



**Kimu v Kitui Flour Mills Limited (Miscellaneous Application
E016 of 2025) [2025] KEELRC 3040 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3040 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E016 OF 2025**

**K OCHARO, J
OCTOBER 30, 2025**

BETWEEN

STEPHEN KIOKO KIMU APPLICANT

AND

KITUI FLOUR MILLS LIMITED RESPONDENT

RULING

1. By an application dated 20th January 2025, the Applicant sought that the court adopt the assessments made by the Director of Occupational Health and Safety Services, as documented in the [Work Injury Benefits Act](#) Form 4 dated 14th August 2020 and 17th December 2020, and to issue a decree based upon these assessments for the sum of KShs. 83, 149.73. The application is supported by a supporting affidavit sworn on 25th January 2025.
2. The Applicant alleges that on 8th August 2018 and 8th August 2020, while working for the Respondent, he was involved in workplace accidents. As a result, he suffered serious injuries. He reported the accident to the Director of Occupational Safety and Health Services [hereinafter referred to as the Director].
3. Through a [WIBA](#) 4 form, the Director awarded the Applicant KShs. 15,118.13 on 14th August 2020 and 17th December 2020, KShs. 68,031.60, cumulatively, therefore, KShs. 83,149. 73.
4. On 15th August 2020, and 18th December 2020, the Respondent was served with the aforementioned forms to cause them to provide compensation to the applicant. However, the Respondent refused and/or neglected to make the payment. Such refusal and/or neglect contravened the obligations imposed upon the Respondent by law as an employer.
5. The Respondent did not prefer an appeal against the Director’s assessment and award within the requisite statutory period or at all.



6. The Respondent opposes the application through a replying affidavit of Faith Sowayi, sworn on 30th April 2025. They argue the application is misconceived and a waste of judicial time. The application is an abuse of the court process.
7. The Respondent states that while working for them, the Applicant was involved in a workplace accident on 8th August 2018, as a result, he sustained injuries. The accident was reported to the Director of Occupational Safety and Health Services, Mombasa. The Director issued the Respondent with a WIBA 4 form dated 14th August 2020, on which he assessed the compensation payable to the Applicant as KShs. 15, 118.13. The assessment was based on Part II of the medical report, which indicated the duration of the Applicant's absence from work as four [4] weeks.
8. Subsequently, the Respondent noted that the injury and period indicated on Part I of the Dosh 1 form did not tally with the Doctor's description of the injury and period in Part II. Part I indicated the injury sustained was a broken arm, while Part II stated that the injury was a wound on the right foot.
9. Noting the inconsistency, the Respondent referred the Applicant back to the Doctor. The Doctor subsequently prepared an amended Dosh 1 form and requested that the County Occupational Safety and Health Officer note the amendment and issue an appropriately amended WIBA 4.
10. Consequently, the County Occupational Safety and Health Officer issued an amended DOSH4 form, Ref. WIBA /MSA/11249/20, in which they erroneously stated that the accident occurred on 8th August 2020 as opposed to 8th August 2018, and compensation payable was assessed as KShs. 68,031.6.
11. The applicant returned to work on August 25, 2018, earlier than the date indicated on the forms, making him eligible for compensation only for the days absent from August 8 to August 25, totalling 17 days or Kenya Shillings 10,591. After resumption, he continued to receive his salary, and additional compensation for subsequent days was paid, amounting to KShs—22,925, which exceeds his entitlement.
12. The Respondent asserts that the applicant's claim for a total compensation of 83,149.73 shillings, based on two accidents, is incorrect, as there was only one accident in which he was involved, which was reported. The Respondent has all through been willing to pay the Applicant the correct assessed amount of KShs. 68,031.8.
13. The Applicant's insistence that he suffered injuries from two accidents, despite knowing there was only one, amounts to an attempt at unjust enrichment.

Determination

14. I have carefully considered the grounds put forth on the face of the Application, the contents of the Applicant's supporting affidavit, the Respondent's replying affidavit, and the detailed and helpful submissions by Counsel for the parties, and the following issues emerge for determination: was the Applicant involved in one or two accidents? If the answer is in the negative, what would be its impact on the Applicant's instant application?
15. This Court observes that the Respondent provided a detailed explanation of the origin and the factors that contributed to the creation of the two assessment forms. The explanation was fact-based and supported by documents. Any reasonable adversary faced with such facts and documents would seek to discount them if they believed that the facts were not genuine and the documents were not authentic. The Appellant, I hold, chose not to rebut this through a further affidavit. The explanation contained in the replying affidavit remained uncontroverted and is plausible.



16. The effect of the foregoing is a conclusion that the Appellant was only involved in one accident, which occurred on 8th August 2018. There was an initial assessment of Kshs. 15,118.13 in his favour by the Director, but this was, for cause, amended to 68,031.6. The Respondent admits the latter amount as payable to the Applicant, given the circumstances of the matter. I view the applicant's claim for the two amounts as an attempt to unjustly enrich himself, a vice that I cannot endorse.
17. This matter has garnered my attention. The Respondent's Counsel submitted that this Court lacks the jurisdiction to adopt the Director's awards and other decisions. The issue regarding this Court's jurisdiction to adopt the awards has now been conclusively settled. I strongly encourage Counsel to review the Court of Appeal decision in *Charles v. Cheto* [2025] KECA 748 [KLR], and to acknowledge that the court possesses the necessary jurisdiction.
18. Ultimately, this Court adopts as its judgment the award of the Director in the amount of Kshs. 68,031.6. Since the applicant was pursuing unfair enrichment, I shall not award him the costs of this application. Additionally, interest on the stated amount shall accrue from the date of this order until full payment is made.
19. Orders accordingly.

READ SIGNED AND DELIVERED THIS 30TH DAY OF OCTOBER 2025.

OCHARO KEBIRA

JUDGE

