



Muturi v National Police Service & 3 others (Miscellaneous Cause E033 of 2023) [2023] KEELRC 2480 (KLR) (13 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2480 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E033 OF 2023
AN MWAURE, J
OCTOBER 13, 2023**

BETWEEN

DENNIS KARIUKI MUTURI APPLICANT

AND

NATIONAL POLICE SERVICE 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

**DEPUTY INSPECTOR GENERAL KENYA POLICE SERVICE 3RD
RESPONDENT**

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 20th February 2023 seeking the following orders:
 1. spent
 2. That this Honourable Court be pleased to adopt as a judgment of this court the award of the Directorate of Occupational Safety and Health Officer made in favour of the Applicant against the 1st Respondent.
 3. That judgment be entered for the Applicant against the 1st Respondent for Kshs 1,396,000 being the work injury compensation assessed under the *Work Injury Benefits Act*.
 4. That this Honourable Court be pleased to award interest on the above amount from the date of assessment until payment in full.
 5. That this Honourable Court be pleased to award any other relief as it may deem fit and just to grant.



6. That the costs of this application be awarded to the Applicant.

Applicant's Case

2. The Applicant's application was supported by an affidavit sworn by himself.
3. The Applicant avers he was employed by the 1st Respondent as a police constable, police no. 2018076841 on 28th June 2018.
4. The Applicant avers he was involved in an accident while on patrol at Kitengela on 29th July 2021 and was admitted and treated at Nairobi West Hospital.
5. The Applicant avers that on 24th March 2022, he attended a work injury evaluation clinic conducted by the Directorate of Occupational Health Services (DOSHS) and was examined by a panel of three doctors who published a joint report assessing his permanent incapacity at 30%.
6. The Applicant avers that the Director directed the 1st Respondent to settle the claim and the Applicant was to sign certificates of payment to mark the payment fully settled.
7. The Applicant avers that vide a letter dated 17th June 2022, the 1st Respondent's insurer requested the Applicant to go for a second opinion which the Applicant complied and visited the doctor but raised an objection that the law provides if the 1st Respondent has an objection to the Director's assessment and award it should be raised as an appeal.
8. The Applicant avers that the 1st Respondent had no reasonable prospects of complying with the Director's award and he proceeded to cause his counsel on record to write to the Directorate of Occupational Safety and Health on 7th February 2022 to highlight his frustrations in enforcing the award and a demand letter dated 17th August 2022 to the 1st Respondent demanding settlement of the claim.

Respondents' Case

9. In opposition to the Applicant's Notice of Motion Application dated 20th February 2023, the Respondents filed Grounds of Opposition dated 25th April 2023.
10. The Respondents aver the 1st Respondent maintained an enhanced comprehensive group life cover vide a contract between the Principal Secretary, State Department for Interior and Citizen Services and National Hospital Insurance Fund (NHIF) and included Work Injury Benefits under the [Work Injury Benefits Act](#) (WIBA) and a Group Personal Accident Cover for its members.
11. The Respondents aver that the 1st Respondent fully complied with its obligation set under WIBA to report accidents to facilitate compensation of the Applicant and further remitted statutory deductions due to NHIF.
12. The Respondents aver that the 1st Respondent reported the Applicant's injury to DOSHS and presented supporting documents to facilitate his compensation in line with WIBA.
13. The Respondents aver that the Claimant was evaluated by DOSHS which made a compensation award of Kshs 1,369,440 and the 1st Respondent did all it could to facilitate the compensation and even followed up with NHIF for update on why the claim has not been settled but it has not responded.



Analysis and Determination

14. It is not contested that the Applicant was injured and his injuries were evaluated by DOSH at 30% permanent incapacity and awarded Kshs 1,369,440 as compensation.
15. The Applicant submitted that the 1st Respondent passed the assessed claim to its insurer for settlement and the insurer opted to conduct an independent assessment on the Applicant which is alien to the law. The Applicant relied on *Stephen Wangusi Nyongesa v Dot.Com Bakery Limited* [2022] eKLR, in which the Court was faced with a similar scenario where the employer's insurers elected to undertake independent medical assessment instead of settling the claim as assessed. The Court expressed itself that:

“The Respondent did not tell the Court in which law this kind of procedure is domiciled...
1. Any process outside of the statute that is shown to have been undertaken, either by the Respondent or its agents and/or insurers to the disadvantage of the Applicant regarding the assessment and award made by the Director of Occupational Safety and Health Services was an outright illegality, which this court cannot sanction.”
16. The Respondents in its Grounds of Opposition did not go into detail on the actions of its insurer but only affirmed that the 1st Respondent did all it could to facilitate the compensation and even followed up with NHIF for update on why the claim had not been settled but it has not responded.
17. The Respondents did not produce any documents before this court to show that the 1st Respondent has taken reasonable action to ensure that the Claimant received his award from its insurer.
18. In *Elijah Kisiyanga Ndende v Manager Zabkem International Construction Ltd* [2022] eKLR the court held:

“7. The *Work Injury Benefits Act* is silent on the procedure to be followed in enforcing the Director's decision made on assessment of compensation payable to an employee for work injuries. In my view, the legislature never intended that an employee whose employer fails and/or refuses to pay the amount of compensation assessed by the Director of Occupational Safety and Health Services under WIBA would be without civil remedy, and particularly so where the employer never objected to the Director's decision on assessment of compensation payable to the employee.

It was held in the case of *Samson Chweya Mwandabole v Protective Custody Limited* [2021] eKLR as follows:-

“...However, this Court being 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 Director's award for purposes of execution. This jurisdiction should not be confused with appellate jurisdiction which is expressly donated under Section 52(2) of the WIBA in respect of the director's reply to objection made 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 Director's award by any party by way of objection or appeal under Sections 51(1)



and 52(2) of the WIBA respectively. In this case, it is common ground that the Respondent did not object to the award under Section 51(1) of the WIBA...”

In the present case, the Director’s award (decision) is contained in a DOSH/WIBA 4 Form dated 24th June 2016 and annexed to the Applicant’s supporting affidavit. The assessment is not shown to have been subjected to any objection by the Respondent or by any other party under Section 51(1) of the Work Injury Benefits Act.”

19. Flowing from the above and having considered the pleadings and the submissions, this court holds:
- a. The assessment made by the Director of Occupational Safety and Health Services on the Applicant herein on 1st April 2022 is hereby adopted as a Judgment of this Court.
 - b. Judgment is hereby entered for the applicant against the respondents for Kshs 1,369,440 in accordance with the assessment of the Director of Occupational Safety and Health Services dated 1st April 2022 as assessed under the work injury compensation.
 - c. costs of the application are awarded to the Applicant.
 - d. Interest to be awarded from date of this ruling till full payment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF OCTOBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

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 15th March 2020 and subsequent directions of 21st 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.

