



**Kiptoo v County Government of Elgeyo Marakwet & another (Miscellaneous Case E025 of 2024) [2025] KEELRC 1811 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1811 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
MISCELLANEOUS CASE E025 OF 2024  
MA ONYANGO, J  
JUNE 20, 2025**

**BETWEEN**

**KIPROTICH KIPTOO ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF ELGEYO MARAKWET . 1<sup>ST</sup> RESPONDENT**

**CHEBORWA HEALTH CENTRE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide a notice of Motion dated 31<sup>st</sup> October, 2024, the Applicant Mr. Kiprotich Kiptoo states that at the time material to this suit he was engaged by the 1<sup>st</sup> Respondent, the County Government of Elgeyo Marakwet, as driver to the 2<sup>nd</sup> Respondent, Cheborwa Health Centre. He avers that on or about 23<sup>rd</sup> April, 2019 while in the course of employment driving motor vehicle registration No. GK A937D make Toyota Landcruiser, he was involved in a road accident along Moiben-eldoret road at Torochmoi area. That the motor vehicle lost control and overturned due to bad maintenance. As a consequence the Applicant sustained severe head and neck injuries.
2. The Applicate avers that the accident was reported to the Director of Occupational Safety and Health who assessed compensation due to the Applicant at Kshs. 162,600. A notice dated 25<sup>th</sup> April, 2023 was sent to the Respondents to settle the claim but no payment was made even though the Respondents did not dispute the award.
3. It is the Applicant's position that the *Work Injury Benefits Act* does not provide for the mode of execution of the Director's award where the employer fails to pay the compensation hence the institution of this suit. The Applicant relies on the equitable maxim that no person will suffer a wrong without a remedy. He pleads that it is in the interest of justice to award the prayers sought in his application.



4. The Respondents did not file any response to the application which was disposed of by way of written submissions. The Applicant filed submissions dated 1<sup>st</sup> April, 2025.
5. I have considered the application and the grounds in support thereof. The issue for determination is whether the Applicant is entitled to the orders sought in the application.
6. Section 16 of the [Work Injury Benefits Act](#) provides:

16. Substitution of compensation for other legal remedies

No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.

7. Section 30 of the [Work Injury Benefits Act](#) provides:

30. Compensation for permanent disablement

- (1) Compensation for permanent disablement shall be calculated on the basis of ninety-six months earnings subject to the minimum and maximum amounts determined by the Minister, after consultation with the Board, and set out in the Third Schedule.
- (2) If an employee has sustained an injury specified in the first column of the First Schedule, the employee shall for the purposes of this Act, be deemed to be permanently disabled to the degree set out in the second column of the First Schedule.
- (3) If an employee sustains an injury not specified in the First Schedule which leads to permanent disablement, the employee shall be paid such percentage of disablement in respect thereof as in the opinion of a medical doctor will not lead to a result contrary to the guidelines of the First Schedule.
- (4) If an injury or serious disablement contemplated in paragraph (a) or (b) has unusually serious consequences for an employee as a result of the special nature of the employee's occupation, the Director may determine such higher percentage as the Director shall deem equitable.
- (5) No payment for temporary disablement in accordance with the provisions of section 29 shall be deducted from compensation payable under this section.

8. In the instant case notice of accident dated 3<sup>rd</sup> August, 2021 was sent to the Director who assessed the compensation at Kshs. 162,600 and the Respondent was notified by letter dated 25<sup>th</sup> April, 2023 from Board Secretary, Elgeyo Marakwet County Government County Public Service Board. The Respondents neither paid nor appealed against the award of the Director.

9. Section 51 of the Act provides:

51. Objections and appeals against decisions of the Director

- (1) Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.



- (2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.

10. Section 52 further provides:

52. Director's reply

- (1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
- (2) An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision.

11. As stated by the Applicant, the Act does not provide for the mode of execution of the Director's award where the employer fails to pay the same.

12. In *Lagat v Kenya Ordinance Factories Corporation (Miscellaneous Cause E038 of 2023)[2024] KEELRC 1118 (KLR) (25 April 2024) (Ruling)* the court stated as follows:

“Going back to the substantive issue herein, it is my view that until the *Work Injury Benefits Act* is reviewed and a provision made on the manner in which the Director's awards are to be executed, the courts must do substantive justice and give effect to the very clear and unambiguous intentions of the Act by enforcing the decisions of the Director. Both Article 159(2) of *the Constitution* and section 20(1) of this court's Act requires that the court does substantive justice and acts without undue regard to technicalities.”

13. For the reasons stated herein above, I adopt the award of the Director of Occupational Safety and Health dated 3<sup>rd</sup> August, 2021 as an order of this court and enter judgment for the Applicant against the 1<sup>st</sup> Respondent in the sum of Kshs. 162,600. The Respondent shall pay the Applicants costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20<sup>TH</sup> DAY OF JUNE 2025**

**MAUREEN ONYANGO**

**JUDGE**

