

KENYA / JUDGMENT

Ndoro v Ready Consultancy Company Ltd & another [2026] KEMC 834 (KLR)

[2026] KEMC 834 (KLR)

COURT

Magistrate's Court

CASE / FILE NUMBER

Civil Miscellaneous E125 of 2023

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REPUBLIC OF KENYA IN THE CHIEF MAGISTRATES COURT AT MOMBASA MAGISTRATES
COURT CIVIL MCCCmisc. CAUSE NO. E125 OF 2023 MDUNE CHAKA

NDORO.....APPLICANT/RESPONDENT VERSUS READY CONSULTANCY
COMPANY LIMITED.....RESPONDENT/APPLICANT AND FIDELITY SHIELD INSURANCE
COMPANY LIMITED.....INTENDED 2ND RESPONDENT

RULING

Background

1. Before the Court is the Notice of Motion dated 11th February 2026 filed by Ready Consultancy Company Limited, the Respondent/Applicant herein. The application is expressed to be brought pursuant to sections 7 and 26(4) of the Work Injury Benefits Act, Order 1 Rule 10, Order 9 Rule 9 and Order 22 of the Civil Procedure Rules, 2010, among other enabling provisions of the law. It is supported by the affidavit of Mohamed Ducale, a director of the Respondent/Applicant.
2. The Applicant seeks, inter alia, leave for the firm of Marende Necheza & Company Advocates to come on record on its behalf; stay of execution of the judgment and decree; setting aside of the judgment and decree; joinder of Fidelity Shield Insurance Company Limited as the 2nd Respondent; and an order compelling the intended 2nd Respondent to satisfy the award of KShs. 1,433,437 made pursuant to the assessment of the Director of Occupational Safety and Health Services. It also seeks costs of the application.
3. The dispute has its origin in a workplace accident involving the Applicant/Respondent, Mdune Chaka Ndoro, on 30th May 2019, while he was an employee of Ready Consultancy Company Limited.
4. The material placed before the Court shows that the Applicant/Respondent was described in the relevant DOSH documentation as a loader. Following the accident, a claim was processed under the Work Injury Benefits Act.

5. The County Occupational Safety and Health Office at Mombasa subsequently assessed compensation. The correspondence dated 15th February 2022 records, among other matters, monthly earnings of KShs. 6,543, permanent incapacity assessed at 80%, and a computation resulting in compensation of KShs. 1,305,907. Insurance and notification of the claim
 6. The Respondent/Applicant's case is that at the material time it had obtained WIBA insurance from Fidelity Shield Insurance Company Limited.
 7. In support thereof, it annexed a renewal certificate issued by Fidelity Shield Insurance Company Limited in respect of Ready Consultancy Company Limited. The certificate identifies the insured's business as cleaning services and the class of insurance as WIBA. The schedule attached thereto contains various categories of employees and reflects a total workforce of 111 employees.
 8. There is also correspondence showing that the accident and claim were processed through AMS Insurance Brokers Limited. Ready Consultancy forwarded various claim documents including DOSH forms, the injured employee's statement, identification documents, attendance records, payment records, medical bills, medical reports, X-ray documentation, discharge documentation and a claim form.
 9. In particular, a letter from AMS Insurance Brokers Limited dated 29th July 2019 addressed to Fidelity Shield Insurance Company Limited refers to Claim No. CL6636, Fidelity's claim reference MSA/C/605/089572/19, the injured person as Mdune Chaka Ndoro, the date of injury as 30th May 2019 and the insured as Ready Consultancy Limited. 10. The material further includes email correspondence dated 8th March 2022 headed in reference to the injury to Mdune Chaka Ndoro on 30th May 2019, Claim No. 6636, insured Ready Consultancy Company Limited. The correspondence indicates that documents concerning the claim and the ensuing litigation were transmitted through the insurance chain. 11. There is additionally an email relating to reference MSA/C/605/089572/19 in which summons were transmitted with a request that appearance be entered to safeguard the insured's interest. Judgment and decree 12. The Applicant/Respondent thereafter approached the Court for enforcement of the statutory award. The decree exhibited before the Court shows that judgment was entered on 19th July 2023 by Hon. H. Adika, PM, in favour of Mdune Chaka Ndoro against Ready Consultancy Company Limited. 13. The decree reflects a principal award of KShs. 1,433,437, interest on the principal at 14% for the period stated therein in the amount of KShs. 16,656.50, giving a total of KShs. 1,450,093.50, together with costs and interest. 14. I pause here to observe a discrepancy in the Applicant's Motion. The prayers refer to a judgment and decree allegedly issued on 7th August 2023, whereas the decree exhibited before the Court records that judgment was entered on 19th July
2023. The Court will proceed on the basis of the decree actually exhibited before it. Applicant's case 15. The Respondent/Applicant's principal argument is that although the decree is against it, it had duly insured its WIBA liability with Fidelity Shield Insurance Company

