



**Atima v Bhachu Industries Limited & another (Miscellaneous Application
E026 of 2024) [2026] KEELRC 304 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 304 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E026 OF 2024**

**SC RUTTO, J
FEBRUARY 4, 2026**

BETWEEN

DANVERS NYAMBUTO ATIMA APPLICANT

AND

BHACHU INDUSTRIES LIMITED 1ST RESPONDENT

SAFETY AND HEALTH SERVICES 2ND RESPONDENT

RULING

1. On 25th October 2024, the Court, differently constituted, allowed the Applicant/Respondent's (hereinafter the Applicant) Notice of Motion dated 18th July 2024. To this end, the Court entered judgment against the 1st Respondent/Applicant (hereinafter the 1st Respondent) in the sum of Kshs 368,616/= in accordance with the award of the Director of Occupational Safety and Health (Director).
2. Subsequently, the 1st Respondent filed a Notice of Motion dated 19th November 2024, seeking the following orders:
 1. Spent.
 2. Spent.
 3. That this Honourable Court be pleased to Review and/or set aside the Judgment entered against the Applicant on the 25th of October 2024.
3. The Motion is premised on the grounds set out therein and is supported by the Affidavit of Amritpal Bahra, the 1st Respondent's Human Resource Manager. In support of the Motion, the 1st Respondent avers that upon being served with the assessment by the 2nd Respondent under the [Work Injury Benefits Act](#) (WIBA), the parties did not oppose the Application for enforcement.



4. Mr. Bahra avers that on 18th November 2024, new information came to light indicating that following the Applicant's injury on 21st March 2022, he was treated at Mbagathi Hospital. Upon completion of treatment, a DOSH form was completed by the attending doctor, which indicated that the Applicant was not entitled to any compensation. According to Mr. Bahra, this information was neither furnished to nor brought to the attention of the Court or the parties before the Court endorsed the award on 25th October 2024.
5. Mr. Bahra further contends that the Applicant's procurement of a second DOSH form containing contradictory information was fraudulent and amounted to an attempt at unjust enrichment.
6. He avers that the 1st Respondent stands to suffer substantial prejudice if the Application is not allowed.
7. In opposition to the 1st Respondent's Motion, the Applicant, Danvers Nyambuto Atima, filed a Replying Affidavit sworn on 21st November 2024, in which he avers that he sustained injuries in the course of his employment on 21st March 2022, and that the 1st Respondent duly completed and submitted DOSH Form 1 to the 2nd Respondent.
8. Mr. Nyambuto avers that on 28th February 2024, he was referred by the 2nd Respondent to Kitengela Sub-County Hospital, where he was medically assessed and awarded a permanent incapacity of 7%. He further states that, after several follow-ups, he visited the offices of the 2nd Respondent and was issued with DOSH Form 4 on 28th February 2024, which he subsequently forwarded to the 1st Respondent for purposes of payment.
9. He further deposes that upon the 1st Respondent's refusal and/or failure to settle the award, he was constrained to institute the present suit seeking adoption of the award.
10. Mr. Nyambuto categorically states that he did not attend Mbagathi Hospital on 12th October 2022 and has never been examined by Dr. Kanjama for purposes of preparation of any medical report. He contends that the medical report relied upon by the 1st Respondent is a forgery.
11. He further contends that, even by the most remote reasoning, the assessment of 0% permanent incapacity is untenable in light of the injuries sustained to his left foot, which he maintains were severe and resulted in permanent incapacity.
12. In response to the Applicant's Replying Affidavit, the 1st Respondent filed a Supplementary Affidavit sworn on 27th November 2024 by its Human Resources Manager, Amritpal Bahra.
13. Mr. Bahra maintains that the Applicant was referred to Mbagathi Hospital for treatment between 3rd June 2022 and 24th August 2022, during which period he attended the hospital on several occasions and received medication as required, all at the 1st Respondent's expense.
14. That after all the treatments and medication, the Applicant sought compensation for his injury on 18th October 2022, the Director of WIBA indicated there was no compensation needed. Mr. Bahra contends that upon being informed of this, the Applicant went to the DOSHS office in Machakos county where another set of DOSH forms was reproduced with an injury that was exaggerated and a value was placed for compensation.
15. While the review application was still pending, the 1st Respondent filed a further Notice of Motion dated 26th June 2025 seeking the following orders:
 1. Spent.



