



**Adis v Style Industries Limited Godrej) Consumer Products) (Employment and Labour Relations Petition E036 of 2022) [2026] KEELRC 5 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 5 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E036 OF 2022**

**HS WASILWA, J  
JANUARY 15, 2026**

**BETWEEN**

**GRADUS OLUOCH ADIS ..... PETITIONER**

**AND**

**STYLE INDUSTRIES LIMITED GODREJ) CONSUMER PRODUCTS) ..... RESPONDENT**

**RULING**

1. The Respondent/Applicant filed a notice of motion application dated 26<sup>th</sup> November 2025 seeking orders that: -
  - a. Spent
  - b. This Honourable Court be pleased to issue a stay of execution of the Warrants of Attachment dated 20<sup>th</sup> November 2025 and the Proclamation Notice dated 21<sup>st</sup> November 2025 by Mbusera Auctioneers pending the hearing and determination of this application inter-parties.
  - c. This Honourable Court be pleased to review and set aside the orders made on 19<sup>th</sup> November 2025 confirming the computation of the Deputy Registrar Honourable Mr. D.O Mbeja (SPM) (DR) of 10<sup>th</sup> November 2025 and order the file be placed urgently before Honourable Mr. D.O Mbeja (SPM) (DR) for recomputing upon consideration of all the evidence that was availed by the Respondent/Applicant on 19 November 2025.
  - d. This Honourable Court be pleased to set aside and cancel the Warrants of Attachment dated 20 November 2025 and extracted by the Petitioner and the Proclamation Notice drawn and dated 21 November 2025 and further order that as a result of the error in the computation of the decretal amount on 10 November 2025, the Respondent is not under any obligation to pay any auctioneer fees to Mbusera Auctioneers as indicated in the Proclamation Notice



as well as the court collection fees and further costs provided in the Warrants of Attachment dated 20 November 2025.

- e. The costs of this application to be borne by the Petitioner.
2. The Respondent/Applicant further filed a notice of motion application dated 27<sup>th</sup> November 2025 seeking orders that:
    - a. Spent
    - b. This Honourable Court be pleased to certify the application dated 26 November 2025 as urgent and grant stay of execution of the Warrants of Attachment dated 20 November 2025 and the Proclamation Notice dated 21 November 2025 by Mbusera Auctioneers pending the hearing and determination of the application dated 26 November 2025 inter-parties.
    - c. The costs of this application be in the cause.

### **Respondent/Applicant's Case**

3. The Respondent/Applicant avers that it served with a Proclamation Notice on 21<sup>st</sup> November 2025 by Rosemary Waithira Mbuthia t/a Mbusera Auctioneers requiring payment of Kshs. 937,330 together with auctioneer's fees of Kshs. 129,300 within seven (7) days, failing which the Respondent's movable property listed in the Notice will be sold by public auction. The seven-day period expires on 27<sup>th</sup> November 2025.
4. It is the Respondent/Applicant's case that allowing these execution proceedings to continue would be a travesty of justice as the Petitioner will be unjustly enriching himself at its expense who has fully complied with all the court orders and the final award of 13<sup>th</sup> October 2023. The gross total decretal sum of Kshs. 4,927,682.00 was settled in full on 25<sup>th</sup> October 2023.
5. The Respondent/Applicant avers that the final Decree subject to statutory deductions in compliance with the law comprised of the following: 15 days salary for each year worked 1<sup>st</sup> November 2012-2022; salary for 31<sup>st</sup> March 2022 (c) 2 months' salary in lieu of notice; interest from date of the final Award until payment in full and costs of the petition.
6. The Respondent/Applicant avers that it has complied fully with the orders of the court made on 16<sup>th</sup> June 2023 and final award of 13<sup>th</sup> October 2023 by making all the necessary payments that were due to the Petitioner on the following dates: 3<sup>rd</sup> July 2023, 25<sup>th</sup> October 2023 and for taxed costs on 12<sup>th</sup> March 2024. These amounts paid were exclusive of taxes.
7. The Respondent/Applicant avers that on 10<sup>th</sup> November 2025, the Deputy Registrar Honorable Mr. D.O Mbeja (SPM) (DR) issued a computation of the decretal amount which he considered as outstanding of Kshs. 934,105.00 without being able to consider the Respondent/ Applicant's computation as contained in the letter dated 19<sup>th</sup> November 2025.
8. It is the Respondent/Applicant's case that the execution sought by the Petitioner has no lawful basis as the Petitioner has already been paid all amounts that were due and owing. The final payment was made on 25 October 2023.
9. The Respondent/Applicant avers that unless this court intervenes and issues stay orders against the Warrants of Attachment dated 20 November 2025 and Proclamation Notice dated 21 November 2025, the Respondent stands to suffer substantial loss by way of unlawful sale of its movable property and unjust enrichment by the Petitioner.



