



Muturi v M/S Intex Contraction Limited (Miscellaneous Application E029 of 2024) [2024] KEELRC 13393 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13393 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E029 OF 2024
AN MWAURE, J
DECEMBER 6, 2024**

BETWEEN

MR. AMOS KINYUA MUTURI APPLICANT

AND

M/S INTEX CONTRUCTION LIMITED RESPONDENT

RULING

Introduction

1. The Applicant filed a Notice of Motion dated 10th July 2024 under Certificate of Urgency seeking orders that:
 1. Spent
 2. The Honourable Court be pleased to order the Respondent to forthwith pay to the applicant a sum of Kshs.202,292.31 as assessed and awarded by the Directorate of Occupation Health and Safety under the *Work Injury Benefits Act* (WIBA) in an award dated 3rd November 2023.
 3. This Honourable Court be pleased to order the Respondent to pay to the Applicant interest on the said sum of Kshs.202,292.31 at 14% from 3rd November 2023 to date of full payment
 4. The costs of this cause be borne by the Respondent in any event.

Respondent's Replying Affidavit

2. In opposition to the application, the Respondent filed a replying affidavit dated 6th August 2024 sworn by Christopher Mukhovi, a legal officer working in the claims department of the Respondent's insurer.



3. He avers that the application lacks merit because this Honourable court does not have jurisdiction to handle with enforcement proceedings of awards made by the Directorate of Occupation Health and Safety Services.
4. He avers that the Respondent was not informed of an inquiry by the Directorate as set out under section 23 of the [Work Injury Benefits Act](#) No. 13 of 2007 to allow it to furnish the Director further particulars regarding the accident as the Director may require.
5. He avers that the Respondent was not aware of the existence of the award made by the Director which the Applicant seeks to enforce or served with the same demand of payment of work injury benefit after the Director made the award.
6. He avers that the Respondent became aware of the award when served with the application.
7. He avers that the applicant was awarded Kshs.72,692.31 for temporary incapacity in clear breach of the [Employment Act](#) as there was no proof that the Applicant was not being paid his monthly salary as he was still earning his full monthly salary.
8. The Respondent avers that there was no sick-off sheet provided to show that the applicant was away from work to warrant the award for temporary incapacity.
9. This Honourable Court directed that the application be canvassed by way of written submissions.

Applicant's submissions

10. The Applicant submitted that this Honourable Court has jurisdiction to enforce awards by the Director of Occupational Health and Safety under section 12 of the [Employment and Labour Relations Court Act](#).
11. The Applicant submitted that section 87(2) of the [Employment Act](#), this Honourable Court is bestowed with jurisdiction to handle matters between an employer and an employee for neglect or refusal to fulfil a contract of service.
12. In *Jared Ingling Obuya V Handicap International* [2021] eKLR the court held that this Honourable Court (ELRC) has jurisdiction under Article 162(2) of [the Constitution](#), [Work Injury Benefit Act](#) and section 12 of the [Employment and Labour Relations Court Act](#) to enforce awards of compensation by Director DOSH.
13. In *Samson Chweya Mwendabole V Protective Custody Limited* [2021] eKLR, *Joash Shisia Cheto V Thepot Patrick Charles*[2022] eKLR and *Luvinzu V Timsales Limited* (Miscellaneous Civil Application E069 of 2023) [2024] KEELRC 857 (KLR) the court reiterated the jurisdiction of this Honourable Court(ELRC) to enforce the Director's award for purposes of execution and should not be confused with appellate jurisdiction which is expressly donated under section 52(2) of the WIBA in respect to the Directors reply to objection made under section 51(1) of the WIBA.
14. In *Edwin Songoroh & Another V Amony Koech Yatich & Another* [2021] eKLR the court observed that the magistrate court or ELRC court can adopt a Director's award under the [Work Injury Benefit Act\(WIBA\)](#) court's pecuniary jurisdiction vis a vis the dispute at hand. To enforce an award, a miscellaneous motion or ordinary claim can be filed in the absence of specific regulations. The court cannot review the merits of the award at the adoption unless a review is done through an appeal under section 52 of WIBA.
15. The Applicant submitted that he is entitled to the orders sought as the Respondent has not preferred an appeal or objection to the award by the Director DOSH. The Applicant argues that the applicant



ought to have raised an objection/appeal to the award by the Director within 60 days of the award and no appeal has been preferred before this Honourable Court.

