYANGO ODHIAMBO 2ND CLAIMANT

**AS THE ADMINISTRATORS OF THE ESTATE OF JOEL ODHIAMBO -
DECEASED**

AND

QUALE HOLDINGS LIMITED T/A GUYANA GUEST HOUSE ... RESPONDENT

JUDGMENT

1. The claimants are the legal representatives of the deceased, Joel Odhiambo, who suffered a work injury while working for the respondent. The claim is that on 8 September 2018, while the deceased was in the course of his employment for the respondent as a painter, while walking on the pavement at the rooftop, it cracked and he fell to the ground. He suffered fatal injuries.
2. The accident was reported to the Director of Occupational Health and Safety (DOSHS), and under sections 22 and 26 of the *Work Injury Benefits Act* (WIBA), the claim was assessed at Ksh. 1,926,144 on 8 February 2019.
3. A Certificate of Dependency was issued on 2 October 2019, which listed the widow and three children of the deceased as dependents, although one child is an adult. DOSHS assessed compensation and made a demand on 11 October 2019 as follows;
 - a. Millicent Akinyi Odhiambo, wife,
 - b. Sharon Anyango Odhiambo, adult daughter,



- c. Edward Otieno Odhiambo, adult son,
 - d. Lillian Atieno Odhiambo, minor daughter.
4. The claim is that despite notice to the respondent, it has refused to settle the compensation as required under WIBA.
 5. The claimants had filed Mombasa SRMCC No. 2078 of 2018, seeking compensation against the respondent under the *Law Reform Act* and the *Fatal Accidents Act*. However, following the Supreme Court judgment in Petition No. 4 of 2019, Law Society of Kenya v Attorney General & another, the trial court declined jurisdiction.
 6. The claimants are seeking judgment herein for payment of Ksh. 1,926,144, as assessed by DOSH, with interest at 16% and costs.
 7. In evidence, Millicent Akinyi Odhiambo testified that she was the wife to the deceased, Joel Odhiambo who worked as a painter earning Ksh.3, 000 per day. On 8 September 2018, the deceased reported to work for the respondent and while working on the rooftop, the pavement he was stepping on cracked, he slid and fell to the grounds. He was rushed to the Coast General Hospital where he was admitted for 10 days until 18 September 2018 when he died.
 8. The matter was reported to DOSH who assessed and awarded compensation at Ksh.1, 926,144.
 9. The deceased was survived by the wife and 3 children. The administrators have obtained a Certificate of Dependency, which was submitted to DOSH, and the compensation was allocated accordingly.
 10. Millicent testified that when the matter was reported to the DOSH and labour office, the respondent was summoned without attending. The respondent was informed of the assessment and compensation, yet has not paid since.
 11. Upon cross-examination, the witness confirmed that she was not employed by Respondent. Her deceased husband was working for the respondent for 7 years. The Certificate of Dependency was issued by the Nyando County Commissioner, the deceased's home county, and the place of birth. The DOSH assessment and compensation notice was served upon the respondent by DOSH. The deceased is indicated to be a self-employed person. He was not an employee of the respondent, but he was working on the premises at the time.
 12. In response, the respondent denied the claim, stating that there was no accident on 8 May 2018 as alleged. The contract for service between the respondent and the deceased commenced on 1 June 2018, and therefore, he could not have died in the course of his employment on 8 May 2019 as alleged.
 13. The deceased's relationship with the respondent was that of an independent contractor for services, whereby he had his tools of trade, which enabled him to execute the job of plastering and painting the exterior parts of the respondent's building, the Guyana Guest House, located along Mnazi Mmoja Road, Mombasa.
 14. The deceased was not an employee of the respondent; therefore, the WIBA does not apply. The response was issued under WIBA under policy No. 02/11/15139/18, and Metropolitan Canon General Insurance Limited would have paid this claim had an employer-employee relationship existed as claimed.
 15. The claimants filed Civil Suit No. 2078 of 2019, which is still pending before the Magistrates' Court. The assessment of DOSH on 8 February 2019 was irregular and cannot validly be subject to a court.



