

Case ID: [2026] KEELRC 38 (KLR) Copy

Title: Kadenge (Suing for and on Behalf of Emmanuel Mwaruwa Gwamadi - Deceased) v Shupazzafina Limited & another [2026] KEELRC 38 (KLR) Copy

Court: Employment and Labour Relations Court

Judges: S Radido

Date: 22 January 2026

Parties: Kadenge (Suing for and on Behalf of Emmanuel Mwaruwa Gwamadi - Deceased) v Shupazzafina Limited & another [2026] KEELRC 38 (KLR) Copy

Summary: REPUBLIC OF KENYA

legal\_issues: ['THAT this Honourable Court be pleased to adopt as judgment of the Court against the Respondents jointly and severally the assessment /award of the Director of Occupational Safety and Health Services, Nairobi, made on 6th November 2019. (ii) A decree do issue for:', '3. This section shall not apply in a suit where the dispute over a contract of service or any other matter referred to in subsection (1) is similar or secondary to the main issue in dispute.']

decision: The Respondent did not pay, and Dama Kalume Kadenge (the applicant) sought and was granted Letters of Administration over the estate of the deceased on 14 October 2025.

legal\_principles: ['As the learned Judge correctly observed, there is a lacuna in the law with regard to the procedure for enforcement of the Director's decision, in that there is no express provision of the WIBA stipulating the procedure for enforcement. Be that as it may, Employment and Labour Relations Courts have aptly held that enforcement of the Director's decisions properly lies with the ELRC as the court with the jurisdiction to deal with employment and labour relations claims and for connected purposes, and as provided for under sections 86 and 89 (formerly sections 87 and 90) of the Employment Act (Cap. 226). Section 86 reads:']

---- JUDGMENT TEXT ----

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISC APPLICATION NO. E400 OF 2025

IN THE MATTER OF ENFORCEMENT OF THE AWARD OF THE DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH SERVICES, NAIROBI

AND

IN THE MATTER OF SECTIONS 10(1), 19(2) AND 51 OF THE WORK INJURY BENEFITS ACT, CAP 236

AND

IN THE MATTER OF ARTICLES 27(1) & (2), 41(1) AND 162(2) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 12 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT AND THE INHERENT POWERS OF THE COURT

AND

IN THE MATTER OF RULE 69 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

BETWEEN

DAMA KALUME KADENGE (suing for

and on behalf of Emmanuel Mwaruwa

Gwamadi (deceased) APPLICANT

v

SHUPAZZAFINA LIMITED 1st RESPONDENT

FIRST ASSURANCE COMPANY LTD 2nd RESPONDENT

RULING

Emmanuel Mwaruwa Kadenge (deceased) was employed by Shupazafina Ltd (the Respondent), and he died in the course of work on 16 March 2019.

The Respondent reported the death to the Director, Occupational Safety and Health, and the Director assessed compensation payable and made a demand for payment to the Respondent on 6 November 2019.

The Respondent did not pay, and Dama Kalume Kadenge (the applicant) sought and was granted Letters of Administration over the estate of the deceased on 14 October 2025.

The applicant then moved the Court on 15 October 2025, seeking orders:

THAT this Honourable Court be pleased to adopt as judgment of the Court against the Respondents jointly and severally the assessment /award of the Director of Occupational Safety and Health Services, Nairobi, made on 6th November 2019. (ii) A decree do issue for:

(a) The sum of Kshs 8,736,000/- being the Director's award/assessment made on 6th November 2019.

(b) Burial expenses for the sum of Kshs 750,480/- reasonably incurred in laying the deceased to rest.

(c) Interests thereon at court rates (14%) from the date of the award (6th November 2019) until payment in full.

Costs of this application be awarded the applicant/

The main grounds in support of the Motion were that the deceased, a supervisor with the Respondent, died in the course of work; a report was made to the Director, Occupational Safety and Health Services; the Director assessed compensation payable and made a demand for payment on 6 November 2019; the Respondent did not lodge an Objection within 60 days; the Respondent failed to make payment; that under section 34(5) of the Work Injury Benefits Act, an employer was under an obligation to meet reasonable funeral expenses and that funeral expenses of Kshs 750,480/-were incurred.

The Court gave directions on the Motion on 5 November 2025.

First Assurance Co Ltd (the company) caused a replying affidavit sworn by its Assistant Legal Manager to be filed on 9 November 2025.

In the affidavit, the Manager deponed that the application was defective and a non-starter as against

it; the orders sought against the Company were untenable and unenforceable, and that the Court lacked jurisdiction to entertain the Motion and that jurisdiction lay with the Director, Occupational Safety and Health.

The company filed its submissions on 19 December 2025. The company cited *Musembi v Great Yaddo Industry Limited* (2022) KEELRC 13025 (KLR) and *Lameck Nyakundi Anyona v W.J.J Kenya Construction Company Limited* (2022) KEELRC 976 (KLR) to submit that this Court did not have jurisdiction to enforce awards by the Director of Occupational Safety and Health and that its jurisdiction was purely appellate.

The Respondent did not file a response to the Motion (should have been filed and served on or before 19 November 2025).

The applicant's submissions were not on the record by the agreed timeline of 5 December 2025 (and by the time of the delivery of this Ruling). The Respondent did not also file any submissions (should have been filed by 24 December 2025).

