



**Judy v Grand Subterra Limited (Miscellaneous Application  
E003 of 2025) [2025] KEELRC 1788 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1788 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
MISCELLANEOUS APPLICATION E003 OF 2025**

**K OCHARO, J  
JUNE 17, 2025**

**BETWEEN**

**DAVID GICHAIRA JUDY ..... APPLICANT**

**AND**

**GRAND SUBTERRA LIMITED ..... RESPONDENT**

**RULING**

1. By the Notice of Motion application dated 10<sup>th</sup> February 2024, the Applicant sought;
  - I. The Honourable Court be pleased to adopt as judgment of the Court the assessment /award of the Director of Occupational Safety and Health Services, Malindi, made on 22<sup>nd</sup> July, 2024.
  - II. A decree do issue for;
    - a. The sum of KShs. 788,799 being the Director’s award /assessment made on 22<sup>nd</sup> July 2024; and
    - b. Interest on the assessed /awarded sum at court rates [14%] from the award date [22<sup>nd</sup> July 2024] until full payment.
  - III. Costs of this application be awarded to the Applicant.
2. The application is premised on the grounds set out on the face of the application and the affidavit in support thereof, sworn by the Applicant, on February 3, 2025.
3. The Respondent filed a preliminary objection challenging the jurisdiction of this Court to hear and determine the instant application.
4. When the parties appeared before this Court on 29<sup>th</sup> April 2025, this Court directed that the application and the preliminary objection shall be determined simultaneously in this ruling.



### **The Application.**

5. The Applicant stated that at all material times, he was an employee of the Respondent and that on 13<sup>th</sup> January 2024, he sustained work-related injuries.
6. The incident was reported to the Directorate of Occupational Safety and Health Services, Malindi and upon assessment, he was found to have suffered 20% permanent incapacity. Consequently, on 22<sup>nd</sup> July 2024, DOSH/WIBA 4 was issued requiring the Respondent to compensate the Applicant at KShs. 788, 799.
7. Upon being notified of the award, the Respondent never objected or appealed against the award within the stipulated statutory period.
8. Despite the Director's demand, the Respondent failed or neglected to settle the awarded sum and has expressed total unwillingness to do so. It was obliged to pay the awarded amount within 90 days. It has breached the obligation.
9. The justice of this case demands that the orders sought be given to facilitate the enforcement of the award.

### **The Respondent's preliminary objection.**

10. Through a notice of preliminary objection dated 14<sup>th</sup> April 2025, the Respondent asserted that this Court lacks jurisdiction to enforce decisions arising from the Director of Safety and Health.

### **Analysis and Determination.**

11. I have carefully considered the Notice of Motion, the grounds upon which it is premised and the affidavit in support thereof, and the preliminary objection and return that two issues emerge for determination as follows: -
  - a. Whether this Court has jurisdiction to entertain the instant application.
  - b. Should this Court grant the Applicant the orders sought?
12. It is a golden principle of law that jurisdiction is everything, and where the Court discovers that it has none in a matter, it must down its tools and proceed no more in the matter. That being so, it becomes compelling for this court first to determine the jurisdictional issue raised by the Respondent.
13. It is undisputed that the framers of the *Work Injury Benefits Act*, likely due to oversight, did not provide mechanisms for enforcing the Director's decisions under the Act. Mainly on the premise that equity will not suffer a wrong without remedy and that the constitutional imperative—the citizens' right to access to justice—will abhor a situation where those rightfully deserving a benefit under the law would go without remedy, simply because of a gap in the law and the Courts' unwillingness to innovate to remedy the situation through Judge-made law, this court has consistently held that despite the gap, it has jurisdiction to issue facilitative orders for the enforcement of the decisions.
14. Recently, the Court of Appeal in the case of Charles v Cheto [2025] KECA 784 [KLR], citing some decisions from this court, affirmed the position that this court has jurisdiction to issue orders facilitating the enforcement of the Director's decisions.
15. Undeniably, the *Work Injury Benefits Act* provides for the post-director's statutory steps to be undertaken by a party aggrieved by his decisions. The Respondent did not undertake any.



16. Additionally, the Applicant's application was not opposed through an affidavit or grounds of opposition.
17. By reason of the premises, the Applicant's application is hereby allowed with costs. The Respondent's preliminary objection is dismissed.
18. Orders accordingly.

**READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 17<sup>TH</sup> JUNE, 2025.**

**OCHARO KEBIRA**

**JUDGE**

