



Kayvee Construction Limited v Kodoni & another (Employment and Labour Relations Appeal E192 of 2024) [2025] KEELRC 2345 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2345 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E192 OF 2024**

**JW KELI, J
JULY 30, 2025**

BETWEEN

KAYVEE CONSTRUCTION LIMITED APPELLANT

AND

VINCENT AMBEYI KODONI 1ST RESPONDENT

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH SERVICES
(DOSH) 2ND RESPONDENT**

(Being an Appeal from the decision of the Director of Occupational Safety and Health Services at Nairobi dated the 11th of June, 2024 in WIBA 11040/2024)

JUDGMENT

1. The Appellant herein, being dissatisfied with the decision of the Director of Occupational Safety and Health Services at Nairobi dated the 11th of June, 2024 in WIBA 11040/2024 in favour of the 1st respondent, filed a memorandum of appeal dated the 5th of July 2024 seeking the following orders:-
 - i. The appeal herein be allowed.
 - ii. The entire decision and/or directive of the Director issued on 11th June 2024. be quashed, vacated, reviewed and/or set aside.
 - iii. The Respondent do bear the costs of this appeal.
 - iv. Costs of this appeal be borne by the Respondents.
 - v. The Honourable court may grant any other orders it deems just.



Grounds Of The Appeal

2. By failing to give reasons for his decision enhancing the permanent disablement from 25% to 55% the Director of Occupational Safety and Health Services acted in overt breach of the statutory provisions of the law and therefore the decision and/or the directive was made per in curium, spurious and hence bad in law.
3. The enhancement of the percentage of the disablement award consequent to the objection by the Appellant was manifestly excessive and unjustified.
4. The Director erred in law and fact and misdirected himself as to the extent and nature of the Respondent's injuries and thereby erred in law in his assessment of the percentage of permanent disability which is inordinately high.
5. The decision on the percentage of permanent disability is erroneously high and against the weight of the evidence and law.
6. The Director erred in law by failing to properly and sufficiently appraise interpret and apply the provisions of the First Schedule of the *Work Injury Benefits Act* 2007 hence arriving at an inconsistent judgment.
7. The Director erred in law and in fact when he failed to consider, analyse and/or evaluate the initial medical report that had been presented before him thereby arriving at an erroneous conclusion.
8. The Director erred in law and in fact incompletely overlooking the Appellant's objection.

Background To The Appeal

9. A claim was filed before the Director of Occupational Safety and Health in relation to the 1st Respondent and against the Appellant vide ML/DOSH/ FORM 1 seeking compensation for a work injury sustained by the 1st Respondent on 29th April 2023 at the Respondent's Spring Valley work site, whereby the 1st Respondent suffered a crush injury to his right hand with multiple fractures to his ring and little fingers, while greasing the mixer machine, subsequently resulting in amputation of ring finger. The assessment of permanent incapacity was indicated as 25% (pages 8-9 of the Record of Appeal dated 26th November 2024).
10. The appellant, through its insurer Geminia Insurance Co. Ltd, vide letter dated 18th April 2024, submitted an objection to the assessment and sought authority to re-examine the injured employee. (The appellant did not produce the said objection in the record of appeal.)
11. On the 23rd April 2024, the Director of Occupational Safety and Health Services (DOSH) wrote to the insurer in reference to the letter of 18th April 2024 and, among others, stated that, as regards the assessment, where there are two or more injuries, the sum of the percentages may be increased. Further, the decision stated that the injured employee was required to appear before the Work Injury Evaluation Clinic(WIEC) Board on or before 9th May 2024 with prior booking and a referral letter from the County Occupational Safety and Health Officer- Nairobi. That subsequently, upon receipt of the Board's medical report an informed determination shall be communicated to all the affected parties(page 5 of ROA was the said letter to insurer by DOSH).
12. Following a Work Injury Evaluation Clinic held on 9th May 2024 at Safety House which culminated in a Report dated 9th May 2024 (Report on pages 11-13 of the ROA), the Director of Occupational Safety and Health Services delivered his Decision and issued form DOSH/WIBA 4 "Demand for Payment of Work Injury Benefit", dated 11th June 2024, designating the 1st Respondent's permanent disablement



at 55% and awarding compensation of Kshs. 897,600.00 calculated as follows: 17,000.00 (Monthly Total Earning) x 96 months x 55% Disablement (page 20 of ROA).

