



REPUBLIC OF KENYA



Mwangi (The legal representative of the Estate of William Ikaba Kago - Deceased) v Uplands Premium Dairies and Foods Ltd (Miscellaneous Cause E174 of 2024) [2024] KEELRC 13285 (KLR) (21 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13285 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E174 OF 2024
S RADIDO, J
NOVEMBER 21, 2024**

BETWEEN

MONICA WANJIKU MWANGI (THE LEGAL REPRESENTATIVE OF THE ESTATE OF WILLIAM IKABA KAGO - DECEASED) APPLICANT

AND

UPLANDS PREMIUM DAIRIES AND FOODS LTD RESPONDENT

RULING

1. On a date which is not clear but stated to be in May 2023, the Director of Occupational Safety and Health assessed compensation due to the estate of William Ikaba Kago under the [Work Injury Benefits Act](#).
2. Consequently, on 21 May 2024, the Principal Magistrates Court at Githunguri issued a Limited Grant Ad Litem under section 54 and the 5th Schedule of the Succession Act to Monica Wanjiku Mwangi (the applicant).
3. The applicant has now moved the Court seeking orders:
 - i. ...
 - ii. The Honourable Court does enter judgment for the applicant for Kshs 3,840,000/- based on the award of the Directorate of Occupational Health and Safety, Thika.
 - iii. The costs for the application for Letters of Administration Ad Litem.
 - iv. The costs of this application.
 - v. Interest on the award at court rates from the date of the assessment by the Directorate of Occupational Safety and Health, Thika.



- vi. Such other or further relief as this Honourable Court may deem just to grant.
4. Upon service of the application, the Respondent filed a Notice of Preliminary Objection on 9 July 2024, contending:
 - i. That this Honourable Court lacks jurisdiction to hear and determine the application herein.
 - ii. Therefore, the applicant's application dated 10th June 2024 should be dismissed with costs to the Respondent.
5. Pursuant to directions issued on 15 October 2024, the Respondent filed its submissions on 18 November 2024 (should have been filed and served before 25 October 2024), and the applicant on 5 November 2024.
6. The Court has considered the Notice of Preliminary Objection and submissions.
7. In opposition to the Preliminary Objection, the applicant urged that the proper course of action for the Respondent was to lodge an objection with the Director of Occupational Safety and Health within 60 days of his assessment as outlined in section 51(1) of the [Work Injury Benefits Act](#), but no objection was lodged.
8. Consequently, the applicant urged the Court to consider the holdings in [Elijah Kisyanga Ndende v Manager Zabkem International Construction Ltd](#) (2022) KEELRC 383 (KLR); [Joash Shisia Cheto v Thepot Patrick Charles](#) (2022) KEELRC 478 (KLR); [Omollo v Securex Agencies \(K\) Limited](#) (2024) KEELRC 2540 (KLR) and [Luvinzu v Timsales Limited](#) (2024) KEELRC 857 (KLR) and find that it had jurisdiction.
9. The Director of Occupational Safety and Health does not have the mandate to enforce implementation and or enforcement of compensation after an assessment.
10. The [Work Injury Benefits Act](#) envisages a dissatisfied party lodging an objection against an assessment within 60 days. The Respondent did not lodge an objection.
11. The applicant is entitled, as the legal representative of the deceased employee of the Respondent to realise the compensation.
12. The law and this Court cannot countenance a situation where such a party is left without remedy after the Director has performed his statutory duty.
13. The Court, therefore, finds the Notice of Preliminary Objection without merit with the result that there is no legal hindrance to allowing the Motion dated 10 June 2024.

Orders

14. The Court finds and declares:
 - i. The Notice of Preliminary Objection dated 9 July 2024 is found without merit.
 - ii. Judgment is entered for the applicant in the sum of Kshs 3,840,000/- together with interest from 1 June 2023.
15. The applicant to have the costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 21ST DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCIARB



JUDGE

Appearances

For Applicant KNM Law Associates LLP

For Respondent D. Muinde & Associates

Court Assistant Wangu

