



**Ogeto v East Africa Cans and Closures Ltd (Miscellaneous Application
E037 of 2024) [2025] KEELRC 2233 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2233 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E037 OF 2024**

**AK NZEI, J
JULY 25, 2025**

BETWEEN

DANCAN AYIECHA OGETO APPLICANT

AND

EAST AFRICA CANS AND CLOSURES LTD RESPONDENT

RULING

1. On 15th February, 2024, the Applicant herein filed a Notice of Motion dated 14th February, 2024 and sought the following Orders:-
 - a. That the Court be pleased to adopt as its Judgment the award of the Director of Occupational and Safety Office dated 3rd May, 2023.
 - b. That Judgment be entered for the Applicant against the Respondent for Kshs.456,049/= being the amount assessed under the *Work Injury Benefits Act*.
 - c. That the Court be pleased to award interest at Court rates on the amount/award from the date of assessment until payment in full.
 - d. That the Court be pleased to award any other relief that the Court may deem fit and just to award.
2. The Court's record shows that on 8th March, 2024, the Respondent filed an evenly dated Notice of Preliminary Objection, calling for the Applicant's application to be struck off on grounds:-
 - a. That the application is improperly before the Court.
 - b. That this Court has no Jurisdiction to enforce decisions arising from the Director of Safety and Health.
 - c. That in light of the foregoing, the application be struck off with costs.



3. The Applicant is shown to have filed an affidavit in reply to the Respondent's Preliminary Objection, sworn by himself on 16th April, 2024.
4. The single issue for determination arising from the aforesaid preliminary objection is whether this Court is seized of jurisdiction to enforce awards made by the Director of Occupational Safety and Health Services pursuant to provisions of the Work Injury Benefits Act (WIBA).
5. As stated by the Supreme Court of Kenya in *Munene - vs - King'ara & 2 Others (Petition No. 7 of 2014)* [2014] KESC 37 (KLR) (5th May, 2014) (Judgment):-

“ 68. . . . The question of Jurisdiction is a pure question of law. This court has on several occasions adopted the dictum of Nyarangi J.A. in the Owners of Motor Vessel “Lillian S” - vs - Caltex Oil (Kenya) Ltd [1989] KLR 1, that it has to be determined from the start, and that where the Court finds it has no jurisdiction, it should down tools.”

6. Should this Court down tools regarding the Applicant's application dated 14th February, 2024? The Work Injury Benefits Act is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (the Director) to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not oust this Court's Jurisdiction to enforce such awards, and especially where the Director's decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Work Injury Benefits Act (WIBA) has not been objected to pursuant to Section 51 of the said Act; or has been objected to and the objection has been determined in favour of the employee.
7. Pursuant to Section 12(a) of the Employment and Labour Relations Court Act, this Court has jurisdiction to determine all disputes relating to or arising out of employment between an employer and an employee.
8. By dint of Article 162(2)(a) and (3) of the Constitution of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where such Jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such ousting statutory provisions is Section 16 of the Work Injury Benefits Act which expressly ousts Courts' jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 of the Act mandates the Director to undertake such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision regarding assessment of compensation by the Director. (See this Court's decision in *Marcus Curvey Ojango – vs – Kenya Revenue Authority* [2024] eKLR).
9. I also stated as follows in the case of *Amir Swaleh Omar – vs – Mackenzie Maritime (E.A.) Limited* [2022] eKLR:-

“ 17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would



be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of WIBA, the assessed sum becomes the injured employee's right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director's assessment, and issuance of a decree which can then be executed to realise that right.
19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine. Article 50(1) of the *Constitution* of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”

10. In upholding this Court's Jurisdiction to enforce awards made by the Director of Occupational Safety and Health Services, the Court of Appeal stated as follows in the case of Charles – vs – Cheto (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR) (9 May 2025) Judgment):-

“52. Even though the appellant further alleged that he was notified by the Respondent's advocates of the Director's award dated 5th September, 2019 after the time for appealing the same had lapsed, his remedy still lay in orders staying the Respondent's suit. . . . In view of the foregoing, we find no fault in the learned Judge's decision to adopt and pave way for enforcement of the award.”

11. I return a finding that this Court is seized of Jurisdiction to adopt the Director's award to pave way for enforcement thereof; and that the Applicant's Notice of Motion is properly before this Court. The Respondent's Preliminary Objection dated 8th March, 2024 is overruled, and is hereby dismissed with costs to the Applicant.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI



JUDGE

Appearance:

Mr. Makau for the Claimant

Miss Sheth for the Respondent

