



**Mutie v Blue Stone Limited (Miscellaneous Application
E027 of 2022) [2022] KEELRC 12716 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12716 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E027 OF 2022**

M MBARŪ, J

MAY 12, 2022

BETWEEN

JOHNSTONE MAKAU MUTIE APPLICANT

AND

BLUE STONE LIMITED RESPONDENT

RULING

1. The applicant filed application dated February 21, 2022 seeking for orders that;
 - a. The decision by the director of occupational safety and health services rendered on August 21, 2020 awarding the applicant a sum of Kshs 1,118,400 against the respondent be adopted as a judgement of this court;
 - b. Interest on a sum of Kshs 1, 118,400 be awarded at the rate of 14% per annum from August 21, 2020.
 - c. Costs of this application.
2. The application is supported by the affidavit of the applicant and on the grounds that he was employed by the respondent earning Kshs 76, 641 per month and on February 1, 2020 due to the negligence of the respondent he was involved in an accident where he sustained deep cuts to the middle and ring fingers rendering him handicap. The matter was reported tot eh director who assessed compensation at Kshs 1, 118,400 but the respondent has neglected to pay the same.
3. The applicant filed his further affidavit and avers that in reply the respondent has filed the replying affidavit of sarah weru, deputy manager legal affairs of MUA Insurance, a third party and not the respondent herein and without authority from the respondent to reply that she is an officer of the respondent.



4. This court has jurisdiction to determine the instant application as held in the case of *Edwin Songoroh & another v Amony Koech Yatich & another* [2021] eKLR and *Samson Chweya Mwendapole v Protective Custody Limited* [2021] eKLR. there is no express statutory provision that requires the Magistrates Court to hear awards for adoption from the WIBA director and pursuant to the court's original jurisdiction under article 162(2) of the *Constitution* and section 12 of the *Employment and Labour Relations Court Act*, this court has the mandate to determine the matter.
5. In reply, the respondent filed the replying affidavit of Sarah Weru the deputy manager- legal affairs of the MUA Insurance company and the respondent's insurer and authorised by the management of MUA Insurance and the respondent to respond herein and avers that the applicant was an employee of the respondent and was on December 1, 2020 involved in an accident while in employment.
6. Ms Weru avers that the accident to the applicant was reported to the directorate of occupational safety and health who made an award of Kshs 1, 118,400 on 21st August, 2020 based on the degree of incapacity assessed at 16%. Upon receipt of the assessment the respondent consulted Dr. Wambugu who re-examined the applicant and concluded that he did not sustain any degree of incapacity and based on these findings and aggrieved by the award of the director, the respondent appointed a medical panel that reviewed the disability from 16% to 4%.
7. The director, guided by the findings by the medical panel, reviewed the award to Kshs 369, 600 and the applicant has therefore misled the court since he has never challenged the review or lodged an appeal and therefore he is not entitled to the orders sought.
8. Ms Weru avers that the applicant has prematurely moved the court and the court with proper jurisdiction is the Magistrate's Court as held in *Edwin Songoroh & another v Amony Koech Yatich & another* [2021] eKLR. this court lacks jurisdiction to hear the instant application and there is no provision vesting the court with jurisdiction as held in *Peter Mutua Kaloki v China State Construction & Engineering Corp (Kenya) & another* [2022] eKLR that this court cannot ascribe to itself jurisdiction where there is a lacuna in law.
9. Both parties filed written submissions and which the court has put into account and the sole issue for determination is whether the court should adopt the award of the Director as its judgement.
10. The accident to the applicant on December 1, 2020 while at work is not contested. Also, the matter was reported to the director under the *Work Injury Benefits Act*, 2007 (the Act) and who made an assessment and awarded the applicant the sum of Kshs 1, 118,400 in compensation.
11. The applicant has not disclosed that the respondent applied for a review of the award and the director allowed the same and awarded the applicant the sum of Kshs 369, 600. These facts are not addressed in the applicant's Further Affidavit in reply to the respondent.
12. The director has the report dated April 29, 2021 allocating and award of Kshs 369, 600 to the applicant.
13. There is no appeal against such an award pursuant to the provisions of section 23 and 52 of the act, the act provides for legal redress to this court. judicial assistance can be sought by aggrieved parties from decisions of the director and the court can make a determination with respect to all relevant matters arising from those decisions and including an appeal.
The award of the director stands at Kshs 369, 600.
14. The respondent opted to file the replying affidavit of Sarah Weru, who avers that she is;
... Deputy manager- legal affairs of the MUA Insurance Company The Respondent's Insurer And Who Avers That I Have Been Duly Authorised By The Management of the MUA Insurance company



and the respondent to swear this affidavit on behalf of the defendant and thus competent to swear this affidavit.

15. Under the *Employment and Labour Relations Court (Procedure) Rules, 2016* (the rules) a ‘respondent’ is defined as;

“respondent” means a person against whom a suit has been instituted in the court or who replies to any proceedings in court;

16. In the instant replying affidavit, ms weru avers under oath that she has authority of MUA Insurance and that of the respondent to respond herein. Such response is acceptable under the rules.
17. The question of jurisdiction has been addressed and the respondent assets that that applicant is prematurely before this court and should have filed the instant application before the Magistrates Court as held in *Edwin Songorob & another v Amony Koech Yatich & another* [2021] eKLR and in Peter *Mutua Kaloki v China State Construction & Engineering Corp (Kenya) & another* [2022] eKLR.
18. Pursuant to the provisions of article 162(2) (a) of the *Constitution, 2010* this court has original jurisdiction to hear and determine employment and labour relations matters and for connected purposes. For expediency and to ensure access to justice, the Chief Justice issued directions pursuant to section 27 of the *Interpretation and General Provisions Act*, chapter 2 Laws of Kenya and read together with section 16 of the *Labour Institutions Act*, 2007 and under Gazette Notice No 9243 allowed designated Magistrates to address allocated matters under the *Work Injury Benefits Act*, 2007; *Labour Institutions Act*, 2007; *Employment Act*, 2007; *Occupational Safety and Health Act*, 2007; and *Labour Relations Act*, 2007. See Legal Notice No 9243 of July 27, 2011. See *Rwanken Investment Limited & another v Ministry of Labour & 2 others* [2013] eKLR.
19. Further to these practice directions and to ensure access to justice, the Chief Justice published more directions pursuant to Legal Notice No 6024 and designated magistrates with special jurisdiction to hear and determine employment and labour relations disputes with a given monetary jurisdiction.
20. These practice directions remain as published. The constitutional mandate and the jurisdiction of the court remain constant.
21. The application before court and the attendant jurisdiction of the court pursuant to the *Constitution, 2010* cannot be taken away. There is jurisdiction herein.
22. On the findings above, judgement is hereby entered in terms of the director’s award to the applicant at Kshs 369,600 to be paid within 30 days and after which date the same shall attract interests at court rates and until paid in full each party shall bear own costs.

DELIVERED IN COURT AT NAIROBI THIS 12TH DAY OF MAY, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

