



**Karimi v Kenya Women Finance Bank Ltd (Cause E1018 of 2021)
[2023] KEELRC 990 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 990 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1018 OF 2021
SC RUTTO, J
APRIL 28, 2023**

BETWEEN

WILSON KARIUKI KARIMI CLAIMANT

AND

KENYA WOMEN FINANCE BANK LTD RESPONDENT

RULING

1. The Claimant/Applicant filed a Statement of Claim on December 8, 2021. Contemporaneous with filing the suit, the Claimant moved the Court vide a Motion Application dated December 7, 2021, 2017, seeking an order to compel the Respondent to pay a sum of Kshs 2,065,728.00 plus interest being an Award by the Director of Occupational Safety and Health Services (Director). It is worth noting that the orders sought through the instant Application are similar to those sought in the main suit.
2. The Application is supported by the Affidavit of the Applicant through which he avers that the Respondent raised an objection in respect of the Award but the same was declined by the Director. The Applicant further contends that the Respondent has not appealed against the Director's Award hence it has an obligation and duty to forthwith pay the Award summarily as evaluated by the Director.
3. The Respondent opposed the Application through the Replying Affidavit of Mr. Kairu Timothy Waweru. Mr. Waweru admits that the Applicant was awarded the sum of Kshs 2,065,728/= on November 7, 2019 by the Director and its objection against the said Award was declined. He states that the Respondent exercised its right of Appeal under Section 52(2) of the *Work Injury Benefits Act* (WIBA) and subsequently drafted a Memorandum of Appeal through its Advocates on record. That however, the Respondent could not file the Appeal as the E-filing portal did not have a provision for filing appeals arising from the Director. He further states that the Respondent made follow ups with the Court with regards to the filling and the ICT department promised to follow up on the same. That they are yet to receive a response on the issue.



4. Following the Court's directions of January 25, 2022, the matter was canvassed by way of written submissions. Subsequently, there was a lull and the matter came up for mention on January 17, 2023 when parties confirmed compliance with regards to filling of submissions.

Submissions

5. It was the Applicant's submissions that the assertions by the Respondent do not hold water since the E-filing platform had not been introduced by the Judiciary as at January 12, 2020. That the Respondent ought to have filed the Appeal at that point. It was further submitted that the Respondent has never been keen and or serious about filling an appeal from the Director's Award. In support of its submissions, the Applicant placed reliance on the case of *Arafa Amin Mohamed (suing as the legal representative to the Estate of Omar Khatib Abdulkadir- Deceased) vs Dola Feeds (K) Limited (2022) eKLR.*
6. On its part, the Respondent reiterated the averments contained in its Replying Affidavit and stated that failure to file the Appeal has not been occasioned by indolence on its part nor any reason within its control but entirely upon the Court. That further the Director's Response was well out of time hence the Memorandum of Appeal could not possibly have been filed in strict compliance with *WIBA.*

Analysis and determination

7. As stated herein, the Applicant seeks to have the Court compel the Respondent to pay the sum of Kshs 2,065,728/= being an award by the Director. Essentially, the Claim as well as the Application is purely for enforcement of that Award by the Director.
8. As it is, the Claim and the Application are not properly before Court. I say so because, first, there is no provision under the law granting the Court jurisdiction to enforce an award emanating from the Director. It can very well be said that there is a lacuna to that effect. Second, pursuant to Section 52(2) of the *Work Injury Benefits Act*, this Court has an appellate jurisdiction to hear and determine any appeals arising from an Award by the Director. Such was the determination by the Supreme Court in the case of *Law Society of Kenya vs Attorney General & another [2019] eKLR.*
9. In this case, the Applicant already has an award in his favour hence there is no fresh dispute as to be brought through a Claim as he has done in this case. What the Applicant ought to have done is have the Award adopted and this it could only do by moving the Court by way of a Miscellaneous Application as opposed to a full-blown Claim as the one herein.
10. In light of the provisions of Section 52(2) of the *WIBA* and the determination in *Law Society of Kenya vs Attorney General & another [2019] eKLR*, it is this Court's position that such an Application for adoption of an award can only be brought before a Magistrate's Court.
11. Indeed, it will be a misnomer to have this Court enforce an Award by the Director and thereafter sit on Appeal over the same issue. If anything, enforcing such an Award through the instant Application will be proceeding on a process not contemplated under the *WIBA*. Where will the Respondent appeal to, if this Court proceeds to issue the orders sought? Needless to say, this is not the appropriate forum to hear and determine the Applicant's Application as framed.
12. It is against this background that I dismiss the Application dated December 7, 2021 with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2023.

STELLA RUTTO



JUDGE

Appearance:

Mr Onsombi for the Claimant/Applicant

Mr Kirui for the Respondent

Court Assistant Abdimalik Hussein

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 March 15, 2020 and subsequent directions of April 21, 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 had 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 *Civil 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.

