



Kamau v Kenya Accreditation Services (KENAS) (Miscellaneous Application E347 of 2024) [2025] KEELRC 1961 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1961 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E347 OF 2024**

BOM MANANI, J

JUNE 30, 2025

BETWEEN

JOHN MBURU KAMAU APPLICANT

AND

KENYA ACCREDITATION SERVICES (KENAS) RESPONDENT

RULING

Introductions

1. By the application dated 5th December 2024, the Applicant has moved the court to adopt the award of the Director of Occupational Health and Safety (the Director) dated 20th September 2023 as a court judgment. The application is supported by an affidavit dated 5th December 2024 and a further affidavit dated 20th February 2025 (erroneously indicated as 20th February 2024).
2. The Respondent has opposed the application. It has sworn an affidavit in this respect through its Senior Administration Officer.
3. The Applicant avers that he was employed by the Respondent as its Chief Manager Corporate Services. He contends that on 8th April 2023 whilst on duty, he fell on a slippery surface and suffered injury as a result.
4. The Applicant avers that the accident was reported to the Director who assessed the compensation due to him at Ksh. 6,040,746.52. He has produced DOSH/WIBA form 4 to evidence the assessment.
5. The Applicant further contends that he was forced to use his funds in the sum of Ksh. 100,000.00 to pay for medical attention because the Respondent's medical cover did not cater for all medical expenses. He avers that the Respondent has failed to pay him the amount assessed by the Director and to reimburse him the out of pocket medical expenses.



6. The Applicant avers that section 26(4) of the *Work Injury Benefits Act* obligates an employer to settle claims assessed by the Director within ninety (90) days of the assessment. He contends that despite this, the Respondent has not settled the assessment made in his favour. As such, he seeks an order adopting the award as a court judgment in order to enforce it.
7. On its part, the Respondent denies knowledge of the award by the Director. It further contends that if the award exists, then it is void as it was rendered in contravention of section 10 of the *Work Injury Benefits Act*.
8. The Respondent avers that the Director can only make awards in respect of claims arising from accidents which occur in the course of duty. It contends that the suit accident occurred on 8th April 2023, a Saturday. As such, it occurred whilst the Applicant was not on duty and the Director was not entitled to make an assessment in respect of it.
9. The Respondent contends that the court cannot adopt an award which is ultra vires the powers of the Director. In its view, such an award is a nullity and incapable of enforcement.
10. In a rejoinder, the Applicant avers that contrary to the Respondent's assertion that it is not aware of the award, there is evidence that it has always been aware of it. The Applicant avers that the Respondent's officer, one Agnes Mwangi, who swore the affidavit feigning ignorance of the award had indeed written to the Respondent's insurers on 8th August 2023 forwarding details of the claim to it (the insurer). As such, the Respondent's attempts to feign ignorance of the award is misleading.
11. The Applicant avers that it is the Respondent who reported the suit accident to the Director by filling the DOSH 1 form. As such, the contention that it was unaware of the matter is misleading.
12. The Applicant contends that his lawyer wrote to the Respondent on 30th October 2024 demanding payments of the award. He contends that the Respondent responded through its letter of 6th November 2024 indicating that it was following up the matter with its insurers. As such, he contends that the Respondent has always been aware of the matter.
13. The Applicant contends that the Respondent did not challenge the jurisdiction of the Director to adjudicate on the matter when the assessment was being processed. He further contends that the Respondent did not appeal against the award as required under the *Work Injury Benefits Act*. He avers that the Respondent having not challenged the award through an appeal cannot seek to challenge it at the adoption stage.

Analysis

14. Through the replying affidavit dated 7th February 2025, the Respondent's officer alleges that the Respondent is unaware of the impugned award. Yet, there is evidence to suggest the contrary. For instance, the email correspondence dated 25th November 2024 and 27th November 2024 between the Respondent's officer and the Applicant's lawyers demonstrates that they exchanged the DOSH assessment form around that time. As such, the Respondent's contention that it was unaware of the award is misleading.
15. The Respondent also contends that the suit accident occurred outside work. As such, the Director was not entitled to make an assessment in respect of it.
16. To my mind, this objection ought to have been taken with the Director at the time he was considering the award. There is no evidence that the Respondent did this.