Determination

13. The appeal was canvassed by way of written submissions. The Appellant and 1st Respondent filed.
14. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-
“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

1. Further in on principles for appeal decisions in *Mbogo V Shah* [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

Issues for determination

16. The court taking into account the grounds of appeal finds the issues for determination to be :-
 - a. Whether the DOSH overlooked the Appellant’s objection
 - b. Whether DOSH erred in the assessment of the injuries to arrive at excessive award.

Whether the DOSH overlooked the Appellant’s objection

17. Ground 7 of the appeal was that the director , occupational safety and health services erred in law and in fact in completely overlooking the appellant’s objection.
18. At the outset the court notes that the appellant did not place the said objection in the record. The appellant through its insurer Geminia Insurance Co. Ltd vide letter dated 18th April 2024 submitted an objection and sought authority to re-examine the injured employee. (The appellant did not file the said objection in the record of appeal).
19. On the 23rd April 2024, the Director of Occupational Safety and Health Services (DOSHS) wrote to the insurer in reference to the letter of 18th April 2024 and, among others, stated that the assessment is where there are two or more injuries and the sum of the percentages may be increased. Further, the decision stated that the injured employee was required to appear before the Work Injury Evaluation Clinic(WIEC) Board on or before 9th may 2024, with prior booking and referral letter from the County Occupational Safety and Health Officer- Nairobi. That subsequently, upon receipt of the Board’s medical report, an informed determination shall be communicated to all the affected parties (page 5 of ROA was the said letter to the insurer by DOSHS).



20. The appellant submitted that the Director completely ignored and disregarded the appellant's objection dated 18th April 2024 and thus made an excess and unjust award against the appellant in favour of the 1st respondent herein. Conversely, the 1st respondent (injured employee) submitted that the Director considered the objection as per decision in letter dated 23rd April 2024.
21. Section 51 of WIBA provides for objection as follows: - '52. Director's reply
- (1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
 - (2) An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision."
22. The director on receipt of the objection dated 18th April 2024 (objection not on record) responded vide letter dated 23rd April 2024. The court noted that the response was within the 14 days under the law, it set out responses to the objection and further stated that the relief sought had been granted and the matter referred to the Work Injury Evaluation Clinic Board for re-examination of the injured employee. It was indicated that the Director upon receipt of the medical report of the board would make an informed decision. The court finds that the Director complied with the law under section 51 of WIBA on the said objection.

Whether DOSH erred in the assessment of the injuries to arrive at excessive award.

23. The court finds that the issue covers grounds 1-6 of the appeal.

The appellant's submissions.

24. Based on the law, facts and evidence tendered by the parties herein, the 2nd Respondent herein erred in his decision to enhance the 1st Respondent's permanent disablement from 25% to 55%. That the said decision was made without basis, new evidence and further that no reason whatsoever was tendered by the 2nd Respondent herein to warrant the said decision. The 1st Respondent's injuries and degree of permanent disability was well documented and clearly outlined in the various medical reports and documents tendered in this matter, which documents ought, to have formed the basis for any award in favour of the 1st Respondent. The 1st Respondent's claim and nature of injury sustained as established in the document at pages 8-9 of the Record of Appeal herein, the Notice by employer of an occupational accident Part 1 of the ML/DOSH Form 1. In the said document, it is clearly indicated that the 1st Respondent herein was an employee of the Appellant employed as a Mixer Machine Operator. That the 1st Respondent prior to the accident herein had worked for a period of 8 years, and that on 29th April, 2023 was involved in an accident while greasing the mixer machine, when he sustained crush injury to the right hand with multiple fractures of the ring and little fingers. The 1st Respondent is indicated to have resumed his duties on 1st February, 2024 after undergoing treatment whose expenses were settled by the Appellant herein at a sum of Kshs. 920,425/-. At part II of the said DOSH Form 1 at page 9 of the Record of Appeal, the medical details are contained thereof. The said details are to the effect that the 1st Respondent sustained injury of loss of ring finger at metacarpal level and stiffness of middle and little fingers. On the issue of permanent disability that arise thereof, the said document indicates that the 1st Respondent sustained twenty-five (25%) percent permanent disability.
25. At pages 15-16 of the Record of Appeal herein, there is a Discharge Summary document from Avenue Hospital indicating that the 1st Respondent was hospitalized from 29th April, 2023 to 6th May, 2023.



