



**Nyahi v Kenya Ports Authority (Miscellaneous Application E058 of 2024) [2024] KEELRC 2457 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2457 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E058 OF 2024**

**M MBARŪ, J  
OCTOBER 11, 2024**

**BETWEEN**

**OMAR SALIM NYAHI ..... APPLICANT**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

**RULING**

1. The ruling herein relates to an application dated 19 June 2024 seeking orders that the court to adopt as the judgment, the assessed award of the Director of Occupational Safety and Health (Director) made on 29 September 2023.
2. The applicant is also seeking that a decree be issued for the sum of Ksh.1, 490,366.40 being the director’s award made on 29 September 2023 with compound interests at court rates from the date of the award until paid in full.
3. The application is supported by the affidavit of the applicant on the grounds that he is employed by the respondent as a Docker and on November 1, 2022 he sustained injuries at work. The incident was reported to the Director and upon assessment, he was found to have suffered 15% incapacity. On 29 September 2023 the applicant was issued with an award of Ksh.1, 490,366.40 and the respondent was notified to make payment within 90 days to allow the Director to remit to the applicant.
4. In his affidavit, the applicant aver that upon the Director issuing notice to the respondent, they had 60 days to file objections or an appeal which they failed to address. Through a letter dated 17 April 2024, the Director demanded that the respondent settle the award within 7 days but there was no compliance.
5. Whereas Section 26(4) of the *Work Injury Benefits Act* (WIBA) requires that payment should be made within 90 days, the respondent failed to address this. The respondent failed to settle the award in accordance with Section 26(4) of *WIBA* and is hence liable to a fine not exceeding Ksh.500, 000 or imprisonment or both.



6. Unless the court directs the respondent to settle the award as a judgment of the court, the applicant will suffer loss and damage and be prejudiced by the conduct of the respondent.
7. In reply to the application, the respondent filed the Replying Affidavit of Mary Ng'ang'a Legal Officer of M/S Jubilee Allianz Insurance Company Limited, the insurers of the respondent. She avers that the applicant is abusing of court process as he seeks to enforce an award that has already been settled. He was injured on November 1, 2022 while at the respondent's premises where his claim was assessed by the Director, Kwale County and settled.
8. The Director assessed the applicant's injuries and made an award of Ksh.1, 490,366.40 based on 15% permanent incapacity. The respondent formally contested the award predicated on a 15% permanent incapacity and proposed a re-evaluation assessed by Dr. M.S. Malik to ascertain the degree of incapacity hence challenging the initial assessment and award. The second assessment established a 10% permanent incapacity upon which an award of Ksh.1, 051,672 was issued to this effect. The instant application should be dismissed as the applicant has failed to disclose the payment made in the settlement.

Both parties attended court and made oral submissions.

9. The applicant supported the application and that the assessment of the Director has not been settled and as the Advocate attending, there is no communication upon demand. The response by the respondent is done by a third party and not an officer of the respondent and should be dismissed. The alleged settlement of the award has not been communicated to the applicant's advocate hence there is no payment.
10. The respondent submitted that parties were keen to record a consent. No Consent was filed.

### **Determination**

11. Whereas the applicant has filed this application on the basis that the respondent has failed to pay the award assessed by the Director, Mombasa County, the respondent through the Replying Affidavit of Mary Ng'ang'a avers that the claim has since been settled after the applicant's work injuries were reported and assessed by the Director, Kwale County.  
This is a major disparity relating to this application.
12. Where the applicant is partially paid or paid in full, his Further Affidavit would have addressed the averments made by the respondent.
13. The provisions of Section 7 of WIBA allow an employer to secure its employees by taking insurance cover for work injuries. Where Jubilee Allianz Insurance Company Limited has made payments to the applicant without the knowledge of the Director, such should be addressed accordingly and outside these proceedings. Where there is no payment as alleged by the respondent, the applicant is allowed to address.
14. The basis of WIBA is to secure an employee who is injured at work. Upon assessment and an award is made, the employer is required to make payment for the benefit of the employee injured at work. The demand letters from the Director, Mombasa County and the assessment stated under oath by the respondent to have settled the award from the Director, Kwale County must be rationalized. Taking account is necessary.
15. Where the respondent's claims are not justified, the averments by Ng'ang'a as a Legal Officer must be addressed.



16. The record before the court, the application dated 19 June 2024 is declined and no orders on costs.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 11 DAY OF OCTOBER 2024.**

**M. MBARŪ**

**JUDGE**

