



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oganda v Elemech Eng (K) Ltd & another (Employment and Labour Relations Cause E038 of 2022) [2023] KEELRC 2328 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2328 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**EMPLOYMENT AND LABOUR RELATIONS CAUSE E038 OF 2022**  
**AN MWAURE, J**  
**SEPTEMBER 29, 2023**

**BETWEEN**

**RISPER NYABEWARI OGANDA ..... CLAIMANT**

**AND**

**ELEMECH ENG (K) LTD ..... 1<sup>ST</sup> RESPONDENT**

**JUDGICH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed his application *vide* a notice of motion dated February 18, 2022. He is making prayers for the following orders:
  - i. that this honourable court be pleased to adopt as judgment of this court the award of the county occupational safety and health officer.
  - ii. That judgment be entered for the applicant against the respondent for kshs. 153,785/- being the amounts assessed under the *Work Injury Benefits Act*.
  - iii. That this honourable court be pleased to award interest on the amount from the date of assessment until payment in full.
  - iv. That this honourable court be pleased to award any other relief this court may deem fit and just to grant
  - v. That costs of this application be awarded to the applicant.
2. The prayers are supported by the applicant's Affidavit dated February 15, 2022. In her aforesaid Affidavit the applicant avers that she was employed by the respondent as a house help. She says on August 10, 2018 she fell down and injured her thumb on August 10, 2018.



3. She says the county occupation and safety health officer assessed the injuries at kshs 153,785. She says the respondent has not appealed the award and at the same time has failed and/or refused to pay the same.
4. She prays the award be adopted as the judgment of the court.
5. The court has considered the applicant submissions dated..... and the respondent submissions dated June 19, 2023.

### **Analysis and determination**

6. The court has considered the pleadings and the submissions of the respective parties. The award was given on September 19, 2019.
7. The contention by the respondent is that this court has no jurisdiction to handle such matters as the court has no original jurisdiction under the *WIBA Act*. The respondent submissions are that such adoptions should be handled by the magistrate's court so that if there is an appeal then this court should handle the same. There are conflicting views on the issue of the court that should handle the adoption of awards of the occupational safety and health officers.
8. Various superior courts have adopted the assessments and others have referred them to the lower courts. The lower courts in equal measure have been afraid or at least reluctant to deal with the adoption of assessments awards. That has left the claimants in a precarious position.
9. In the case of *Elijah Kisyanga Ndende vs the Manager Zakhem International Construction Limited* 040/2021 the court stated:

“in my view the legislature never intended an employee whose employer fails or refuses to adopt the award of compensation assessed by the health services under WIBA would be without a civil remedy and especially where the employer never objected to the directors decision on assessment of compensation payable to the employee”
10. In the case of *Samson Chweya Mwambane vs Protective Custody Limited* (2021) eKLR. The court held “however this court has been endowed with unlimited original and appellate jurisdiction in disputes related to employment and labour relations pursuant to article 162(2) of the *Constitution* and section 12 of the *Employment and Labour Relations Court Act*. The court has inherent jurisdiction to adopt as judgment the directors award for purposes of execution. The jurisdiction should not be confused with appellate jurisdiction which is expressly denoted under section 52(2) of WIBA in respect of Directors reply to objection under section 51(1) of WIBA. It would appear that the former jurisdiction which I now invoke can be exercised by the court where there is no challenge mounted against the directors' award by any party by way of objection or appeal under section 51(2) and 52(2) of *WIBA* respectively. In this case it is common ground that the respondent did not object to the award under sections 51(1) of *WIBA*.”
11. The court guided by the above and by rules of natural justice and seeing that the *WIBA* is silent on the procedure to be used to enforce the directors award and is also not open to provide proviso on the limitation of time in which to enforce the same the court will enter judgment in favour of the applicant. The applicant must not be left without a remedy.
12. Judgment is therefore entered against the respondent for kshs. 153,785/- and interest is awarded from the date of the ruling until full payment.

Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 29<sup>TH</sup> DAY OF  
SEPTEMBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

