



Kinyanjui v Newspaper Transporters Ltd & another (Miscellaneous Application E226 of 2024) [2026] KEELRC 583 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 583 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E226 OF 2024**

**AK NZEI, J
FEBRUARY 27, 2026**

BETWEEN

MWANGI KINYANJUI APPLICANT

AND

NEWSPAPER TRANSPORTERS LTD 1ST RESPONDENT

**DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH
SERVICES 2ND RESPONDENT**

RULING

Background

1. According to the Court’s record herein, the proceedings herein were instituted by the Applicant on 16th August, 2024 vide a Notice of Motion dated 14th August, 2024; seeking the following Orders:-
 - a. That the Court be pleased to adopt as its Judgment the award made by the Directorate of Occupational Safety and Health Office on 5th September, 2023.
 - b. That Judgment be entered for the Applicant against the 1st Respondent for Kshs.594,850/= being the amount assessed under the [Work Injury Benefits Act](#).
 - c. That the Court be pleased to award interest on the amount from the date of assessment until payment in full.
 - d. That costs of the suit be borne by the 1st Respondent.
 - e. That the Court be pleased to award any other relief the Court may deem fit and just to grant.
2. The application sets out on its face the grounds on which it is based, and is anchored on the Applicant’s supporting affidavit sworn on 14th August, 2022. It is deponed in the said supporting affidavit, inter-alia:-



- a. that the Applicant was employed by the 1st Respondent as a cleaner, and was on 23rd May, 2023 involved in an accident [while] in the course of employment with the 1st Respondent.
 - b. that as required, the Applicant proceeded to the 2nd Respondent for assessment, and was assessed and sent for further medical examination.
 - c. that the 2nd Respondent issued statutory notices and a demand for payment dated 5th September, 2023 for the sum of Kshs.594,850/=, being the amount assessed under the *Work Injury Benefits Act*.
 - d. that the Applicant's disablement was assessed at 22%.
 - e. that no appeal was preferred against the award made by the 2nd Respondent within the statutory timelines.
 - f. that there has been unreasonable delay on the part of the 1st Respondent to either settle the compensation or to otherwise take action against the award.
3. Documents annexed to the supporting affidavit included copies of a Notice by an Employer of an Occupational Accident/Disease of an Employee and ML/DOSH/WIBA/FORM 4 dated 5th September, 2023 and duly signed by one James Mithanga, whose designation is indicated as Director-Occupational Health and Safety Officer.
 4. According to the Court's record, the matter (file) herein was initially allocated to B. Manani, J (Court No. 11), and the Hon. Judge made the following Orders on 23rd September, 2024:-

“ . . . the application is considered unopposed. It is therefore allowed as presented with the consequence that:-

 - a. Judgment is hereby entered for the Applicant against the 1st Respondent for Kshs.594,850/= as amended by the 2nd Respondent on 5th September, 2023.
 - b. The amount amended attracts interest at Court rates from the date of the amend.
 - c. Costs of the application are granted to the Applicant, to be borne by the 1st Respondent.”
 5. Subsequently, according to the Court's record, the 1st Respondent filed a Notice of Motion dated 5th December, 2024 seeking, inter-alia, the setting aside of the foregoing orders of 23rd September, 2024 and leave to file response to the Applicant's application herein.
 6. The Court (B. Manani, J) allowed the 1st Respondent's said application vide a Ruling delivered on 30th June, 2025, whereby the Court stated, inter-alia, as follows:-
 - “ 31. Having regard to the foregoing, the Court is convinced that the proceedings of 23rd September, 2024 ought to be set aside to enable the Respondent participate in the cause in the interest of Justice.
 32. As such, the Court issues the following Orders:-
 - a. The application dated 5th December, 2024 is allowed and the proceeding of 23rd September, 2024 and all subsequent orders in the matter are hereby set aside.



