



**Mwania v Master Platters Limited (Miscellaneous Application  
E133 of 2023) [2023] KEELRC 2252 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2252 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E133 OF 2023**

**K OCHARO, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**NICHOLAS MBITHI MWANIA ..... APPLICANT**

**AND**

**MASTER PLATTERS LIMITED ..... RESPONDENT**

**RULING**

1. Through a Notice of Motion Application, dated May 15, 2023, the applicant seeks the following orders:
  - a. That this honourable court adopts the assessment of the Director of Occupational Safety and Health Services filed herein as a judgment of the court.
  - b. That a decree for KShs.506,688.00 to issue in accordance with the assessment of the Director of Occupational Safety and Health Services against the respondent.
  - c. That a declaration to issue that the respondent has committed an offence contrary to section 26(6) of the [Work Injury Benefit Act](#) for failing to pay the Applicant.
  - d. That the court commits the Directors of the Respondent to one year in jail or fine them KShs.500,000 or both.
  - e. That the costs of this application be provided for.
2. The application is grounded on the grounds set on the face of it and the supporting affidavit sworn by the applicant on June 15, 2023.
3. The application is resisted by the Respondents through a replying affidavit sworn by Girish Kumar Jiuraj Patel that was sworn on the 7<sup>th</sup> of July 2023.



## The Application

4. The Applicant stated that he is a former employee of the Respondent company. Further, on or about the 30<sup>th</sup> of September 2020, a time before he existed the said employment, he sustained workplace injury in the course of his employment.
5. He further states that following the injury, the Respondent filled the requisite notice (notice by the employer of an occupational accident of an employee) and reported the accident to the Director of Occupational Safety and Health Services (“the Director”).
6. Eventually, the Director assessed compensation due to him at KShs.506,688.00. The assessment was served on the Respondent but it has opted not to pay.
7. The Applicant states that section 26 of the *Work Injury Benefits Act* makes it an offence for either an insurer or employee to fail to pay the compensation due to an employee following an assessment under the Act. By its conduct, the Respondent has committed an offence. The Directors should be punished.

## The Response

8. The Respondent agrees that there was a workplace accident as a result of which the Applicant suffered an injury. Further, the Respondent does not dispute that it filled, and sent to the Director, the requisite notice as stated by the Applicant.
9. The deponent of the replying affidavit states that since the notice was issued, he has been unwell, in and out of hospital leaving the Respondent company in the hands of his son for management.
10. The Respondent asserts that the Applicant has never turned up since she exited from the employment nor written to it on the account the money should be deposited into. Consequently, it is the Respondent’s view that the application herein has been made in bad faith.
11. It is further stated that the Respondent is working to pay the Applicant the sum assessed by the Director save that it should be allowed to deduct KShs.18,850 that the Applicant owes it, plus the necessary statutory deductions.
12. The Respondent urges this court to note that in his assessment of what could be due to the Applicant, the Director employed 30 working days instead of 26 working days. Consequently, the figures arrived at are erroneous. This court could do a correction.
13. As regards punishment for the alleged offence under section 26 of the WIBA, the Respondent argues that the Applicant’s crave that they be punished has no legal basis as the Respondent has not refused to settle the assessed amount. The Applicant is the one who occasioned delay in the settlement thereof for the reason hereinabove stated.

## The Applicant’s Submissions

14. Counsel for the Applicant submits that under section 10 of the *Work Injury Benefits Act*, an employee has a right to be compensated by the employer for an injury that occurs in the course of his employment. The section provides:

“(1) An employee who is involved in an accident resulting in the employee’s disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.



(2) An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.”

15. There is no contest that the Applicant suffered an injury in September 2020, two years the down the lane, Respondent has without any justification refused to compensate him.

16. The contention by the Respondent that the Director erroneously computed the amount payable to the Applicant when he employed in the computation 30 working days instead of 26 working days, cannot be raised at this forum. The issue ought to have been raised as an objection to Director under section 51 of the Work Injury Benefits Act. This the Respondent did not do. The section provides:

“Any person who is aggrieved by a decision of the Director on any matter under this Act may within sixty days of such decision, lodge an objection with the Director against such decision.”