19. 20. 21. 22. 23. 24. 25. The said Discharge Summary document indicates that the 1st Respondent sustained injury of crush to the right hand that resulted into debridement. That the 1st Respondent received treatment and dressing that the said hospital for the said injuries. Further, at page 17 of the Record of Appeal herein, there is a Treatment Summary document from the Avenue Healthcare. The said document indicates that the 1st Respondent was diagnosed with a crush injury - right hand with amputation of the ring finger and fractures of the middle and little finger proximal phalanges and metacarpals. The said document clearly indicates that the 1st Respondent had stiffness of middle finger and little fingers, altered sensation of middle finger resulting into a twenty-five (25%) percent permanent disability. That the above analysis of documents in this matter is meant to establish and demonstrate that the 1st Respondent's injuries and the resultant disablement were issues already contained in the various medical documents present before the 2nd Respondent herein, and thus ought to have been guided by the evidence and documents available. All the said documents and evidence point to the fact that at the time of discharge of the 1st Respondent and lodging of the claim to the 2nd Respondent herein, the 1st Respondent had stiffness of middle finger and little fingers, altered sensation of middle finger resulting into a twenty-five (25%) percent permanent disability as a result of the crush injury to the right hand sustained. Based on the above aforesaid, the appellant submits that the 2nd Respondent had no reason as no such were tendered to interfere with the findings in the said medical documents that clearly established that the 1st Respondent had stiffness of middle finger and little fingers, altered sensation of middle finger resulting into a twenty-five (25%) percent permanent disability as a result of the crush injury to the right hand sustained.
26. The appellant submits that no new medical information or document or evidence was tendered by the 1st Respondent to warrant the change in the disablement percentage of the 1st Respondent by the 2nd Respondent from 25% to 55%. That at the time of discharge, the 1st Respondent had stiffness of middle finger and little fingers, altered sensation of middle finger resulting into a twenty-five (25%) percent permanent disability as a result of the crush injury to the right hand sustained. Clearly, the Work Injury Evaluation Clinic held on 9th May, 2024 at pages 11- 13 of the Record of Appeal herein cannot form basis for enhancing the 1st Respondent's permanent disablement from 25% to 55%. No reasons have been offered in the said document, no new findings or treatment have been tendered in the said report to warrant the change in permanent disablement. It is actually clearly indicated that the said enhancement was on account of mere opinion issued on 9th May, 2024 and not on concrete medical and/or professional investigation and findings based on clear medical evidence. As such, the appellant submitted that the said opinion should have been disregarded for lack of basis and/or medical evidence to warrant enhancement.
27. Grounds 4, 5, and 6 of the Memorandum of Appeal- On the issue of the quantum payable, whether the same was excessive and unjust. The appellant submitted that the 2nd Respondent erred in the decision to enhance the 1st Respondent's disablement from 25% to 55% without reason, basis and/or evidence, and thus in the doing so arrived at an excessive and unjust award in general damages to the tune of Kshs. 897,600/-. That the award by the 2nd Respondent in favour of the 1st Respondent in the circumstances thereof is excessive and unjust and not commensurate to the 1st Respondent's injuries and/or degree of permanent disability as contained in the Discharge Summary and Treatment summary reports. The appellant drew attention of the court to the well-established principle that in suits brought in respect of bodily injuries, the measure of damages is governed by the principle of restitution in integrum, that is; an award for bodily injuries is intended to be compensatory in nature such that the Plaintiff should receive in monetary terms no more and no less than his actual loss. That there are principles established by authorities for the assessment of damages in personal injury claims. These are, fairness, reasonableness, moderation, and principles of "stare decisis" That an injury should attract an award equivalent or near equivalent to previous Court awards for similar injuries.



