



Kabara v Broad Contractors Company Limited (Miscellaneous Case E047 of 2025) [2025] KEELRC 2247 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2247 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E047 OF 2025**

**JK GAKERI, J
JULY 29, 2025**

BETWEEN

ERICK ONYANGO KABARA APPLICANT

AND

BROAD CONTRACTORS COMPANY LIMITED RESPONDENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 3rd June, 2025 filed on 17th June, 2025 seeking Orders that-
 1. This Honourable be pleased to adopt as a judgment of the court the Award of the Director of Occupational Safety and Health Services dated 19th December, 2024.
 2. The judgment to be entered for the Applicant against the respondent for Kenya Shillings Four Hundred and Fifty Thousand Seven Hundred and Eighty and Seventy Three Cents (Kshs.450,780.73).
 3. This Honourable court be pleased to award interest on the amount at court rates from the date of filing of the suit till payment in full.
 4. Costs of this application be awarded to the Applicant.
2. The application is expressed under Section 1A, 1B & 34 of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, Section 87 of the *Employment Act* and Sections 10 and 3 of WIBA and is based on the grounds set out on its face and the Supporting Affidavit of the Applicant sworn on 3rd June, 2025.
3. The affiant deposes that on 6th May, 2024 he suffered a permanent injury of the right hand index finger and reported the same to the employer who rushed him to hospital for treatment and reported the accident to the Director of Occupational Safety and Health Services by completing the DOSH



Forms and the Directorate of Occupational Safety and Health services assessed compensation at Kshs.450,780.73 and the sum remains unpaid and no objection had been filed.

4. The affiant deposes that the demand letter served on the respondent was not honoured.

Respondent's case

5. By a Replying Affidavit sworn on 8th July, 2025, Mr. Parminder Singh Manku deponed that the respondent discovered that the company stamp appearing on the Applicant's DOSH I and II Forms submitted to the Director of Occupational Safety and Health Services was used fraudulently and denied having authorised its use.
6. The affiant further deposed that the respondent responded to the demand letter vide letter dated 5th February, 2025 addressed to the law firm of Otieno Yogo, Ojuro & Company Advocates rejecting the demand on the premise that the documentation was fraudulent. That the medical report and the DOSH WIBA Form 4 dated December 19th 2024 was grossly exaggerated and the alleged permanent injury to the applicant's right-hand index finger did not correspond with medical evidence and the assessment lacked credible substantiation.
7. According to the affiant, the sum of Kshs.450,78.73 award by DOSHS as 16% permanent in capacity at Kshs.309,659.75 and Kshs.141,120.98 for temporary incapacity was excessive and not reflective of the severity of the alleged injury.
8. That the respondent was seeking an Order directing the DOSH to re-assess the injury and compensation to rectify the fraudulent use of the respondent's stamp and exaggerated assessment.
9. By a further Affidavit sworn on 14th July, 2025 after the court directed the applicant to avail clear copies of the DOSHS Forms, the affiant deposed that the respondent had not demonstrated that a formal complaint was made to the DOSHS or the police or a forensic analysis conducted to ascertain the truth as fraud was a grave criminal offence.
10. That the employee was acting in the ordinary course of business and the employer was liable.
11. The affiant further deposed that since the respondent was aware of the DOSHS proceedings, its silence and inaction for over 60 days amounted to ratification by conduct and a response to a demand letter was not an objection and the respondent had the opportunity to raise the objections before the DOSHS but failed to do so and the award was binding and enforceable and the allegations were an afterthought.

Analysis and determination

12. It is common ground that the applicant was an employee of the respondent and his right hand index finger was injured at the work place on 6th May, 2024.
13. It is also not in contest that the applicant notified that employer of the accident/injury and was rushed to ST. VINCENT DE' PAUL Community Clinic, Kisumu on 6th May, 2024, as captured in the hand written letter dated 13th August, 2024.
14. It is also not in dispute that the respondent completed the requisite DOSH forms and the Director of Occupational Safety and Health Services (herein-after DOSHS) assessed the compensation payable to the applicant for the injury.
15. Equally not in contest is the fact that the respondent received the DOSH WIBA 4 dated 19th December, 2024, which is a notification of assessment of compensation requesting the employer to pay the same



if in agreement or object to the assessment as provided by the provisions of Section 51 of the [Work Injury Benefits Act](#) (hereinafter WIBA).

