



**Ngovi (Suing as the administrator and legal representative of the  
Late Kennedy John Ngovi) v Muloil Limited & another (Petition  
E010 of 2023) [2023] KEELRC 1333 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1333 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
PETITION E010 OF 2023**

**M MBARŪ, J**

**MAY 25, 2023**

**BETWEEN**

**SYOMBUA NGOVI (SUING AS THE ADMINISTRATOR AND LEGAL  
REPRESENTATIVE OF THE LATE KENNEDY JOHN NGOVI) ..... PETITIONER**

**AND**

**MULOIL LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**2. DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH  
SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The petition is not opposed. The respondents were served but failed to enter appearance of file any response to the petition.
2. The petitioner is seeking for a declaration that her constitutional rights have been violated by the 1<sup>st</sup> respondents for failure to make payments as directed by the 2<sup>nd</sup> respondent and that an order should issue for payment of Kshs 1,209,408 plus interests from October 1, 2015 until paid in full and further that an order of *mandamus* should issue compelling the 2<sup>nd</sup> respondent to commence statutory action against the 1<sup>st</sup> respondent including arrest and prosecution for failing to pay the petitioner.
3. The petition is filed on the basis that the petitioner is the mother to the late Kennedy John Ngovi and she holds Letters of Administrator over his estate as the Administrator. The deceased was employed by the 1<sup>st</sup> respondent company and the 2<sup>nd</sup> respondent is established under the [Work Injury Benefits Act](#).
4. The deceased, Kennedy John Ngovi was employed by the 1<sup>st</sup> respondent as a workman at Gichanga estate in Nyali where he was involved a work injury accident and taken to Coast Provincial General Hospital but died. The accident and death was reported to the 2<sup>nd</sup> respondent who made an assessment



- of compensation on October 13, 2015 for Kshs 1,209,408 but the 1<sup>st</sup> respondent failed to pay and it has now been 7 years since the claim was lodged and the award rendered but there is no compliance. Despite demand to pay, the 1<sup>st</sup> respondent has refused to comply.
5. The petition is that there are constitutional violations through the failure of the 1<sup>st</sup> respondent to pay the estate of the late Kennedy John Ngovi through the Administrator and the petitioner herein and the petition should be allowed with costs.
  6. The petition is supported by the supporting affidavit of the petitioner.
  7. The petitioner submitted that she is a widow aged 71 years and the mother to the late Kennedy John Ngovi who was employed by the 1<sup>st</sup> respondent and in the course of his employed he was injury and died. The 1<sup>st</sup> respondent reported the accident to the 2<sup>nd</sup> respondent who assessed the claim and made an award of Kshs 1,209,408 but the 1<sup>st</sup> respondent has refused to pay. the failure to pay the award has led to violation of the petitioner's constitutional right and pursuant to section 34 of the [Work Injury Benefits Act](#), the 1<sup>st</sup> respondent should be ordered to pay as held in [Godfrey Ngondi Waititu v Director of Occupational Safety & health Services](#) [2021] eKLR.
  8. The petitioner has moved the court through a petition. Where a party is seeking to enforce a constitutional right and fundamental freedoms and without seeking to challenge the constitutionality of any statute, a memorandum of claim filed in terms of Rule 7(3) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) would suffice as held in the case of [Sumaiyya Athnami Hassan v Paul Masinde Simidi](#) [2019] eKLR.
  9. On the merits of the petition, without any responses, the facts of the petition are not challenged. The deceased, Kennedy John Ngovi was an employee of the 1<sup>st</sup> respondent who died following work injury. The 1<sup>st</sup> respondent through letter dated October 2, 2015 reported the matter to the 2<sup>nd</sup> respondent and on October 13, 2015 the 2<sup>nd</sup> respondent assessed the work injury benefits upon death and directed for payment of Kshs 1,209,408.
  10. Several demands have been made to the 1<sup>st</sup> respondent to pay the award to the estate of the deceased without compliance. Under Section 26(4) of the [Work Injury Benefits Act](#), upon assessment and directions to pay the award of Kshs 1,209,408 the same became due and owing.
  11. The 2<sup>nd</sup> respondent is under a duty to commence action against the 1<sup>st</sup> respondent following work injury at its premises and further set in motion prosecution procedures for failure to pay the work injury award as required under the law. The failure to pay the award for work injury despite notice and demand is not justified and effectively the 1<sup>st</sup> respondent has caused damage and injury to the Estate of the late Kennedy John Ngovi and the petitioner who is the Administrator is entitled to the orders sought in the petition.
  12. Accordingly, judgment is hereby entered for the petitioner against the 1<sup>st</sup> respondent with an order that the 1<sup>st</sup> respondent shall pay the sum of Kshs 1,209,408 awarded for work injury and further an order of *mandamus* is hereby issued directed at the 2<sup>nd</sup> respondent to commence investigations and action against the 1<sup>st</sup> respondent company following work injury and death of the deceased at its premises. No orders on costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25<sup>TH</sup> DAY OF MAY, 2023.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**



Court Assistant: Japhet Muthaine

