



**Ngumbao v Royal Mark Services Ltd (Miscellaneous Cause
E038 of 2023) [2024] KEELRC 1514 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1514 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
MISCELLANEOUS CAUSE E038 OF 2023**

**AK NZEI, J
JUNE 13, 2024**

BETWEEN

NELSON KAHINDI NGUMBAO APPLICANT

AND

ROYAL MARK SERVICES LTD RESPONDENT

RULING

1. The Misc. Cause herein was commenced by the Applicant, Nelson Kahindi Ngumbao, vide a Notice of Motion dated 7/9/2023, which this Court on 2/10/2023 fixed for Ruling on 2/11/2023 on being satisfied that the Respondent herein, Royal Mark services Limited had been duly served.
2. On 11/10/2023, however, the Respondent (hereinafter referred to as the “Respondent/Applicant” filed an evenly dated Notice of Motion under a certificate of urgency, seeking the following orders:-
 - a. that pending hearing and determination of the application, the Court be pleased to arrest the Ruling slated for 2nd November 2023.
 - b. that the Court be pleased to arrest its Ruling slated for 2nd November 2023 and allow the Respondent/Applicant to make its response to the Applicant/Respondent’s application dated 7th September 2023.
 - c. that upon the grant of prayer 3 above, the Respondent/Applicant be granted leave to take out third party proceedings against Pacis Insurance Limited, its Insurer.
 - d. that a new Ruling date do issue upon issuance of the orders sought herein above, and such other directions which the Court may be pleased to grant.
3. The application is based on the supporting affidavit of Joel Otieno Ologa, a Director of the Respondent company, sworn on 11/10/2023. It is deponed in the said affidavit:-



- a. that when the matter herein came up in Court, the Respondent/Applicant was engaged in talks with its insurer towards settling the sum awarded to the Applicant/Respondent.
 - b. that the Respondent/Applicant has a valid insurance cover with Pacis Insurance Company Limited that is required by law to have met the Applicant/Respondent's award.
 - c. that the Insurance company is fully aware of the Applicant/Respondent's award and equally aware of its duty to settle the same.
 - d. that the Respondent/Applicant stands to suffer undue prejudice as it would be prevented from enjoying the rights and benefits conferred upon it by the policy it had taken out to cater for such eventualities.
4. The foregoing is the application before me for determination, and is opposed by the Applicant/Respondent vide his replying affidavit sworn on 25/10/2023. It is deponed in the said replying affidavit:-
- a. that despite having been served with the application dated 7/9/2023 both electronically and physically on 11/9/2023 and 27/9/2023 respectively, the Respondent/Applicant neither entered appearance nor filed response to the application.
 - b. that the Respondent/Applicant's application is incompetent, strange, misconceived both in law and in fact, and serves no practical purposes to the extent that it seeks to arrest the ruling slated for 2/11/2023 and to take out 3rd party proceedings against the Respondent/Applicant's insurers.
 - c. that service is not denied by the Respondent/Applicant, and that in the absence of a draft response to the application dated 7/9/2023, the Court cannot ascertain whether the Respondent/Applicant has a defence in law to warrant exercise of the Court's discretion to arrest the ruling.
 - d. that the present proceedings seek to enforce an award of the Director of Occupational Safety and Health Services, and that it is not open to the Court to consider the merits of the Director's award, or to go on a fact-finding mission since this is the preserve of the Director.
 - e. that once the Director's award is made, the employer is obligated under the law to settle the same under the law within 90 days of the claim. That the award having been made on 27/10/2023, the period of 90 days has since lapsed.
5. Both parties filed written submissions on the application pursuant to this Court's directions in that regard, which I have considered.
6. It ought to be noted, right from the onset, that this Court can only give orders enforcing an award of the Director where such an award has not been objected to and/or appealed against pursuant to Sections 51 and 52 of the [Work Injury Benefits Act](#) (WIBA). This Court cannot be called upon to delve into issues of liability regarding the claim herein as that is the province of the Director under Section 23 of [WIBA](#).
7. The Director's award vests rights on the injured employee, and unless validity and successfully objected to or appealed against pursuant to the relevant provisions of the statute ([WIBA](#)), this Court will give such orders as will enforce the award, and thus facilitate realization by the injured employee of the already vested right.



8. On 26/10/2023, I gave an order recalling the date that I had earlier given for delivery of a Ruling on the Applicant/Respondent's Notice of Motion application dated 7/9/2023. This I did to allow the Respondent/Applicant time to prosecute its Notice of Motion application dated 11/10/2023.
9. Having considered the Respondent/Applicant's said application dated 11/10/2023, it is my finding that the application is without merit, as orders sought therein are not capable of being granted, for reasons stated in this Ruling. The same is hereby dismissed with costs.
10. The Respondent/Applicant may, however, file and serve response to the Applicant/Respondent's Notice of Motion dated 7/9/2023, within 7 days of this Ruling. The said application shall be given a fresh Ruling date.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH 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/Applicant

