



**Musungu v Syka Manpower Services Limited (Miscellaneous Application
E006 of 2025) [2025] KEELRC 2307 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2307 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E006 OF 2025**

M MBARŪ, J

JULY 31, 2025

BETWEEN

CLARENCE WALUKELA MUSUNGU APPLICANT

AND

SYKA MANPOWER SERVICES LIMITED RESPONDENT

RULING

1. The applicant filed an application dated 17 January 2025 seeking the adoption of the Dosh award made on 20 September 2024, for the sum of Ksh 1, 223,653 with interests at 14% from the date of assessment.
2. The application is supported by the applicant, Clarence Walukela Musungu, on the grounds that he was employed as a loader/cleaner in 2017 by the respondent. On 20 February 2020, he slipped and fell off a ladder while in the course of his duties and sustained serious injuries. He was treated and fitted with a metal implant in his right femur. The matter was reported to Dosh, and on 26 June 2024, he was awarded Ksh.275, 039 without assessing his incapacity.
3. The applicant avers in his affidavit that he objected to the award by Dosh on 2 August 2024, and the award was reviewed to Ksh. 1,223,653, with a permanent disability assessment of 60%. The respondent did not file any objections or an appeal and is therefore required to pay the award with interest.
4. In reply, the respondent filed the Replying Affidavit of Regina Ileri, the legal officer with M/S Heritage Insurance Company, the insurers of the respondent and avers that the applicant was injured on 20 February 2020 and lodged a claim with Dosh. There was an assessment of injuries with 9% permanent disability per the assessment dated 15 September 2021, wherein Dr Miriam Najib found no disability. In the evaluation, the respondent paid the applicant Ksh.39, 300 based on the monthly wage of Ksh.19, 650 for 60 days that the applicant was unable to work. Upon reviewing the applicant's medical records, the total medical expenses were Ksh.57, 517 and hence the insurer remitted Ksh.91, 517 to



the applicant covering loss of wages and medical expenses. This resulted in the final settlement of the matter.

5. Ileri avers that the applicant voluntarily executed the discharge voucher dated 11 January 2022 and accepted the payment, discharging the respondent and insurer of any liability. Despite this payment, the applicant filed the instant application seeking payment of Ksh.1, 223,653 over an alleged error in the assessment of disability at 60%.

6. Previously, the applicant alleges that he had been awarded Ksh.239, 075 on 26 June 2024 without an assessment of disability. He objected on 2 August 2024, and the Dosh made a review. This claim is untenable. Dosh had already done an assessment and made an award of Ksh.91, 517 which the respondent paid in full. The purported review of the award rendered the Dosh award res judicata, the matter having been fully determined and settled. The time to file objections under section 51 of the Work Injury Benefits Act (WIBA) had lapsed, and hence Dosh could not revisit the matter for a review.

Ileri avers that the Dosh award has since been settled in full.

7. The applicant filed a Further Affidavit and avers that the fact of being injured while at work on 20 February 2020 is not challenged. The matter was reported to Dosh 14 months after the injury on 3 May 2021. The assessment and award of Ksh. 39,300 omitted the permanent disability suffered.

8. Indeed, the first assessment by Dosh was Ksh 239. 075 on 26 June 2024, but he objected, and Dosh made a review for Ksh 1,223,653 on 20 September 2024. The discharge voucher filed by the respondent, dated 11 January 2022, was in acceptance of Ksh 91,517 as full settlement, but this is misleading since on 10 June 2022, the respondent issued a cheque for Ksh 37,300 on humanitarian grounds to cater for funeral expenses following his father's demise. On 5 May 2023, the respondent paid Ksh 10,500 for a second surgery due to the injuries suffered, and the NHIF paid Ksh 300,000 for the treatment.

9. The respondent was notified of the objections to the Dosh award, and the application herein was only filed after the reassessment for payment of Ksh. 1,223,653, which is due and remains unpaid.

Both parties attended and made submissions.

10. The application, affidavit and submissions are assessed, and the single issue for determination is whether the application dated 17 January 2025 should be allowed with the adoption of the Dosh award for Ksh. 1,223,653.

11. The applicant has admitted that he was injured on 20 February 2020 while at work with the respondent. The matter was reported to Dosh on 3 May 2021.

On 10 October 2023, the applicant was discharged from the hospital.

On 26 June 2024, the Dosh assessed the injuries and made an award of Ksh.239, 300.

On 2 August 2024, he objected to the award as it did not include the permanent disability.

On 20 September 2024, the Dosh reviewed the award of Ksh 1, 223,653.

12. The applicant does not deny that following the work injury on 20 February 2020 he was assessed and the Doctor assessed 0% disability. The respondent has since paid Ksh.91,517, and NHIF paid Ksh.300,000.

13. The appellant has since signed the discharge voucher dated 11 January 2022, admitting full payment for the work injury and discharging the respondent.



14. Indeed, under Section 16 of the WIBA, the Dosh is authorized to assess and award compensation for a work-related injury. Upon the award, if a party is dissatisfied, under section 51 of WIBA, one can file objections or an appeal within 60 days of the Dosh decision.
15. The award of Ksh.239,075 was on 26 June 2024. The objection on 2 August 2024 was within the timeline allowed under section 51(1) of WIBA.
16. The payment of Ksh. 91,517 and discharge voucher on 11 January 2022 cannot negate the rights under section 16 read together with sections 51 and 52 of WIBA. This is further buttressed under section 35(4) of the *Employment Act*, that the employee who enjoys a right at work cannot be denied such right under any other mechanism, including the execution of a discharge voucher.
17. However, the applicant appreciates that he has since received payments of Ksh. 91,519 from the respondent, plus a further Ksh.300,000 paid by the NHIF upon the respondent clearing his dues. These amounts going into the applicant's benefits following the work injury should be taken into account. The response that the payments were made on humanitarian grounds is far removed from the facts of the case. The applicant suffered a work injury, he was undergoing treatment, and the payment of Ksh. 91,519 plus Ksh. 300,000 cannot be for humanitarian grounds.
18. On the award of Ksh. 1,223,633 by Dosh on 20 September 2024, this amount is due less Ksh. 391,519 already admitted as paid for the benefit of the applicant. The payment shall be made within 30 days; after this period, costs due shall be assessed accordingly.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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