16. In *Hadisha Engineering Company Limited & UAP Insurance Company Limited V Benson Chege Karoki*(2015) eKLR the court held that any objections against the decision of the director of the [Work Injury Benefits Act](#) should have been preferred within 60 days to the Director who within 14 days give a written answer. After the written answer, the objector may lodge an appeal with the court within 30 days.
17. In *Ruth Wambui Mwangi & Agnes Nyambura Wangai (suing as the legal representatives of the estate of Joseph Wangai Muraya V Alfarah Wholesalers Limited*(2017) eKLR the court found that the Respondent did not appeal to the Director against the assessment or raise an objection with the court and dismissed the application for lack of merit.
18. The Applicant submitted that since the respondent was served with an assessment, there was an expectation that the award would be paid. Section 26 of the Work Injury Benefits states that an employer who fails to pay compensation claims commits an offence and shall on conviction be liable to a fine not exceeding five hundred shillings or imprisonment for a term not exceeding one year or both.
19. In *Arafa Amin Mohamed (suing as the Legal Representative to the Estate of Omar Khatib Abdulkadir-Deceased) V Dola Feeds (K) Limited* [2022] eKLR the court held that the applicant had established her case after an award was assessed and made by the Director DOSH. The court made an order for enforcement of the award plus costs and interest.

Respondent's submissions

20. The Respondent submitted that the provision that the Applicant has come before this Honourable Court does not confer jurisdiction to this court as set out in section 16 of the WIBA which has original jurisdiction from this court as regards WIBA claims.
21. The Respondent submitted that when a person is aggrieved by the decision of the Director DOSH, he or she has a right to appeal to this Honourable Court (ELRC) pursuant to sections 51(1) and 52 of the WIBA. The Respondent argues that the Applicant has not demonstrated that he appealed according to the law.
22. The Respondent cited the cases of *Peter Mutua Kaloki V China State Construction & Engineering Corp(Kenya) and Another* [2022] eKLR the court held that ELRC's jurisdiction is limited to appellate review and *Musembi V Great Yadoo Industry Limited Misc Case No. E080 of 2022) KEELRC 13025* the court emphasized the importance of jurisdiction for discharging judicial functions.
23. In *Samuel Kamau Macharia & Another V Kenya Commercial Bank Ltd & 2 Others* [2012] eKLR the Supreme Court emphasized that the courts derive their jurisdiction from [the constitution](#) or statute and cannot arrogate jurisdiction to itself, even in the interest of justice. In conclusion, the court does not have jurisdiction to enforce the Director's awards through fresh claims or miscellaneous applications.
24. In *Sammy Ndugu Waity V Independent Electoral & Boundaries Commission & 3 others* [2019] eKLR the Respondent argued that where [the Constitution](#) or any other law establishes an organ with a clear mandate for the resolution of a given genre of dispute, no other body can lawfully pursue such power, nor can it append such organ from the pedestal of execution of its mandate.
25. The Respondent submitted that the Applicant has not exhausted the mechanisms for appeal and this Honourable Court should not entertain this instant application and relied on section 9(2) of the [Fair Administrative Action Act](#).



Determination

26. The main issue of determination is whether this Honourable Court (ELRC) has jurisdiction to enforce awards from WIBA and whether the Applicant is entitled to the orders sought.
27. In *Samson Chweya Mwendabole V Protective Custody Limited* (supra) the court held as follows:
- “...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...”
28. In this case, the Applicant was awarded Kshs. 202,292.31, but the Respondent has failed to make the payment after being served with the assessment notice. The Respondent did not file an appeal against the Director’s award, therefore the Applicant is entitled to receive the awarded amount.
29. The law was not meant to have a lacuna on adoption of DOSHA award and this is the court that has authority to adopt the DOSHA awards.
30. Flowing from the foregoing, this court allows the Notice of Motion dated 10th July 2024 on the following terms:
- a. The assessment made by the Director of Occupational Safety and Health Services in the sum of Kshs. 202,292.31 granted in favour of the Applicant against the Respondent is hereby adopted as a Judgment of this Court.
 - b. Interest to accrue at 14% per annum on the above sum from 3rd November 2023 until full payment.
 - c. Costs of the application are awarded to the Applicant.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAKURU THIS 6TH 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 15th March 2020 and subsequent directions of 21st 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

