



**IN THE REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**MISC. NO. E020 OF 2020**

**SAMSON CHWEYA MWENDABOLE.....CLAIMANT**

**-VERSUS-**

**PROTECTIVE CUSTODY LIMITED.....RESPONDENT**

**RULING**

1. This Ruling is in respect of the Applicant's Notice of Motion dated 19.8.2020 seeking the following orders:-

**(a) That this application be certified as urgent and heard ex-parte in the first instance.**

**(b) 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.**

**(c) That judgment be entered for the Applicant against the Respondent for Kshs. 671,803.50 being the amount assessed under the Work Injury Benefits act.**

**(d) That this Honourable Court be pleased to award interest on the amount from the date of assessment until payment in full.**

**(e) That this Honourable Court be pleased to award any other relief this court may deem fit and just to grant.**

**(f) That costs of this application be awarded to the Applicants.**

2. The application is premised on the grounds set out on the body of the Motion and the Supporting Affidavit sworn by the Applicant on 19.8.2020. The Respondent has opposed the application vide the Replying Affidavit sworn by Ms. Linda Njenga Koigi, Head of Legal Britam General Insurance Company Limited which had insured the Respondent when the cause of action herein arose.

3. The Applicant's case is that he was injured while in the course of his employment by the Respondent and the permanent injuries suffered were assessed at 25%. It is further his case that the Director of Work Injury Benefits computed his compensation for permanent incapacity at Kshs. 632,268 plus temporary incapacity damages of Kshs. 39,535.50 bringing the total award of damages to Kshs. 671,803.50.

4. He contended that despite being aware of the said award the Respondent did not object on appeal against the same under section 51 and 52 of the Work Injury Benefits Act (WIBA). He relied on **Hadisha Engineering Co. Ltd & Another vs. Benson Chege Karori[2015]eKLR** where the court held that any objections to the award under section 51 of the WIBA should be lodged within 60 days to the Director and thereafter the objector may lodge an appeal to this court within 30 days of receipt of the Director's reply by dint of section 52 (2) of WIBA. Therefore, he prayed for the orders sought in his motion.

5. The Respondent's admitted that the Claimant was injured while in the course of his employment and assessment was done under the WIBA. It is further Respondent's case that the Applicant did not forward the DOSH/WIBA 4 Form to it after the assessment and as such it was possible to raise an objection to the assessment within the stipulated time frame because it was unaware of the assessment.

6. It further contended that the Applicant did not suffer any permanent incapacity at all as per the second medical report prepared by Dr. P.M. Wambugu which is annexure NM1 to the Replying Affidavit.

7. Having considered the application, affidavits and written submissions filed, there is no dispute that the Applicant was employed by the Respondent and on 27.8.2017 he was involved in an accident while in the course of his employment and suffered bodily injuries. There is

further no dispute that the Director of Work Injury Benefits assessed the Applicant's degree of incapacitation and awarded him a total of Kshs. 671,803.50 on 15.7.2019. The only issue for determination is whether the application herein should be allowed.

8. The gist of the application herein is simply that the court does adopt the award by the Director as judgment of the court for purposes of execution. There is a lacuna in law with respect to procedure for enforcement of the awards made by the Director under WIBA. However, this court being endowed with unlimited original and appellate jurisdiction in disputes related to employment and labour relations pursuant to Article 162(2) (a) of the Constitution and section 12 of the Employment and Labour Relations Court Act, I hold that it has the 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 Directors reply to objection made under section 51(1) of the WIBA.

9. It would appear that the former jurisdiction, which I now invoked, 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 section 51(1) and 52(2) of WIBA respectively. In this case, it is common ground that the Respondent did not object to the award under section 51(1) of the Act.

10. According to the Respondent, the Applicant did not serve it with the award and therefore it was unaware of the same. Without any objection, the appellate jurisdiction of this court could not be invoked and there is no possibility of doing so in future. Consequently, the court finds that the Respondent's objection to the application herein by way of the Replying Affidavit filed by its insurer is neither here nor there and the application must be allowed in terms of prayers 2,3,4 and 6. However, the interest on the award will accrue interest at court rates from the date of filing the application.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 11TH DAY OF MARCH, 2021.**

**ONESMUS 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 15<sup>th</sup> April 2020, this judgment 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**