



Kisenge v China Communications Construction Company Limited (Miscellaneous Application E214 of 2023) [2025] KEELRC 1917 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1917 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E214 OF 2023**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

LAWRENCE MUEMA KISENGE APPLICANT

AND

**CHINA COMMUNICATIONS CONSTRUCTION COMPANY
LIMITED RESPONDENT**

RULING

1. This is an application dated 13th October 2023 and seeks the following orders of court;
 - i. Adoption of the Award by the Director of Occupational Safety and Health Services (DOSHS) in the sum of Kshs. 432,105/= as the judgment of this Court.
 - ii. Issuance of a decree for execution.
 - iii. Costs of the application to be borne by the Respondent.
2. The application is supported by the Applicant's affidavit sworn on 13th October 2023 and further buttressed by written submissions filed on his behalf. The Respondent opposed the application through a Replying Affidavit sworn by on 14th May 2024 and a Supplementary Affidavit sworn on 3rd March 2025 alongside written submissions.
3. The dispute arises from an alleged workplace injury sustained by the Applicant on 6th April 2019 while employed by the Respondent as a Steel Farm Worker. The Applicant contends that he was injured when a wooden bar fell from a height, striking him on the head and right hand little finger. He reported the injury to DOSHS which initially assessed his permanent incapacity at 20% and awarded him Kshs. 432,105/= as compensation. The Respondent, however, disputes this award, asserting that a subsequent medical review by DOSHS-appointed doctors revised the permanent incapacity to 0%, rendering the initial award null and void.



4. The following issues emerge for determination;
 - i. Whether the Applicant is entitled to the Award of Kshs. 432,105/= as assessed by DOSH.
 - ii. Whether this Court has jurisdiction to adopt the DOSH Award as its judgment.
 - iii. Whether the subsequent revision of the Applicant's permanent incapacity from 20% to 0% invalidates the initial award.
 - iv. Whether the application is merited.

These are addressed as below.

5. The Applicant argues that he is entitled to compensation under the *Work Injury Benefits Act*, 2007 (WIBA), having sustained injuries during the course of his employment. He relies on Sections 10, 21, and 22 of WIBA which mandate compensation for work-related injuries and require employers to report such incidents to the Director of Occupational Services and DOSH.
6. The Applicant further submits that the Respondent failed to object to the initial assessment by DOSH within the statutory period thereby rendering the award final and binding. He cites the authority of *Samson Chueya Muandabole v Protective Custody Limited* [2021] eKLR where the court held that it has inherent jurisdiction to adopt a DOSH award for purposes of execution, even in the absence of explicit enforcement provisions under WIBA. Additionally, the Applicant references *Elijah Kisyanga Ndende v Manager Zahkem International Construction Ltd* [2022] eKLR where the court observed that the legislature did not intend to leave employees without remedy where employers refuse to pay compensation as assessed by DOSH.
7. The Respondent contests the application on various grounds one of which is a jurisdiction. It is her position that this Court lacks jurisdiction to enforce an award that has been nullified by DOSH's subsequent revision of the permanent incapacity to 0%. They contend that the Court must respect the finality of administrative decisions under WIBA.
8. Again, the Respondent accuses the Applicant of filing a deceptive claim, relying on an outdated 20% assessment while concealing the revised 0% assessment. This therefore become a fraudulent claim. Besides the authority of *Reuben Ikatwa & 17 Others v Commanding Officer British Army Training Unit Kenya* [2017] KECA 274 (KLR), where the court warned against fraudulent claims.
9. The Respondent asserts that the Applicant failed to adhere to workplace safety protocols, thereby contributing to his injury. This therefore breeds an element of contributory negligence that was frowned in the authority of *Staipack Industries v James Mbithi Munyao* [2005] KLR and *South Nyanza Sugar Co. Ltd v Enock Nyandoro Magaka* [2020] eKLR where the court found that an employer cannot be held liable where an employee's actions contribute to the injury.
10. Again, the Respondent submits in emphasizes that the Applicant has not discharged the burden of proving negligence as is of required under Sections 107–109 of the *Evidence Act*. This is not in the least to the standard of a balance of probabilities. His case therefore becomes inadequate and unacceptable. He cannot be seen to benefit on anything that he had failed to establish in evidence.
11. The critical issue then becomes whether the Applicant is entitled to the DOSH Award of Kshs.432,105.00. Section 10 of WIBA provides that an employee who suffers a work-related injury is entitled to compensation under the Act. Sections 21 and 22 obligate the employer to report the injury to DOSH which then assesses the compensation payable.



12. The Applicant's case hinges on the initial assessment by DOSH, which awarded him Kshs. 432,105/= based on a 20% permanent incapacity. The Respondent, however, has produced evidence (marked "VO3") showing that DOSH subsequently revised the assessment to 0% incapacity after a review by its appointed doctors. The point of determination is whether the initial award remains valid in light of the subsequent revision. The Respondent argues that the revision nullifies the initial award, while the Applicant insists that the Respondent's failure to object within the statutory period renders the initial award final.
13. The case of *Makomboki Tea Factory Limited v Mwaura* [2024] KEELRC 2145 (KLR) is instructive. The court held that an employer dissatisfied with a DOSH assessment must challenge it within 60 days under Sections 51 and 52 of WIBA. Failure to do so renders the decision final. Here, the Respondent did not challenge the initial assessment within the stipulated period. However, the subsequent revision by DOSH raises questions about the enforceability of the initial award.
14. While the Applicant is right that the Respondent's inaction initially solidified the award, the revision by DOSH the statutory body mandated to assess such claims cannot be ignored. The principle of stare decisis and the finality of administrative decisions compel this Court to recognize the revised assessment as the authoritative determination of the Applicant's incapacity.
15. The Applicant relies on *Samson Chueya Muandabole and Elijah Kisyanga Ndende* to argue that this Court has jurisdiction to adopt the DOSH Award. While these cases affirm the Court's inherent jurisdiction to enforce awards where employers refuse to pay they nevertheless do not address situations where the award itself has been invalidated by the statutory authority.
16. The Respondent's argument and submission that the Court lacks jurisdiction to enforce a nullified award is persuasive. Judicial intervention in such circumstances would undermine the statutory framework of WIBA which vests DOSH with the exclusive mandate to assess and revise compensation.
17. The Respondent's allegation of fraudulent conduct by the Applicant serves a serious blow to the application. The Applicant's failure to disclose the revised 0% assessment undermines his credibility to a large degree. Courts must guard against litigants who seek to exploit the judicial process for unjust enrichment and gain as was enunciated in the authority of *Reuben Ikatwa & 17 Others v Commanding Officer British Army Training Unit Kenya & British Army Training Unit Kenya* [2017] KECA 274 (KLR).
18. The Respondent's argument and submissions on contributory evidence is plausible but insufficiently substantiated. While workplace safety is a shared responsibility, the Respondent has not provided concrete evidence to prove that the Applicant's actions directly caused the injury. This is not so even to a balance of probabilities. Its sadly fall short of such measure.
19. In light of the revised DOSH assessment, the initial award of Kshs.432,105/= cannot stand. The Applicant's claim is predicated on an assessment that has been superseded by a subsequent and binding determination by the statutory authority.
20. I am therefore inclined to dismiss the application with orders the each party their costs of the same.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:



Mr. Amemba holding brief for Namanda instructed by Namanda & Company Advocates for the Applicant.

Mr. Achola instructed by Kangethe and Mola Advocates for the Respondent.

