



Osino v China Civil Engineering Construction Corporation (K) Ltd (Miscellaneous Application E340 of 2024) [2025] KEELRC 1792 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1792 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E340 OF 2024**

**S RADIDO, J
JUNE 19, 2025**

BETWEEN

STEPHEN ODUOR OSINO APPLICANT

AND

**CHINA CIVIL ENGINEERING CONSTRUCTION CORPORATION (K)
LTD RESPONDENT**

RULING

1. For determination is a Motion dated 27 November 2024 by Stephen Oduor Osino (the applicant), seeking orders:
 - i. THAT this Honourable Court be pleased to adopt the award of the Director of Occupational Safety and Health Services (DOSHS) made in favour of the applicant herein on 2nd September 2024 as a judgment of this Court.
 - ii. THAT this Honourable Court be pleased to order and direct the Respondent to pay to the applicant the sum of Kshs 1,206,677/- being the award made by the Director of Occupational Safety and Health Services (DOSHS) in favour of the applicant herein on 2nd September 2024 following a road traffic accident which occurred on 20th January 2024 wherein the applicant was injured.
 - iii. THAT this Honourable Court be pleased to award interest on the said sum of Kshs 1,206,677/- at court rates to the applicant.
 - iv. THAT, further this Honourable Court be pleased to issue a decree for the execution of the award of the Director of Occupational Safety and Health Services (DOSHS) made in favour of the applicant herein on 2nd September 2024 as a judgment of the Court.
 - v. THAT costs of this application be awarded to the applicant.



2. The grounds in support of the Motion were that the applicant, an employee of the Respondent was involved in an accident on 20 January 2024 in the course of work; the applicant was admitted in hospital for a week; a report was made to the Director, Occupational Safety and Health; an assessment of 35% permanent disability was made; the Director assessed compensation payable at Kshs 1,206,677/- on 12 September 2024 and a demand made to the Respondent, and that the Respondent had neglected to make payment.
3. The Respondent filed a replying affidavit sworn by its insurer's Legal Officer in opposition to the Motion on 1 April 2025.
4. In the affidavit, the Respondent contended that the Respondent was aware of the accident; the Respondent was not made aware of the award in good time to enable it object; the Court lacked jurisdiction to enforce the award as its jurisdiction was appellate in terms of section 52(2) of the [Work Injury Benefits Act](#); a second medical opinion revealed the applicant had not sustained any permanent disability and that the Motion was an abuse of the court process and lacked merit.
5. Pursuant to Court directions given on 2 April 2025, the applicant filed a further affidavit on 7 April 2025, and submissions on 21 April 2025, and the Respondent filed its submissions on 13 May 2025.
6. In the further affidavit, the applicant deponed that the Respondent's Safety Officer had confirmed receipt of the assessment and demand to pay before he moved to Court.
7. The Court has considered the Motion, affidavits and submissions.

Jurisdiction.

8. The Respondent challenged the jurisdiction of this Court to enforce an award by the Director of Occupational Safety and Health.
9. According to the Respondent, the Court only had appellate jurisdiction over decisions of the Director of Occupational Safety and Health in terms of section 52(2) of the [Work Injury Benefits Act](#).
10. The Respondent relied on *Lameck Nyakundi Anyona v W.J.J Kenya Construction Company Limited* (2022) eKLR and *Elizabeth Njeri Nderi & Ar v Highway Carriers Ltd* (2019) KECA 433 (KLR).
11. The Respondent acknowledged that Judges of this Court had taken inconsistent positions on the question of jurisdiction to enforce awards by the Director of Occupational Safety and Health, but did not disclose to the Court with the jurisdiction.
12. The applicant, on his part, contended that the decision of the Director of Occupational Safety and Health under section 51 of the [Work Injury Benefits Act](#) could be adopted or enforced by this Court by dint of Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024. The applicant cited *Atswenje v Butali Sugar Mills Ltd* (2024) KEELRC 2636 (KLR) and *Mutegi v Teachers Service Commission & Ar* (2023) KEELRC 2720 (KLR)
13. The applicant also cited the decision in *Omutiti v Orpower 4 Inc* (2023) KEELRC 1974 (KLR) to argue that the Magistrates Court lacked the jurisdiction to enforce or adopt awards by the Director of Occupational Safety and Health.
14. Article 162(2)(a) of [the Constitution](#) directed Parliament to establish a Court with jurisdiction over employment and labour disputes.