These principles have been restated in many cases, including- *West (H) & Son Ltd vs. Shepherd* [1964] AC 336 at p. 345, *Lim Poh Choo vs. Camden & Islington Area Health Authority* [1979] 1 ALL E.R. 332, both of which cases were applied in *Cecilia W. Mwangi & Another vs. Ruth Mwangi* (CA NO. 251 OF 1996). Lord Morris in the locus classicus of *West (H) & Son Ltd. vs. Shepherd* (1964) A.C. 326 at page 345 stated as follows: -"But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be an endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional." Further in *Lim Poh Choo vs. Camden and Islington Area Health Authority* (1979) 1 All ER 332, Lord Denning M.R. aptly set out as follows: - "In considering damages in personal injury claims, it is often said: "the Defendants are wrongdoers, so make them pay up in full. They do not deserve any consideration." That is a tendentious way of putting the case. The accident, like this one, may have been due to a pardonable error much as may befall of us. I stress this so as to remove the misapprehension, so often compensated for all the loss and detriment she has suffered. That is not the law she is only entitled to what is in the circumstances, a fair compensation, fair both to her and to the Defendants. That this issue is clear and simple. That there was no basis and evidential back up to warrant the enhancement of the 1st Respondent's disablement from 25% to 55% by the 2nd Respondent and thus in doing so the 2nd Respondent's award was based on wrong finding and thus unjust and excessive. No evidence in the form of an additional new medical findings or report, or new medical complication or deterioration of the 1st Respondent's health was adduced to inform the 2nd Respondent's decision to enhance the 1st Respondent's permanent disablement apart from the already availed medical report, treatment and Discharge summaries that indicate the 1st Respondent's injuries and the degree of permanent disablement being at 25%.

28. The appellant submits that the 1st Respondent's injuries and the degree of permanent disablement is as contained in the medical documents supported by evidence of actual treatment and diagnosis, which are the DOSH FORM 1, Discharge Summary and Treatment Summary both from the Avenue Healthcare. The said documents all indicating that 1st Respondent sustained debridement, stiffness of middle finger and little fingers, altered sensation of middle finger resulting into a twenty-five (25%) percent permanent disability as a result of the crush injury to the right hand sustained. Based on the aforesaid, we humbly draw this Honourable Court's attention to *West (H) & Son Ltd. vs. Shepherd* (1964) A.C. 326 at page 345 stated as follows: -"But money cannot renew a physical frame that has been battered and shattered. All Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be an endeavor to secure some uniformity in the general method of approach. In the case of *Jabane vs Olenja*, (1986) KLR 1, the Court stated that in assessment of general damages, it must be borne in mind that each case depends on its own facts, awards should not be excessive, comparable injuries should attract comparable awards and inflation should be taken into account. In the premises, we humbly submit that an award of Kshs. 400,000/= will be fair and adequate compensation. We respectfully draw the Court's attention to the following cases, which we humbly submit are instructive in the assessment of damages herein given the fact that they are fairly recent decisions: - a) In *Kenya Power and lighting Co. Ltd v Mary Wanjiku Njoroge* (2019) eKLR, where the award was reduced to Kshs.500,000 on appeal. However, the injuries on the cited case were more serious than the present one because it involved amputation of the thumb and the little finger while one finger healed with some conformity. Permanent disability was assessed at between 15% to 20%. b) In *Climax Coaches v Ndiri* (Civil Appeal E25 of 2022) [2023] KEHC 20304 (KLR) (13 July 2023) (Judgment), the Court reduced an award of Kshs.700,000/- to that of Kshs.500,000/-, for a Respondent who had suffered an open fracture of the right finger, right finger was stiff and there



was partial stiffness of 3 fingers of the right hand, with disability assessed at 25%. 41. 42. My Lord, the alleged injuries sustained by the 1st Respondent herein are less severe than those sustained by the Respondents in the cases relied on above, as such the award should also be less to the ones awarded to the Respondents in the above stated matters. We reiterate our submission that an award of Kshs. 400,000/- is fair in this case. The essence of damages would be defeated if any higher award on general damages were made herein.

