



Mwambia v Kenya Power & Lighting Company Limited (Miscellaneous Application E009 of 2024) [2025] KEELRC 2268 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2268 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E009 OF 2024**

**ON MAKAU, J
JULY 31, 2025**

BETWEEN

DAVID GUANTAI MWAMBIA APPLICANT

AND

KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

RULING

1. This ruling relates to the applicant's Notice of motion dated 30th October 2024 seeking the following orders: -
 - a. That this matter be certified as urgent and be heard *ex parte* in the first instance for urgency of the same.
 - b. That this Honourable court be pleased to adopt the Award of the Director of Occupational Health and Safety Services made in *Work Injury Benefits Act* claim Ref:No.WIBA/MRU/101/2023 made on 09/08/2023 as a Judgment of this court.
 - c. That a decree be issued in accordance with assessment of the Director of Occupational Health and Safety for the sum of Kshs.16,456,400.64.
 - d. That a declaration to issue that the Respondent has committed an offence contrary to section 26(6) of the *Work Injury Benefit Act* for failing to pay the Applicant.
 - e. That the Honourable Court commits the Respondent to one year in jail or fines it Kshs.500,000/= or both.
 - f. That the Honourable Court be pleased to award interests on the amount at court rates from the date of assessment until payment in full.
 - g. That the costs of the application be paid by the Respondent.



2. The application was supported by affidavit sworn by the applicant on 30th October 2024 and was objected to by the respondent vide Notice of Preliminary Objection dated 16th January 2025 on the following grounds: -
 1. That this application is improperly before this court.
 2. That this court does not have jurisdiction to enforce decisions arising from the Director of Safety and Health (DOSHS).
 3. That in the light of the foregoing, this application should be struck out with costs.
3. By a ruling delivered on 12th March 2025, I dismissed the preliminary objection. Subsequently, the applicant filed a supplementary affidavit dated 19th March 2025 bringing on record a legible Form DOSH/WIBA 4. The respondent also filed a Replying Affidavit to oppose the instant motion.
4. The applicant's case in brief is that he was employed by the respondent as Transmission of Electricity Foreman II and on 26th April 2022, he slipped and fell while on duty inspecting electricity transformer at Ikawa Primary School; that he got injured and was admitted in hospital for treatment until 29th July 2022 when he was discharged; that the respondent reported the accident to the Director of DOSHS vide DOSH 1 FORM dated 31st July 2023; and that his degree of permanent incapacity was assessed at 75 percent and compensation assessed at Kshs.16,456,400.64 in DOSH/WIBA 4 FORM dated 9th August 2023.
5. He further averred that the respondent's insurer requested for his second opinion/re-examination vide letter dated 31st August 2023 and he was seen by Dr.Ruga as requested on 9th September 2023. On the same date, the applicant wrote an email to the respondent informing it that he had been re-examined by the said doctor.
6. The applicant averred that the respondent never paid the assessed damages even after demand and several reminders by the DOSHS. Besides, the respondent never challenged the award of damages in any manner but kept on indicating that it was processing the payment. Consequently, he prays for the orders sought in the motion.
7. The respondent's case was a repeat of the grounds argued under the preliminary objection that was dismissed on 12th March 2025. The affiant of the Replying Affidavit deposed that the application is premature, unmerited, frivolous and an abuse of the court process; that the court lacks jurisdiction to enforce the award of DOSHS because section 52(2) of WIBA donates only appellate jurisdiction to the court; that WIBA has not given the court power to recognize, register and enforce awards by DOSHS as the power to ensure payment of the awards is on the DOSHS; that the documents relied upon by the applicant are defective and incomplete, rendering the application untenable; that the DOSH Form 1 is not signed and stamped in part III by the DOSHS but by Senior OSH Officer; that only DOSHS has the mandate to sign DOSH Forms; and that the respondent is ready and willing to comply with any lawful and procedurally valid directive by the Director but shall not be compelled to act on irregular, unsigned or unauthorized documents.
8. The motion was canvassed by written submissions which basically reiterated the facts summarized above.