- b. The Respondent is granted leave to file and serve papers in the cause within 14 days of this ruling to enable it to participate in the proceedings.
 - c. Meanwhile, the Court observes that in view of the sentiments expressed by the Judge in Nairobi ELRC Miscellaneous Application No. E292 of 2023 regarding the authenticity of some of the documents which the Applicant presented to Court, it is in the Applicant's interest to carefully reflect on the sentiments and consider asking the Director of Occupational Safety and Health Services to swear an affidavit to speak to the status of the impugned documents.
 - d. Having come to the Court's attention that the instant Miscellaneous Application is related to an earlier matter which was struck out by Justice Gakeri (Nairobi Miscellaneous Application No. E292 of 2023), it is directed that this file be placed before the Presiding Judge, Claims Division of the Court to determine whether the matter should be handled by Court No. 8, the successor of Justice Gakeri or this Court (Court No. 11).
 - e. Each party to bear its own costs for the application dated 5th December, 2024.”
7. The Court's record further shows that the matter was on 22nd July, 2025 placed before the Judge then presiding over the Court's Claims and Labour Relations Division, L. Ndolo, J, who gave the following Order:-

“I have seen the application dated 30th June, 2025 in which it is listed that a similar application being Misc. E292 OF 2023 was struck out by Gakeri Judge on 30.4.2024. I direct that this matter be handled by Nzei Judge who took over the docket from Gakeri Judge. Mention on 29.7.2025 before Nzei Judge.”
8. The foregoing shows how this matter moved from B. Manani, J (Court No. 11) to this Court (No. 8). Although Gakeri, J once sat in this Court (No. 8), the said Hon. Judge was transferred from this Court station effective 1st October, 2024; long after he had struck out Misc. Application No. E292 of 2023 vide a Ruling delivered by him on 30th April, 2024, according to documents filed herein. The aforesaid Ruling put an end to Misc. Application No. E292 of 2023, and as such the present matter is not a continuation of the said earlier matter, which I never handled, in any case. It is not clear, therefore, why both Court No. 11 (Manani, J) and the Presiding Judge (Claims and Labour Relations Division) felt that the matter should come to me. Court No. 11 should have proceeded and determined the application dated 14th August, 2024 upon the 1st Respondent responding to the same pursuant to the said Court's Ruling delivered on 30th June, 2025. Why push the matter to another Court whose in-tray is more than full, and without a good reason?
9. Nevertheless, the matter herein stands allocated to me now, and this Court is obligated to determine the same.
10. Although the 1st Respondent was, vide the Ruling delivered on 30th June, 2025, ordered to file response to the Notice of Motion dated 14th August, 2024 within 14 days of the Ruling, the 1st Respondent did



not file response to the said application until 29th July, 2025 when it filed its evenly dated grounds of opposition; without leave. No leave was subsequently sought to admit the grounds of opposition on record. In the interest of Justice, however, I will treat the said grounds of opposition as having been duly filed and served in time.

11. The 1st Respondent thus opposes the Notice of Motion dated 14th August, 2024 on the following grounds:-
 - a. That the application lacks merit and should be struck out for being res judicata and an abuse of the Court's process, a similar application (Milimani ELRC Misc. E292/2023) having been struck out vide a ruling delivered on 30.04.2023.
 - b. That the Court has no Jurisdiction to hear and determine the application as the same is not an appeal as contemplated in Section 52(2) of the Work Injury Benefits Act, 2007.
 - c. That according to paragraphs 3 and 6 of the Applicant's supporting affidavit, the Applicant was allegedly injured on 23.05.2022 and reported the claim to the 2nd Respondent on 30.08.2023, outside the statutory period provided for under Section 26(1) of the Work Injury Benefits Act, and that the claim is time barred.
 - d. That the Applicant should have applied for review in ELRC Misc. E292 of 2023 instead of filing the present cause, which amounts to forum shopping. That the present case is an invitation to sit on appeal against the decision of the same Court.

