



**ASP Company Limited v Director Occupational Health and Safety,  
Kajiado; Musembi (Interested Party) (Judicial Review Application  
E165 of 2024) [2024] KEELRC 1305 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1305 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
JUDICIAL REVIEW APPLICATION E165 OF 2024**

**B ONGAYA, J**

**MAY 29, 2024**

**BETWEEN**

**ASP COMPANY LIMITED ..... EXPARTE APPLICANT**

**AND**

**DIRECTOR OCCUPATIONAL HEALTH AND SAFETY,  
KAJIADO ..... RESPONDENT**

**AND**

**DANIEL MUSEMBI ..... INTERESTED PARTY**

**JUDGMENT**

1. The ex-parte applicant ASP Company Limited filed the notice of motion dated 19.03.2024 through RICAR Advocates LLP. It was under sections 8 and 9 of the [Law Reform Act](#) and Order 53 rule 3 of the Civil Procedure Rules. The applicant prayed for:
  - a. An order of certiorari be issued to quash the decision of the 1<sup>st</sup> respondent made on 25.07.2023 and re-emphasized by the 2<sup>nd</sup> respondent by letter dated 29.01.2024 that the applicant compensates the interested party Kshs. 1, 936, 886.65 on account of 90% disablement.
  - b. An order of mandamus compelling the 1<sup>st</sup> respondent to have the interested party undergo an independent medical examination to ascertain the degree of the injury.
  - c. An order of mandamus to compel the respondent to conduct an inquiry as envisaged in the law.
  - d. An order of prohibition restraining the interested party, the respondent, its agents, employees or any other person from enforcing the decision dated 25.07.2023 in WIBA/KJD/363/23.



2. The application is based on the material on record including the as filed at the leave stage and the supporting affidavit of Lilian Gitari, the respondent's human resource manager sworn on 19.03.2024 and upon the following grounds:
  - a. By the impugned letters the applicant is to pay the interested party Kshs. 1, 936, 886.65 on account of 90% disablement.
  - b. Prior to receipt of the letter the applicant was not aware of proceedings before the respondents.
  - c. On 23.10.2023, the applicant lodged objection to the Director. On 06.11.2023, the Director replied upholding the decision. There was no further correspondence but on 12.01.2024 interested party made a telephone call for facilitation to go for a hearing on 15.01.2024. On 29.01.2024 the applicant was denied a right to be heard before the Work Injury Evaluation Committee Board because the objection had been lodged out of time.
  - d. On 27.11.2023, the applicant was to appear before the Work Injury Evaluation Committee Board accompanied with a Doctor of own choice.
3. Despite service, the respondents and interested party did not enter appearance or file opposing affidavits or attend on hearing date. Counsel for the applicant made oral submissions.
4. Section 51 of the *Work Injury Benefits Act*, 2007 (WIBA) provides thus: "(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 an objection 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."
5. Section 52 of the same WIBA provides, "(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."
6. The Court considers that the objection having been rejected, the legitimate path was for the applicant to appeal. The applicant instead filed the instant judicial review proceedings. The Court finds that the proceedings are an abuse of Court process for want of compliance with the prescribed statutory procedure. Further, the remedies prayed for must fail because the respondents appear to have performed their duty and roles per provisions of WIBA. As respondents never participated, there will be no orders on costs.
7. In conclusion, the application herein is dismissed with no costs and the Deputy Registrar to return the case file to Machakos sub-registry forthwith.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29<sup>TH</sup> MAY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