16. The respondent, through a letter dated 28 May 2021, disputed the validity of the DOSH assessment. Before the assessment, the respondent was not involved and while waiting, the claimants served summons from the magistrate's court.
17. The court has no jurisdiction over the matter in view of WIBA. In Mombasa SRMCC No. 2078 of 2019 which is still pending, the claimants cannot file another claim before this court. The lower court set the matter back to the registry on 7 October 2020 to await further directions which have not issued.
18. At the time the deceased had an accident while working at the Guyana Guest House, the respondent maintained policy No. 02/11/15139/18 with Metropolitan Canon General Insurance Limited, which covered one employee involved in the maintenance of the building from time to time. The respondent also maintained a public liability insurance policy, number P/MSA/2550/2013/12825, with Jubilee Insurance Company Limited, which insured the respondent against liabilities that may have arisen from injuries to visitors to the property. The two covers were fully paid on 8 September 2018, when the deceased is alleged to have been injured.
19. The response is that if the court finds that the deceased fell in the class of persons who constitute members of the public in terms of the policy number P/MSA/2550/2013/12825, with Jubilee Insurance Company Limited that any liability that may arise against the respondent in this regard should be settled by the insurance.
20. The response is that the respondent will issue third party proceedings in line with the averments above.
21. The claim should be dismissed, and if there is any liability as claimed, the two intended parties, Metropolitan Cannon General Insurance Limited or the Jubilee Insurance Company Limited, should take responsibility for fully indemnifying the respondent.
22. In evidence, the respondent called Lydia Kaguna Japhet, the owner of the respondent company. She testified that on 1 July 2018, the deceased had a contract with her for painting and plastering Guyana Guest House. The deceased would use his tools while the respondent provided the materials for his job. On 8 September 2018, the deceased came for the work and was admitted by Omar Khamis Shaban, who subcontracted the deceased and other persons to carry out painting work.
23. The deceased, without wearing safety gear, climbed to the canopy of the building while carrying a metallic ladder. Due to the weight and pressure exerted on the canopy, it cracked, and the deceased fell, sustaining fatal injuries. She took him to Jocham Hospital and later Coast General Hospital, where he died.
24. Kaguna testified that she had taken an insurance policy with Metropolitan Canon General Insurance and therefore reported the accident. The insurance, through the letter dated 2 July 2019, declined liability on the basis that the deceased was not an employee.
25. The claimants filed Mombasa SRMCC No.2087 of 2019, and she filed a defence. No directions have been issued in the matter. DOSH did not invite her to participate in the assessment of the claim, and had this been done, she would have objected since the deceased was not an employee but an independent contractor.
26. DOSH served the respondent with two letters dated 3 March 2021 and 5 May 2021. The DOSH demand form has never been served. When filing SRMCC No. 2087 of 2019, the claimants did not disclose that they had obtained the DOSH Form 4 seeking payment of compensation. The objections by the respondent are valid since the deceased was not an employee and SRMCC No. 2087 of 2019 is ongoing, pending determination.



27. Kaguna testified that where the court finds the respondent liable, third party proceedings should be issued to Metropolitan Cannon General Insurance Limited under policy No. 02/11/15139/18 or to Jubilee Insurance Company Limited under Policy No. P/MSA/2550/2013/12825 to compensate the claimants. The two policies had been fully paid on 8 September 2018 when the deceased had the fatal injury while engaged by the respondent.
28. After the hearing, both parties submitted written statements.
29. The claim states that the claimants are the administrators of the estate of the deceased, Joel Odhiambo, who suffered a work injury while working for the respondent on 8 September 2018. He was admitted to hospital for 10 days, and the respondent paid Ksh 15,000, indicating that the rest would be paid by the insurance company, which was not the case. Upon his death, the matter was reported to DOSH, which conducted an assessment and arranged for compensation. The Certificate of Dependency was also filed.
30. The claims filed in Mombasa SRMCC No. 2078 of 2019 seeking damages for a work injury, and before the conclusion of the matter, the court held that it had no jurisdiction and the matter was redirected to DOSH.
31. The claim herein is valid as it cannot be irregular based on the 2nd claimant not filing a second verifying affidavit, as held in *Savala & another v Ndanyi* [2022] eKLR.
32. The claimants acknowledge having filed Mombasa SRMCC No. 2078 of 2019. Following the judgment in *Law Society of Kenya v The Attorney General & another* (Petition No. 4 of 2019), the court determined it lacked jurisdiction and referred the matter back to the DOSH. Since then, the court has addressed this in the directions issued on 9 October 2023.
33. The claimants submitted that DOSH assessed the compensation due and issued a demand notice to the respondent, but there was no payment. There was no objection or appeal, and the payment of Ksh. 1,926,144 is due and justified as held in *Joash Shisia Cheto v Theport Patrick Charles* [2022] eKLR.
34. The respondent confirmed filing Mombasa Petition No. E010 of 2023, and the DOSH attended and confirmed that the respondents were involved in assessing the award to the deceased's estate. The petition has since been resolved, yet the respondent has not sought to enjoin the DOSH in these proceedings.
35. The respondent submitted that no employer-employee relationship existed between them and the deceased, which would justify the instant claim. The claimants filed Mombasa SRMCC No. 2078 of 2019 regarding the same cause of action, and the matter is still pending determination. The respondents were never allowed to participate in the assessment of compensation before DOSH; therefore, they could not file objections due to the absence of an employment relationship.
36. With the other suit still pending, the claim herein violates the provisions of section 6 of the *Civil Procedure Act*. The multiple suits amount to an abuse of court processes, and the claim should be dismissed with costs, as held in *Nguruman Limited v Jan Bonde Nielseon* [2014] eKLR.
37. The claimants have not produced Affidavits of Service to confirm that the respondent was aware of the DOSH award and assessment. In the case of *Nyangilo Ochieng & another v Fanuel B Ochieng & 2 others* [1996] eKLR, the court held that unless there is proof of service of the due notices under the law, the persons claiming service have the burden of proof, which is lacking in this case. The respondent was denied the right to be heard contrary to the rules of natural justice.



