

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

MISCELLANEOUS NO. E110 OF 2021

ERICK ONGAKI MISATI.....APPLICANT

VERSUS

ONE WAY CLEANING SERVICES LIMITED.....RESPONDENT

RULING

1. The Applicant sought vide his Notice of Motion application for orders:-

- i. THAT this Honourable Court be pleased to adopt as a judgment of this Court the award of the Director of Occupational Safety and Health Services.
- ii. THAT judgment be entered in favour of the Claimant as against the Respondent for Kshs. 23,884.62 being the amount assessed under the Work Injury Benefits Act.
- iii. THAT this Honourable Court be pleased to award interest on the amount from the date of the assessment.
- iv. THAT the costs of this Application be borne by the Respondent.

2. The Applicant supports the motion by his affidavit of 28th June 2021 as well as the grounds on the face of the Motion. He asserts in the affidavit that the Respondent had retained his services as a cleaner from 2017 at a salary of Kshs. 13,800/- and that he sustained severe injuries on 3rd July 2020 while performing his duties for the Respondent. He depones that the Respondent prepared and signed the duly filled statutory notice by an employer of an occupational accident/disease of an employee to the Directorate of Occupational Safety and Health Services. The Directorate of Occupational Safety and Health assessed the work injury benefits for compensation vide claim Reference No. WIBA/NBI/1558/2020 at Kshs. 23,884.62. He deponed that despite the Respondent being aware of the award and despite demand being made, the Respondent has failed, neglected and or refused to pay and had not lodged an objection or appeal within the 60 days prescribed under the law. He deponed further that the Respondent's conduct in refusing to pay amounts to blatant disregard of the Directorate of Occupational Safety and Health Services' statutory authority to assess and direct compensation on work injury benefits which such negligence suffices as an embarrassment of the statutory office of the Directorate of Occupational Safety Health Services.

3. The Work Injury Benefits Act, 2007 (WIBA) does not provide for an enforcement mechanism in respect of awards of the Director and recourse was section 87 of the Employment Act, 2007 (the Act) as held in the case of **Ruth Wambui Mwangi & Another (suing as the Legal Representatives of the Estate of Joseph Wangai Muray v Alfarah Wholesalers Limited [2017] eKLR** where Radido J. stated thus:-

But before penning off, the Court must observe that the Act is not express on what avenue an application seeking payment of compensation under the Work Injury Benefits Act should take (whether a substantive suit or an application as presented herein)

4. Under the Work Injury Benefits Act, an application such as this can found an action for the enforcement of the award of the Director Occupational Safety and Health. In the present case nothing was presented to demonstrate otherwise and the Court therefore adopts as a judgment of this Court the award of the Director of Occupational Safety and Health Services. I hereby enter Judgment in favour of the Claimant as against the Respondent for the sum of Kshs. 23,884.62 being the amount assessed under the Work Injury Benefits Act. The Court in addition will award interest on the amount of Kshs. 23,884.62 at court rates from the date of the assessment as the Respondent has wilfully declined to settle its obligation perhaps under the mistaken belief that the Applicant has no recourse for enforcement. The costs of this Application must of necessity be borne by the Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY 2021

Nzioki wa Makau

JUDGE