



**Omamo v Unigrain Equipment Limited (Miscellaneous Cause  
E051 of 2021) [2024] KEELRC 1549 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1549 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS CAUSE E051 OF 2021**

**AK NZEI, J  
JUNE 20, 2024**

**BETWEEN**

**GEORGE ODHIAMBO OMAMO ..... APPLICANT**

**AND**

**UNIGRAIN EQUIPMENT LIMITED ..... RESPONDENT**

**RULING**

1. The application before me is the Applicant's Notice of Motion dated 25/10/2023, expressed to be brought under Sections 87 and 90 of the [Employment Act](#) 2007 and Rule 17 of the [Employment and Labour Relations Court \(Procedure\) Rules](#) 2016. The Applicant seeks the following orders:-
  - a. that the Court be pleased to adopt as judgment the award of the Director of Occupational Safety and Health Services.
  - b. that judgment be entered for the Claimant/<sup>th</sup> September 2021.  
Applicant against the Respondent for the sum of kshs. 284,773, with interest at 14% per annum from 17
  - c. that costs of the application be borne by the Respondent.
2. The application is based on the Applicant's supporting affidavit sworn on 25/10/2023. It is deponed in the said affidavit:-
  - a. that the Applicant was employed by the Respondent from 1<sup>st</sup> June 2019 to 30<sup>th</sup> November 2020; and that on 11<sup>th</sup> April 2020 while at work, the Applicant got an accident and sustained head injuries.



- b. that the Applicant was treated and the matter was reported to the Director of Occupational Safety and Health Services, whereupon the Applicant's incapacity was assessed at 2.5% and compensation payable to him was assessed at 284,773.
  - c. that despite the Respondent being informed of the compensation award payable to the Applicant, and a reminder being sent vide a letter dated 26/7/2023; the Respondent refused to pay the said sum.
  - d. that the Respondent did not appeal the Director's decision within the time set out in law, and is therefore liable to pay the awarded sum to the Applicant.
  - e. that it is in the interest of justice that the application be allowed.
3. Documents annexed to the Applicant's supporting affidavit herein are copies of a duly filled Form DOSH/WIBA4. The Form DOSH/WIBA4 is dated 17/9/2021 and is duly signed by the Director of Occupational Safety and Health Services (Mombasa County). I have noted from the said document that the Applicant's permanent incapacity was assessed at 2.5% while compensation payable to him was assessed by Director at kshs. 284,773.
  4. Also annexed to the Applicant's supporting affidavit is a copy of the Director's letter to the Respondent dated 26/7/2023, reminding the Respondent to settle the assessed sum of kshs. 284,773. The Respondent is shown to have responded to the Director's said letter vide a letter dated 7/8/2023, explaining that it had forwarded the claim to its service provider.
  5. The Respondent did not respond to the Applicant's application herein, despite having been given time by this Court to file its response. The application, therefore, stands unopposed.
  6. The *Work Injury Benefits Act* is silent on how awards of compensation made by the Director of Occupational Safety and Health Services to employees who suffer work injuries or occupational diseases are to be enforced. At the same time, the said *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 upon demand.
  7. As I stated in the case of *Amir Swaleh Omar v 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 diseases 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 inquiries 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 the *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 realize 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.”

8. Pursuant to Article 162(2) (a) of the *Constitution* of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, where such jurisdiction has not been expressly ousted by the statute over particular matters. A good example of an ousting a statute is Section 16 of the *Work Injury Benefits Act* which provides as follows:-

“No action shall lie by any employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this *Act* in respect of such disablement or death.”

9. It is clear from the foregoing provision of the statute that this Court, and indeed all the Courts, have no jurisdiction to determine issues of liability and assessment of compensation in cases involving work injuries or occupational diseases. Section 23 of the *WIBA* mandates the Director to make such inquiries as are necessary to decide upon any claim or liability in accordance with the *Act*, while Sections 28 and 30 of the *Act* provide for assessment of compensation by the Director.

10. I am satisfied that the application herein is merited, and I allow the same in the following terms:-

- a. the award made by the Director on 17/9/2021 is hereby adopted as a judgment of this Court, and judgment is hereby entered for the Applicant against the Respondent for the sum of kshs. 284,773 being the sum awarded by the Director.
- b. the Applicant is awarded interest on the awarded sum, to be calculated at Court rates from the date of this Ruling.
- c. a decree shall issue forthwith.

11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 20<sup>TH</sup> JUNE 2024**

**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:

.....Applicant

.....Respondent

