



Matheka v Intercontinental Consultants & Technocrats PVT Limited (Miscellaneous Application E173 of 2024) [2024] KEELRC 2801 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2801 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E173 OF 2024**

**L NDOLO, J
NOVEMBER 14, 2024**

BETWEEN

MARGARET MUMBUA MATHEKA APPLICANT

AND

**INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT
LIMITED RESPONDENT**

RULING

1. By her Notice of Motion dated 7th June 2024, the Applicant seeks orders directing the Respondent to pay to her the sum of Kshs. 2,500,615 as awarded by the Director of Occupational Safety and Health Services on 22nd November 2021 and Kshs. 58,050 for treatment, plus costs and interest.
2. The Motion is supported by the Applicant's own affidavit and is based on the grounds that:
 - a. The Applicant, who was an employee of the Respondent, was injured at work on 2nd June 2021;
 - b. Upon being injured, the Applicant informed the Respondent of the accident and was released to seek medical attention;
 - c. The Applicant sought treatment and upon her return to work, she asked for compensation and refund of treatment costs but the Respondent did not oblige;
 - d. The Applicant spent Kshs. 58,050 in the course of treatment;
 - e. The Applicant recorded the injury and the necessary documentation with the Director of Occupational Safety and Health Services, upon which an assessment was done and an award issued on 22nd November 2021;
 - f. The Applicant was found to have a fracture on her right ankle and was assessed at 5% permanent disability;



- g. The Director awarded the Applicant Kshs. 2,500,615 as compensation on the basis of wages of Kshs. 42,000 per month at 96 months, with 5% disability.
3. The Respondent opposes the application by a replying affidavit sworn by its General Manager, Geoffrey Kamau on 24th July 2024.
 4. Kamau depones that the Applicant had been engaged by the Respondent as an Independent Consultant Sociologist and not as an employee of the Company. He points out that the Respondent did not exercise any form of control over the Applicant who was paid on the basis of invoices for days worked.
 5. The Respondent asserts that the Applicant was not covered under its medical cover or employee insurance scheme.
 6. Kamau admits being aware that the Applicant had lodged a claim with the Director of Occupational Safety and Health Services. He accuses the Director of making an assessment on the basis of DOSH Form 1 filled by an unauthorised person, without conducting any investigations or inquiry into the claim, as required under Section 23 of the *Work Injury Benefits Act*.
 7. According to Kamau, the award by the Director was not served on the Respondent. He adds that the claim is statute barred.
 8. The parties urged their respective positions by way of written submissions. The issue of the jurisdiction of this Court to entertain the application has been raised and this being a core issue, I will deal with it first.
 9. The Respondent submits that the Court has no primary jurisdiction under the *Work Injury Benefits Act*. In pursuing this argument, the Respondent relies on the decision in *Musembi v Great Yaddo Industry Limited* (Miscellaneous Case E080 of 2022 [2022] KEELRC 13025 (KLR) (1 November 2022) (Ruling) where it was held that the Employment and Labour Relations Court exercises appellate jurisdiction under the provisions of the *Work Injury Benefits Act*.
 10. A similar conclusion was made in *Seme v Sino Hydro Corporation Engineering Bureau* 15 Co. Ltd (K) (Miscellaneous Case E009 of 2023 [2024] KEELRC 519 (KLR) (7 March 2024) (Ruling) where the Court stated as follows:

“...purposeful interpretation of the execution of the award of the Director would point to the fact that this Court cannot adopt the Director’s award thus confirming it as the order of ELRC and thereafter change tact and sit as an appeal court where appeals are raised against the award adopted.”
 11. I hold a similar view on this issue. In my decision in *Akhonya (suing as the Administrator of the Estate of Brian Mutambi Amakobe) (Deceased) v Uburu Heights Limited* (Miscellaneous Application E148 of 2023 [2024] KEELRC 244 (KLR) (15 February 2024) (Ruling) I stated that:

“As far as work injury claims are concerned, the only jurisdiction granted to the Employment and Labour Relations Court is appellate and there can be no room to expand this jurisdiction to cover issues which arise in the course of processing of claims before the Director.”
 12. In light of the foregoing jurisprudence, I find and hold that this Court lacks jurisdiction to grant the orders sought by the Applicant.



13. The application dated 7th June 2024 is therefore declined with an order that each party will bear their own costs.

14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Kihara for the Applicant

Mr. Keiro for the Respondent