Limited. 16. Mohamed Ducale deposes that the insurer was duly notified of the claim, the necessary claim forms and supporting documents were transmitted to it and, despite numerous reminders, Fidelity Shield failed or neglected to compensate the employee. 17. The Respondent/Applicant further states that Fidelity Shield instructed legal counsel to enter appearance in the proceedings on behalf of Ready Consultancy in order to protect the insured's interests. 18. It consequently maintains that the intended 2nd Respondent was aware of the accident, claim and proceedings and ought to bear the ultimate responsibility for satisfying the award. 19. Ready Consultancy states that execution of the decree against it is ongoing and is prejudicial to it because the very risk giving rise to the decree was insured. It consequently asks the Court to stay execution, set aside the judgment, join Fidelity Shield and compel the insurer to satisfy the award. Applicant/Respondent's opposition 20. Mdune Chaka Ndoro opposed the application through a Replying Affidavit. He describes the application as misconceived, incompetent, bad in law and an abuse of the process of the Court and seeks its dismissal with costs. 21. He first attacks the Motion as an omnibus application, contending that it combines four distinct forms of relief, namely leave for advocates to come on record after judgment, stay of execution, setting aside of judgment and joinder of a new party. He contends that the respective reliefs are governed by different legal principles and thresholds and ought to have been sought distinctly and precisely. 22. On the substantive dispute, he states that the matter arose from a valid WIBA award which was subsequently adopted or enforced by the Court and that the judgment therefore represents enforcement of a statutory award which remains unpaid. 23. On stay of execution, he contends that the Respondent/Applicant has not demonstrated substantial loss, prompt filing of the application or provision of security. According to him, the application merely seeks to delay satisfaction of a decretal sum which has remained unpaid for several years and continues to attract interest. 24. As regards setting aside, he maintains that the judgment was regularly entered for purposes of enforcing a lawful and binding statutory award and that no sufficient cause has been demonstrated for disturbing it. 25. Of particular significance is his opposition to the proposed joinder of Fidelity Shield. He contends that Fidelity Shield was neither a party to the WIBA process nor to the proceedings culminating in judgment and cannot be introduced at the execution stage merely for the purpose of imposing liability for the decree upon it. 26. His position is that whatever rights Ready Consultancy may possess against its insurer ought to be pursued in separate proceedings and should not prejudice his right to enjoy the fruits of his judgment. He accordingly asks that the Motion be dismissed with costs. Issues for determination 27. Having considered the Motion, the supporting affidavit, the Replying Affidavit and the material placed before the Court, I discern the following issues for determination: i. Whether the omnibus nature of the application renders it incompetent; ii. Whether leave should be granted for the Applicant's advocates to come on record; iii. Whether the judgment and decree should be set aside; iv. Whether the Applicant has established a basis for stay of execution; v. Whether Fidelity Shield Insurance Company Limited may properly be joined at this stage and compelled to satisfy the decree; and vi. Who should bear the costs of the application.

