



**Randani v Kenya Ports Authority (Miscellaneous Application
E034 of 2024) [2024] KEELRC 1576 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1576 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E034 OF 2024**

**M MBARŪ, J
JUNE 20, 2024**

BETWEEN

MWANAHALIMA HALFANI RANDANI APPLICANT

AND

KENYA PORTS AUTHORITY RESPONDENT

RULING

1. The applicant filed an application dated 27 March 2024 under the provisions of Section 12 of the *Employment and Labour Relations Act, 2007* [non-existent], Order 40 rule 51 of the Civil Procedure Rules and Article 159(2)(d) of the *Constitution* seeking orders;
 1. The court be pleased to adopt as the judgment of the court, the assessment/award of the Director of Occupational Safety and Health Services, Mombasa made on 11 August 2023 as judgment of the court.
 2. A decree do issue for;
 - a. The sum of Kshs. 2,020,237.33 being the Director’s award/assessment made on 11 August 2023, and
 - b. Interests thereon at court rates from the date of the award on 11 August 2023 until payment in full.
 3. Costs of this application be provided for.
2. The applicant supports the application through the Supporting Affidavit on the grounds that the applicant herein seeks to enforce the director’s award which remains unpaid despite the respondent being notified of the same. The applicant has been the employee of the respondent as an environment field officer and sustained an injury on 18 March 2023 while on duty. The incident was reported to the



Director under the Work Injury Benefits Act, 2007 (WIBA) and upon assessment an award of Ksh.2,020,237.33 was made on 11 August 2023.

3. Upon the assessment and award, the Director notified the respondent to make payment within 90 days. The respondent did not file any objections or appeal. Through letters dated 7 March 2024 and 14 March 2024, the director reminded the respondent to pay the applicant since 90 days had lapsed.
4. In the Supporting Affidavit, the applicant avers that despite the respondent being served with the necessary notices by the Director and the demand to pay being made, the respondent has refused to make payment. Under Section 26(6) of the WIBA, the law allows for sanctions against the employer who fails to pay the award of the Director and the orders sought should be issued with costs.
5. In response, the respondent filed the Replying Affidavit of Rosedaisy Agiro the senior insurance officer who has access to the insurance records of the respondent including those emanating from work injuries.
6. Agiro aver that the applicant is an employee of the respondent and was involved in an accident within the Port of Mombasa on 18 March 2023 while running personal errands or exiting the Port during the lunch break. The accident occurred while the applicant was on board a privately owned vehicle registration number KAQ 444D belonging to a third party, which rammed on a stationary lorry KBH 975H that was along Kilindini Road near Regional Shades area in the Port of Mombasa. There is the applicant's accident statement dated 5 April 2023 who narrated the events.
7. Agiro aver that whatever work is allocated to an employee of the respondent, there are instructions and where such involves movement outside the office, the employee is allocated a KPA vehicle and driver. In this case, the applicant admitted she boarded a private vehicle when the accident occurred at 12 Noon. The police Abstract report shows the driver of motor vehicle KAG 444D was charged in court for careless driving and fined Ksh.20, 000.
8. Agiro aver that as the officer responsible for insurance records she is aware that under WIBA accident is defined as arising out of and in the course and scope of an employee's employment and resulting in personal injury. In this case, the subject matter of these proceedings is not a work injury for which compensation would have been rightful under the provisions of Section 10 of WIBA. The court lacks jurisdiction to enforce the award that does not emanate from a work-related accident.
9. Upon receipt of the demand letter from the Director to pay compensation to the application under the provisions of WIBA, the respondent replied on 8 march 2024 and expressly stated that the accident involving the applicant was not work-related. The applicant is not entitled to compensation under the provisions of WIBA.
10. The Director through letter dated 14 march 2024 stated that the accident happened during work hours and therefore fell under WIBA. Although the Director is obliged under Section 23 of WIBA to conduct an inquiry that is crucial and necessary to decide upon any claim or liability in accordance with WIBA, no such inquiry was conducted. From the statement of the applicant about the accident, it was evident that it was not work related. The accident does not fall under the provisions of WIBA.
11. The respondent has taken a Group Personal Accident Policy which covers employees who may suffer injury outside their work scope.
12. In this case, the applicant suffered accident from running personal errands which are not work-related. Her claim was treated under the Group Personal Accident cover and not the insurance cover for work-related injuries. The applicant was paid Ksh.90,135 being compensation under the Personal Accident



Policy through letter dated 31st October 2023 from Liaison Group and a discharge voucher for the payment dated 20 November 2023.

