

The Court of Appeal Clarifies on the Presumed Lacuna Over the Procedure for Challenging and Enforcement of WIBA Decisions

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A commentary on the Civil Appeal E046 of 2022: Charles v Cheto [2025] KECA 784 (KLR) (9 May 2025) (Judgment)

Introduction and Brief Background

On May 9, 2025, the Court of Appeal delivered a judgment in the case of Charles v Cheto whereby the court has clarified the enforcement of compensation awards under the Work Injury Benefits Act (WIBA), Cap. 236.

The case originated from a claim filed by Theopot Patrick Charles at the Employment and Labour Relations Court (ELRC) in Malindi. In the claim, Theopot sought to enforce an award of compensation issued by the Director of Occupational Safety and Health Services (DOSHS). The award was pursuant to the provisions of the Work Injury Benefits Act, Cap 236.

Proceedings at the ELRC

The ELRC found that, based on the evidence tendered by the parties, Theopot was engaged by the Cheto as a casual employee and that he was injured in the course of his employment. The ELRC therefore upheld the Director's award; holding that the same was payable to the Respondent by the Appellant.

Aggrieved by the ELRC's decision, Cheto moved to the Court of Appeal to challenge the said decision on grounds that the Judge erred in facts and law, including by enforcing a decision where the Appellant was not involved, failing to recognize the Respondent was not an employee of the Appellant, and failing to acknowledge the Appellant's right to a fair hearing.

At the Court of Appeal

Based on the above grounds, the Court of Appeal framed two issues for determination as follows:

1. Whether the learned ELRC Judge erred by failing to find that the Appellant was not informed of, or was not party to the proceedings before the Director, thereby violating his right to a fair hearing; and
2. Whether the learned Judge erred by adopting the Director's award.

Duty to be informed and participate in the proceedings before the Director, OSHA

On the first issue, the Appellant argued that he was not aware of the proceedings before the Director as he was not notified of the same, and as such, the said proceedings should be nullified. However, the Court of Appeal disagreed with the Appellant and found that the argument presented by the Appellant seemed to be an afterthought since the same was not raised in the Appellant's pleadings filed at the ELRC.

The Court upheld the validity of the compensation award, affirming that it was issued in accordance with the provisions of the WIBA and that the Appellant cannot purport to disregard it.

The Right to lodge an Objection to an award by the Director

The court further found that the procedures followed were fair and in compliance with the principles of natural justice and that if the Appellant had an issue with the said decision, he ought to have lodged an objection with the Director within 60 days of notice of the award, but he did not lodge any objection.

In any case, if the Appellant had fundamental constitutional issues with the Director's award, as he seemed to have, he ought to have invoked the court's judicial review jurisdiction in a separate suit to quash the Director's decision. However, the Appellant never lodged any judicial review application. Accordingly, the Court dismissed the Appellant's arguments regarding procedural irregularities.

Jurisdiction of the ELRC to enforce the DOSHS awards

On the second and last issue, the Appellant argued that the ELRC Judge misdirected himself by stating he had no authority to address the matter and failed to declare the Director's decision as null and void. The Court of Appeal confirmed that the ELRC had the jurisdiction to enforce the award, as it falls within the scope of its mandate under Sections 86 and 89 of the Employment Act, Cap 226.

The Court further relied on the case of ***Richard Akama Nyambane v ICG Maltauro Spa [2020] KEELRC 847 (KLR)***, where Mbaru, J. held that an award by the Director is enforceable through the ELRC.

Finally, on this issue, the Court of Appeal reiterated that the proper avenue for the Appellant to challenge the fairness and lawfulness of the proceedings before the Director would be to lodge a judicial review application seeking to quash the said proceedings and the resultant award.

CONCLUSION

This judgment in Charles v Cheto reinforces the legal framework for the enforcement of compensation awards under the WIBA and the need to adhere to the procedures and timelines prescribed in law. Any reluctance and/or mistake as to procedure presents a risk of rendering the party's claim moot, and thus incurably helpless. Most importantly, it underscores the jurisdiction of the ELRC in enforcing DOSHS awards, which should not be confused with the judicial review issues surrounding the procedure and the resultant award.

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