



Midega v Kenya Electricity Generating Company Limited (Judicial Review Miscellaneous Application E148 of 2024) [2024] KEELRC 2720 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2720 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E148 OF 2024**

L NDOLO, J

NOVEMBER 7, 2024

BETWEEN

JOHN OUMA MIDEGA APPLICANT

AND

KENYA ELECTRICITY GENERATING COMPANY LIMITED ... RESPONDENT

RULING

1. This ruling disposes of the Respondent’s Preliminary Objection brought by notice dated 19th July 2024. The substance of the Objection is that:
 - a. This Court lacks primary jurisdiction to hear and determine the application dated 6th May 2024;
 - b. The application is defective pursuant to the holding of the Court in Edwin Songoroh & another v Amony Koech Yatich & another [2021] eKLR where it was held that an award by the Director of Occupational Safety and Health Services can be adopted by either the Magistrates Court or the Employment and Labour Relations Court subject to considerations of pecuniary jurisdiction vis-a-vis the dispute at hand;
 - c. Section 5 of the Magistrates Court Act stipulates the pecuniary jurisdiction of Magistrates Courts with respect to civil claims. This dispute falls within the pecuniary jurisdiction of the Senior Principal Magistrates Court;
 - d. The application is further defective pursuant to the holding in Seme v Sino Hydro Corporation Engineering Bureau 15 Co. Ltd (K) (Miscellaneous Application E009 of 2023) [2024] KEELRC 517 (KLR) (7 March 2024) (Ruling). The Court does not have the jurisdiction to adopt the decision of the Director.



2. The major ground of the Respondent’s Preliminary Objection is that this Court lacks primary jurisdiction in work injury matters. This issue has been the subject of several decisions from this Court (variously constituted). In *Lameck Nyakundi Anyona v W.J.J Kenya Construction Company Limited* [2022] eKLR it was held that:

“There is no provision of the law, in the *Work Injury Benefits Act*, the *Employment and Labour Relations Court Act*, or the *Employment Act*, which allows the Court to enforce the compensatory awards of the Director of Work Injury.”

3. A similar conclusion was made in *Peter Mutua Kaloki v China State Construction & Engineering Corp* (Kenya) and another [2022] eKLR where it was stated:

“There is no provision for E&LRC to adopt an award of the Director as its Judgment. Such adoption ultimately leads to a Judgment and Decree issued by the E&LRC, which Court does not have primary jurisdiction in work injury compensation.”

4. In *Akhonya (suing as the Administrator of the Estate of Brian Mutambi Amakobe) (Deceased) v Uhuru Heights Limited* (Miscellaneous Application E148 of 2023 [2024] KEELRC 244 (KLR) (15 February 2024) (Ruling) I stated the following:

“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.”

5. I have no reason to change my position on this matter. My finding is that the Court has no jurisdiction to deal with the application dated 6th May 2024. Consequently, the Respondent’s Preliminary Objection is upheld and the Applicant’s application is struck out with an order that each party will bear their own costs.

6. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF NOVEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Githinji for the Applicant

Mr. Njuguna for the Respondent

