



Mutuma v China State Construction Engineering Corporation (Kenya) Limited (Miscellaneous Cause E008 of 2024) [2024] KEELRC 13544 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13544 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS CAUSE E008 OF 2024
ON MAKAU, J
DECEMBER 20, 2024**

BETWEEN

SIMON MUTUMA APPLICANT

AND

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (KENYA)
LIMITED RESPONDENT**

RULING

Background

1. The applicant has filed a notice of motion dated 10th September 2024 seeking the following orders: -
 1. That this Honourable Court be pleased to make a declaration that the Respondent pay the claimant the award amount of Kshs201,344.00 being the compensation award by the Director of Occupational Safety and Health Services to the claimant.
 2. That the compensation of Kshs.201,344.00 by the Director of Occupational Safety and Health Services to the claimant be adopted as the judgment of this court.
 3. That costs of the application be paid by the Respondent.
 4. Interest on prayer 2 and 3 above.
2. The motion is supported by applicant's own affidavit sworn on even date and it is opposed by the respondent vide a Replying Affidavit sworn on 24th October 2024 by its HR Manager Mr.Raphael Ooko Ayimba. It also filed notice of preliminary objection on grounds of jurisdiction.
3. The applicant's case is that he was employed by the respondent as a carpenter and in February, 2023 he was injured while in the course of his employment. He was treated at Nyambene Hospital, Maua, Meru County and thereafter the Director of Occupational Safety and Health (DOSHS) assessed his



compensation at Kshs.201,344. Despite demand for payment by the DOSH, the respondent neither paid nor challenged the award as prescribed by WIBA. Hence the application should be allowed as prayed.

4. The respondent's case is that the court lacks jurisdiction to enforce the award by DOSH because Section 52(2) of *Work Injury Benefits Act* only clothes the court with appellate jurisdiction only. Besides, the respondent avers that the applicant was not its employee but he was employed by respondent's sub-contractor.
5. The application was argued orally by counsels for the two sides on 4th November 2024 in the open court. I have considered the affidavits and submissions presented by both sides. The issues for determination are: -
 - a. Whether the court lacks jurisdiction.
 - b. Whether the application should be allowed.

Jurisdiction

6. Article 162 (2)(a) of *the Constitution* as read with section 12 of the *Employment and Labour Relations* (ELRC) Act gives this court unlimited original and appellate jurisdiction on Employment and Labour Relations disputes. The matter before the court now is neither an appeal under section 52 of the *WIBA* nor a suit but a special jurisdiction to ensure access to justice. It is a non-litigious process under section 12 of the *ELRC Act* for enforcement of the awards made in alternative statutory mechanism. Consequently, only this court with unlimited power in employment and labour disputes is clothed with the power to entertain and enforce such awards.

Merits of the motion

7. The respondent has not disputed the degree of injuries suffered or quantum of damages awarded by the DOSH. However, it denied the employment relationship between it and the applicant.
8. In response, the applicant contended the DOSH satisfied himself about the employment relationship between the parties herein before assessing the quantum of damages. He contended that a Mr. Benson Amunabi had filled section 4 of DOSH Form 4 on behalf of the respondent as the employer. Consequently, he maintained that he was employed by the respondent when he suffered the bodily injuries.
9. I have considered the evidence and the oral submissions and especially DOSH Form 1 part 1 which gives details of the applicant's employer and the cause of the injury. The form was filled by Mr. Benson Amunabi, respondent's OHS Officer on 13th December 2023. It gives the particulars of the employee as the applicant who was employed as carpenter and was injured at LOT 1 Main Composite when a bag of cement fell on his right leg. The accident occurred on 3rd February 2023 at 13.00 hours and the nature of the injury was fracture of the right leg fibula distal. The form bears the stamp of the respondent on paragraph 5 of the DOSH Form 1 to authenticate the applicant's monthly earnings of Kshs.20,800.00.
10. Section 2 of the *Employment Act*, 2007 defines an employee as person employed under a contract of service for wages or salary. The information provided in DOSH Form 1 above is sufficient proof that the applicant was injured while in the course of employment by the respondent on 3rd February, 2023.
11. Having noted that the nature of injuries and the quantum of damages is neither disputed nor settled, I find merits in the motion dated 10th September 2024 and allow it in terms of prayer 2, 3 and 4.



DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER, 2024.

ONESMUS N MAKAU

JUDGE

ORDEr

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

