



**Ngewa v Moon Plaza Limited & 2 others (Miscellaneous Application  
E221 of 2023) [2024] KEELRC 2366 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2366 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E221 OF 2023  
L NDOLO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**MUTHINI NGEWA ..... APPLICANT**

**AND**

**MOON PLAZA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ABDULLAHI ALI ..... 2<sup>ND</sup> RESPONDENT**

**BOSKO ENGINEERING LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By his Notice of Motion dated 19<sup>th</sup> September 2023, the Applicant seeks orders directing the Respondents to fill the assessment form (ML/DOSH Form 1) for purposes of compensation.
2. The application is supported by the Applicant's own affidavit and is based on the grounds that:
  - a. The Applicant was an employee of the Respondents;
  - b. On 10<sup>th</sup> January 2023, the Applicant was in the lawful course of his employment with the Respondents, cutting metal with a grinder, when a metal particle landed on his left eye, causing it serious impairment;
  - c. The Applicant followed up the claim with the Respondents for purposes of reporting to the Director of Occupational Safety and Health Services and filling of the claim for assessment of his compensation but the Respondents have failed to do so;
  - d. On 13<sup>th</sup> July 2023, the Applicant notified the Director of Occupational Safety and Health Services, for purposes of investigating the matter and compelling the Respondents to fill the assessment form but no solution has been forthcoming to date;



- e. The *Work Injury Benefits Act* does not provide for a civil remedy in the event that the employer declines to fill forms for facilitating assessment of compensation;
  - f. No wrong should be allowed to go without any compensation, if it can be redressed by a court of law;
  - g. Article 159(2) of the *Constitution* of Kenya provides that justice shall be done to all, irrespective of status and justice shall not be delayed;
  - h. the *Constitution* reiterates that justice shall be administered without undue regard to procedural technicalities;
  - i. Article 162(2) of the *Constitution* establishes this Court, with the mandate to hear and determine disputes relating to employment and labour relations;
  - j. It is in the interest of justice that this matter be expedited and the application allowed as prayed.
3. By his application, the Applicant asks the Court to compel the Respondents to complete the DOSH Form 1 to facilitate assessment of an award in his favour. Part IV of the *Work Injury Benefits Act* provides an elaborate procedure for reporting accidents occurring at the workplace. In this regard, Section 21 of the Act provides as follows:
21. Written or verbal notice of any accident provided for in section 22 which occurs during employment shall be given by or on behalf of the employee concerned to the employer and a copy of the written notice or a notice of the verbal notice shall be sent to the Director within twenty-four hours of its occurrence in the case of a fatal accident.
4. Section 22(1) requires that:
- 22(1) Subject to the provisions of this section, an employer shall report an accident to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.
5. Section 24(1) adds the following responsibility on the employee:
- 24(1) An employee who is injured in an accident or his dependant, shall, when reporting the accident or thereafter at the request of the employer or Director, furnish such information and documents as may be prescribed or as the employer or Director may request.
6. An employee who complains that the employer or the Director have failed to facilitate assessment of their claim must themselves demonstrate that they have followed the reporting procedure set out in the *Work Injury Benefits Act*.
7. In the present case, the Applicant, who names three Respondents as employers, did not produce any evidence of having reported the accident as required under the Act.
8. The Applicant's application therefore fails and is disallowed with no order for costs.
9. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY SEPTEMBER 2024.**

**LINNET NDOLO**

**JUDGE**

**Appearance:**



Mr. Muinde for the Applicant

No appearance for the Respondents

