



Akhoya (Suing as the administrator of the Estate of Brian Mutambi Amakobe) (Deceased) v Uhuru Heights Limited (Miscellaneous Application E148 of 2023) [2024] KEELRC 244 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 244 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E148 OF 2023**

L NDOLO, J

FEBRUARY 15, 2024

BETWEEN

SYPHROSE AMAKOBÉ AKHOYA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF BRIAN MUTAMBI AMAKOBÉ) (DECEASED) APPLICANT

AND

UHURU HEIGHTS LIMITED RESPONDENT

RULING

1. The subject of this ruling is the Applicant's Notice of Motion dated 10th July 2023, seeking to enforce the award of the Director of Occupational Safety and Health Services dated 18th November 2022, as a decree of this Court.
2. The Motion is supported by an affidavit sworn by Syphrose Amakobe Akhonya and is based on the following grounds:
 - a. Sometime in 2020, the deceased was employed by the Respondent as a casual labourer at Cascada Apartments within Two Rivers Mall (the Construction Site);
 - b. On 15th October 2020, while performing his duties at the Construction Site, the deceased fell from the 5th floor and sustained fatal injuries;
 - c. The matter was subsequently referred to the Director of Occupational Safety and Health Services where the Applicant was awarded Kshs. 1,440,000 as per the award dated 18th November 2022;
 - d. Since the award was issued and served upon the Respondent, no objection has been made and the statutory period of 60 days given by law to make an objection has since lapsed;



- e. Despite all reasonable and diligent efforts by the Applicant requesting the Respondent to comply with the award of the Director of Occupational Safety and Health Services, the Respondent has failed, ignored and/or neglected to do so;
 - f. In the premises, it is only just, fair and equitable that the Applicant's application be granted as prayed.
3. The Respondent opposes the application by a replying affidavit sworn by Kenneth Mbae on 26th October 2023.
 4. Mbae, who describes himself as the Managing Director of the holding company of the Respondent, known as Centum Real Estate Limited, terms the application as premature, unmerited, frivolous and an abuse of the court process.
 5. Mbae states that the Respondent is a stranger to the deceased, Brian Mutambi Amokobe, on whose behalf the application has been brought.
 6. He adds that the Respondent is also a stranger to the award by the Director of Occupational Safety and Health Services dated 18th November 2022.
 7. According to Mbae, the Respondent has never been involved in any proceedings and/or correspondence relating to the adjudication of the matter in the office of the Director of Occupational Safety and Health Services. He avers that the Respondent has never been served with any documentation relating to any such proceedings.
 8. The Respondent is said to have lodged an objection with the Director subsequent to filing of the present application. The Respondent lays blame on the Applicant for the delay in submission of the objection, on account of failure to serve any documentation relating to the claim for compensation until the filing of this application.
 9. The parties urged their respective positions by way of written submissions.
 10. In the submissions filed on behalf of the Respondent, the jurisdiction of this Court to enforce awards by the Director of Occupational Safety and Health Services has been challenged.
 11. In urging this position, the Respondent relied on the decision in [*Lameck Nyakundi Anyona v W.I.I Kenya Construction Company Limited \[2022\]*](#) eKLR where it was held

“There is no provision of the law, in the Work Injury Benefits Act, the Employment and Labour Relations Court Act, or the Employment Act, which allows the Court to enforce the compensatory awards of the Director of Work Injury.”
 12. This was also the holding in [*Peter Mutua Kaloki v China State Construction & Engineering Corp \(Kenya\) and another \[2022\]*](#) eKLR where it was stated:

“There is no provision for E&LRC to adopt an award of the Director as its Judgment. Such adoption ultimately leads to a Judgment and Decree issued by the E&LRC, which Court does not have primary jurisdiction in work injury compensation.”
 13. Several decisions emanating from this Court (variously constituted) have identified a lacuna in enforcement of awards by the Director. I do not think however that the way to cure this lacuna is for this Court to assume jurisdiction that has not been conferred upon it either by [*the Constitution*](#) or by statute.



14. In reaching this conclusion, I am guided by the binding Supreme Court decision in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR where it was authoritatively stated:

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

15. As far as work injury claims are concerned, the only jurisdiction granted to the Employment and Labour Relations Court is appellate and there can be no room to expand this jurisdiction to cover issues which arise in the course of processing of claims before the Director.

16. It would appear that the framers of the law did not envisage a situation where contentious issues would arise at the Director’s level but the efficacy of a law is tested in its implementation. In my view, any gaps in the law ought to be addressed through legislative intervention; the converse would open up the Court to the dangerous path of judicial craft and invention.

17. In the result, I decline to assume jurisdiction in this matter and direct that any emerging issues regarding the processing of the claim be canvassed before the Director.

18. Each party will bear their own costs.

19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Karanja for the Applicant

Ms. Bett for the Respondent