2. That, this Honourable Court be pleased to stay proceedings of this Matter pending determination of the issue of Fraud before the Director of DOSH at the Nairobi Branch (headquarters) of Kenya.
 3. That, this Honourable Court be pleased to refer this Matter back to the Director of DOSHS at the Nairobi Branch (headquarters) for purposes of addressing the issue of Fraud;
 4. That the costs of this Application be provided for.
16. The Motion is premised on the grounds set out on its face and is supported by the Affidavit sworn on 26th June 2025 by Amritpal Bahra, the 1st Respondent's Human Resource Manager.
 17. The grounds advanced in support of the Motion are that, following the Court's Judgment delivered on 25th October 2024, new information emerged on 18th November 2024 to the effect that the Applicant had been treated at Mbagathi Hospital and that a DOSH form was duly completed by the attending medical practitioner, indicating that the Applicant was not entitled to any compensation, as confirmed at the DOSHS Nairobi offices on 15th October 2022.
 18. It is further contended that the Applicant waited for a period of two (2) years and subsequently lodged an identical claim arising from the same injury at the DOSHS office in Athi River Branch on 28th February 2024, where he was awarded the sum of Kshs. 368,616/=. In the 1st Respondent's view, this was a clear abuse of process and fraudulent in nature.
 19. The 1st Respondent further avers that it lodged an objection to the said award by way of a letter dated 20th March 2024. That the Objection was allowed by the Director of DOSHS on 22nd March 2024, and that the matter remained pending before the Director at the time the Judgment was delivered on 25th October 2024.
 20. The 1st Respondent further avers that it addressed a letter dated 2nd December 2024 to the DOSHS offices in Nairobi, raising concerns regarding the alleged fraud.
 21. It is averred by the 1st Respondent that the Director responded vide a letter dated 6th March 2025, in which the actions of the Athi River Branch were condemned, thereby precipitating the filing of the present Application before this Honourable Court.
 22. The Applicant responded to the 1st Respondent's Notice of Motion by filing Grounds of Opposition dated 5th August 2025, together with a Replying Affidavit sworn on the same date.
 23. In the Grounds of Opposition, the Applicant contends, inter alia, that:
 1. This Honourable Court lacks jurisdiction under the *Work Injury Benefits Act* (WIBA) to refer the matter back to the Director of Occupational Safety and Health (DOSH) as prayed, particularly where the court has already adopted the Director's award as a judgment on 25th October 2024.
 2. The Director under WIBA lacks jurisdiction to investigate or determine allegations of fraud, such allegations being criminal or quasi-judicial in nature and within the mandate of the courts and criminal investigation agencies and not the DOSH.
 3. The Respondent's allegations of fraud are unsubstantiated, speculative and are raised too late, long after the award was issued and judgment entered, clearly meant to delay or defeat the lawful enforcement of the court's judgment.



4. The application offends the doctrine of *functus officio*, as the court has already rendered judgment by adopting the award, and cannot now revisit or refer the matter back to the Director.
 5. The application is *res judicata* and duplicative, the Respondent having already filed a similar application dated 19th November 2024 seeking stay and review/set aside of the judgment of 25th October 2024, which is still pending and undetermined.
 6. The Respondent/Applicant had every opportunity to object to the award at the appropriate time by appealing or seeking review under the provisions of WIBA and the Civil Procedure Rules but failed to do so diligently.
24. In his Replying Affidavit, the Applicant contends that the award of Kshs. 368,616/- was validly issued by the DOSHS, Athi River Office, on 28th February 2024, pursuant to the provisions of the WIBA.
 25. Mr. Nyambuto further states that the award was based on a medical report from a Government hospital, Kitengela Sub-County Hospital, which assessed his permanent incapacity at 7%, and that it was not founded on any fraudulent or forged document.
 26. He avers that the 1st Respondent neither challenged the award before the Director, as provided under Section 51(2) of WIBA, nor appealed the award to this Honourable Court within the time prescribed by law.
 27. Mr. Nyambuto further states that he filed an application for the adoption of the Director's award as a judgment of this Court, which was unopposed by the 1st Respondent, and accordingly, the Court adopted the award.
 28. He further contends that the 1st Respondent's first attempt to set aside the judgment, through their application dated 19th November 2024, remains pending and undetermined, and that the present application constitutes forum shopping and an attempt to re-litigate the same issue by indirect means.
 29. Mr. Nyambuto further avers that the 1st Respondent is estopped from reopening the matter under the guise of a new application alleging fraud, having failed to act diligently within the framework provided by WIBA and the Civil Procedure Rules.
 30. He states that the allegations of fraud are unsubstantiated, speculative, and an afterthought, raised over a year after the award, and that no formal complaint has been lodged with the Director or the police to substantiate this serious claim.
 31. Mr. Nyambuto contends that any alleged discrepancies between the medical reports do not amount to fraud but are merely matters of medical opinion, and do not invalidate the lawfully issued award.
 32. In his view, the application dated 26th June 2025 is *res judicata* in light of the pending application dated 19th November 2024, and offends the principles of finality and judicial economy.
 33. Mr. Nyambuto states that the Court is now *functus officio* with respect to the adoption of the award and cannot remit the matter back to the Director after judgment has been entered.
 34. According to Mr. Nymabuto, the 1st Respondent has not come to Court with clean hands and is misusing the judicial process to evade compliance with a lawful judgment, to his detriment.