16. Strangely, the respondent did not file an objection with the DOSHS and had been sitting pretty until the instant applicant was filed and served upon it as evidenced by the issues deponed upon in its Replying Affidavit.
17. The concerns the respondent is raising ought to have been placed before the DOSHS by way of an objection after receipt of the DOSH WIBA 4 which the respondent acknowledged receipt.
18. The court is at a loss as to what the respondent expected the applicant to do after service the assessment by the DOSHS was neither paid nor objected to or any other action taken.
19. The applicant accorded the respondent sufficient time to fathom what action was desirable to safe guard its interests but took no action.
20. Section 51 of the [Work Injury Benefits Act](#) provides: -
 1. Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.
 2. The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or Order which the objector claims or the question which he desires to have determined.
21. The foregoing provision leaves no doubt that the decisions of the DOSHS on any matter under WIBA may be objected to by any person aggrieved by such decision. Being aggrieved by the DOSHS assessment of the applicant's compensation, the respondent was at liberty to invoke the provisions of Section 52 of the WIBA.
22. Indeed, the respondent could have approached the DOSHS even after the sixty days.
23. Section 51(1) of the WIBA uses the phrase "may within sixty days" which would appear to suggests that the DOSHS has discretion to receive objections after the sixty days.
24. Relatedly, under Section 52 of WIBA an objector who is dissatisfied with the DOSH'S reply to the objection may appeal to the Employment and Labour Relations Court within 30 days of receipt of the reply by the DOSHS.
25. The respondent had these and other options to register and demonstrate its objection to the award by the DOSH but failed to do so and cannot successfully object to the adoption of the award at this stage without taking additional steps and having not done so the applicant has crossed the rubicon.
26. This application turns on whether the respondent has sustainable case for the court to make an order other than adoption of the DOSHS award as an Order of this court and enter judgment in favour of the applicant against the respondent.
27. In determining this application the court is guided by the sentiments of the Court of Appeal in its recent decision in *The Pot Patrick Charles V Joash Shisia Cheto* [2025] KECA 784 (KLR) delivered on 5th May, 2025 where the court addressed the question of adoption of awards by the DOSHS and affirmed the position that the ELRC had jurisdiction to do so as held in previous decisions of the court such as *Samson Chweya Mwendabole V Protective Custody Ltd* [2021] KEELRC 1809 (KLR) and *Sino V China Civil Engineering Construction Corporation (K) Ltd* [2025 KEELRC 1792 (KLR) among others.



28. In Thepot Patrick Charles Case (supra), the Court of Appeal held:

As the learned Judge correctly observed, there is a lacuna in the law with regard to the procedure for enforcement of the Directors decision in that there is no express provision of the WIBA stipulating the procedure for enforcement. Be that as it may, the Employment and Labour Relations Courts have aptly held that enforcement of the Director's decisions properly lies with the ELRC as the court with jurisdiction to deal with employment and labour relations claims and for connected purposes, and as provided for under Section 86 and 89 (former Sections 87 and 90) of the *Employment Act* (Cap 226)..."

29. The foregoing sentiments of the Court of Appeal settles the law that the Employment and Labour Relations Court is the only court with jurisdiction to adopt the awards by the DOSHS for purposes of enforcement.

30. As adverted to elsewhere in this judgment, the respondent's contention that it did not authorize or endorse the DOSHS forms, its stamp was used fraudulently by the employee, fraudulent documentation, exaggerated award not reflective of the severity of the award and the Order sought to direct the DOSHS to re-assess the applicants injury were matters which the respondent ought to have brought to the attention of the DOSHS by way of an objection and, if dissatisfied by the outcome appeal to this court for hearing and determination but refused, failed or neglected to do so.

31. The sentiments of the Court of Appeal in Thepot Patrick V Joash Shisia Cheto (supra) sum it all as follows:

In this case, the learned Judge correctly observed that Section 51 and 52 of the WIBA are silent on the avenues for redress for a party who becomes aware of the proceedings before the Director after the time for lodging an objection and/or filing an appeal against the Director's decision has already lapsed.

32. We agree with the learned Judge that the solution in the circumstances would be to lodge a motion for Judicial Review to quash the award before adoption by the court and on first seeking to have the adoption proceedings stayed. Notably, the appellant sat back and took no steps to that end.

33. The remedy identified by the learned Judge appears to be the only viable course of action in the circumstances. The appellant who took no steps to seek judicial review of the Director's award, was misdirected in seeking to present a case for what he misperceived as breach of his constitutional right to a fair acclaim that came too late in the day. Likewise, any attempt to seek leave of the ELRC to file objection proceedings out of time, and to stay adoption proceedings pending the intended objection would also amount to a futile attempt to invoke the court's jurisdiction, which only arises on an appeal against a Director's written reply to an objection. In the present case, the respondent's suit was essentially in the nature of adoption proceedings, which stood to succeed in the absence of any objection by the appellant to the Directors award.

34. The appellant's disaffection with the Director's decision on the ground that he was not the respondent's employer, and therefore not liable; that he had not been notified of the proceedings before the Director; and that, therefore, his right to a fair hearing were violated were misplaced. Such grounds can only find relevance in an appeal contemplated in Section 52(2) of the WIBA by way of Judicial Review of the Director's decision..."

The court is guided accordingly.



35. The upshot of the foregoing is that the applicant's notice of motion dated 3rd June, 2025 has merit and is granted in the following terms:
- a. The award by the Director of Occupational Safety and Health Services (DOSHS) herein dated 19th December, 2024 be and is hereby adopted as an order of this court and Judgment entered in the sum of Kshs.450,780.73 in favour of the applicant against the respondent.
 - b. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 29TH DAY OF JULY, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

