



**Simon v Teachers Service Commission (Miscellaneous Application
E006 of 2025) [2025] KEELRC 2269 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2269 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E006 OF 2025
ON MAKAU, J
JULY 31, 2025**

BETWEEN

JENIFFER KINYA SIMON APPLICANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. This ruling relates to the applicant’s Notice of motion dated 13th March 2025 seeking the following orders: -
 - a. That this Honourable court be pleased to adopt as a judgment of this court the award of the Director of Occupational Safety and Health Services dated 17th March 2022.
 - b. That a judgment be entered in favor of the claimant as against the respondent for Kshs.7,665,641.74 and a decree to issue in accordance with the assessment of the Director of Occupational Health and Safety under the *Work Injury Benefits Act*.
 - c. That this Honourable court be pleased to award interest on the amount Kshs.7,665,641.74 at 80 percent permanent disablement from the date of the assessment up to payment in full.
 - d. That the costs of this application be provided for.
2. The motion is supported by the applicant’s Affidavits sworn on 13th March 2025 and 26th May 2025 and it is opposed by the respondent vide a Replying Affidavit sworn by the respondent’s Ag Director HR Management and Development, one Kenneth Marangu, sworn on 28th April 2025.
3. The applicant’s case is that she was injured in traffic accident on 14th November 2016 while in the course of employment by the respondent. The accident was reported to the Director of Occupational Safety and Health Services (DOSHS) for assessment of compensation. Her degree of permanent



- disability suffered was assessed at 80 percent and on 17th March 2022 the compensation was assessed at Kshs.7,665,641.75.
4. The applicant averred that the respondent did not challenge the said award but only paid Kshs.1,800,000 leaving Kshs.5,865,641.74 outstanding. Despite demand through the applicant's Advocate, the respondent has failed to settle the outstanding balance hence the instant motion because she urgently needs finances for medication and upkeep.
 5. The respondent on the other hand, admitted that the applicant was injured while on duty and that the DOSH assessed her compensation at Kshs.7,665,641.74 based on 80 percent degree of permanent incapacity; that upon receipt of the DOSH/WIBA -4 dated 17th March 2022, it lodged an objection seeking review of the assessment, and that the DOSH ordered a re-evaluation clinic and the degree of permanent incapacity was reduced from 80 percent to 60 percent.
 6. In view of the foregoing review, the compensation went down to Kshs.4,834,022.40 out of which Kshs.1,800,000 was paid on 24th May 2024. The respondent acknowledged that a balance of Kshs.3,034,022.40 remains unpaid but it has prepared vouchers for payment of Kshs.2,000,000 and 1,034,022.40 which are awaiting release of funds from the exchequer.
 7. The applicant filed a Supplementary Affidavit sworn on 26th May 2025 contending that she was a stranger to the Review clinic ordered by the DOSH and averred she was not involved in the same. She urged the court to disregard the new assessment and enter judgment as prayed based on the original assessment made on 17th March 2022.
 8. The Application was disposed of by written submission but as at 30th June 2025 when the court fixed the matter for ruling, the respondent had not filed its submissions. Having considered the material before the court, the only issue for determination is whether the court should adopt the original DOSH assessment dated 17th March 2022.
 9. There is no dispute that on 17th March 2022, the DOSH assessed the applicant's compensation at Kshs.7,665,641.74. It is also a fact that the said award was challenged by the respondent by way of objection under section 51 of the WIBA Act. Sub section (1) provides that: -

“ Any person aggrieved by a decision of the Director or any other matter under this Act, may within sixty (60) days of such decision, lodge an objection with the Director against such a decision.”
 10. The applicant protested that she was a stranger to the new assessment and urged the court to disregard it. The court cannot grant the applicant's request to disregard the new assessment. It can only sympathize with her if the proper procedure was not adopted in dealing with the respondent's objection to the original award.
 11. Having said that, I have to appreciate that there is indeed evidence that the said assessment of 17th March 2022 was successfully challenged under section 51 of the WIBA. A re-evaluation clinic was ordered by the DOSH and that resulted in reduction of the degree of incapacity from 80 percent to 60 percent and the award from Kshs.7,665,641.74 to Kshs.4,834,022.40. consequently, I find that the assessment dated 17th March 2022 is no longer in existence and therefore it cannot be adopted and enforced.
 12. In view of the foregoing conclusion, I find it hard to allow the application in the absence of an amendment on the motion to reflect the existing DOSH assessment of 26th June 2023. Consequently, I strike out the notice of motion dated 13th March 2025 with no order as to costs since the respondent



has not fully settled the new DOSH award. For avoidance of doubt the applicant is free to move the court appropriately.

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.

ONESMUS N MAKAU

JUDGE