38. The respondent submitted that Mombasa SRMCC No. 2078 of 2019 is still pending over the same cause of action. The respondent filed a response, denying the existence of an employment relationship. The burden of proof shifted under Section 107 of the *Evidence Act* to the claimants, which they failed to do. Without an employment relationship, the claim under WIBA cannot stand. An independent contractor is not an employee, as held in *Kenya Hotels & Allied Workers Union v Alfajiri Villas (Magufa Ltd)* [2014] eKLR; *Christine Adot Lopehio v Wycliffe Mwari Pere* [2013] eKLR.

Determination

39. The pleadings, the evidence, and written submissions assessed, the issues which emerge for determination are;

Whether there was an employment relationship between the parties;

Whether this is a proper case given Mombasa SRMCC No. 2078 of 2019;

Whether the orders sought should be issued,

And who should pay costs.

40. Starting on the claim under Mombasa SRMCC No.2078 of 2019, the respondent has denied the claim, stating that there was no employment relationship with the deceased. The court's jurisdiction is therefore challenged.
41. The respondent has also denied the claim on the basis that the claimants alleged that the deceased had an accident on 8 May 2019, which was not the case.
42. In the court ruling delivered on 27 October 2022, the court dismissed the respondent's objection regarding the court's jurisdiction to hear and determine the instant claim, premised on WIBA. There is no appeal against this ruling or application for review.
43. The WIBA provisions protect and apply to everyone on the shop floor. The respondent's admission that there was a contract for service between them and the deceased therefore places him on the shop floor where the accident occurred on 8 September 2018.
44. Unlike under the *Employment Act*, where the employee is defined under a restricted employer-employee relationship, under section 5 of WIBA, there is a broader definition and 'employee' includes one whether the contract is expressed or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done and whether by the day, week, month or any longer period and whether the payment is in cash or recognised legal tender.
45. Once placed on the shop floor, whether under an oral or written contract, and regardless of whether remuneration is paid by the hour or for work done, the subject employee is protected under the WIBA in the event of a work-related injury. The distinction sought by the respondent that the deceased was on a contract for service and not an employee is not the definition under the WIBA, unlike the *Employment Act* or the *Labour Relations Act*.
46. Indeed, the policy cover submitted by the respondent with policy No. 02/11/15139/18, Metropolitan Canon General Insurance Limited, is clear to the extent that the insurer committed to pay compensation in respect of;

... if any insured employee in the insured's immediate service shall sustain bodily injury by accident or decease arising out of and in the course of employment by the insured in the



business described in the Schedule for which a claim shall first be made against the insured and reported to the company during the period of insurance.

47. The substantive cover does not define an employee. The listed position under the Schedule includes a person for maintenance. Negating the WIBA under the insurance cover is not permissible.
48. The cover produced by the respondent commenced on 29 May 2018, before the accident took place on 8 September 2018.
49. Further, the respondent secured a policy P/MSA/2550/2013/12825, with Jubilee Insurance Company Limited, which provided that,
 - a. Accidental bodily injury to third-party persons,
 - b. Accidental damage to third party property happening in connection with the insured's business and occurring upon or about the premises,
 - c. ...
50. The respondent's claim that the insurer refused to pay due to the absence of an employer-employee relationship is unfounded. Under WIBA, all injuries occurring at the employer's premises and on the shop floor are covered.
51. The cover under Jubilee Insurance Company Limited was effective from 11 April 2018 to 10 April 2019. The deceased suffered a work injury on 8 September 2018.
52. In the Amended Memorandum of Claim, under paragraph (4), the claimant's case is that the deceased was injured while working for the respondent on 8 September 2018. The DOSH assessment was carried out on 8 February 2019. The respondent's allegations that the claim is based on an alleged accident on 8 May 2019 are misleading.
53. According to the claimants' assertion, under Section 5(4) of the WIBA and Section 6, a deceased employee's representatives are entitled to lodge a claim for due compensation after assessment. In cases where there are dependents, a Certificate of Dependents submitted to the Department of Social Welfare and History (DOSHS) suffices for the distribution of compensation. The claimants have since applied these provisions of the law.
54. Regarding costs, these proceedings would have been unnecessary, and the respondent complied with the notice from DOSHS, which is challenged under Mombasa ELRC Petition No. E010 of 2024. The judgment confirms proper service and notice to the respondent herein. The costs of these proceedings are due as claimed.
55. The claim is hereby allowed, and judgment is entered in favour of the claimants against the respondent.
 - a. The DOSHS assessment and compensation at Ksh. 1,926,144,
 - b. The same shall be paid within 30 days after which it shall accrue interest at court rates,
 - c. The claimants are awarded costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30 JUNE 2025.

M. MBARŪ

JUDGE



In the presence of:

Court Assistant: Japhet

..... and

