



**Nyapalo v Njuca Consolidated Limited & another (Miscellaneous Application  
E038 of 2025) [2025] KEELRC 1946 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1946 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E038 OF 2025**

**M MBARŪ, J  
JUNE 30, 2025**

**BETWEEN**

**FREDRICK OWINO NYAPALO ..... APPLICANT**

**AND**

**NJUCA CONSOLIDATED LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MAYFAIR INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant submitted an application dated 12 March 2025, seeking to enforce the award made by the Director of Occupational Safety and Health Services (DOSHS) on 19 September 2024. The applicant also requests that the court adopt and issue a decree for Ksh.1,119,600, the DOSHS award, and interest and costs.
2. The application is supported by the applicant's affidavit, which states that the first respondent employed him as a mason when he sustained a work injury on 23 June 2021. DOSHS was notified of the accident, assessed it, and established a 55% capacity. On 19 September 2024, DOSHS notified the respondents to pay Ksh. 119,600 within 90 days, but they have failed to do so.
3. The applicant states that the respondents did not raise objections or appeal against the DOSHS award. Despite notice being issued to pay the compensation, the respondent has refused to comply, leading to these proceedings.
4. In reply, the 1st respondent filed the Replying Affidavit of the Director, Ann Muthoni Njoroge, who averred that the applicant was an employee and had sustained a work injury. The 1st respondent has been facing financial challenges, which have delayed the processing of the claim. Additionally, the 1st respondent noted significant concerns regarding the claim. The medical report dated 15 June by Dr. Hassan from Port Reitz Sub-County Hospital states the applicant had 70% incapacity, while the



applicant claims he had 55% incapacity. The medical report by Dr. Benjamin Okanga, dated 19 April 2023 and stamped by Coast General Hospital, assigns an 8% incapacity.

5. The assessment by DOSH is a 55% incapacity. The matter should be dismissed on the doctrine of exhaustion to allow the 1<sup>st</sup> respondent to appeal the decision of DOSH.
6. The 2nd respondent filed the Replying Affidavit of Charity Njuguna, the legal officer, who avers that the 1st respondent took out a work injury benefits insurance cover. On 24 June 2021, the 1st respondent's brokers, Selwyn Insurance Agents, reported that the applicant had sustained a work injury and claimed compensation. By email dated 28 June 2021, a request was made for particulars and documents to facilitate the processing of the claim. The 1st respondent failed to provide the details, and this lapse led to the repudiation of liability.
7. Njuguna aver that the 2nd respondent is not liable to indemnify the 1st respondent as it failed to provide the necessary documents, leading to a fundamental breach of the policy document. The 2nd respondent issues two distinct insurance covers for employers: the Work Injury Benefits Insurance Cover, intended to indemnify the employer for work-related injuries, and the Employer's Liability cover, designed to protect against legal liability under common law for damages and litigation costs. In this case, the 1st respondent had not taken out cover for Employer's Liability, and as a result, the 2nd respondent is not liable to indemnify the 1st respondent.

The parties attended and made oral submissions in court.

Determination

8. Under the *Work Injury Benefits Act* (WIBA), a report to DOSH following a work injury should lead to an assessment and the award of compensation. Under Section 12 of the *Employment and Labour Relations Court Act*, the court is granted authority to issue awards of compensation in employment and labour relations claims and for related purposes. Under rule 69 of the Employment and Labour Relations Court (Procedure) Rules, after a DOSH assessment and award, a party may apply and seek the adoption of the DOSH award as the court's judgment.
9. The 1st respondent, as the applicant's employer, does not deny the accident and work injury as stated in the application. The dispute is that the 1st respondent has been experiencing financial difficulties and that there are conflicting assessments between Dr. Hassan from Port Reitz Sub County Hospital, who determined that the applicant had 70% incapacity, and Dr. Benjamin Okanga of Coast General Hospital, who assessed an 8% incapacity. The applicant and the DOSH have estimated a 55% incapacity. These disparities need to be addressed.
10. However, any objections to the DOSH assessment and award should be addressed under Sections 51 and 52 of WIBA. Following the DOSH Notice dated 19 September 2024, the 1st respondent had the opportunity to respond through objections or an appeal, as held in *Law Society of Kenya v Attorney General and Another* Petition No. 4 of 2019. The primary forum for the 1st respondent to present its case and objections, if any, is not within these proceedings.
11. In this instance, the enforcement proceedings have not been substantively challenged. The acknowledgement that there was a work injury in this case is adequate.
12. Application dated 12 March 2025 is meritorious and is hereby allowed. The DOSH award for compensation of Ksh. 129,600 is approved for payment within 30 days, after which the same shall accrue costs and interest from the date hereof until paid in full.

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



**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

