



Gonda v Indo Kenya Petrochemicals Limited (Miscellaneous Application E026 of 2024) [2024] KEELRC 13213 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13213 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E026 OF 2024**

**AK NZEI, J
NOVEMBER 22, 2024**

BETWEEN

MOSES CHIRANZI GONDA APPLICANT

AND

INDO KENYA PETROCHEMICALS LIMITED RESPONDENT

RULING

1. The application before me is the Applicant's Notice of Motion dated 1st March, 2024 and expressed to be brought under Sections 10(1)(2) and 26(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 an Order of the Court, and do compel the Respondent to pay a sum of Kshs.165,775/= being the outstanding balance from the total award made by the Director of Occupational Safety and Health Services.
 - b. That a decree be issued in accordance with the assessment of the Director, for a sum of Kshs.165,775/= plus interest of Kshs.40,615/=.
 - c. That costs of the application, being Kshs.65,000/=, be paid by the Respondent.
2. The application is based on the Applicant's supporting affidavit sworn on 1st March, 2024. It is deponed in the said affidavit:-
 - a. that the Applicant was on 2nd August, 2022 involved in an accident while working for the Respondent.
 - b. that the accident was reported to the Director of Occupational Safety and Health Services (Director), and compensation payable to the Applicant was assessed at Kshs.435,600/=.



- c. that pursuant to discussions between the Respondent and her insurers, it was agreed (between the two) that the insurer would pay Kshs.269,825/=, while the Respondent would pay Kshs.165,775/=.
 - d. that on 3rd August, 2023, the Applicant executed an agreement with the Respondent whereby the Applicant was supposed to be paid Kshs.435,500/=.
 - e. that the Respondent's insurers subsequently paid Kshs.269,825/= to the Applicant as agreed, upon which the Applicant signed a discharge voucher on 29th May, 2023 and a certificate of payment on 3rd August, 2023 (before the Labour Officer) regarding the aforesaid sum paid by the Respondent's insurers.
 - f. that the Respondent did not pay the sum of Kshs.165,775/= which it was supposed to pay in person, despite the agreement to pay.
3. Documents annexed to the Applicant's supporting affidavit include a Certificate of Payment, duly executed by the Applicant and the Respondent on 3rd August, 2023 and witnessed by the County Occupational Safety and Health Officer, Kilifi (Malindi Station). The said Certificate of Payment does not state that the sum paid to the Applicant, Kshs.269,825/=, was a part-payment of the sum of compensation assessed by the Director of Occupational Safety and Health Services. Indeed, the said document states that the sum paid, Kshs.269,825/=, was the compensation due.
 4. Nothing has been placed before this Court indicating that compensation payable was at any given time assessed at Kshs.435,600/=, not even a copy of the all important Form DOSH/WIBA 4.
 5. The application is opposed by the Respondent vide a replying affidavit of Pandya Shubham Nileshkumar sworn on 20th May, 2024. It is deponed in the said replying affidavit that all the money due to the Applicant was paid.
 6. In the absence of any form of evidence demonstrating that compensation payable to the Applicant was assessed by the Director of Occupational Safety and Health Services at Kshs.435,600/= and that only part of that amount was paid to the Applicant by the Respondent and/or its insurers, I find no merit in the Applicant's application.
 7. Consequently, the Applicant's Notice of Motion dated 1st March, 2024 must fail, and is hereby dismissed with no Order as to costs.
 8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 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.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Applicant



.....Respondent