Analysis and determination

Whether the Motion is fatally defective for being omnibus 28. The Applicant/Respondent is correct that the Motion seeks several distinct orders, each attracting its own legal considerations. That fact, however, does not of itself render an application incompetent. 29. The overriding objective of the Court is the just, expeditious, proportionate and affordable determination of disputes. Procedural rules remain important, but procedure ought not, without demonstrated prejudice or incurable defect, to become an end in itself. 30. The reliefs sought here, although legally distinct, all arise from the same decree and the Respondent/Applicant's attempt to resist execution on the basis of the insurance relationship it says existed between itself and Fidelity Shield. The Respondent has understood the reliefs sought and has answered each of them. 31. I therefore decline to strike out or dismiss the Motion merely because it combines the prayers identified in the Replying Affidavit. Each prayer can and will be determined upon the legal threshold applicable to it. Leave for advocates to come on record 32. The first substantive procedural prayer concerns the firm of Marende Necheza & Company Advocates coming on record after judgment. No particular prejudice has been demonstrated that would arise from allowing the Respondent/Applicant representation by counsel of its choice. The Court is satisfied that the appropriate course is to regularise representation and determine the substantive controversy. 33. Leave is accordingly granted to Marende Necheza & Company Advocates to come on record for Ready Consultancy Company Limited. Whether the judgment should be set aside 34. The prayer for setting aside presents a substantially different question. The decree before the Court arose from enforcement of an assessment made under the Work Injury Benefits Act. The Respondent/Applicant does not deny the occurrence of the workplace accident. It does not place before the Court material challenging the fact that Mdune Chaka Ngoro was its employee, nor does it establish that the statutory award was lawfully overturned before judgment was entered. 35. More fundamentally, the gravamen of Ready Consultancy's present complaint is not that Mdune was not entitled to compensation. Its complaint is that Fidelity Shield ought to satisfy that compensation because Ready Consultancy had insured against its WIBA liability. Those are conceptually distinct questions. 36. The first concerns the employee's statutory entitlement to compensation from his employer. The second concerns the employer's contractual or statutory entitlement to indemnity from its insurer. 37. Section 7(1) of the Work Injury Benefits Act requires every employer to obtain and maintain insurance in respect of liability that the employer may incur under the Act. The existence of insurance, however, does not by itself extinguish the employer's liability to the injured employee or render a judgment enforcing a valid award irregular. 38. Indeed, in *Moraa v Commission on Administrative Justice* [2026] KEELRC 72 (KLR), the Employment and Labour Relations Court recently distinguished the employee-employer claim from an employer-insurer indemnity claim. The Court held that, in WIBA enforcement proceedings, jurisdiction is confined to enforcement of the award between the employee and employer and that an indemnity claim against a third party insurer should be ventilated separately. 39. The documentary material produced by Ready Consultancy may well demonstrate an arguable claim against Fidelity Shield. The renewal certificate, claim correspondence and emails are not insignificant. They tend to show the existence of an

insurance relationship and communication of the claim to the insurance chain. But they do not demonstrate why the employee's judgment against his employer should be vacated. 40. No appeal or successful challenge to the underlying DOSH award has been demonstrated. Neither has the Respondent/Applicant demonstrated that the decree was obtained through fraud, misrepresentation or some other circumstance sufficient to deprive the Applicant/Respondent of the judgment already entered in his favour. The Court therefore finds no sufficient basis for setting aside the judgment and decree. Stay of execution 41. The Applicant additionally seeks stay of execution. Stay is a discretionary remedy. It is not intended to deprive a successful litigant of the fruits of judgment indefinitely. An applicant must demonstrate sufficient grounds for the Court to intervene and ordinarily must address substantial loss, delay and security. 42. The chronology is material. Judgment was entered on 19th July 2023. The present Motion was filed on 11th February

