



REPUBLIC OF KENYA



KENYA LAW
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**Zakayo v Timafloor Limited (Miscellaneous Cause E005 of 2024)
[2024] KEELRC 13522 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13522 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS CAUSE E005 OF 2024
ON MAKAU, J
DECEMBER 20, 2024**

BETWEEN

ABRAHAM ZAKAYO APPLICANT

AND

TIMAFLOR LIMITED RESPONDENT

RULING

1. This ruling relates to the Applicant's Notice of Motion dated 6th May 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 Kshs.638,214.05 being the compensation award by the Director of Occupational Safety and Health Services to the claimant.
 2. That the compensation of Kshs.638,214.05 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 above.
2. The application is supported by the applicant's Affidavit sworn on the same date and it is opposed by the respondent vide a Replying Affidavit sworn on 20th July 2024 by one Cheryl Odipo, Legal Officer of the respondent's Insurer (UAP Old Mutual Insurance Company Limited).
3. The applicant's case is that on 16th March 2022, he was involved in an accident while in the course of his employment by the respondent and received serious bodily injuries. He was treated and thereafter the Director Occupational Safety and Health, Meru assessed his compensation at Kshs.638,214.05. The respondent was notified by a demand dated 13th February 2024 but it neither paid nor challenged the award of Kshs.638,214.05 hence, the application should be allowed.



4. The respondent's case is that after the award of Kshs.638,214.05 by the DOSH, it referred the applicant to a second medical opinion which reviewed his disability and the award reduced to Kshs.370,225.00. Subsequently, it paid the applicant as per the Discharge Voucher marked Ex 1 (Not annexed to the Affidavit). Consequently, the respondent contended that the application is a non-starter and should be dismissed with costs. Besides, the court lacks jurisdiction to entertain the motion.
5. Both sides filed written submissions which I have considered herein. The issues for determination are: -
 - a. Whether the court lacks jurisdiction to entertain the application.
 - b. Whether the application should be granted as prayed.

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. There is no dispute that the applicant was injured while in the course of employment by the respondent and the DOSH assessed compensation at Kshs.638,214.05. There is also no dispute that the respondent neither challenged the award by DOSH under section 51 and 52 of the WIBA nor paid the damages to the applicant upon demand.
8. However, the respondent alleges that it referred the applicant for a second medical opinion whereby the disability was reviewed and the award compensation went down to Kshs.370,225.00 which was paid.
9. There is no documentary evidence showing that the applicant underwent the second medical examination and finally received any payment of Kshs.370,225.00 from the respondent or at all. I took the trouble of checking from the CTS e-files but saw no such documentary evidence.
10. Even if the said documents were to be found in the system, I wonder how that overturns the assessment of damages by the DOSH. The only way to defeat the award by DOSH is through objection or appeal under section 51 and 52 of WIBA or through mutual agreement. Since neither of the two alternatives have been demonstrated, the award by the DOSH remains due and owing from the Respondent to the Applicant.

In view of the foregoing conclusion, I find that the application has merits and it is allowed as prayed in prayer 2,3 and 4 of the motion.

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

