



**Ngilu v Capacity Outsourcing (K) Limited & another (Cause E061 of 2021)  
[2024] KEELRC 2318 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2318 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E061 OF 2021  
M MBARŪ, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**JOSEPH WAMBUA NGILU ..... CLAIMANT**

**AND**

**CAPACITY OUTSOURCING (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY OCCUPATIONAL SAFETY AND HEALTH OFFICER,  
MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The matter proceeded ex parte. The respondents were served but failed to enter the appearance of file any response. The claimant was allowed substituted service, but the respondent failed to attend.
2. The claimant is a male adult. The 1<sup>st</sup> respondent is a limited liability company. The 2<sup>nd</sup> respondent is a public office created under Section 53 of the *Work Injury Benefits Act* (WIBA).
3. The claim is that the claimant was employed by the 1<sup>st</sup> respondent in the year 2019 as a furnace safety supervisor earning Ksh.21, 000 per month. On 17 January 2020, while on duty with the 1<sup>st</sup> respondent, a metal exploded from the furnace causing the hot melted metal to spill out and land on the claimant's left eye. He was taken to Makadara Hospital where he was treated and an operation was conducted leading to the loss of his eye.
4. Following the injury, the 1<sup>st</sup> respondent failed to meet medical bills while the claimant was at home for 77 days for recovery and was only paid his wages.
5. Upon recovery, the claimant learnt that the 1<sup>st</sup> respondent had filed a DOSH form which was assessed and an amount allocated but the 1<sup>st</sup> respondent has failed and refused to disclose these details to the claimant.



6. The claim is that upon the 2<sup>nd</sup> respondent being served with notice of the injury, it conducted a medical examination which concluded that the accident had caused a 30% permanent disability on the claimant's left eye. Despite having a DOSH form and knowing the amount awarded, the 1<sup>st</sup> respondent has failed to pay and or compensate the claimant for the work injury. The 1<sup>st</sup> respondent is in breach of his rights by failing to issue the claimant with the assuagement of the injury and paying due compensation under the WIBA.

The claimant is seeking orders that;

- a. An order compelling the respondents to furnish the claimant with the assessment of the injury and the compensation payable;
- b. An order compelling the 1<sup>st</sup> respondent to settle the claimant as assessed by the 2<sup>nd</sup> respondent if agreeable by the claimant;
- c. Costs of the suit;
- d. Any other relief this court deems fit and just to grant.

7. The claimant testified in support of his claim and reinterested in the orders sought. He has been in the employment as the 1<sup>st</sup> respondent from the year 2019 but on 17 January 2020 he suffered a work injury, he was taken to hospital and an operation was conducted leading to the loss of his left eye. Despite the 1<sup>st</sup> respondent submitting the DOSH form to the 2<sup>nd</sup> respondent for assessment and compensation, the claimant being assessed by a medical officer, the 1<sup>st</sup> respondent has refused to disclose the amount awarded.

8. The claimant testified that he had suffered greatly due to the injury suffered and the failure of the respondent's refusal to disclose to him the WIBA assessment and award. He has been unable to receive any payments due to the breach of his rights by the respondents and the orders sought should be allowed with costs.

The claimant also filed written submissions.

9. The claimant testified that upon work injury on 17 January 2020 DOSH form was submitted to the 2<sup>nd</sup> respondent and an award of Ksh. 660,832.90 was made but the 1<sup>st</sup> respondent refused to pay. Under Section 51 of WIBA, there is no objection filed to the award and hence there should be payment as held in Ahmed Abdullahi Musa v Director of Occupational Safety and Health Services & another [2021] eKLR. Under Section 10(2) of WIBA, an employer is liable to compensate an employee injured while at work and under Section 26(4) of WIBA an employer or insurer for whom a compensation claim is lodged has 90 days to pay which the 1<sup>st</sup> respondent has failed to oblige as held in Richard Akama Nyambane v ICG Maltauro Spa [2020] eKLR.

Determination

10. The claimant is seeking to enforce his rights under WIBA upon being injured at the workplace on 17 January 2020. His pleadings and evidence in court were that the respondents have failed to disclose to him the amounts due upon assessment of his work injuries. In his written submissions, the claimant asserts that the assessment is for payment of Ksh.660, 832.90.

11. The claimant is bound by his pleadings. The respondents have been served and failed to attend. This does not aid justice. The claim as presented before this court is not controverted and the orders sought to be positive under the provisions of WIBA for the respondents to disclose to the claimant the assessed award and to pay the same, this court finds the claim is with merit and is hereby allowed with costs to



be met by the 1<sup>st</sup> respondent as the employer who should have disclosed the payable award as assessed by the 2<sup>nd</sup> respondent.

12. Accordingly, judgment is hereby entered for the claimant against the respondents in the following terms;
- a. An order is hereby issued directing the respondents jointly and severally to furnish the claimant with the assessment of the injury and the compensation payable following his work injury;
  - b. An order is hereby issued against the 1<sup>st</sup> respondent to settle the claim as assessed by the 2<sup>nd</sup> respondent as (a) above;
  - c. The 1<sup>st</sup> respondent to meet costs due to the claimant.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 26 DAY OF SEPTEMBER 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

