



Njoroge (Suing on her own behalf and on behalf of the Estate of the Late Francis Murende Njoroge (Deceased) v Modern Coast Builders & Contractors Limited (Miscellaneous Application E014 of 2023) [2023] KEELRC 1332 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1332 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

MISCELLANEOUS APPLICATION E014 OF 2023

M MBARŪ, J

MAY 25, 2023

BETWEEN

CHARITY NJOROGE (SUING ON HER OWN BEHALF AND ON BEHALF OF THE ESTATE OF THE LATE FRANCIS MURENDE NJOROGE (DECEASED) APPLICANT

AND

MODERN COAST BUILDERS & CONTRACTORS LIMITED ... RESPONDENT

RULING

1. The applicant filed application dated March 10, 2023 and seeking for orders that the court be pleased to adopt as judgment the award of the Director of Occupational Safety and Health Services made on January 7, 2020 for the amount of Kshs 2,436,576.
2. The application is supported by the affidavit of the applicant and on the grounds that she is the widow to the deceased who had been employed by the respondent as a fabricator operator. The applicant was granted Letters of Administration ad litem for the purpose of filing these proceedings to recover the sum awarded to the Estate of the deceased by the Director of Occupational Health and Safety Services (Director) against the respondent.
3. In her Supporting Affidavit, the applicant avers that the respondent employed the deceased but on December 12, 2019 he sustained injury as a driver leading to death. The respondent reported the accident and death to the director who assessed the same and made an award of Kshs 2,436,576. The respondent was informed of the award but has refused to pay. Several demands have been made but the respondent has refused to comply and leading to these proceedings.
4. The respondent entered appearance on March 13, 2023 but there is no response.



5. On March 28, 2023 both parties attended court and the respondent allowed time to respond to the application and then proceed and file written submissions. The respondent did not comply.
6. The applicant submitted that the deceased was an employee of the respondent who suffered work injury and died on December 12, 2019 which was reported to the Director and who assessed the award on January 7, 2020 but the respondent has refused to pay and the applicant and is seeking judgment to enforce the award as held *Samson Chweya Mwendapole v Protective Custody Limited* [2021] eKLR that the *Work Injury Benefits Act* does not have an enforcement mechanism and the court having original mandate over employment and labour relations claims pursuant to article 162(2)(a) of the *Constitution*, it is the proper forum to urge the application. The applicant also relied on the case of *Odbiambo & another v Quale Holdings Ltd t/a Guyana Guest House* [2022] eKLR.
7. The respondent as the employer has not filed any objections to the award or responded to the application herein and the same should be allowed as prayed.
8. As set out above, the respondent has not challenged the application. There was appearance only.
9. The employment of the deceased, Francis Murende Njoroge by the respondent has not been challenged. Following employment, the deceased suffered injury and death on December 12, 2019 which was reported to the director and who assessed the same and made an award for payment of Kshs 2,436,576.
10. The accident and death was reported by the respondent to the director on 19th December, 2019.
11. On January 7, 2020 the director assessed the work injury and death and pursuant to the *Work Injury Benefits Act* directed the respondent to pay the award but there is no compliance.
12. There is a record of several demand notices made but the respondent has not complied and pursuant to Section 26 of the *Work Injury Benefits Act, 2007* the payment as directed is due.
13. Accordingly, an Order is hereby issued against the respondent to pay the applicant as the Administrator of the Estate of the late Francis Murende Njoroge the sum of Kshs 2,436,576 for work injuries under the provisions of the *Work Injury Benefits Act, 2007*. No orders on costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF MAY, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine and Raahma

..... and

