



**Munke v Principal Secretary Ministry of Interior and National Administrator & another (Miscellaneous Application E023 of 2024) [2024] KEELRC 13463 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13463 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
MISCELLANEOUS APPLICATION E023 OF 2024  
AN MWAURE, J  
DECEMBER 13, 2024**

**BETWEEN**

**LEBOI OLE MUNKE ..... CLAIMANT**

**AND**

**PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATOR ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant/Applicant filed a Notice of Motion dated 3<sup>rd</sup> June 2024 seeking for orders that:
  1. This Honourable Court be pleased to adopt the assessment of the Director of Occupational Safety and Health Services made in Claim Reference No. ML/DOSHS/WIBA/5444 as Judgment and Decree of this Court.
  2. This Honourable Court be pleased to enter Judgment for the Claimant/Applicant against the Respondents for Kshs. 2,310,336 as assessed by the Director of Occupational Safety and Health Services made in Claim Reference No. ML/DOSHS/WIBA/5444.
  3. This Honourable Court be pleased to award the Claimant/Applicant interest on the amount from the date of assessment until payment in full.
  4. This Honourable Court be pleased to award any other relief it may deem fit and just grant
  5. Costs of this Application be borne by the Respondent.
2. The application is supported with the affidavit of the Claimant/Applicant sworn on even date with several annexures thereto.



3. The Respondents were served with the application as per the affidavit of service on record but did not file any response to the application.
4. This Honourable Court directed that the application be canvassed by way of written submissions.

#### **Claimant/Applicant's submissions**

5. The Claimant/Applicant submitted that this Honourable Court has jurisdiction to hear and determine this Application.
6. The Claimant/Applicant relied on the case of Jared Ingling Obuya V Handicap International 2021] KEELRC 1990 (KLR) the court stated that the Employment and Labour Relations Court has the jurisdiction to enforce awards by the Director under the *Work Injury Benefits Act* (WIBA) when employers fail to comply. This is based on Article 162(2) of *the Constitution* and Section 12(1) of the *Employment and Labour Relations Court Act*. Although WIBA does not specify enforcement methods, the court must ensure beneficiaries receive compensation. The Legislature is encouraged to come up with clear enforcement guidelines on compensation awards made by the Director DOSH. The court found that this Honourable Court(ELRC) has jurisdiction to enforce these awards of compensation by Director DOSH.
7. The Claimant/Applicant submitted that the Director of Occupational Safety and Health Services awarded him Kshs.2,310,336/=. However, the Respondents have not paid the said amount and did not appeal the award.
8. The Claimant/Applicant urged this Honourable Court to allow the application with costs.

#### **Respondent's submissions**

9. The Respondents submitted that it is not in dispute that the matter falls under the WIBA Cap 236 Laws of Kenya.
10. In Owner of motor vessel Lillian S- V Caltex Oil Ken a Limited 1989 KLR, Nyarangi JA stated as follows: -

“Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction there will be no basis for continuation of proceedings pending other evidence. A court of law down its tools in respect of the matters before it the moment it holds that it is without jurisdiction.”
11. The Respondent submitted that section 53 of the *Work Injury Benefits Act* (WIBA) creates the office of the Director of WIBA, responsible for implementing the Act. The Director's duties include: registering employers, overseeing the Act's implementation, ensuring employers provide insurance for their employees, receiving and investigating accident reports, and ensuring injured employees are compensated according to the Act.
12. The Respondent argues that in the Claimant's Application, he reported the alleged accident to the Director of Occupational Safety and Health Services, who assessed the claim and awarded him Kshs.2,310,336/= in compensation. The Respondent submitted that jurisdiction over such matters exclusively lies with the Director under the *Work Injury Benefits Act*.
13. The Respondent cited section 52(2) of WIBA confer this court appellate jurisdiction over matters from the Director of Occupational Safety and Health. Therefore, the adoption of a DOSH award cannot be done through a miscellaneous application but must be appealed.



