



**Ojango v Kenya Revenue Authority (Miscellaneous Application
E049 of 2024) [2024] KEELRC 2767 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2767 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E049 OF 2024**

AK NZEI, J

NOVEMBER 8, 2024

BETWEEN

MARCUS GURVEY OJANGO APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

1. On 24th May, 2024, the Applicant herein filed a Notice of Motion dated 23rd May, 2024 seeking the following Orders:-
 - a. That the court be pleased to adopt as Judgment of the Court the award of the Director of Occupational Safety and Health Services (Kwale) made on 10th May, 2023.
 - b. That a decree do issue for:-
 - i. The sum of Kshs.2,880,666.67 being the Director’s award/assessment made on 10th May, 2023; and
 - ii. Compound interest thereon at court rates from the date of the award (10th May, 2023) until payment in full.
2. Annexed to the Applicant’s affidavit sworn on 23rd May, 2024 in support of the application are copies of several documents.
3. On 10th June, 2024, the Respondent filed a Notice of Preliminary Objection dated 5th June, 2024, and called for the Applicant’s application to be struck off on grounds:-
 - a. That the application is improperly before this Court.
 - b. That the Court has no Jurisdiction to enforce decisions arising from the Director of Safety and Health (DOSHA) – (*sic*).



4. On 10th June, 2024, I directed that the preliminary objection be heard first, and directed that written submissions thereon be filed.
5. It is worthy noting that the *Work Injury Benefits Act* (WIBA) is silent on how awards of compensation made by the Director of Occupational Safety and Health Services (Director) to employees who suffer work injuries or occupational deceases are to be enforced. At the same time, the said Act does not oust this Court's Jurisdiction to enforce such awards; and especially where the Director's decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act has not been objected to pursuant to Section 51 of the *Act* (WIBA), or has been objected to and the objections and/or appeals have been determined in favour of the injured employee, and the employer has refused to pay.
6. Pursuant to Article 162(2)(a) of the *Constitution of Kenya* 2010, this Court has inherent jurisdiction over all employment and labour relations disputes and/or matters, except where that jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such statutory provision is Section 16 of the *Work Injury Benefits Act* (WIBA) which ousts Courts' jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such enquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the *Act* make provision on assessment of compensation by the Director.
7. I stated as follows in the case of *Amir Swaleb Omar v Mackezie Maritime (E.A) Limited* (2022) eKLR:-
 - “ 17. The *Act* (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the *Act* does not expressly divest this court of jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.
 18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of *WIBA*, the assessed sum becomes the injured employee's right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the Director's assessment, and issuance of a decree which can then be executed to realise that right.
 19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a



dispute over a liquidated claim, which this court can entertain and determine.
Article 50(1) of the Constitution of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”

8. I will not belabour the point. This court has jurisdiction to enforce awards of compensation made by the Director, and which are not the subject of objections or appeals pursuant to Sections 51 and 52 of the WIBA, or where objections have been made and have been determined by the Director in favour of an employee, and the determination is not the subject of an appeal to this court pursuant to Section 52(1) of the Act (WIBA).
9. In sum, and having considered written submissions filed on behalf of both parties herein, I find no merit in the Respondent’s preliminary objection, and the same is hereby dismissed with costs to the Applicant.
10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH 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