The Court has considered the Motion, affidavits and submissions on record.

Jurisdiction: Adoption and enforcement

Judges of this Court have taken opposed positions on whether the Court has the jurisdiction to enforce the awards by the Director of Occupational Safety and Health. The determinations cited by the Company reflect the position.

This Court has, however, always maintained that the Court has the requisite jurisdiction to adopt and enforce awards by the Director of Occupational Safety and Health under the Work Injury Benefits Act and that its jurisdiction is not merely appellate.

The primary jurisdiction cannot lie with the Magistrates' Courts. The Magistrates' Court exercises delegated jurisdiction by virtue of section 29(3) of the Employment and Labour Relations Court Act as read with Gazette Notice No. 6024 of 2018 (22 June 2018).

In order not to get into an exegesis on the jurisdiction of this Court to adopt and enforce an award by the Director of Occupational Safety and Health, the Court can do no better than reiterate the binding determination by the Court of Appeal in *Charles v Cheto* (2025) KECA 784 (KLR) that:

we hasten to point out that, upon notification of an occupational accident as prescribed by the WIBA and a claim for compensation therefor, the Director is mandated to undertake such inquiry as may be necessary to determine any claim or liability (section 23 of the Act), and may also require the injured employee to submit to medical examination (section 25). The Director may then award compensation in accordance with Part V of the WIBA (sections 28 to 37).

As the learned Judge correctly observed, there is a lacuna in the law with regard to the procedure for enforcement of the Director's decision, in that there is no express provision of the WIBA stipulating the procedure for enforcement. Be that as it may, Employment and Labour Relations Courts have aptly held that enforcement of the Director's decisions properly lies with the ELRC as the court with the jurisdiction to deal with employment and labour relations claims and for connected purposes, and as provided for under sections 86 and 89 (formerly sections 87 and 90) of the Employment Act (Cap. 226). Section 86 reads:

86. Complaint and jurisdiction in cases of dispute between employers and employees.

(1) Subject to the provisions of this Act, whenever—

- a. an employer or employee neglects or refuses to fulfill a contract of service; or
  - b. any question, difference or dispute arises as to the rights or liabilities of either party; or
  - c. touching any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party, under any contract of service, the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Employment and Labour Relations Court.
2. No court other than the Employment and Labour Relations Court shall determine any complaint or suit referred to in subsection (1).
3. This section shall not apply in a suit where the dispute over a contract of service or any other matter referred to in subsection (1) is similar or secondary to the main issue in dispute.

In this Court's view, the Court of Appeal in the above-cited judgment resolved the question of this Court's jurisdiction to adopt and or enforce the awards by the Director of Occupational Safety and Health under the Work Injury Benefits Act.

This Court holds that the Employment and Labour Relations Court has the primary jurisdiction.

#### Jurisdiction: Limitation

The Director of Occupational Safety and Health made an award on 6 November 2019.

The applicant only secured Letters of Administration on or around 14 October 2025.

The applicant moved this Court on 15 October 2025, more than 3 years after the assessment by the Director.

The applicant did not explain why it took so long to secure Letters of Administration.

The action advanced by the applicant occurred in the course of performance of a contract of service.

By dint of section 89 of the Employment Act, 2007, the applicant had 3 years within which to invoke the Court's jurisdiction. She moved the Court after around 6 years.

The Court is, therefore, of the view that the action is caught up by the limitation prescription in section 89 of the Employment Act and cannot be maintained.

The Court will examine the merits of the Motion on the assumption that it is wrong on the question of limitation.

#### Adoption of the Director's award

It is not in dispute that the deceased was an employee of the Respondent and that he died in the course of work.

The Respondent made a report to the Director, Occupational Safety and Health, and he assessed compensation payable as Kshs 8,736,000/-. The Respondent did not raise any objection with the Director within 60 days as prescribed under the Work Injury Benefits Act.

The Court has no reason not to adopt the assessment by the Director for purposes of enforcement and or execution.

The applicant also prayed to be awarded Kshs 750,480/- on account of reasonable funeral expenses.

The applicant placed before the Court receipts for coffin, flowers, perfume, cloth and catering services and cited section 34(4) of the Work Injury Benefits Act.

The section envisages payment of reasonable expenses for the funeral of an employee.

The applicant seeks Kshs 334,060/- incurred on catering expenses, Kshs 30,000/- for flowers, Kshs 4,500/- for perfume and Kshs 4,000/- for cloth.

To the Court, the catering, flowers, perfume and cloth expenses cannot be reasonable funeral expenses to be burdened upon an employer when an employee dies in the course of work.

While what is reasonable may be subjective, the Court is of the view that coffin and hearse expenses would fit in the category of reasonable funeral expenses. The applicant produced a receipt for Kshs 85,000/- for these heads.

The Court would have been ready to allow the Motion in terms of compensation of Kshs 8,736,000/- and funeral expenses of Kshs 85,000/-.

#### Orders

In light of the question of limitation, the Court declines to assume jurisdiction.

The Motion dated 15 October 2025 is struck out with no order on costs.

Delivered virtually, dated and signed in Nairobi on this 22nd day of January 2026.

Radido Stephen, MCI Arb

Judge

#### Appearances

For applicant Odunga & Associates

For 1st Respondent D.C. Rotich & Associates

For 2nd Respondent Cootow & Associates

Court Assistant Wangu