



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO**

**ELRC CAUSE 20 OF 2020**

**KENYA PLANTATION AND AGRICULTURAL WORKERS UNION....CLAIMANT**

**VERSUS**

**K.T.D.A MOGOGOSIEK TEA FACTORY.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed a Memorandum of Claim dated 14<sup>th</sup> July, 2020, on the 11<sup>th</sup> August, 2020 seeking for an order to compel the respondent to pay the sum of Kshs. 1,525,453 as compensation for an industrial accident against its member, **Sammy Kipkemboi Rono**.

2. It is stated that Sammy Kipkemboi Rono, the grievant herein was employed by the Respondent in November, 1997 as a shift Mechanic. That on 19<sup>th</sup> November, 2017 at around 3:15am the grievant was at his place of work attending to an elevator conveyor which had broken down when he came into contact with a live electric wire which electrocuted him and he fell down from a high place sustaining serious injuries.

3. That the grievant was rushed to Tenwek Hospital where he was admitted for a few weeks and later discharged but continued as an outpatient at the facility from 27<sup>th</sup> November, 2017 to 6<sup>th</sup> February, 2018 and his degree of incapacity was assessed at 35% by Tenwek Hospital. He continued with treatment and the Doctor recommended him to resume work on 1<sup>st</sup> July, 2018 albeit on lighter duties due to the nature of his injuries.

4. That the accident was reported to the occupational safety and health office in Kericho and the work injury evaluation clinic awarded the grievant Kshs. 1,525,453 on 24<sup>th</sup> April, 2019.

5. On 14<sup>th</sup> June, 2019, UAP Insurance send the grievant for a second medical examination by one Doctor George W.O. Mugenya, which grievant attended but the report was never served upon him or the claimant. That on 6<sup>th</sup> August, 2019, the respondent through UAP insurance send the grievant a settlement voucher of Kshs. 414,275/- requiring his signature and return to them for settlement. Aggrieved by this turn of events the claimant on behalf of the grievant reported the issue to the occupational safety health office Kericho who inquired the reduction of the compensatory money by a letter of 4<sup>th</sup> September, 2019 but did not elicit any response therefore prompting the Claimant to filed this suit praying for judgment to be entered against the Respondent for;

**1) A declaration that the decision of a respondent through UAP Insurance company to pay the grievant Kshs. 414,276/-as final award for permanent incapacity is wrongful, unfair and unlawful.**

**2) An order compelling the respondent to pay the grievant the sum of Kshs1,525,453/- as compensation for the injuries suffered by the grievant as assessed and awarded by the Work injury evaluation Clinic.**

**3) Costs of the cause.**

**4) Interest in 2 above.**

**5) Any other relief this Honourable Court deem fit to grant.**

6. The Respondent upon being served enter Appearance and filed as response to the Claim dated 16<sup>th</sup> September 2020 and filed in court on 18<sup>th</sup> September, 2020 through the firm of Nyachiro Nyagaka and Company Advocates. The respondent basically denied the occurrence of the alleged accident and the degree of incapacity of the grievant and put the claimant to strict proof therefore. It further challenged the jurisdiction of this Court to entertain the issue it being a WIBA matter.

7. Hearing was conducted on 11<sup>th</sup> March, 2021 with the claimant calling one witness, **Sammy Kipkemboi Rono, CW-1**, the grievant who testified that he was employed by the Respondent in the year 1997 as a shift mechanic taking care of all operations of machines. He testified that he is a member of the claimant's Union who have a CBA with the respondent marked as Exb-1. He adopted his witness statement of 14<sup>th</sup> July, 2020 which reiterated the averments in the memorandum of claim and stated that he is still employed by the Respondent. He testified that he was awarded Kshs. 1,525,453 for the injuries sustained however UAP insurance on behalf of the Respondent offered to pay Kshs **414,276/-** but have not yet paid. He prayed for an order of the Court for the Respondent to pay him the award of Kshs 1,525,453 awarded by the occupational safety evaluation clinic.

8. The Respondent after entering appearance and filing a response did not file any document neither did it participate in the hearing of the case as such the matter proceeded for formal proof.

#### **Claimants Submissions**

9. The claimant filed its submissions on the 13<sup>th</sup> April, 2021 and submitted that it is the responsibility of the Respondent to pay the claimant for injuries sustained at work as envisaged under section 10(2) of the work Injuries and Benefits Act. He further argued that the Respondent ought to shoulder the expenses he incurred in hospital and thereafter as an outpatient in light of section 34 of the Employment Act.

10. He submitted that the Work Injury Evaluation clinic awarded him Kshs 1,525,453.00 which figure was not objected by the Respondent as provided for under section 51(1) of the Work Injury Benefits Act therefore they are liable to pay the said figure as it is or be subjected to the provision of section 26(6) of the Work Injuries and Benefits Act and punished by this Court.

11. He cited the case of Jared **Ingling Obuya –v- Handicap International [2021] eKLR** where the court held that;

“The Employment and Labour Relations Court being the Court with original and Appellate jurisdiction to hear and determine disputes arising from Employer and Employee relationship and to administer statutory enactments dealing with Employment and Labour Relations matters has in this Court's considered finding jurisdiction to enforce awards by the Director pursuant to Work Injury Benefits Act 2007 where an employer willfully disregards and fails to enforce a decision and award of the Director pursuant to a statutory assessment of compensation arising from an occupational disease in terms of Article 162(2) of the Constitution read with Section 12(1) of the Employment and Labour Relations Court Act No. 20 of 2014, which provides:-

**“(12) (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and Labour Relations as read with Section 13 therefore which provides: A judgment award, order or decree of the Court shall be enforceable in accordance with the rules made under the Civil Procedure Act.”**

12. Accordingly, he urged this Court to compel the respondent to pay the award as granted by the Work benefits evaluation clinic.

13. I have examined the averments of the parties herein. From the chronology of events in this matter, this claim was lounged before the WIBA direction who assessed injury and awarded the claimant kshs.1,525,453/=.

14. This is as expected under the WIBA and as per the Judgment of the COA and SCA in CA No.133 of 2011 and Petition No. 4/2019 respectively. The two highest courts determined that matters of injury at work will be determined under WIBA by the direction.

15. Under Section 52 of WIBA any party aggrieved with the decision of the director can seek redress in court.

16. The court envisaged is the ELRC but this redress will only be addressed as an appeal of which the matter before me is not.

17. This is also a matter which I believe can be resolved through the rules of this court. Currently, there is no rule directing parties on how to progress with the decision of the Director under WIBA.

18. My understanding however is that a decision of the Director should be adopted by court in order to become a court order.

19. The Direction of WIBA's decision needs adoption by the lower court to become a court order which can therefore be appealable to this court.

20. As it were, the applicant has not taken these steps as envisaged and therefore my finding is that the matter is improperly before this court.

21. I therefore proceed to strike out the claim before me and direct the parties to follow the proper channels before appealing to this court if at all.

Ruling delivered virtually this 15<sup>TH</sup> day of JULY, 2021.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Saya for the claimant – present

No appearance for respondents

Court Assistant – Fred and Wanyoike