



Kiogora v Imetha Water & Sanitation Co. Ltd & another (Miscellaneous Application E009 of 2022) [2023] KEELRC 538 (KLR) (3 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 538 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E009 OF 2022**

ON MAKAU, J

MARCH 3, 2023

BETWEEN

STANLEY KIOGORA CLAIMANT

AND

IMETHA WATER & SANITATION CO. LTD RESPONDENT

AND

TRIDENT INSURANCE CO.LTD INTENDED RESPONDENT

RULING

1. This ruling relates to two applications filed by each of the two parties herein. The main application is the Notice of Motion filed by the substantive applicant (herein called the employee) dated 26th October, 2022 seeking the following orders:-
 - a. That this Honourable court be pleased to adopt as a judgment of this Court the award of the Director of Occupational Safety and Health Services dated 21st of August, 2017.
 - b. That a judgment be entered in favour of the claimant as against the Respondent for Kshs.840,635.10 and a decree to issue in accordance with assessment of the Director of Occupational Health and Safety under the *Work Injury Benefits Act*.
 - c. That this Honourable court be pleased to award interests on the amount, Kshs.840,635.10 at 14% per annum from the date of the assessment up to payment in full.



2. The second application is the Notice of Motion dated 9th November, 2022 filed by the Respondent in the main application (herein after called the employer) seeking the following orders:-
 1. That the Honourable court be pleased to join Trident Insurance Company Limited as a 2nd Respondent in this suit before the hearing and determination of the claimant's Application dated 28/10/2022.
 2. That costs of this application be in the cause.

Submissions

3. It was submitted for the employee that there is no dispute that he suffered serious injuries on 23rd December, 2016 while in the course of employment by the respondent; that his injuries were assessed as 30% permanent incapacity; and the Directorate of Occupational Safety and Health Services through a Clause Form dated 21st August, 2017 computed his compensation at Kshs.840,635.10. No appeal was lodged to challenge the award within the required 60 days but the respondent never paid the award. The employee now seeks for the award to be adopted as judgment of the court and executed because all other amicable means have borne no fruits.
4. The employer has not opposed the employee's application but has filed its application seeking for leave to join its insurer to the proceeding so that it may be held liable to settle the employee's claim. It contends that the insurer should be held liable because under Section 7 of the Work Injury Benefit Act (WIBA) it is mandatory for an employer to take out an insurance cover for employees.
5. In his rejoinder the employee submitted that he has no direct claim against the insurer and hence opposed the requested joinder. He advised that the best option open for the employer, is to file a declaratory suit against the insurer and not to seek joinder. Further, he submitted that Order 1 Rule 10 under which the joinder is sought is not applicable in this case as the same is only intended for fresh proceedings before any judgment is entered.

Determination

6. The issues for determination are:-
 - a. Whether Trident Insurance Company Limited should be joined as 2nd Respondent before the determination of the employee's Notice of Motion dated 27th October, 2022.
 - b. Whether the court should adopt as judgment the award by the Director of Occupational Safety and Health Services dated 21st August, 2017 and issue a decree against the respondent (employer) for the sum of Kshs.840,635.10.
 - c. Whether the court should award interest on the Kshs.840,635.10 at 14% per annum from 21st August, 2017 till payment in full.

Joinder of the Insurer

7. The court appreciates that Section 7 of the [Work Injury Benefits Act](#) binds the employer herein to obtain and maintain an insurance cover for its employees including the applicant. There is no contest that the employee herein was covered by the proposed 2nd respondent when the injuries were sustained. However the employee has no direct claim against the insurer since he was not privy to the contract between the insurer and the employer.



8. I agree with the employee's submissions that the best option for the employer is to file a declaratory suit against the insurer. Consequently, I decline to grant the application for joinder of the Insurer as 2nd Respondent in the employee's Notice of Motion dated 26th October, 2022.

Adoption of the Award

9. The application for adoption of the Director's Award as judgment of this court has not been opposed. The assessment of the compensation at Kshs.840,635.10 was also not challenged by the employer within the 60 days window provided under Section 51 of the WIBA. Consequently, I adopt the award by the Director dated 21st August, 2017 as judgment of this court and direct that a decree be issued against the Respondent (employer) for the sum of Kshs.840,635.10.

Interest

10. The award was made by the Director on 21st August, 2017 and it was not challenged. The employee herein suffered serious injuries that left him permanently incapacitated. He pursued payment from his employer amicably but in vain. He then filed the instant application. It is well principle of economics that the cost of waiting is payment of interest on the principle debt. He has waited for over 5 years. Consequently, I award the claimant interest on the principal award of Kshs.840,635.10 at court rates from 21st August, 2017 till payment in full.

DATED, SIGNED AND DELIVERED AT NYERI THIS 3RD DAY OF MARCH, 2023.

ONESMUS N MAKAU

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 April 2020, this ruling has been delivered to the parties online with their consent, the parties 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.