Submissions

35. The Application was canvassed by way of written submissions which the Court has duly considered.



Analysis and Determination

36. The 1st Respondent contends that following the adoption of the Director's award on 25th October 2024, it received new information on 18th November 2024 indicating that the Applicant, after sustaining injuries on 21st March 2022, had been treated at Mbagathi Hospital, whereupon a DOSH form was completed by the attending doctor, reflecting that he was not entitled to any compensation.
37. The Applicant has denied the 1st Respondent's assertions, specifically refuting that he attended Mbagathi Hospital on 12th October 2022 and was seen by Dr. Kanjama, and has described the medical report annexed by the 1st Respondent as fraudulent.
38. He contends that the award in his favour was based on a medical report from a Government hospital, Kitengela Sub-County Hospital, which assessed his permanent incapacity at 7%, and was not founded on any fraudulent or forged document. He further avers that the 1st Respondent never challenged the award before the Director, as provided under Section 51(2) of WIBA.
39. In support of its assertions, the 1st Respondent annexed to its Supporting Affidavit a copy of ML/DOSH/FORM 1 dated 12th October 2022, which indicates that the Applicant was attended to at Mbagathi Hospital by Dr. Kanjama. The report describes the Applicant's incapacity as temporary.
40. The 1st Respondent also annexed another medical report, ML/DOSH/FORM 1, from Kitengela Sub-County Hospital, showing that the Applicant's injuries were assessed as resulting in 7% permanent incapacity. It is pursuant to this report that the Applicant was awarded the sum of Kshs. 368,616.00.
41. In essence, the two medical reports (DOSH Form 1) are conflicting, and it remains unclear whether the Director's subsequent assessment took into account the initial evaluation conducted at Mbagathi Hospital.
42. Further to the foregoing, the 1st Respondent annexed to its Supporting Affidavit a copy of an Objection dated 20th March 2024, which it lodged with the 2nd Respondent against the Applicant's award of Kshs 386,616/-. In response, the 2nd Respondent, by letter dated 22nd March 2024, indicated that it had allowed the Objection and directed that the Applicant attend the 2nd Respondent's clinic in Safety House for a second medical opinion.
43. Notably, the 2nd Respondent's decision, as set out in the letter dated 22nd March 2024, was copied to the Applicant, although it remains uncertain whether he actually received it.
44. From the record, it is unclear what transpired between the 2nd Respondent's decision and the Applicant's filing for the adoption of the Director's award. Specifically, it is unclear whether the Applicant attended the DOSHS clinic for a second medical opinion.
45. Notably, the 2nd Respondent, despite being a party to these proceedings, did not file a response to clarify these issues.
46. It is also unclear whether, at the time the Court adopted the award on 25th October 2024, it was aware that the 2nd Respondent had upheld the 1st Respondent's Objection and directed that the Applicant undergo a second medical evaluation.
47. The 1st Respondent further annexed to its affidavit a copy of a letter dated 2nd December 2024 by its advocates on record in which it raised concerns regarding the alleged assessment of the Applicant at the 2nd Respondent's offices in Nairobi and Athi River. In response, the 2nd Respondent vide a letter



dated 6th March 2025 advised the 1st Respondent to apply for the recall of the matter to its offices for appropriate handling.

48. Given that the 2nd Respondent had allowed the 1st Respondent's objection and directed the Applicant to undergo a second medical evaluation, it is unclear why the 2nd Respondent would request the file to be recalled for further handling. This is bearing in mind that the grounds raised in the 1st Respondent's Objection relate to the two conflicting medical assessments.
49. In the final analysis, I am persuaded that the Court would not have adopted the Director's award dated 28th February 2024 had it been aware that the 1st Respondent's Objection had been upheld and that the Applicant was required to undergo a second medical evaluation.
50. Accordingly, the 1st Respondent's Notice of Motion dated 19th November 2024 is hereby allowed, and the judgment entered in favour of the Applicant on 25th October 2024 is set aside. The resultant decree and orders are also set aside.
51. Consequently, and in accordance with the 2nd Respondent's decision dated 22nd March 2024, the Applicant/Respondent herein shall undergo a second medical evaluation.
52. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Applicant/Respondent Ms. Chumo instructed by Mr. Kirwa

For the 1st Respondent/Applicant No appearance

For the 2nd Respondent No appearance

Court Assistant Catherine

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

