



**Abdi v Teachers Service Commission (Miscellaneous Application  
E027 of 2024) [2024] KEELRC 2439 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2439 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E027 OF 2024**

**J RIKA, J**

**OCTOBER 4, 2024**

**BETWEEN**

**BILLOW MAALIM ABDI ..... APPLICANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. The Applicant seeks, through his Application dated 6<sup>th</sup> February 2024, an order that the Court adopts as its Judgment, the award of the Director of Occupational Safety and Health [DOSH], dated 30<sup>th</sup> May 2023.
2. He was awarded Kshs. 4,838,400 for work injury.
3. This Court ruled in *Lameck Nyakundi Anyona v. W.J.J. Kenya Construction Company Limited* [2022] eKLR, in a similar Application, that it does not have jurisdiction to adopt an award of the Director, DOSH, [also called Director Work Injury], as its Judgment.
4. Section 52 [2] of the *Work Injury Benefits Act*, only allows the E&LRC to exercise appellate jurisdiction, in Appeals arising out of awards of the Director.
5. Jurisdiction is appellate, as underscored by the Court of Appeal in *Attorney-General v. Law Society of Kenya & Another* [2017] eKLR.
6. Decisions of Superior Courts, such as Supreme Court in *Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, and Court of Appeal in *Rift Valley Railways [Kenya] Limited v. Hawkins Wagunza Musonye & Another* [2016] eKLR, restate that jurisdiction is everything, and is given by the *Constitution* or the Statute.



7. There are decisions of the E&LRC on the subject, which have acknowledged that there is a lacuna in the enforcement mechanism of the work injury awards of the Director, and assumed jurisdiction, to bridge that lacuna.
8. But, the decisions of Superior Courts above, emphasize that a Court can only exercise jurisdiction as given by the Constitution or Statute. It is not permitted by this case-law, for a Court to exercise jurisdiction it does not have, in the interest of justice; or to enable litigants access to justice; or to fill a lacuna, as has been argued in some of our Court's decisions. There is no provision for the Court to step in, to fill a legislative lacuna. The 2 Superior Courts' decisions cited at paragraph 6 above, characterize such stepping in, to amount to judicial craft and innovation.
9. Individual Courts must determine whether they have jurisdiction in a matter, under the doctrine of competence-competence. Where the Court is persuaded, or even apprehends, that it does not have jurisdiction, it must not exercise illusory jurisdiction. It must avoid acting on the strength of judicial craft and innovation.

It is ordered: -

- a. The Application dated 6<sup>th</sup> February 2024 is declined for want of jurisdiction.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 4<sup>TH</sup> DAY OF OCTOBER 2024.**

**James Rika**

**Judge**