Determination

12. Having considered the application dated 14th August, 2024, the affidavit sworn in support thereof and the grounds of opposition filed by the 1st Respondent and dated 29th July, 2025, issues that fall for determination, in my view, are as follows:-
 - a. Whether the application herein is res-Judicata.
 - b. Whether this Court has jurisdiction to entertain and to determine the application herein.
 - c. Whether the orders sought in the application are merited.
13. On the first issue, The Black's Law Dictionary (10th Edition) defines the term Res Judicata as:-

“An issue that has been definitively settled by judicial decision.

An affirmative defence barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been-but was not-raised in the first suit. The three essential elements are:-

 1. An earlier decision on the issue.
 2. A final Judgment on the merits, and
 3. The involvement of the same parties, or parties in privity with the original parties . . .”
14. Section 7 of the Civil Procedure Act on the other hand provides as follows:-

“No court shall try any suit or issue in which the matter in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to



try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

15. The Ruling delivered by Gakeri, J on 30th April, 2024 in Nairobi ELRC Misc. Application No. E292 of 2023 (involving the parties herein) forms part of the Court’s record herein as it was annexed to the 1st Respondent’s Notice of Motion dated 5th December, 2024 which this Court (B. Manani, J) determined vide the Ruling delivered on 30th June, 2025; (referred to in paragraphs 5 and 6 of this Ruling). I have perused the said Ruling, and it is clear that the Judge (Gakeri, J) struck out the Applicant’s application in the said cause after making a finding that the Applicant had not demonstrated that he had an award by DOSH. The Court did not “hear and finally decide” the dispute between the Applicant and the Respondents. It did not issue a final decision/Judgment on the matter. It did not dismiss the suit before it, but rather struck it out.
16. In my view, the Applicant was within his right to file a subsequent application, similar or otherwise, and to pursue his right, subject to the law on limitation of actions.
17. What is before the Court for enforcement in the present case is the award made by the Director of Occupational Safety and Health Services (the Director) on 5th September, 2023. The application herein (dated 14th August, 2024 and filed on even date), was filed less than a year from the date of the Director’s said award/decision.
18. I return a finding that the suit herein is not res-judicata and is not statute barred. The same is properly and validly before this Court.
19. Before delving into the second issue, it is to be noted that the validity and/or authenticity of the Director’s assessment of the percentage of the Claimant’s permanent disablement and compensation payable thereon, as contained in the filed DOSH/WIBA/FORM 4 dated 5th September, 2023, has not been questioned by the Respondents in the case before me.
20. It ought to be noted that under the provisions of the *Work Injury Benefits Act* (WIBA), the issues of liability and assessment of damages payable to employees who suffer work injuries is done by the Director, pursuant to Sections 23, 28 and 30 of the Act.
21. Section 23(1) of WIBA provides as follows:-
 - “(1) After having received notice of an accident or having learned that an employee has been injured in an accident, the Director shall make such inquiries as are necessary to decide upon any claim or liability in accordance with this Act.”
22. Section 16 of the Act (WIBA) on the other hand provides as follows:-

“No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee’s employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.” (Emphasis added).
23. Once the Director decides on the aforesaid issues of liability and quantum of compensation (damages) payable, any person aggrieved by the Director’s decision can only challenge the same pursuant to the provisions of Sections 51 and 52 of WIBA.



24. The 1st Applicant has not demonstrated, or even alleged, that it in any way objected to, or appealed against the Director's award made on 5th September, 2023.
25. This Court's duty is limited to enforcing the Director's said award which, as already stated in this Ruling, was filed in this Court less than one year from its date.
26. As I have previously stated in numerous decisions of this Court, the *Work Injury Benefits Act* (WIBA) is silent on how awards of compensation made by the Director are to be enforced. At the same time, the said Act does not oust this Court's Jurisdiction to enforce such awards, and especially when the Director's decision determining the issues of liability and quantum of compensation pursuant to Sections 23, 28 and 30 of the Act has not been objected to pursuant to Section 51 of the Act, or has been objected to and the objections and/or appeals have been determined in favour of the injured employee or the estate of a diseased employee (where the work injury or occupational injury resulted in the death of an employee); and the employer has refused to pay.
27. I stated as follows in this Court's decision in *Marcus Curvey Ojango – vs – Kenya Revenue Authority* [2024] eKLR:-