13. The instant application erodes the sole purpose of work-related injury compensation under WIBA which does not extend to unrelated work injuries and should be dismissed for want of jurisdiction and merit.
14. The applicant filed her Supplementary Affidavit and aver that the injuries suffered on 18 March 2023 were work-related for compensation under WIBA and the Director lodged investigations to ascertain particulars of the accident. The averments that there is payment of Ksh.90,135 since the accident was not work-related is not correct since the respondent never objected to the Director's assessment as required following communication on 4 and 11 August 2023 as required under Section 51 of WIBA.
15. The challenge by the respondent relates to how the claim was assessed by the Director and liability assessed under Section 12 and 23 of WIBA. The Director made such inquiries as necessary and determined liability on the part of the respondent who bears the stator duty to pay the assessed compensation since there is no objection or an appeal as required under Section 52(2) of WIBA. What the respondent is seeking is for the court to re-open the matter of inquiry and investigations which is not the case since the director has already made a determination and made an award under his statutory mandate under WIBA.
16. Both parties agreed and filed written submissions and also attended court for oral highlights.
17. The application submitted that in the case of *Mutegi v Teachers Service Commission & another* [2023] eKLR, the respondent challenged the court's jurisdiction on the grounds that the injuries suffered were not work-related and the court held that pursuant to Section 12 of the Employment and Labour Relations Court Act, and Article 162 of the *Constitution*, the court was properly clothed with jurisdiction especially where there was no objection filed by the employer against the award of the director. In addressing Section 10 of *WIBA*, the court was of the view that the objections made with regard to jurisdiction were not proper as objections ought to have been raised with the director.
18. In the case of *Joash Shisia Cheto v Theport Patrick Charles* [2022] eKLR on the jurisdiction, the court held that it had no jurisdiction to open the director's award at this stage. The courts have found there is a lacuna with regard to the enforcement mechanisms of the director's award and under the inherent powers of the court, an application or claim can suffice.
19. The application submitted that the orders sought can be issued as this is a work-related claim and the director assessed and made an award under the provisions of WIBA. In the case of *Luvizu v Timsales Limited* Misc. Appl. No.E069 of 2023 where no objection had been filed against the director's award, the court entered judgment for the applicant and the instant application should be allowed with costs.
20. The respondent submitted that WIBA only applies in work-related injuries which is not the case here hence the court lacks jurisdiction to enforce the award by the director. In the case of *Seme v Sino Hydro Corporation Engineering Bureau* 15 Co. Ltd (K) Misc. Appl. No. E009 of 2023 the court held that a purposive interpretation of WIBA is that unless the matter is an appeal, the court has no jurisdiction to adopt the director's award.
21. In this case no investigations were conducted to ascertain that the statement of the application was to the effect that the accident occurred outside work and the responsible third party charged in court and a sanction issued. The import of it is that the provisions of WIBA do not apply to allow the court enforce the award as assessed. The role of the court under WIBA is appellant as held in *Law Society of Kenya v Attorney General & another* Petition No. 4 of 2019. Without jurisdiction, the award of



the director having failed to adhere to the conditions of WIBA, this application should be dismissed with costs.

Determination

22. The issues that emerge for determination are whether the court has jurisdiction to address the application seeking adoption of the Directors award under WIBA; and whether there was a work-related accident that justified the invocation of WIBA.
23. On the last issue which establishes the facts herein, the fact of the application being involved in an accident on 18 March 2023 is agreed save for the circumstances. On the one part, under Dosh Form1 dated 5 May 2023, the report to the director was that on 18 March 2023, the applicant, an environment field officer of the respondent had an accident at Grainbulk Terminal. It was noted as follows;
 3. Occupational accident
 - i. date ...
 - ii. Has the worker resumed duty ...?
 - iii. Place where the accident took place: Grainbulk Terminal
 - iv. What is the injured worker's occupation Environment Field Officer?
 - v. What duties was the employee undertaking at the time of the accident? Inspection ...
24. On the other part, immediately after the accident, the applicant filed an accident report on 5 April 2023 and it related to the accident in which a private vehicle Toyota, Reg. KAQ 444D driven by Mr. Aziz Mohamed (Roro Forman) C/No.555020, rammed into a stationary truck along the main Kilindini road adjacent to the regional logistics shed on 18th March 2023 at about 1200 hours.
25. In this report, the applicant noted that,