10. The Respondent/Applicant avers that there has been no delay in bringing this application and the Petitioner shall suffer no prejudice as he has already been compensated per the orders derived by this court.
11. The Respondent/Applicant avers that it is in the interest of justice that this application be allowed to prevent the Respondent from losing its movable property based on the Warrants of Attachment and Proclamation Notice be protected from unlawful attachment and auction.

### **Petitioner/Respondent's Case**

12. In opposition, the Petitioner/Respondent filed a Notice of Preliminary Objection dated 1<sup>st</sup> December 2025 on the following grounds:
  1. There was already an application for stay dated 30/09/25 filed by the Applicant and heard to finality by the Honourable Court and it is as a result of that application that the current orders of the Court adopted on 19/11/25 were made.
  2. The current application by the Applicants is an attempt to re-argue their previous application which had been heard and determined to finality and therefore the present application is invalid and res-judicata.

### **Respondent/Applicant Submissions**

13. The Respondent/Applicant submitted on two issues: whether the Preliminary Objection on res judicata is merited and does res judicata apply in this case; and whether the threshold for grant of orders of Review and set aside of the orders of 19 November 2025 has been met.
14. On the first issue, the Respondent/Applicant submitted that the Preliminary Objection raised herein does not fit the definition of a preliminary objection as held in *Mukisa Biscuits Manufacturing Co. Limited v West End Distributors Limited* [1969] EA 696; wherein the court defined a Preliminary Objection as follows:-

‘A Preliminary Objection is in the nature of what used be demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.’
15. The Respondent submitted that the Petitioner has not raised a pure point of law. There are facts that need to be ascertained such as did the DR compute his findings of 10<sup>th</sup> November 2025 without the benefit of reviewing evidence that could only be brought to court after 10<sup>th</sup> November 2025. Have reasons and evidence been provided by the Applicant on why the proof of statutory deductions and remittances could not be availed before 10<sup>th</sup> November 2025.
16. The Respondent submitted that the pending matter requiring judicial determination concerns two filed applications which seek among other orders review of the court orders of 19<sup>th</sup> November 2025 and stay of execution of the new warrants of attachment and sale dated 21<sup>st</sup> November 2025 that were served upon it and initiated the execution process against it. On 19<sup>th</sup> November 2025, the Court made it explicitly clear that it would uphold the orders issued by the DR on 10<sup>th</sup> November 2025 and would only overturn them if sufficient good cause was demonstrated. The requirement for judicial discretion in making a final determination on the applications herein presents a triable issue.



17. The Respondent submitted that the doctrine of res-judicata does not apply to an application for review. Courts retain inherent and statutory power to review their own decisions where sufficient cause is shown. It cited *Nthiga (Suing as a Legal Representative and Administrator of the Estate of the Deceased Leonard R. I Nthiga) v Governor, Tharaka Nithi County Government & 5 others* [2023] KEELC 18396 (KLR) held that,
- “...Therefore, I am not persuaded that the application is res judicata or that the court is functus officio. This is so because the court has powers to review its own orders where sufficient cause is shown. The question is whether under the circumstances of this case, the Applicant has met the threshold for review orders.”
18. It is the Respondent’s submission that the application dated 26<sup>th</sup> November 2025 was filed pursuant to Order 45 of the Civil Procedure Rules, 2010 (CPR), which empowers a party who is not appealing to seek review of a decree or order. An application properly grounded on Order 45 of the CPR is therefore not barred by res judicata. Accordingly, the relevant inquiry is not whether the matter is res judicata, but whether the Applicant has demonstrated the threshold for review.
19. The Respondent submitted that where an application is properly anchored in Order 45 of the CPR and demonstrates sufficient grounds, the Court is neither barred by res judicata nor rendered functus officio.
20. The Respondent submitted that the review jurisdiction exists precisely to cure errors, prevent injustice, and ensure that the Court’s orders reflect the true factual and legal position. It urged the Court to adopt this sound judicial approach and proceed to review and set aside the impugned order of 19<sup>th</sup> November 2025 so as to give effect to justice in this matter.
21. On the second issue, the Respondent submitted that it is trite law that a Court is allowed to review its decisions within the confines of Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the CPR where the applicant demonstrates
- (a) discovery of a new and important matter or evidence which, after due diligence, was not within their knowledge or could not be produced at the time of the decree or order,
  - (b) a mistake or error apparent on the face of the record, or
  - (c) any other sufficient reason, and
  - (d) that the application has been brought without unreasonable delay.
22. The Respondent submitted that the computation undertaken by the DR on 10<sup>th</sup> November 2025 was arrived at without accounting for the statutory deductions lawfully made by the Applicant in settling the decretal sum.
23. It further submitted that at all material time, it was unable to procure and place before the DR proof of these deductions and remittances, as the relevant documents were in the custody of its third-party service providers, who were out of the jurisdiction. Owing to the fact that the judgment and the corresponding payments were made in 2023, considerable time was also required to retrieve, verify, and consolidate the necessary historical records.
24. It was submitted that the proof of statutory deductions and remittances qualifies as new and material evidence that the Applicant could not produce before the DR, and warrants this Court to review and set aside the orders of 19<sup>th</sup> November 2025.



