



**Njuguna & 2 others (All suing as legal representatives of the Estate of the late
Evanson Njuguna Kugwa – Deceased) v Multiple Hauliers Limited (Miscellaneous
Application E010 of 2022) [2023] KEELRC 657 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 657 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E010 OF 2022**

**B ONGAYA, J
MARCH 10, 2023**

BETWEEN

NANCY NJOROGE NJUGUNA 1ST APPLICANT

TERESIA W NJUGUNA 2ND APPLICANT

WILSON NDIRANGU 3RD APPLICANT

**ALL SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
EVANSON NJUGUNA KUGWA – DECEASED**

AND

MULTIPLE HAULIERS LIMITED RESPONDENT

RULING

1. The applicants are the legal representatives of Joseph Ngugi Njuguna (Deceased) who was employed by the respondent. On September 3, 2019 the deceased while on duty was involved in an accident and he sustained fatal injuries. The Director of Occupational Safety and Health (DOSHS) assessed the compensatory benefits at Kshs. 3, 381, 408.00. On October 18, 2019 the respondent was notified to pay the compensation but has failed or neglected to do so. The respondent did not object to the assessment within the statutory time under section 51 of the *Work Injury Benefits Act, 2007* (WIBA) or at all. Counsel issued a demand notice dated December 14, 2022 but the respondent failed to pay the assessed amount. While the WIBA does not prescribe expressly on realisation of such awards, it is urged for the applicants that justice shall be administered without undue regard to technicality per article 159(2) of the *Constitution* of Kenya, 2010. Further, article 162(2) of the *Constitution* establishes the Court with mandate to hear and determine disputes relating to employment and labour relations. Thus, no person shall suffer a wrong without a remedy. Those are the grounds in the application dated January 26, 2023 and filed on January 27, 2023 through D.Muinde & Associates and supported by the annexed affidavit of Nancy Mogere Njuguna. The applicants prayed for orders:



- a. ...(spent).
 - b. That the honourable court be pleased to adopt the assessment of the Director of Occupational Health and Safety Officer dated October 18, 2019 as an order of the court.
 - c. That a decree to issue in accordance with the assessment of the Director of Occupational Health and Safety Officer.
 - d. That costs of the application be provided for.
2. The respondent opposed the application by filing the notice of preliminary objection dated February 17, 2023 through Anthony Burugu & Company Advocates. It was urged the application be struck out with costs because the court has only been granted appellate jurisdiction vide provisions of section 52(2) of the *WIBA*. The respondent relies on *Margaret Wanjiku Kaniu (Suing as the legal representatives of the estate of Nebemiah Mwangi Kamau v Multiple Hauliers [EA] Limited* Miscellaneous Cause No. E083 of 2022 where Rika J held that section 52(2) of WIBA confers the Court with appellate jurisdiction which does not spread to enforcement of awards made by the Director under the Act.
 3. For the applicants it was submitted that in *Samson Chweya Mwendabole v Protective Custody Limited* [2021]eKLR Onesmus Makau J held, “8. The gist of the application herein is simply that the court adopts the award by the Director as judgment of the Court for purposes of execution. There is a lacuna in law with respect to procedure for enforcement of the awards made by the Director under WIBA. However, this court being endowed with unlimited original and appellate jurisdiction in disputes related to employment and labour relations pursuant to article 162(2) (a) of the *Constitution* and section 12 of the *Employment and Labour Relations Court Act*, I hold that it has the 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 to the Director’s reply to objection under section 51(1) of the *WIBA*.”
 4. The court has considered the submissions and returns that as held in *Samson Chweya Mwendabole v Protective Custody Limited* [2021]eKLR , the appeal process under *WIBA* is clearly different from a proceeding to enforce an award made in an assessment under the *WIBA* – like in the instant application. The court has inherent jurisdiction to adopt the award. In the instant application the respondent filed no affidavit to oppose the material facts in issue and the court returns that the applicants are entitled to the orders sought.
 5. In conclusion the application is hereby determined with orders:
 - a. The assessment of the Director of Occupational Health and Safety Officer dated October 18, 2019 is hereby adopted as an order of the court and the respondent to pay the applicants a sum of Kshs. 3, 381, 408.00 by April 30, 2023 failing interest to be payable thereon at court rates from the date of filing the application until full payment.
 - b. The respondent to pay costs of the proceedings.
 - c. A decree to issue accordingly.

Signed, dated and delivered by video-link and in court at Nairobi this Friday 10th March, 2023

BYRAM ONGAYA, PRINCIPAL JUDGE

