



Employment Law

13 March 2026

KENYA

- An employer's occupational safety obligations when workplace violence becomes a work injury



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An employer's occupational safety obligations when workplace violence becomes a work injury

In the recent Employment and Labour Relations Court (ELRC) judgment of *Dock Workers Union (K) v Director of Occupational Safety and Health Services and Five Others; Federation of Kenya Employers and Another (Interested Parties)* (Petition E004 of 2024) [2025] KEELRC 51 (KLR) delivered on 23 January 2025, the court considered whether the death of an employee who was shot by unknown assailants at the employer's premises constituted an occupational accident under the Occupational Safety and Health Act, 2007 (OSHA).



Facts

The deceased was employed by the Dock Workers Union (Union) until his death in 2020. He died after being shot by unknown assailants on the ground floor of his employer's building during a robbery. The target of the robbery was a trustee of the Union who was accosted by the assailants and shot in the leg.

When the trustee was shot by the assailants, the deceased employee, alerted by the gunshots, went to the ground floor to see what had happened, whereafter he was also shot by the assailants.

Subsequent to his death, the Union filed a report of the incident to the Director of Occupational Safety and Health Services (Director) under sections 21 and 22 of the Work Injury Benefits Act, 2007 (WIBA). The Director assessed the due compensation and required the Union to pay KES 16,482,336 compensation to the deceased employee's dependents. The Union did not object to the compensation order but instead approached the ELRC to challenge it.

The Union sought to challenge the compensation order based on various grounds including arguing that the incident causing the deceased employee's death was not an occupational accident under OSHA. Furthermore, it argued that the accident occurred outside a definable workplace and was not connected to occupational hazards. It also contended that the police authorities (who were cited as respondents) should be held liable for an accident caused by criminals, and not the employer.





Issues for determination

One of the issues identified by the court for determination was whether the order issued by the Director was lawful under section 53 of WIBA and whether the accident which occasioned the death of the employee constituted an occupational accident.



Court's decision

The court affirmed that in line with WIBA, a work injury is a personal injury to an employee arising out of and in the course of employment. OSHA places an obligation on employers to maintain a safe working environment and to report any workplace accidents or occupational diseases to the regulatory authority using the applicable statutory forms. The employer must report any workplace accidents to the Director upon becoming aware of an employee's injury.

With reference to *Fenton v J Thorley & Co Limited* [1903] AC 443, it was re-affirmed that almost anything which unexpectedly causes an injury to, or illness or death of, an employee falls within the concept of an accident. The requirement that the accident must have occurred "in the course of" the employee's duties is satisfied if it occurred while the employee was engaged in their basic duties and responsibilities.

Under section 23 of WIBA, the Director is responsible for determining liability and assessing compensation in work injury claims. Once the

Director assesses the compensation payable and no objection is received in terms of section 51 of WIBA, the assessed sum becomes the injured employee's enforceable right and entitlement.

The court held that the Union had a legal duty under WIBA and OSHA to prevent work injuries, accidents and the death of the deceased employee occurred while in the course of his duties. In this instance it could not be said that the deceased exposed himself to the injury leading to his death. The Union was held liable to pay compensation under WIBA.

In addressing the liability of the police authorities, the court clarified that WIBA and OSHA are concerned with work-related injuries, accidents or deaths, with the aim to ensure the employer provides compensation to employees for work-related injuries and diseases contracted in the course of employment. This is separate to the duty of the police authorities to apprehend and prosecute criminals.

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Key Takeaways

An employer's duty to provide a safe working environment in terms of OSHA extends beyond the traditional occupational hazards and may include incidents involving third-party criminal acts occurring at the workplace. Additionally, the fact that an injury arises from a criminal act does not necessarily relieve an employer of liability under WIBA if the injury occurs in the course of employment. The employer's duty is separate to the duty of police authorities to maintain public order. An employer may not escape liability in terms of OSHA and WIBA in circumstances where their employees are victims of a crime while they are on duty.

In conclusion, in line with their obligation to provide a safe working environment, employers should ensure that appropriate security and risk mitigation measures are in place, particularly where employees interact with the public or operate in environments with heightened security risks. Employers should also ensure that they have appropriate insurance cover for workplace injuries to mitigate the financial impact it may have on their business.

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