Issues for determination and analysis

9. I have considered the motion, Affidavits and submissions filed, and there is no dispute that the applicant was employed by the respondent when he suffered serious bodily injuries. There is also no



dispute that the applicant was admitted in hospital for the injuries suffered and later the respondent reported the accident to the DOSHS using the relevant DOSH/WIBA FORM. It is also not in dispute that the degree of permanent disablement was assessed and compensatory damages computed.

10. The issues for determination are: -
 - a. Whether the court has jurisdiction to recognize, adopt and enforce an award of damages made by DOSHS under WIBA.
 - b. Whether the assessment of damages in FORM DOSH/WIBA 4 herein dated 9th August 2023 is invalid for being signed and stamped by Senior OSH Officer as opposed to the DOSHS.
 - c. Whether the application should be allowed.

Jurisdiction and validity of FORM DOSH/WIBA 4

11. The issues of jurisdiction of the court and validity of the DOSH/WIBA 4 herein were raised in the aforesaid Notice of Preliminary Objection and I rendered myself on the same in the ruling delivered on 12th March 2025 whereby I dismissed the preliminary objection. The applicant has since filed a clear copy of the Form DOSH/WIBA 4. By the respondent pursuing the same grounds in the replying affidavits is an offence against the doctrine of *functus officio* and *res judicata*. Consequently, I decline the invitation to revisit the said grounds and proceed to consider the merits of the motion.
12. Suffice it to say that the Court of Appeal has recently delivered a judgment clarifying that this court is the one clothed with the jurisdiction to adopt awards of the DOSHS and enforce them as its own judgments. In *Thepot Patrick Charles v Joash Shisia Chato* (2025) KECA 784 (KLR) the court held: -

“44...Employment and Labour Relations Courts have aptly held that enforcement of the Director’s decisions properly lies with the ELRC as the court with the jurisdiction to deal with employment and labour relations claims and for connected purposes...”
13. The above decision in effect upheld my decision on the respondent’s preliminary objection rendered on 12th March 2025.
14. In addition, the issue of who should sign and stamp awards in Form DOSH/WIBA 4 is clarified by section 53 of the WIBA itself which provides: -
 - “(1) There shall be a Director of Work Injury Benefits who shall be responsible for the Management of this Act.
 - (2) The Director of Work Injury Benefits shall perform the following functions-
 - a. Register employers;
 - b. supervise the implementation of this Act;
 - c. ensure that all employers insure their employees;
 - d. receive reports of accidents and carry out investigations into such accidents; and
 - e. ensure that employees who are injured are compensated in accordance with the provisions of this Act.



(3) The Director of Work Injury Benefits shall be assisted in performance of the functions, specified in subsection (1) by such other officers as are necessary, for the proper administration of this Act.”

15. The above provision confirms that the respondents cannot arrogantly fault and disregard an assessment and award done by a Senior OSH Officer. Had the respondent read the law properly, it would have saved the judicial time so far spent in entertaining its frivolous objections.

Merits of the motion

16. I have already mentioned that there is no dispute about employment relationship between the parties herein and the fact that the applicant suffered serious bodily injuries while in course of duty. The respondent had also indicated that it is ready and willing to settle the claim provided FORM DOSH/WIBA 4 is signed and stamped by the Director OSHs.

17. As stated above, the applicant has filed a clear form DOSH/WIBA 4 signed by Senior OSH Officer Mr. Muchiri and stamped with an official stamp of County OSH Officer Meru/Isiolo/Marsabit. It is dated 9th August 2023 and it indicates details of the assessment and the amount awarded being Kshs.16,456,400.64. The respondent was notified of the same way back on 18th July 2023 and it neither challenged nor paid the sum awarded.

18. Having considered the material presented by the parties before the court, I find that the application has merits and it is allowed in terms of prayer 2 and 3. The prayer for interest on the award is granted at court rates from the date of filing the suit. The applicant is also awarded costs of the application.

DATED, SIGNED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

