



Mucheke v County Government of Meru (Miscellaneous Application E006 of 2022) [2022] KEELRC 13204 (KLR) (17 November 2022) (Ruling)

Neutral citation: [2022] KEELRC 13204 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E006 OF 2022
ON MAKAU, J
NOVEMBER 17, 2022**

BETWEEN

FRANCIS KIBURI MUCHEKE APPLICANT

AND

COUNTY GOVERNMENT OF MERU RESPONDENT

RULING

1. This ruling relates to the applicant's Notice of Motion dated 18th August, 2022 brought under article 162(2) of the Constitution of Kenya, section 12(1) of the Employment and Labour relations Court Act, section 1A, 1B, 3A & 63 of the Civil Procedure Act, order 51(c) of the Civil procedure Rules and all enabling provisions of the Law. The application seeks the following orders that;
 - a. This court makes declaration that the respondent pay the claimant the award amount of Kshs. 3,107,863.10 being the compensation award by the Director of Occupational Safety and health Services to the applicant.
 - b. The compensation of Kshs 3,107,863.10 by the Director of Occupational Safety and health Services to the applicant be adopted as the judgment of this court.
 - c. Cost of this application be paid by the respondent.
 - d. Interest on prayer (a) and (b) above.
2. The application is supported by affidavit sworn by the applicant is premised on the grounds set out on the body of the motion. In brief the applicant deposed that he is an employee of the respondent and he was injured on 27th October 2014 while in the course of duty transporting the Weighing Balance to the Cess barrier along Meru-Nkubu road ; that he was treated in different hospitals and later he was examined by Dr Mbogori who assessed the decgree of incapacity as 45%; that the applicant reported to the Director of Occupational Safety and health Services and a Dosh/wiba 4 Form was filled (Annexure



- 3); that thereafter the Director assessed the compensation at Kshs 3,107,863.10 on 31st March 2015 (Annexure 4) and sent a demand for payment but the respondent has since refused/neglected to pay; that it is in the interest of justice that the orders sought are granted; and that granting the orders will not prejudice any party.
3. In response to the application, the respondent filed replying affidavit sworn on 24th October 2022 by its counsel Ms Matiri. In brief the respondent deposed that the applicant is its employee; that after he sustained injuries his claim was forwarded to Jubilee Insurance Company which provided insurance cover to its employees that time; that the applicant should therefore pursue compensation for his injuries from insurance company; and that for the said reason, the application is a waste of courts time.
 4. The application was canvassed by way of written submission but the respondent did not file any and instead relied on the said replying affidavit.
 5. The applicant has submitted the respondent was made aware of the Assessed compensation by the Director of Occupational Safety and health Services but did not challenge the award through the procedure provided by the law. Instead it has persisted in the refusal to pay the assessed award to the applicant and even gone ahead to depose that the applicant should pursue his claim from its insurers. Consequently, the applicant prays for the orders sought contending that this court is clothed with the jurisdiction to enforce an award from the Director of Occupational Safety and health Services.
 6. For emphasis, he relied on the decisions of this court in the case of *Jared Obuya v Handicap International* [2021] eKLR and *Samson Chweya Mwendabole v Protective Custody Limited* [2021] eKLR where the court held that it enjoys both original and appellate jurisdiction in disputes related to employment and labour relations pursuant to article 162(2) (a) of the *Constitution* of Kenya and section 12 of the *Employment and Labour Relation Court Act*. As a consequence of the said jurisdiction, the court held that it has inherent jurisdiction to adopt as judgment an award by the Director of Occupational Safety and health Services for purposes of enforcement.

Analysis and determinations

7. After considering the applications, the responses thereto and the submissions filed, the main issues for determination is whether the court should adopt as its judgment the Award of Kshs. 3,107,863.10 by Director of Occupational Safety and health Services made on 31st March 2015 and enforce it against the respondent.
8. The decisions by this court cited above confirm that this court has the inherent jurisdiction to adopt and enforce the awards made by the Director of Occupational Safety and health Services as judgements. Nothing has changed since the said decisions were made by the court and therefore the said jurisdiction of the court is hereby reaffirmed.
9. Turning to the merits of the application, the court notes that the respondent never challenged the award by the Director of Occupational Safety and health Services through the procedure set out under section 51 and 52 of the *Work Injury Benefits Act* (WIBA). Section 51 gives a dissatisfied party dissatisfied with award the right to lodge an objection with the Director within 60 days of the award and the director will either uphold the decision or vary it within 14 days of receipt of the objection.
10. Section 52 of the Act then allows a party dissatisfied with the director's decision on the objection, to file an appeal to this court. The court notes that there are no pending proceedings challenging the award by the Director dated 31st March 2015 and that the time provided by the law to do so has since lapsed.



11. Besides, the respondent has admitted that after the accident, the relevant documentation was done and forwarded to its insurer who should be pursued for the compensation. The said admission corroborates the applicant's motion which I allow with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 17TH DAY OF NOVEMBER, 2022.

ONESMUS N MAKAU

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 April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

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