



Ndungu v Enrustfirm Company Investment Limited & 2 others (Miscellaneous Application E065 of 2023) [2024] KEELRC 655 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 655 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E065 OF 2023**

**DN NDERITU, J
MARCH 20, 2024**

BETWEEN

JOSHUA NDUNGU APPLICANT

AND

ENRUSTFIRM COMPANY INVESTMENT LIMITED 1ST RESPONDENT

LI WU 2ND RESPONDENT

CHENG JINLONG 3RD RESPONDENT

RULING

I. Introduction

1. In a notice of motion dated 9th October, 2023, filed in court on 11th October, 2023 (the application) the applicant, through K & K LAW LLP Advocates, is seeking for the following orders –
 1. That the Honourable court adopts the assessment of the Director of Occupational Safety and Health Services as a judgment of the court.
 2. That a decree for Kshs.259,384 to issue in accordance with assessment of the Director of Occupational Safety and Health Services jointly and severally against the Respondents.
 3. That a decree for the accrued interest be paid from when the order was issued on 15th November, 2022 to when the amount is paid in full be issued.
 4. That a declaration to issue that the Respondents have committed an offence contrary to Section 26(6) of the [Work Injury Benefit Act](#) for failing to pay the Applicant.
 5. That the court commits the Directors of the Respondents being Respondent 2 and 3 to one year in jail or fines them Kshs.500,000 or both.



6. That the costs of this application be provided for.
2. The application is expressed to be brought under the provisions of Article 165 of the Constitution, Rules 28 & 31 of the Employment and Labour Relations Court (Procedure) Rules, Section 26 of the Work Injury Benefit Act (WIBA), and all other enabling provisions of the law. It is based on the grounds on its face and supported with the affidavit of Joshua Ndungu, the applicant, sworn on 10th October, 2023, with several annexures thereto.
3. Upon service of the application the respondents instructed Munyaga Githaiga Advocates LLP to act for them and a notice of appointment of advocates was placed on record by the said law-firm on 25th October, 2023. However, no response to the application was filed.
4. When the application came up in court on 4th December, 2023 for directions Mr. Kiti appeared for the applicant and Miss Mbungu appeared for the respondents. The court granted the respondents seven days within which to respond to the application. It was also directed that the application be canvassed by way of written submissions. Counsel for the applicant filed his written submissions on 16th January, 2023.
5. The respondents neither filed response(s) to the application nor did their counsel file written submissions as of 6th February, 2024 when a date for a ruling was taken.
6. While the matter was pending for this ruling the advocates for the respondents filed an application on 21st February, 2024 seeking to cease acting for them and the same is pending in court.

II. Evidence

7. In the supporting affidavit it is deposed that the applicant was an employee of the 1st respondent as a machine operator. While at work on 23rd March, 2022, he sustained a fracture in the ring finger of the right hand. The 1st respondent reported the matter to the Director of Occupational Health and Safety (the Director) and a claim form was filled and submitted.
8. The Director considered and evaluated the injury and the claim and awarded to the claimant a sum of Kshs.259,384/= in compensation for the said industrial injury. The respondent has since failed, refused, and or neglected to settle the said amount despite several reminders and demand notices.
9. No appeal has been filed by the respondents or any objection in whatever form to the said award and it is deposed that the respondents have since dismissed or terminated the applicant who was solely dependent on his salary for his livelihood rendering him and his family destitute.
10. The applicant has attached a medical report, claim form, demand notice, among other documents, in support of the application.
11. It is deposed that the 2nd and 3rd respondents are directors of the 1st respondent but no supporting evidence has been availed.

III. Submissions By Counsel For The Applicant

12. Counsel for the applicant has urged that upon expiry of 60 days from the date of notification of the award to the respondents the award of the Director became final under Section 51 of the WIBA.
13. Counsel has urged the court to be persuaded by the reasoning in Samson Chweya Mwandabole V Protective Custody Limited (2021) eKLR and Elijah Kisyanaga Ndende v The Manager Zakhem International Construction LTD (2022) eKLR in allowing the application as prayed.



IV. Analysis & Determination

14. In my considered view, there is only one main issue for determination in this application – Should the court allow the application as prayed?
15. As stated in an earlier part of this ruling, the application is not opposed. The court has gone through all the materials placed before it by the applicant alongside the submissions by his counsel. The court agrees with the authorities cited by counsel for the applicant to the effect that this court has the requisite jurisdiction to enter judgment against the respondents in accord with the award of the Director.
16. In the circumstances, judgment is hereby entered against the 1st respondent in the sum of Kshs.259,384/= as awarded by the Director. The said amount shall attract interest from November, 2022, when the award was made, till payment in full. The applicant is awarded costs of the application.
17. A decree shall issue accordingly and the same may be executed in the usual manner, in accordance with the law, in case the respondents fail to settle the same upon notice.
18. All the other prayers are denied. No evidence has been tendered to confirm that the 2nd and 3rd respondents are indeed directors of the 1st respondent.

V. Orders

19. Consequently, the notice of motion by the applicant dated 9th October, 2023 is allowed in the following terms –
 - a. Judgment be and is hereby entered against the 1st respondent in the sum of Kshs.259,384/= as awarded by the Director.
 - b. The said sum shall attract interest at court rates from November, 2022 till payment in full.
 - c. The applicant is awarded the costs of the application which is hereby assessed at Kshs.20,000/=.
 - d. A decree shall issue accordingly and the same may be enforced and executed in accordance with the law.
 - e. The other prayers are denied.

DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 20TH DAY OF MARCH, 2024.

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DAVID NDERITU

JUDGE