On 18 March 2023, after hiking a lift from the subject car indicated above, Reg. KAQ 444D, which was driven by Mr. Aziz Mohamed, at the junction of Kapenguria, adjacent to the Petrol filling station. The subject car was coming forklift area and heading towards number 1 Main Gate. ... the driver was driving off the road and I complained ... he returned to the road. ... the car continued to swerve from its lane before it rammed into a stationary parked lorry registration KBH 975H... parked at the roadside at the main Kilindini road.
26. The applicant was in a private car and had an accident outside the workplace.
27. The applicant has since received compensation under the Group Personal Accident which covers any injuries that an employee suffers outside their employment scope. Such fact is not challenged and the payment is effected and a discharge voucher dated 20 November 2023 is evidence of payment.
28. Under Section 23 of WIBA, upon the director receiving notice of an accident, the office is required to inquire as are necessary to decide on liability in accordance with the Act. Section 23(1) of the act requires that;
 23. Inquiry by the Director
 - (1) After having received notice of an accident or having learned that an employee has been injured in an accident the Director shall make such inquiries as are necessary to decide upon any claim or liability in accordance with this Act.



Other than this inquiry, the director is also required to *concurrently* carry out any other investigations concerning the reported accident and where necessary ask the employer or employee to furnish further particulars; Section 23(2) and (3) requires that;

- (2) An inquiry made under subsection (1) may be conducted concurrently with any other investigation.
- (3) An employer or employee shall, at the request of the Director, furnish such further particulars regarding the accident as the Director may require.

What then is an accident under WIBA?

Section 2 of the Act defines an accident to mean;

accident” means an accident arising out of and in the course and scope of an employee’s employment and resulting in personal injury;

29. The inquiry envisaged under Section 23 of WIBA would then reveal that, the applicant was not injured at the Grainbulk Terminal or that the accident occurred while undertaking duties of Inspection.
30. The report made to the director was not correct. Under Section 23(4) of the WIBA, a person who supplies the director with false information commits a criminal act.
31. The applicant in her statement gave the genesis of the accident. It was in a private vehicle, outside work and outside the scope of official duties. For the injuries suffered, compensation has already been addressed to completion.
32. The motions of the director’s inquiry under WIBA are not mechanical. They are not meant to move papers from one office to the next. This is the office entrusted to under the legal duty to provide compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes.
33. The legal duty of the director should not be in tandem with the Act and not otherwise. Save for information provided by the parties seeking compensation for alleged work injuries, the duty to undertake an inquiry and indeed an investigation before issuance of the assessment and award of compensation is imperative. Even where the employer fails to respond to any given matter, the statement of the employee when being assessed is necessary as a background to the assessment of compensation.
34. In a case where the applicant got injured while on board a private vehicle, a proper investigation would have revealed that the subject driver of the private vehicle was charged in court with a traffic offence and fined Ksh.20,000. Did the director follow up with such a matter? If not, the applicant should and ought to have addressed such facts as within it, if indeed the injuries suffered were in the court of duty, the director then should and ought to have applied the motions of Section 17(2) of WIBA. Bring to bear the liability of the third party to take account to the extent of their liability before assigning respondent full liability.
35. Concerning the court jurisdiction, indeed, under WIBA, there is no enforcement mechanism as appreciated by both parties in their submissions. The court is not left without its overriding powers under Article 162(2) of the *Constitution* and Section 12 of the Employment and Labour Relations Court Act, 2011 to enforce the awards of the director under WIBA where properly issued.
36. To this extent, the court has jurisdiction.



- 37. On the award by the Director dated 11 August 2023, the accident on 18 March 2023 was assessed as not work-related as defined under Section 2 of WIBA, the same having been compensated under the respondent's Group Personal Accident cover for injuries suffered outside employment scope, the award is invalid. It cannot be enforced in these proceedings.
- 38. Accordingly, the application dated 27 March 2024 is without merit and is hereby dismissed. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 20TH DAY OF JUNE 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