2026. That is a period of approximately two years and seven months. 43. The explanation advanced by Ready Consultancy is principally that Fidelity Shield should meet the award. That may explain its desire to seek indemnification from the insurer, but it does not satisfactorily explain the substantial delay in approaching the Court to set aside the judgment and stop its execution. 44. Further, there is no concrete evidence that payment of the decretal sum to Mdune Chaka Ndoro would cause substantial loss of the character contemplated for purposes of stay. The Applicant's principal concern is that it would itself have to satisfy a liability which it believes its insurer ought ultimately to bear. 45. That concern is commercially understandable, but it does not constitute a sufficient reason to continue withholding a statutory compensation award from an injured employee. 46. Nor has the Respondent/Applicant placed before the Court an adequate proposal for security for the decree while seeking to prevent its execution. 47. Most importantly, the proposed stay is not shown to be in aid of an appeal or other viable challenge to the employee's entitlement. Its practical effect would be to postpone payment to the decree-holder while the employer determines its dispute with its insurer. The Court is not persuaded that the employee should carry that burden. The prayer for stay of execution therefore fails. Joinder of Fidelity Shield Insurance Company Limited 48. The most substantial issue is whether Fidelity Shield Insurance Company Limited should now be joined as the 2nd Respondent and compelled to pay the decretal sum. 49. Order 1 Rule 10(2) permits the Court, at any stage of proceedings, to add a person whose presence is necessary to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. 50. The power is broad but not unlimited. The purpose of joinder is to facilitate determination of questions which remain for adjudication. Where judgment has already finally determined the suit and nothing remains except execution, joinder cannot ordinarily be employed to create a fresh substantive cause of action against a person who was not adjudged liable under the decree. 51. Kenyan jurisprudence recognizes this distinction. In *Muia v Ndeti & another; Kitilimu alias Agnes Nduku Kitilimu (Applicant) [2024] KEELC 7200 (KLR)*, the Court, applying the Court of Appeal's reasoning in *J.M.K v M.W.M & Another*, observed that although joinder may in appropriate circumstances occur

after judgment, the rule ceases to apply where the proceedings have been finally disposed of and nothing remains for determination. 52. Similarly, in *Regional Container Freight Station Limited & 2 others v Zum Zum Investment Ltd* [2023] KEHC 21502 (KLR), the Court emphasized that after judgment the former plaintiff is a decree-holder and joinder cannot ordinarily be invoked as though the substantive proceedings remain pending. 53. I am alive to the fact that joinder after judgment is not prohibited in every conceivable circumstance. There are recognized situations connected to execution, substitution, representative proceedings and similar matters where post-judgment joinder may be necessary. 54. This case, however, is materially different. Ready Consultancy does not seek Fidelity Shield's presence merely to facilitate execution of the existing decree. It asks the Court to join Fidelity Shield and thereafter make a new substantive order compelling Fidelity Shield to pay KShs. 1,433,437. 55. That relief would require the Court to determine, among other matters, the existence and precise terms of the insurance contract, the scope and duration of cover, whether the particular employee and accident fell within that cover, whether all policy conditions were fulfilled, whether notification was sufficient and timely, whether any exclusions apply, and ultimately whether Fidelity Shield is contractually or statutorily bound to indemnify Ready Consultancy. 56. Those questions were not determined in the proceedings culminating in the decree against Ready Consultancy. The Court cannot transform execution proceedings between an injured employee and his employer into fresh substantive indemnity proceedings against an insurer and thereafter impose liability upon the insurer without the relevant dispute being properly pleaded and determined. 57. The Court finds considerable guidance in *Moraa v Commission on Administrative Justice*, where the ELRC held that an employee's claim against the employer is distinct from an employer's claim against its insurer and that the latter is properly ventilated through separate proceedings rather than the employee's WIBA enforcement proceedings. 58. This conclusion does not mean that the insurance material placed before this Court is irrelevant or that Ready Consultancy has no remedy. On the contrary, the material shows a prima facie basis upon which Ready Consultancy may consider pursuing Fidelity Shield. Section 7 of WIBA specifically requires employers to maintain insurance against liabilities incurred under the Act. 59. Section 26(4) of WIBA also contemplates settlement by an employer or insurer against whom a claim for compensation is lodged by the Director. Kenyan ELRC decisions have recognized the statutory role of insurers in settlement of WIBA compensation. 60. There are also decisions where an insurer was already properly before the Court and the relationship between the employer and insurer could accordingly be addressed. In *Mwakulomba & another v YMM Freight Limited; Fidelity Shield Insurance Company Limited (Third Party)* [2025] KEELRC 781 (KLR), the Court ordered the employer to satisfy the DOSH award while expressly preserving the employer's ability to claim against Fidelity Shield under the policy cover secured pursuant to section 7 of WIBA. 61. That approach is particularly instructive here. The employee's entitlement to the fruits of the decree need not await determination of the separate indemnity dispute between employer and insurer. 62. The Respondent/Applicant is therefore at liberty, subject to the applicable law, limitation periods and terms of the policy, to pursue appropriate