17. However, assuming that the Respondent took up the objection but the same was not considered by the Director, the proper course of action that was open to it (the Respondent) was to apply for review of the decision before the Director and subsequently lodge an appeal in terms of sections 51 and 52 of the [Work Injury Benefits Act](#). There is no evidence that this was done.
18. Having failed to challenge the award as provided for above, the Respondent cannot seek to challenge it on the merits at the stage of adoption (see [Munyasia v National Council of Churches of Kenya \(NCCCK\)](#) (Miscellaneous Application E082 of 2023) [2023] KEELRC 2509 (KLR) (11 October 2023) (Ruling) and [Ouya v Avenue Health Care Ltd](#) (Miscellaneous Application E213 of 2023) [2024] KEELRC 182 (KLR) (9 February 2024) (Ruling)). The only option that remains open to it is to perhaps challenge the decision through an application for judicial review. However, this must be done before the adoption process ([Joash Shisia Cheto v Thepot Patrick Charles](#) (Cause E005 of 2021) [2022] KEELRC 478 (KLR) (17 March 2022) (Judgment) and [Charles v Cheto](#) [2025] KECA 784 (KLR)). As the record shows, no application for review has been filed.
19. Although the Respondent did not challenge the court's jurisdiction to entertain the application on account of absence of an enforcement mechanism for awards by the Director under the [Work Injury Benefits Act](#), its lawyers have raised the matter through their written submissions. As was observed in the decision of [Joash Shisia Cheto v Thepot Patrick Charles](#) (Cause E005 of 2021) [2022] KEELRC 478 (KLR) (17 March 2022) (Judgment), there is no settled position on this issue. Whilst some Judges of the court have expressed the view that the court cannot entertain an application for enforcement of the Director's award, others have held that the court has powers to entertain such applications. I subscribe to the latter school of thought.
20. Whilst it is true that the [Work Injury Benefits Act](#) does not provide for the procedure for enforcement of the awards by the Director, articles 162 of the [Constitution](#) read together with section 12 of the [Employment and Labour Relations Court Act](#) and section 87 of the [Employment Act](#) fill the gap. On the one hand, Article 162 of the [Constitution](#) and section 12 of the [Employment and Labour Relations Court Act](#) grant the court unlimited original jurisdiction over all employment and labour relations disputes. On the other, section 87 of the [Employment Act](#) entitles parties to an employment relation to institute proceedings before the Employment and Labour Relations Court in respect of any question, difference or dispute as to the rights or liabilities of either party under the relation.
21. The parties to the instant action are in agreement that they had an employment relation. As such, either of them is entitled to move this court under the aforesaid provisions of the [Constitution](#) and statute in respect of any question, difference or dispute between them including enforcement of an award by the Director. Importantly, the Court of Appeal has recently affirmed the jurisdiction of the Employment and Labour Relations Court to adopt awards by the Director ([Charles v Cheto](#) [2025] KECA 784 (KLR)).
22. The Respondent has suggested through its submissions that the Director has not made an award which the court can adopt. This submission, which is not anchored on the replying affidavit, is premised on the fact that the Applicant did not attach DOSH 4 form on the affidavit in support of the application. However, the form was introduced through the further affidavit. As such, the court is satisfied that the Director made the award in question.

Determination

23. The upshot is that I arrive at the conclusion that the court's jurisdiction has been properly invoked.



24. The Respondent did not challenge the award by the Director which was rendered on 30th September 2023 as provided for under sections 51 and 52 of the *Work Injury Benefits Act*. As such, the Applicant is entitled to move this court to adopt the said award for purposes of enforcement.
25. Accordingly, the court hereby adopts the aforesaid award in the sum of Ksh. 6,040,746.52 as the judgment of the court.
26. Any other order which has not been granted is deemed to have been declined.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JUNE, 2025

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant/Respondent

.....for the Respondent/Applicant

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

B. O. M. MANANI

