



Ngumbao v Royal Mark Services Limited (Miscellaneous Application E038 of 2023) [2024] KEELRC 2688 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2688 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E038 OF 2023**

**M MBARŪ, J
OCTOBER 31, 2024**

BETWEEN

NELSON KAHINDI NGUMBAO APPLICANT

AND

ROYAL MARK SERVICES LIMITED RESPONDENT

RULING

1. The applicant filed an application dated 7 September 2023 seeking orders that
 1. The court be pleased to adopt as a judgment of this court the award of the Director of Occupational Safety and Health Services.
 2. The decree to be issued by the assessment of the Director of Occupational Safety and Health Services for the sum of Ksh.519, 378.33.
 3. This court be pleased to award interest on the amount from the date of assessment until payment in full.
 4. This court be pleased to issue any other and further orders it deems fit to grant to meet the ends of justice.
2. The application is supported by the affidavit of the applicant on the grounds that he was employed by the respondent as a machine operator at a wage of Ksh.17, 000 per month, on 27 July 2021, while the applicant was on duty, he was injured and the incident reported to the Director who assessed the injuries and made an award of Ksh.519, 378.33 in compensation.
3. The applicant avers in his affidavit that the decision and award of the Director was served upon the respondent and no objection or appeal was filed. The respondent has not made payment as required under the *Work Injury Benefits Act* (WIBA). Section 26(4) of WIBA requires the employer of the



insurer to settle a claim once the Director has made an assessment which the respondent has failed to address within 90 days. It is only fair and just that the orders sought to be allowed.

4. There is no reply to this application.
5. The respondent opted to file an application dated 11 October 2023 and the court delivered a ruling on 13 June 2024. In paragraph (8) of the ruling, the court directed parties to address this instant application dated 7 September 2023.

Determination

6. At the core of this application is the adoption of the Director's award of 27 April 2023 where the applicant's was awarded Ksh.519, 378.33 for work injuries while working for the respondent.
under Article 162(2) (a) of *the Constitution* and Section 12 of the *Employment and Labour Relations Court Act*, the court has inherent jurisdiction to adopt as a judgment the Director's award for purposes of execution. See Samson Chweya Mwendabole v Protective Custody Limited [2021] KEELRC 1809 (KLR); Elijah Kisyanga Ndende v Manager Zahkem International Construction Ltd [2022] KEELRC 383 (KLR); and Odhiambo & another v Quale Holdings Ltd t/a Guyana Guest House [2022] KEELRC 13010 (KLR)
7. In this case, there is no contest that the applicant was injured while at work, the same was reported to the Director who assessed and awarded compensation. There is no award payment by the respondent as the employer. It is acknowledged that under Sections 7 and 10 of WIBA, the employer should take insurance cover for its injured employees. The employer should be addressed within the provisions of WIBA. Where there is an award, the employer should endeavour to report to the insurance company where a cover is taken, and such award payment is processed accordingly without prejudice to the employee.
8. In this case, the court finds merit in the application dated 7 September 2023 and is hereby allowed in the following terms;
 - a. The award of the Director dated 27 April 2023 is hereby adopted as the judgment of the court;
 - b. The sum of Ksh.519,378.33 is payable to the applicant by the respondent;
 - c. The applicant is awarded the costs of these proceedings.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 31ST DAY OF OCTOBER 2024.

M. MBARŪ

JUDGE

