



**Munyasia v National Council of Churches of Kenya (NCKK) (Miscellaneous Application E082 of 2023) [2023] KEELRC 2509 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2509 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**MISCELLANEOUS APPLICATION E082 OF 2023**  
**NJ ABUODHA, J**  
**OCTOBER 11, 2023**

**BETWEEN**

**PETER MUNYASIA ..... CLAIMANT**

**AND**

**THE NATIONAL COUNCIL OF CHURCHES OF KENYA  
(NCKK) ..... RESPONDENT**

**RULING**

1. The Claimant/Applicant filed application dated 16th March,2023 seeking for orders of this court to adopt the County Occupational Safety and Health Service Director's Award of Kshs 1,702,853.70/= as the judgment of this Honourable Court and the costs and interests be awarded to the Applicant.
2. The application is supported by the Affidavit of Peter Munyasia the Claimant/Applicant herein who averred that he entered in to contract of employment with the Respondent where he was retained as a cashier for a basic salary of approximately Kshs 20,166.30/= and that this engagement was subject to applicability of relevant laws including the [Work Injury Benefits Act](#) Chapter 236 Laws of Kenya.
3. The Applicant averred that on 8th March, 2016 while on duty and while lawfully discharging his duties pursuant to the contract he was involved in a work place accident and suffered physical injury in line of duty at work place including permanent disability by total blindness in the left eye among other injuries.
4. The Claimant/ Applicant lodged his claim under the [Work injury Benefits Act](#) and adhered with all applicable statutes and the Trans-Nzoia County Occupational Health and Safety office on 10th August, 2016 assed the compensation payable at Kshs 1,702,853.70 which the Respondent has refused to make good the claim past 90 days contemplated by the law and that the application has been made without delay.



5. In reply the Respondent also filed its reply sworn on 17th May, 2023 and opposed the Claimant's Application and averred that at the time of the accident the Respondent had obtained and maintained an insurance policy with an insurer approved by the Minister in respect of any liability that the Respondent may incur under the Work Injury Benefits Act (WIBA) to any of its employees.
6. The Respondent averred that the Respondent's Insurer (ICEA Lion General Insurance) issued a referral letter requesting the Applicant to go for a 2nd medical examinations in order to obtain a conclusive report detailing the extent of disability.
7. The Respondent averred that it never received any confirmation from the insurer on the attendance of the Applicant for a 2nd medical examinations and therefore did not issue the Respondent with a 2nd Medical Examination Report hence unable to honour the claim and confirm the complaints and extent of the permanent total blindness in the Applicant's left eye as alleged by the Applicant.
8. The Respondent further averred that the Law does not provide for mechanisms of enforcing Director's award and that the Applicant may only apply to ELRC summarily to move the court to adopt the award for purposes of enforcement by way of execution as if it were a court decree.
9. The Application was dispensed of by written submissions with each party submitting in support of their respective pleadings.

### **Determination**

10. It is not in dispute that the Claimant/Applicant was employed by the Respondent and that he got injured while at work and he suffered personal injuries where the Trans-Nzoia County Occupational Health and Safety office assessed the compensation payable as Kshs 1,702,853.70/=.
11. The Respondent acknowledged that it is them who reported the injury to the Director as per requirements of section 21 and 22 of WIBA. This means they were all aware of the proceedings of the Director who assessed this award but they opted not to raise an objection to the award in 60 days as provided for under section 52 of WIBA and if still aggrieved appeal to ELRC in 30 days thereafter.
12. I also note that the letter by the Respondent requesting for the 2nd medical Examinations was done on 16th November, 2016 after the award was done on 10th August 2016. Nothing prevented the Respondent from raising this issue before the award was given.
13. The court having been faced with the same issue on enforcement of the director's award considered different case laws on the same since the Act is silent on the enforcement in Joash Shisia Cheto v Thepot Patrick Charles [2022] eKLR held as follows;

The general position established by a majority of these decisions is as follows: -

- a. The law does not provide for mechanisms of enforcing the Director's award against a reluctant employer.
- b. In the face of this lacuna, the holder of the award can move the court to seek for enforcement of the award. A majority of the decisions favour the view that the ELRC can be moved for this purpose pursuant to its jurisdiction under article 162 of the Constitution as read with section 12 of the ELRC Act. Only one decision holds the view that the ELRC cannot be moved for this purpose. A few share the view that the Magistrate's court may be moved where pecuniary jurisdiction allows.
- c. The proceedings for enforcement may be in summary form by way of miscellaneous causes or in the form of ordinary causes but confined to matters of enforcement only.



- d. Unless by way of appeal under section 52 of the [WIBA](#), it is not open to the court to consider the merits of the Director's award or indeed go on a fact finding mission. This jurisdiction is the preserve of the Director.
14. The Applicant has therefore rightly approached this court through a miscellaneous Application and since the Respondent has not raised any objection to the payment it only raises an issue of procedure which is not within the purview of this court as it is not sitting as an appeal court or judicial review to quash the award. The Respondent has not set aside the award or stayed the same as was held in the above case hence the Applicant should enjoy his fruits accordingly.
15. In conclusion the Claimant's Application dated 16th March, 2023 is found merited and the court adopts the director's award of 10th August, 2016 at Kshs 1,702,853.70/= as decree of the court and interest at court rates until payment in full. Costs are awarded to the Applicant.
16. It is so ordered

**DATED AT NAIROBI THIS 11TH DAY OF OCTOBER, 2023 DELIVERED VIRTUALLY THIS 11TH DAY OF OCTOBER, 2023**

**ABUODHA JORUM NELSON**

**JUDGE**

