



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

MISCELLANEOUS APPLICATION NO. 2 OF 2015

HADISHA ENGINEERING CO. LTD

1ST APPLICANT

UAP INSURANCE CO LTD

2ND APPLICANT

v

BENSON CHEGE KAROKI

RESPONDENT

RULING

1. Benson Chege Karoki (Respondent) was an employee of Hadisha Engineering Co. Ltd (1st Respondent) and on 15 March 2013 he got injured in the workplace.
2. On 21 May 2013, Dr. Mukua Milton assessed his injury as 28% permanent incapacity and 8 weeks temporary incapacity.
3. Arising from the assessment, the Chief Occupational Health and Safety Officer assessed the compensation payable to the Respondent as Kshs 1,336,002/- on 21 May 2013.
4. The applicants through a letter dated 15 October 2013, caused the Respondent to undergo a second medical assessment, and on 23 October 2013, Dr. George Mugenya assessed permanent incapacity at 6% and temporary incapacity of 2 months.
5. On 21 February 2014, the Chief Occupational Health and Safety Officer assessed the compensation as Kshs 1,419,162/-.
6. The Respondent was dissatisfied with the second medical assessment, as a result of which the Chief Occupational Safety and Health Officer-Naivasha through his letter dated 6 May 2014 referred the parties to a Medical Evaluation Board to give another opinion.
7. The Medical Evaluation Board, comprised of 3 doctors, turned an assessment of 30% incapacity on 18 June 2014. After the assessment, the Chief Occupational Health and Safety Officer assessed the compensation payable to the Respondent as Kshs 1,513,512/- (for both permanent incapacity and temporary incapacity).
8. Earlier in December 2013, the Respondent had acknowledged receipt of Kshs 216,720/- as full and final settlement in respect of the injuries sustained in the work place.
9. The Respondent sought to enforce payment of the compensation of Kshs 1,513,512/- by commencing legal proceedings in Naivasha CMCC Misc. Civil Application No. 12 of 2014, Benson Chege Karoki v Hadisha Engineering Co.
10. The enforcement proceedings prompted the applicants to file the present application seeking

2. That this honourable court be please (sic) to stay proceedings in Naivasha Miscellaneous Application No. 12 of 2014 Benson Chege Karoki vs Hadisha Engineering Company Ltd pending the hearing and determination of this application.

3. That this honourable court be pleased to extend time within which an appeal from the

decision of the Medical Board can be filed under section.

4. Alternatively and without prejudice this court do hereby declare that the Respondent having been compensated cannot now claim further compensation.

11. The Respondent filed a replying affidavit and annexures on 4 February 2015, and the parties made submissions on 9 February 2015.
12. Pending the delivery of this ruling, the Court granted temporary stay of the proceedings before the Chief Magistrate in Naivasha on condition that the sum of Kshs 1,296,792/- was deposited into Court (Chief Magistrate-Naivasha).
13. The primary and substantive prayer in the present motion is prayer 3 seeking extension of time to appeal against the decision of the Medical Evaluation Board. If this prayer is declined, there would be no utility in granting prayers 2 and 4.
14. Any objections against the decision of the Director of Work Injury Benefits (Occupational Safety and Health?), by dint of section 51 of the Work Injury Benefits Act should be preferred within 60 days to the Director. The Director has 14 days within which to give a written answer.
15. It is after the written answer that an objector may lodge an appeal with this Court within 30 days.
16. The applicants have not attempted in the supporting affidavit of Ruth Monyangi to explain why the appeal against the decision was not made in time, but submit the Court has inherent power to extend time. The parties were sent to the Medical Board through a letter dated 6 May 2014. The Board returned its assessment on 18 June 2014. The Director thereafter assessed the compensation on 24 June 2014.
17. The Respondent submitted that the applicants had the opportunity to participate before the Medical Evaluation Board but did not and that the Work Injury Benefit Act did not have a provision granting to Court the power to enlarge time to bring an objection/appeal.
18. It was further submitted that any application to enlarge time should have been made to the Director.
19. The Respondent also questioned the locus or competence of the 2nd applicant.
20. In a brief rejoinder, the applicants submitted that the Court has jurisdiction under section 20 of the Employment and Labour Relations Court Act and that a legal grievance must have a remedy.
21. The applicants should have raised an objection on or before 23 August 2014. Any appeal to the Court should have been lodged by or before 22 September 2014.
22. The present application was filed on 23 January 2015. The Respondent had on its part filed an enforcement application on 15 August 2014 before the Chief Magistrate in Naivasha.
23. The applicants having failed to explain the delays do not merit the order for extension. This order having failed, the prayer for stay would serve no useful purpose.
24. The alternatively prayer is in vacuo and cannot be granted.
25. Because of the opinion the Court has reached, it is not necessary to deal with the ancillary issues raised by the Respondent.
26. In conclusion, the Court dismisses the motion dated 22 January 2015 with no order as to costs.

Delivered, dated and signed in Court in Nakuru on this 20th day of February, 2015.

Radido Stephen

Judge

Appearances

For Applicants

Mr. Kiburi instructed by Kamonjo Kiburi & Co. Advocates

For Respondent
Advocates

Mr. Murimi instructed by Murimi, Ndumia, Mbago & Muchela