Respondent's submissions

29. The Director gave reasons for the enhancement of the percentage of permanent incapacity. A detailed review of the WIEC (page 12 of the record of appeal) shows the findings on injury. It clearly states that the 1st Respondent's Right hand has gross deformity with severe wasting of all the hands muscles, the thumb has fixed flexion, the Index finger is held on flex position at the proximal interphalangeal joint, the ring finger was completely lost, little finger has ankyloses of metacarpophalangeal joint and the right wrist joint had severe restriction in all planes. Whether the Director misdirected himself on the nature and extent of injuries? It is our humble submission that the Director did not misdirect himself on the nature of the injuries. A glance at the WIEC report referred to above shows that a medical board of three doctors: Dr. Kowino J., Dr. Kimani J. and Dr. Kimani W. was constituted to examine the 1st respondent. Such a group of professionals with specialization on work injuries cannot be said to have misdirected themselves on the nature and extent of injuries. The 1st Respondent was also at our offices and we did note that; he had lost the ring finger, all the other fingers were damaged to the extent that they were hard and stuck in place (fixed flexion). Generally, the right hand was deformed as per the findings of the WIEC.
30. Whether the Director failed to properly apply the provisions of the first schedule of WIBA? The Director did indeed apply the provisions of the first schedule of WIBA properly. If the Appellant had further analyzed the findings of DOSH from the WIEC herein they would have realized: a) For the right thumb-fixed flexion deformity distal interphalangeal joint is equivalent to loss of one phalange which is 10%. b) For the index finger-flexion deformity at proximal interphalangeal joint, ankyloses at proximal interphalangeal joint, and restriction of flexion at metacarpophalangeal joint is equivalent to loss of two phalanges and moderate restriction in metacarpophalangeal joint function is 15%. c) For the middle finger-ankyloses at metacarpophalangeal joint and at proximal distal interphalangeal joint is equivalent to the loss of the whole finger which is 6%. d) For the ring finger-loss of ring finger which is equivalent to loss of three phalanges which is 6%e) For the little Finger-Ankyloses of the metacarpophalangeal joint, distal and proximal interphalangeal joint is equivalent to loss of three phalanges which is 6% f) For the right wrist joint-severe restriction in all planes-flexion/extension is 12% The total sum of all these percentages is 55% which was duly and properly awarded at the WIEC.
31. Whether the Director failed to consider the Appellant's objection? The Director did in fact consider the Appellant's objection. This is evidenced by the Director's decision dated 23rd April 2024 (page 5 of the record of appeal) wherein he granted the relief sought by the appellant and ordered that the 1st Respondent herein attend a WIEC on 9th May 2024. This proves that beyond any reasonable doubt that the Appellant's Appeal was considered.

Decision

32. The initial assessment was at 25% by Avenue Healthcare Hospital. The hospital completed the DOAH /FORM 1 and described the injury as crush injury to right hand with multiple fractures ring and little fingers on the right hand. Permanent incapacity was indicated at 25%. The insurer of the appellant was aggrieved by the assessment (the objection not in the record). The court discerned from the response and the appeal now that the appellant felt the evaluation at 25% incapacity was excessive.



The insurer had also requested for re-assessment of the injured employee and the matter was referred to the Work Injury Evaluation clinic(WIEC) Board. The role of the Board is not challenged in the appeal. What is challenged is the basis of enhancement of the incapacity from 25 to 55 % after the objection. The role of the court is not to substitute its opinion for that of the decision maker.

33. The role of the court is as guided by the decision cited by the appellant in decision of the Court of Appeal in *Kiruga vs Kiruga Another* [1988] KLR 348, observed that:-"An appeal court cannot properly substitute its own actual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An Appellate Court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand."The Ministry of Labour and Social Protection, DOSH convened the Work Injury Evaluation clinic as stated in response to the objection on 9th May 2024. The board was constituted of 3 doctors Dr. Kowino J, Dr. Kimani J. and Dr. Kimani W. The three doctors assessed the injured worker(1st Respondent). They considered the Past Medical History of the injured worker to be-'On 29th April 2023 while on duty, he sustained right hand crush injury and fractures at the proximal phalanges of the right ring and little fingers.He was managed at Avenue Hospital, Parklands where he was admitted on 29th April 2023 to 6th May 2023.He had debridement, ray amputation of the ring finger, repair of flexion tendon and Refashioning of skin flaps done.He was discharged to continue with outpatient clinic and physiotherapy.The present complaints were indicated as difficulty using right hand.

