



**Suleiman v Bahari (T) Company Limited (Miscellaneous Application
E035 of 2024) [2024] KEELRC 2631 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2631 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E035 OF 2024**

**AK NZEI, J
OCTOBER 25, 2024**

BETWEEN

OMAR JUMA SULEIMAN APPLICANT

AND

BAHARI (T) COMPANY LIMITED RESPONDENT

RULING

1. The application before me is the Applicant's Notice of Motion dated 26th March, 2024, expressed to be brought under Sections 10(1)(2) and 26(4) and (6) of the [Work Injury Benefits Act](#). The Applicant seeks the following orders:-
 - a. That the Court be pleased to adopt the assessment of the Director of Occupational Safety and Health Services as a Judgment of the Court.
 - b. That a decree be issued in accordance with the assessment of the Director of Occupational Safety and Health for the sum of Kshs 122,591/=, plus interest at court rates of Kshs 7,355.46 from 15th September, 2023.
 - c. That costs of the application be paid by the Respondent.
2. The application is based on the Applicant's supporting affidavit sworn on 26th March, 2024. It is deponed in the said supporting affidavit:-
 - a. That the Applicant was employed by the Respondent as a security guard. That while working for the Respondent on 22nd September, 2022, the Applicant was involved in an accident whereby he sustained severe injuries.
 - b. That the accident was reported to the Director of Occupational Safety and Health Services Mombasa and a DOSH Form 1 was filled.



- c. That subsequently, an assessment of Kshs 122,591/= was made by the Director; and a DOSH/WIBA 4 Form was served on the Respondent on the said date. That sixty (60) days have lapsed since the said date, and the Respondent has refused to pay the Applicant.
 - d. That the Director's decision has not been objected to or appealed.
 - e. That the Applicant issued a demand notice on 13th March, 2024, but the Respondent still refused to pay.
3. Documents annexed to the Applicant's said supporting affidavit included DOSH Form 1, DOSH/WIBA 4 and a demand letter dated 13th March, 2024, among others.
 4. The Respondent opposed the application vide grounds of opposition dated 6th May, 2024. The Respondent stated in the said grounds of opposition, inter alia, that the application is frivolous, incompetent and does not disclose any reasonable cause of action.
 5. The *Work Injury Benefits Act* (WIBA) is silent on how awards of compensation by the Director of Occupational Safety and Health Services to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not divest this Court of jurisdiction to enforce such awards; and especially where the Director's decision awarding the compensation has not been objected to and the employer has refused to pay the assessed compensation upon demand.
 6. I stated as follows in the case of *Amir Swaleh Omar v Mackezie Maritime (E.A) Limited* (2022) eKLR:-

“ 17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of *WIBA*, the assessed sum becomes the injured employee's right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director's assessment, and issuance of a decree which can then be executed to realise that right.

19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine. Article 50(1) of the *Constitution* of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing



before a court, or if appropriate, another independent and impartial tribunal or body.”

7. Pursuant to Article 162(2)(a) of the *Constitution* of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations disputes except where that jurisdiction has been expressly ousted by the statute over particular matters specified in that statute. A good example of such statutory provisions is Section 16 of the *Work Injury Benefits Act* (WIBA) which ousts this Court’s jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 of the said Act (WIBA) mandates the Director to make such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.
8. Rule 38 of the *Employment and Labour Relations Court (Procedure) Rules 2016* (now repealed) provided as follows:-

“Subject to these Rules, the Court may regulate its own procedure.”

9. In view of the fact that the Respondent is not shown to have objected to the Director’s decision, either on liability or on the amount of compensation payable to the Applicant pursuant to Section 51 of *WIBA*, and having considered written submissions filed on behalf of both parties herein, it is my finding that the Notice of Motion dated 26th March, 2024 is properly before this Court, and that it is merited.
10. Consequently, the said application is allowed in the following terms:-
 - a. The award by the Director of Occupational Safety and Health Services made on 15th September, 2023 in favour of the Applicant herein is hereby adopted as a Judgment of this Court and, accordingly, Judgment is hereby entered for the Applicant against the Respondent in the sum of Kshs 122,591/= being the amount assessed and awarded by the Director.
 - b. A decree shall issue, and shall be executed in the manner provided in this Court’s Rules of Procedure.
 - c. Interest on the decreed sum shall be calculated at Court rates from the date of this Ruling.
 - d. Each party shall bear its own costs of the application.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 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.

Appearance:

.....Applicant

.....Respondent