15. Parliament established this Court under the *Employment and Labour Relations Court Act* to handle such disputes. Section 12 of the Act sets the contours of the Court's jurisdiction and section 12(1)(a) of the Act is material for purposes of the instant Motion.
16. Under section 29(3) of the Act, Parliament allowed the Honourable Chief Justice the power to delegate to Magistrates of a certain rank the jurisdiction to handle some employment and labour relations disputes. Apart from the envisioned delegation, section 29(4) of the Act clothed the Magistrates Court with jurisdiction over offences related to employment and labour relations.
17. The Honourable Chief Justice delegated the jurisdiction to Senior Resident Magistrates and above through Gazette Notice No 6024 of 22 June 2018.
18. The Notice provides:

GAZETTE NOTICE NO. 6024; APPOINTMENT OF MAGISTRATES' COURTS TO HEAR MATTERS RELATING TO EMPLOYMENT AND LABOUR RELATIONS

GAZETTE NOTICE NO. 6024

THE *EMPLOYMENT AND LABOUR RELATIONS COURT ACT*

(No. 20 of 2011)

APPOINTMENT OF MAGISTRATES' COURTS TO HEAR MATTERS RELATING TO EMPLOYMENT AND LABOUR RELATIONS

IN EXERCISE of the powers conferred by section 29 (3) and (4) (b) of the *Employment and Labour Relations Court Act*, 2011, and in consultation with the Principal Judge of the Court, the Chief Justice appoints all Magistrates of the rank of the Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:

 1. Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employees' gross monthly pay does not exceed Ksh 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
 2. Matters relating to the following specific areas-
 - (i) Offences under the *Work Injury Benefits Act*, 2007.
 - (ii) Offences under the *Employment Act*, 2007.
 - (iii) Offences under the *Labour Institutions Act*, 2007.
 - (iv) Offences under the *Occupational Safety and Health Act*, 2007; and
 - (v) Offences under the *Labour Relations Act*, 2007.
19. It is clear to this Court that the jurisdiction of the Senior Resident Magistrates is delegated, and the question must therefore arise, where does the original or initial jurisdiction lie? or which Court has the original jurisdiction that has been delegated to the Senior Resident Magistrates by the Honourable Chief Justice?
20. Disputes under the *Work Injury Benefits Act* arise in the course of employment, and consequently, the original or initial jurisdiction is with the Employment and Labour Relations Court by virtue of



Article 162 of *the Constitution* as read with section 12(1)(a) of the *Employment and Labour Relations Court Act*.

21. It is the jurisdiction to deal with those disputes that the Honourable Chief Justice delegated to the Senior Resident Magistrates and Magistrates above that rank.
22. The delegation, in this Court's view, did not divest this Court of its initial or original jurisdiction.
23. The Court, therefore, finds that it has the requisite jurisdiction to enforce awards by the Director of Occupational Safety and Health.
24. The Respondent also made an argument that pursuant to section 52(2) of the *Work Injury Benefits Act*, the jurisdiction of the Court is appellate.
25. This Court's understanding of the proviso is that the appellate jurisdiction therein is triggered and restricted to cases where an Objection was made against an award or assessment of compensation by the Director of Occupational Safety and Health, and a party is aggrieved with the decision.
26. In the case at hand, the Respondent did not register an Objection against the award by the Director of Occupational Safety and Health, and since there was no objection against the award, the question of appellate jurisdiction does not arise.

Adoption of the award.

27. The Respondent contended that it was not aware of the award by the Director of Occupational Safety and Health until it was served with the instant Motion. The contention cannot be true. It is the Respondent who reported the accident, and it is its agent who gave the applicant copies of the award after assessment by the Director.
28. In this regard, it is noteworthy that the Respondent did not cause its Managers to file an affidavit to rebut the depositions by the applicant but rather attempts to rely on an affidavit by its insurers.
29. The Director issued the award and made a demand for payment on or around 12 September 2024. Under section 51 of the *Work Injury Benefits Act*, the Respondent had 60 days within which to lodge an Objection. The Respondent sent the applicant for a second medical opinion, and the doctor issued a report dated 7 October 2024. The report indicated that the applicant did not have any permanent disability at the time of examination/review.
30. The Respondent had the option of using the second medical opinion to lodge an Objection with the Director before the lapse of the 60 days. The Respondent did not lodge an Objection within the 60 days, which lapsed around 12 November 2024.
31. The report by the Director of Occupational Safety and Health relied on initial medical examination reports to assess that the applicant had 35% permanent disability.
32. This Court is aware, and it is in the public domain if one visits the website of the Directorate, that the Director of Occupational Safety and Health operates an electronic/online platform for processing claims under the *Work Injury Benefits Act*. The Respondent was not being candid in asserting that it was not made aware of the award in good time or that it only became aware when served with the Motion.
33. The Court finds no reason not to adopt the award by the Director of Occupational Safety and Health.



Orders.

34. The Motion dated 27 November 2024 is allowed in the following terms:

- i. The award dated 2 September 2024 by the Director of Occupational Safety and Health Services in the sum of Kshs 1,206,677/- is adopted as a judgment of the Court.
- ii. The award to attract interest at court rates from 2 September 2024.

35. The applicant to have costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 19TH DAY OF MAY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

APpearances

For applicant Julius Juma & Co. Advocates

For Respondent Mugwe & Co. Advocates

Court Assistant Wangu

