



Mbia & another (Suing as the representatives of the Estate of Mutuku Mutinda) v Badar Hardware Limited (Miscellaneous Application E016 of 2023) [2023] KEELRC 1718 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1718 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E016 OF 2023**

M MBARŪ, J

JUNE 29, 2023

BETWEEN

WINFRED MWIKALI MBIA 1ST APPLICANT

MONICA MUTUKU 2ND APPLICANT

**SUING AS THE REPRESENTATIVES OF THE ESTATE OF MUTUKU
MUTINDA**

AND

BADAR HARDWARE LIMITED RESPONDENT

RULING

1. The applicants filed application dated 13 April 2023 seeking for orders that the court do adopt as judgment the award of the Director of Occupational Safety and Health Services (Director) and decree to issue in accordance with the assessment of the Director for the sum of Kshs 3,360,000 together with interests and any further orders the court may deem fit and just to grant.
2. The application is supported by the affidavit of Winfred Mwikali Kibia as the widow of the deceased, Mutinda Mutuku who was employed by the respondent as a driver earning Kshs 36,000 per month and on 7 February 2021, the deceased while on duty driving a truck registration No, KCG 254K sustained fatal injuries leading to death. The accident was reported to the Director who assessed compensation on 25 May 2022 at Kshs 3,360,000 and notified the respondent who has failed to pay the same. There is no objection nor has the respondent lodged any appeal and the same should be awarded in terms of Section 26 of the *Work Injury Benefits Act* which requires the employer or the insurer to pay a claim within 90 days upon the claim being assessed.
3. The respondent did not attend these proceedings.



4. Even though the application is not opposed, the court directed the applicants to attend court and make oral submissions with regard to the orders sought.
5. In the Supporting Affidavit of Winfred Mwikali Kibia, she has attached the Director's notice to the respondent dated 25 May 2022 requiring the payment of Ksh. 3,360,000 based on the assessment. Also attached to the application is the Police Abstract Form on a Road Accident dated 23 March 2021 indicating that the deceased Mutinda Mutuku had traffic accident on 7 February 2021 as a driver of motor vehicle KCG 245K owned by the respondent.
6. Under Work Injury Benefits Act, 2007 (the Act) upon occurrence of an accident at work, a notice should issue to the Director in a prescribed form within 7 days in terms of Section 22 of the Act:
 1. Subject to the provisions of this section, an employer shall report an accident to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.
 2. ...
7. Such notice is meant to allow the Director to investigate the accident in terms of Section 23 of the Act and upon completion, refer the employee for medical assessment, and on this basis, assess the percentage of incapacity or death benefits and award pursuant to Section 30(2) of the Act. The report of award is then processed for the due benefits within the provisions of Section 30 and 37 of the Act and upon the award being served upon the employer, payment should be effected within 90 days of the award.
8. Notice has since been issued to the respondent as the employer on 25 May 2022 for the sum of Kshs 3,360,000 based on the last wage the deceased was earning as a driver of the respondent as at the time of death on 7 February 2021 while undertaking his duties aboard Motor vehicle registration No KCG 254K owned by the respondent.
9. Without any objections on the award, appeal against the award or opposition to these proceedings, the respondent is hereby directed to pay the applicants a total sum of Kshs 3,360,000 as assessed and awarded by the Director. No orders on interests or costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 29 DAY OF JUNE, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