proceedings against Fidelity Shield Insurance Company Limited for indemnity, reimbursement or such other relief as it may be advised. 63. I deliberately make no final determination on the merits of such a claim. Doing so in the absence of Fidelity Shield as a party to properly constituted substantive proceedings would offend the right to be heard. 64. Accordingly, the prayer seeking joinder of Fidelity Shield Insurance Company Limited for purposes of compelling it to satisfy the existing decree is declined. The equities of the matter 65. The Court has also considered the competing equities. The record lends considerable weight to Ready Consultancy's assertion that it had WIBA insurance and that the claim was communicated through the insurance chain. The Court does not dismiss those documents lightly. 66. However, the employee suffered the accident on 30th May 2019. The DOSH assessment followed in 2022 and judgment was entered in 2023. The decree remains unsatisfied according to the material before the Court. 67. The dispute between an employer and its insurer should not, in the circumstances of this matter, be visited upon the injured employee by further delaying satisfaction of a subsisting decree. 68. Insurance exists precisely to protect against covered risk. Whether Fidelity Shield is ultimately obliged to indemnify Ready Consultancy is a matter that may be determined between those parties. It does not provide sufficient cause to deprive Mdune Chaka Ndoro of a judgment that has not otherwise been successfully challenged.

Disposition

69. In the result, the Notice of Motion dated 11th February 2026 succeeds only to the limited extent of regularising the Respondent/Applicant's legal representation. 70. Accordingly, the Court makes the following orders:
- a. Leave is hereby granted to the firm of Marende Necheza & Company Advocates to come on record for Ready Consultancy Company Limited.
 - b. The prayer for stay of execution of the judgment and decree is declined.
 - c. The prayer seeking setting aside of the judgment and decree is declined.
 - d. The prayer seeking the joinder of Fidelity Shield Insurance Company Limited as the 2nd Respondent, for purposes of imposing liability for the decretal sum in these proceedings, is declined.
 - e. The prayer seeking an order compelling Fidelity Shield Insurance Company Limited to pay the sum of KShs. 1,433,437 or otherwise satisfy the decree is declined.
 - f. For avoidance of doubt, the judgment and decree in favour of Mdune Chaka Ndoro against Ready Consultancy Company Limited remain valid and enforceable, and the decree-holder is at liberty to proceed with execution in accordance with the law.

- g. Nothing in this ruling shall prejudice the right of Ready Consultancy Company Limited to institute appropriate proceedings against Fidelity Shield Insurance Company Limited, subject to the applicable law and the terms of the insurance contract, for indemnity, reimbursement or any other relief to which it may establish entitlement.
- h. Considering that the Respondent/Applicant has succeeded only on the procedural prayer concerning representation but failed on all substantive prayers, the costs of the application shall be borne by Ready Consultancy Company Limited and paid to Mdune Chaka Ndoro. Orders accordingly. DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT MOMBASA THIS 27TH AUGUST 2026. EMILY M. MWAMUYE SENIOR RESIDENT MAGISTRATE

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