14. In *Elias Musembi V Great Yadoo Industry Limited* [2022] KEELRC 13025 (KLR) where the court stated that adopting a DOSH award as a court judgment would compromise the court’s appellate jurisdiction under section 52(2) of WIBA. Hence, the court cannot issue orders for the adoption of a DOSH award via a miscellaneous application.
15. The Respondents submitted that the Employment and Labour Relations Court (ELRC) lacks jurisdiction to enforce awards made by the Director of Occupational Safety and Health Services (DOSHS). The Respondent cited the case of *Seme V Sino Hydro Corporation Engineering Bureau 15 Co. Ltd* [2024] KEELRC 517 (KLR) the court found that such matters can only be entertained on appeal. Similarly, in *Wambua V Capital D Elegance Limited & another* [2024] KEELRC 1310 (KLR) the court emphasized that there is no legal provision for this court to enforce DOSH awards.
16. This position was further reinforced in *Akhoya V Uhuru Heights Limited* [2024] KEELRC 244(KLR) where the court emphasized that the Employment and Labour Relations Court’s jurisdiction in work injury claims is solely appellate and cannot be extended to cover issues arising during the processing of claims before the DOSHS.
17. In *Peter Mutua Kaloki V China State Construction & Engineering Corp (Kenya) and another* [2022] eKLR, the court held that the Employment and Labour Relations Court cannot adopt an award from the Director of Occupational Safety and Health Services as its judgment, as it lacks primary jurisdiction in work injury compensation. This position was supported in *Adika V Supra Textiles Limited* [2024] eKLR, where the court noted that while there is a gap in enforcing these awards, the ELRC cannot assume jurisdiction not granted by *the Constitution* or statute. Consequently, any issues related to the processing of such claims should be addressed by the Director of Occupational Safety and Health Services.
18. The Respondents therefore urge this Honourable Court to dismiss the Claimant’s application as it lacks jurisdiction.

### **Analysis and Determination**

19. The main issue of determination is whether this Honourable Court has jurisdiction to adopt assessment awards of the Director of Occupational Safety and Health Services.
20. It is not in dispute that the Claimant/Applicant working as Senior Chief grade 10 was injured in the course of his duties and reported the matter where the Director of DOSHS awarded him Kshs.2,310,336/= via Claim Reference No. ML/DOSHS/WIBA 5444.
21. The Respondents did not object to the said award. In *Elijah Kisyanga Ndende V Manager Zahkem International Construction Ltd* [2022] KEELRC 383 (KLR) the court held that:

“The *Work Injury Benefits Act* is silent on the procedure to be followed in enforcing the Director’s decision made on assessment of compensation payable to an employee for work injuries. In my view, the legislature never intended that an employee whose employer fails and/or refuses to pay the amount of compensation assessed by the Director of Occupational Safety and Health Services under WIBA would be without civil remedy, and particularly so where the employer never objected to the Director’s decision on assessment of compensation payable to the employee.”



22. Also in *Samson Chweya Mwendabole V Protective Custody Limited* [2021] KEELRC 1809 (KLR) the court held:-

“...However, this Court being endowed with unlimited original and appellate jurisdiction in disputes related to employment and labour relations pursuant to Article 162(2) of *the Constitution* and Section 12 of the *Employment and Labour Relations Court Act*, the Court has inherent jurisdiction to adopt as judgment the Director’s award for purposes of execution. This jurisdiction should not be confused with appellate jurisdiction which is expressly donated under Section 52(2) of the WIBA in respect of the director’s reply to objection made under Section 51(1) of WIBA. It would appear that the former jurisdiction, which I now invoke, can be exercised by the Court where there is no challenge mounted against the Director’s award by any party by way of objection or appeal under Sections 51(1) and 52(2) of the WIBA respectively. In this case, it is common ground that the Respondent did not object to the award under Section 51(1) of the WIBA...”

23. Indeed this court has authority to enforce the DOSHA awards. As earlier observed this is not an appeal and as is observed in the case of *ELIJAH KISYANGA NDENDE -VS- MANAGER ZAKHEM INTRNATIONAL (SUPRA)* the legislature never meant an employee whose employer fails to honour his obligation to have no civil remedy.

24. The court finds that it has jurisdiction to adopt awards from the Director of Occupational Safety and Health Service.

25. Flowing from the foregoing, this court allows the Notice of Motion dated 3<sup>rd</sup> June 2024 on the following terms:

- a. The assessment made by the Director of Occupational Safety and Health Services in the sum of Kshs. 2,310,336/= granted in favour of the Claimant/Applicant against the Respondent is hereby adopted as a Judgment and decree of this Court.
- b. Interest is awarded at 14% per annum on the awarded amount from the date of assessment until final payment.
- c. Costs of the application are awarded to the Claimant/Applicant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAKURU THIS 13<sup>TH</sup> DAY OF DECEMBER, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of



the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