“Pursuant to Article 162(2)(a) of *the Constitution* of Kenya 2010, this Court has inherent jurisdiction over all employment and labour relations matters, except where that Jurisdiction is expressly ousted by the statute over particular matters specified in that statute. A good example of such a statutory provision is Section 16 of the *Work Injury Benefits Act* (WIBA) which expressly ousts courts' jurisdiction to determine issues of liability and assessment of compensation payable in cases involving work injuries and occupational deceases. Section 23 mandates the Director to undertake such inquiries as may be necessary to decide upon any claim or liability in accordance with the Act; while Sections 28 and 30 of the Act make provision on assessment of compensation by the Director.”

28. Further, I stated as follows in the case of *Amir Swaleh Omar – vs – Mackezie Maritime (E.A) Limited* [2022] eKLR:-

“

“ 17. The Act (WIBA) is silent on how the awards of compensation made by the Director in favour of employees involved in occupational accidents or who suffer occupational deceases are to be enforced. At the same time, the Act does not expressly divest this court of Jurisdiction to enforce such awards; and especially where the award of compensation by the Director has not been objected to and the employer has refused to pay the assessed compensation. Did Parliament intend that an employee caught up in such a situation would be left at the mercy of an employer who may choose either to pay or not to pay the assessed sum? I do not think so.

18. What would be the purpose of the Director making or undertaking enquiries in order to determine the issue of liability and proceeding to assess the compensation payable if the compensation assessed by the Director was not meant to be paid to the injured employee? In my view, once the Director assesses the compensation payable and the same is not objected to pursuant to Section 51 of WIBA, the assessed sum becomes the injured employee's right and entitlement regarding which the employee can move to Court and seek enforcement of that right by seeking entry of Judgment in terms of the



Director's assessment, and issuance of a decree which can then be executed to realise that right.

19. Indeed, failure by an employer to pay a demanded compensation that has been assessed by the Director and to which no objection has been lodged creates a dispute over a liquidated claim, which this court can entertain and determine.

Article 50(1) of *the Constitution* of Kenya 2010 provides:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.”

29. The summary of the foregoing is that this Court is seized of Jurisdiction to enforce awards made by the Director in favour of injured employees and employees who suffer occupational diseases.

30. The preamble to the *Employment and Labour Relations Court Act* states as follows:-

“An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.”

31. Any dispute “relating to or connected to” an employment relationship between an employer and employee falls within the purview of this Court's Jurisdiction. The Court will not allow any narrow interpretation of the law regarding the Court's jurisdiction.

32. Indeed, Section 12(1)(a) of the *Employment and Labour Relations Court Act* provides as follows:-

“(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including –

- a. disputes relating to or arising out of employment between an employer and an employee.”

33. On the third issue, I allow the Applicant's Notice of Motion dated 14th August, 2024 in the following terms:-

- a. The award of Kshs.594,850/= made by the Director of Occupational Safety and Health Services on 5th September, 2023 in favour of the Applicant herein is hereby adopted by this Court, and accordingly, Judgment is hereby entered for the Applicant against the 1st Respondent in the aforesaid sum of Kshs.594,850/=.
- b. A decree shall issue, and shall be enforceable in accordance with the Civil Procedure Rules pursuant to Section 13 of the *Employment and Labour Relations Court Act*.
- c. The Applicant is awarded interest on the decreed sum, to be calculated at Court rates from the date of this Ruling until payment in full.
- d. The Applicant is awarded costs of the proceedings herein, to be agreed or taxed.

34. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026

AGNES KITIKU NZEI



JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Miss Jepchirchir for the Applicant

No appearance for the 1st Respondent

No appearance for the 2nd Respondent