17. It is further submitted that the Respondent’s case that the court directs that KShs.18,500, from the assessed computation, is one that lacks a legal foundation. The claim is foreign under the Work Injury Benefits Act as such it should be disregarded.

18. This court should adopt the award of the Directors so that enforcement of the same is possible, otherwise, the Respondent shall persist with its refusal to pay the assessed compensation.

19. Counsel submits that the essence of section 26(6) of the Act which provides:

(b) an employer or an insurer who fails to pay the compensation claimed under this subsection commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.”

Is to ensure that injured employees are compensated and protected against fraudulent employees and insurers who refuse to honour payments.

20. Counsel submits further, that this court has jurisdiction enforce settlement of the award by the Director. Counsel sought to rely on the decisions in Samuel Wambua Mbitbuke v Metro Concepts East Africa Limited & another (2021) eKLR, and Borniface Indolo Lucira v Prime Quantifiers Construction Company Ltd & another (2021) eKLR.

21. This court has jurisdiction to enforce the award of the Director against the Respondent and impose the appropriate sanction as provided for under section 26(b) of the Act against the Directors and the Respondent.

### **The Respondents submissions**

22. The respondent’s counsel submits that the applicant has another suit against the Respondent, a suit which is pending at the Chief Magistrates Court at Mavoko, suit CMER No. E068 of 2023. In the suit, he has sued for terminal benefits.

23. The respondent was at all times willing to settle the Director’s assessed compensation but was disabled as the Applicant did not provide them with details regarding how the money would be transmitted to her.

### **Determination**

24. Before I delve into considering what the issues for determination are in this matter and rendering myself on them, it is imperative to point out that two pivotal issues are not in contest herein, namely;



- (a) That at all material times, the Applicant was an employee of the Respondent company.
  - (b) That in the course of employment the Applicant suffered a workplace injury, out of which the Director assessed compensation due to him at KShs.506,688.00 pursuant to the provisions of the *Work Injury Benefits Act*, 2007. The compensation remains unsettled to date.
25. Having said this, I now turn to consider what the issues for determination on the instant application are. I have carefully read the application, the grounds upon which it is anchored, the affidavit in support thereof, the Respondent's replying affidavit and the submissions filed by the parties, I distil the following issues for determination:
- (a) whether the court should order the adoption of the Directors' award.
  - (b) whether this court should punish the Respondent's directors pursuant to the provision of section 26(b) of the *Work Injury Benefits Act*.

### **Whether this court should adopt the award of the Director**

26. No doubt the *Work Injury Benefits Act* does not in its provisions provide a procedure for enforcement of the Directors' award. However, this Court has numerously rendered attention to the issue of whether or not it has jurisdiction to adopt the award to enable enforcement of the same. I agree with the decisions cited by Counsel for the Applicant on the issue. The court has jurisdiction.
27. The Respondent has indicated through the answering affidavit that it is willing to settle the amounts that were awarded by the Director as compensation in favour of the Applicant. Consequently, I hold that the Applicant's application and more specifically prayers [a] and [b] are not opposed. They are hereby granted. The award is adopted as a judgement of this Court and a decree should issue.
28. The Respondent is given 10 days of this ruling to pay the sum of the award, in the defaulting execution to issue against it.
29. By urging this Court to declare that the Respondent has committed an offence and go right ahead to convict and sentence its directors, the applicant is inviting the court to step into the space of a criminal process. The *Work Injury Benefits Act* does not at all contemplate the process to be under the purview of this court. I decline the invitation. I reject prayers [c] and [d] of this application, as a result.
30. Costs follow the event. Costs of this application shall be to the Applicant.
31. Orders accordingly.

**READ, SIGNED, AND DELIVERED THIS DAY OF 28<sup>TH</sup> SEPTEMBER, 2023.**

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**OCHARO KEBIRA**

**JUDGE**

In the Presence of:

Mr. Maina for the Applicant

Mr. Allan for the Respondent

**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 15<sup>th</sup> March 2020 and subsequent directions



of 21<sup>st</sup> April 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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

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**OCHARO KEBIRA**

**JUDGE**