25. The Respondent/Applicant submitted that in the instant suit, the Applicant is not seeking to reargue the case but for the Court to recompute and account for statutory deductions and remittances in the computation of final amounts owed (if any) under the decree.
26. It is the Respondent/Applicant's submission that the 1<sup>st</sup> Application was brought without any undue delay as the orders were made on 19<sup>th</sup> November 2025 and the application was lodged on 26<sup>th</sup> November 2025.

### **Petitioner/Respondent's Submissions**

27. The Petitioner/Respondent submitted that his Preliminary Objection on pure points of law to the Respondent/Applicant's application dated 27<sup>th</sup> November 2025 being substantially another application for stay of execution for the reason that the Respondent/Applicant previously filed an application for stay dated 30<sup>th</sup> September 2025 which was heard and finally determined by the Court. It is as a result of the application dated 30<sup>th</sup> September 2025 that the current orders of the Court adopted on 19<sup>th</sup> November 2025 are sought to be stayed through the application dated 27<sup>th</sup> November 2025.
28. He submitted that vide the application dated 30<sup>th</sup> September 2025, stay of execution was filed to stay the execution of warrants of attachment and sale in the sum of Kshs. 4,192,167 arising from the final award of the Court issued on 13<sup>th</sup> October 2023 and the same was to be recovered from the Respondent/Applicant. The Court directed for the re-calculation of the outstanding amount owing from the final award after taking into consideration the amounts paid by the Respondent to the Petitioner.
29. The Petitioner/Respondent submitted that the Deputy Registrar proceeded to calculate the decretal sum out of the final award and after taking into account the total sum paid by the Respondent to the Petitioner came to the finding that the outstanding amount due and payable by the Respondent to the Petitioner was Kshs. 934,105 as at 10<sup>th</sup> November 2025 and directed the parties to appear before the Hon. Judge on 19<sup>th</sup> November 2025. The parties appeared before the Hon. Judge as directed and the Order of the Deputy Registrar (Hon. D.O. Mbeja) was adopted by the Judge as the final Orders of the Court to the effect that the outstanding Decretal Sum due and payable to the Petitioner is Kshs. 934,105.
30. It is the Petitioner/Respondent's submission that the application herein for stay filed by the Respondent/Applicant is an attempt to re-argue their previous Application for stay dated 30<sup>th</sup> September 2025 which was fully determined.
31. The Petitioner/Respondent submitted that the court be Court to be guided by the doctrine of res-judicata as provided for under Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya making it trite in law that litigation must come to an end and if a party files an application and orders are issued as a result of that application, then any order not granted is deemed to have been denied. A party cannot therefore be heard to file a fresh application seeking for similar orders before the same Court which had dealt with the previous similar application. A party dissatisfied with the decisions of the Court may appeal against the same but not to file a fresh and similar application before the same Court.
32. The Petitioner/Respondent submitted that it is clear that the application dated 27<sup>th</sup> November 2025 is similar in legal principle to their earlier application dated 30<sup>th</sup> September 2025 which sought similar stay orders and the same was dispensed with by the Court and cannot be re-litigated afresh under the doctrine of res judicata.



33. I have examined all the averments and submissions of the parties herein. The application sought by the applicant is for review of the order of the court made on 19<sup>th</sup> November 2025. The petitioner respondent raised a preliminary objection avering that this matter is already *res judicata* having been previously determined by this court.
34. From the record of the court the court had granted stay of execution orders 1/10/25 following an application by the applicant herein. The court then directed the DR to compute the claim payable and thereafter a ruling was rendered on 10/11/25. The applicants aver that the issue before this court is for review and that the court has power to review its own orders and the issue of *res judicata* does not arise.
35. It is true that this court has power to review its own orders. Section 74(a) of the ELRC procedures rules 2024 state as follows:
- (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
    - (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made.”
36. As per sub section 1(a) above it is true that the court can also review its orders if there is new evidence which was not available at the time the orders being sought to be reviewed were made. That being the case an application for review cannot be said to be *res judicata* unless a similar application on the same issue has been made. In the circumstances, I find the preliminary objection raised not merited and is dismissed.
37. That said and done, as I turn to the reason for review, the applicants aver that the reason they did not submit evidence of payment of taxes was because it was not available. The presence of the said evidence would in my view aid the court to reach a just and fair determination. In the circumstances, I would therefore allow the application for review and set aside my orders made on 19<sup>th</sup> November 2025 confirming the computation of the Deputy Registrar Hon. D.O. Mbeja on 10<sup>th</sup> November 2025 and order the file placed before Hon. D.O Mbeja for re-computing upon consideration of all the evidence that was availed by the respondent/applicant on 19<sup>th</sup> November 2025. Costs in the petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF JANUARY, 2026.**

**HELLEN WASILWA**

**JUDGE**