On examination the findings of the board were:-

'Right Hand

Gross deformity. Healed scars on the palm extending to distal anterior forearm.

Multiple healed scars with loss of tissue on the dorsal aspect of hand.

Severe wasting of all hand muscles.

Thumb-Fixed flexion deformity at the distal inter-phalangeal joint.

Index Finger-Held in flexed position at the proximal interphalangeal joint.Ankylosis at proximal interphalangeal joint.Restriction of flexion at metacarpophalangeal joint.

Middle Finger-Ankylosis at metacarpophalangeal joint and at proximal and distal interphalangeal joint.

Ring Finger-Loss of ring finger.

Little finger-Ankylosis of metacarpophalangeal joint, distal and proximal interphalangeal joint.

Right Wrist Joint-Severe restriction in movements in all planes."The opinion of the medical board was 55% permanent incapacity.

34. The Compensation in case of permanent disablement/incapacity is according to section 30 of WIBA to wit:- '30. Compensation for permanent disablement
- (1) Compensation for permanent disablement shall be calculated on the basis of ninety-six months earnings subject to the minimum and maximum amounts determined by the Minister, after consultation with the Board, and set out in the Third Schedule.
 - (2) If an employee has sustained an injury specified in the first column of the First Schedule, the employee shall for the purposes of this Act, be deemed to be permanently disabled to the degree set out in the second column of the First Schedule.



- (3) If an employee sustains an injury not specified in the First Schedule which leads to permanent disablement, the employee shall be paid such percentage of disablement in respect thereof as in the opinion of a medical doctor will not lead to a result contrary to the guidelines of the First Schedule.” The note under the first schedule reads:- ‘NOTE: In the case of a right-handed employee, an injury to the left arm or hand and, in the case of a left-handed employee, to the right arm or hand, may in the discretion of the Director be rated at ninety per centum of the above percentages. Where there are two or more injuries the sum of the percentages for such injuries may be increased, at the discretion of the Director.’”
35. In the instant case, the court noted the opinion of the Board was that the 1st respondent had suffered gross deformity of the right hand with severe wasting of all hand muscles. That would ideally be 100% permanent incapacity of the right hand but the court is not a doctor and is guided by the decision in *Kiruga vs Kiruga Another* [1988] KLR 348, observed that: “An appeal court cannot properly substitute its own actual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong.” The court taking into account the report of the medical board constituted of 3 doctors as compared to the one doctor who assessed the injury at 25%, the medical board itemised the injuries and under the 1st schedule the injuries were to effect that the right hand lost all muscles, in lay terms the court read that the injured worker can longer use that hand. The Appellant asked for reassessment. The reassessment could have gone either way. I find no fault in the assessment of a higher percentage of disablement.
36. The impugned compensation was computed as follows:- Kshs. 17000(monthly salary declared by employer (page 8-9 ROA) DOSH form) X 96 months(section 30 of WIBA) X55% total assessment Kshs. 897600. The court finds that the decision of DOSH was guided by the medical report and applied the formula under section 30 of WIBA hence correct. The court authorities cited by the appellant are based on common law. DOSH is guided by WIBA which provides for a formula under section 30 on how to compute the damages. The said authorities are thus not relevant for WIBA awards. The role of the Director was upheld by the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] eKLR where the court held- ‘WIBA, not being unconstitutional and an even more progressive statute, as we have shown above we opine that it is best that all matters are finalized under Section 52 aforesaid.’” The court finds that the award of damages was lawful and no basis to interfere.
37. In the upshot the appeal is dismissed with costs to the 1st respondent.
38. 30 days stay of execution granted.
39. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH JULY DAY OF 2025.

**J.W. KELI,
JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant – Ms. Bett

1st Respondent: Mr. Makau

