



**Nyabuto v Complast Industries Ltd (Miscellaneous Application
E373 of 2025) [2026] KEELRC 613 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 613 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E373 OF 2025**

SC RUTTO, J

FEBRUARY 17, 2026

BETWEEN

JOSIAH OMBEO NYABUTO APPLICANT

AND

COMPLAST INDUSTRIES LTD RESPONDENT

RULING

1. What is before this Court for determination is a Notice of Motion dated 26th September 2025, through which the Applicant seeks the following orders:
 1. That the compensation of Kshs 1,225,680.25 assessed by the Director of Occupational Safety and Health Services to the applicant herein be adopted as the judgment of this court.
 2. That a decree be issued in accordance with the assessment of the Director of Occupational Health and Safety (sic) for the sum of Kenya shillings One Million, Two Hundred and Twenty-Five Thousand, Six Hundred and Eighty shillings, Cents Two Five only (Ksh. 1,225,680.25) with interest at 14% per annum from 28/03/2025.
 3. That costs of the application be paid by the Respondent.
2. The Motion is premised on the grounds set out on its face and by the Supporting Affidavit sworn on even dated by Josiah Ombeo Nyabuto, the Applicant herein. The Applicant states that he is employed by the Respondent as a machine attendant and that on 26th March 2024, at approximately 3:30 p.m., he sustained an injury after being cut by a machine while on duty, resulting in the permanent loss of his right thumb. He was treated at various hospitals and was subsequently examined by Dr. Lenah Momanyi, who prepared a medical report in Part II of the DOSH Form 1 confirming the injuries.
3. The Applicant further avers that he reported the accident to the Director of Occupational Safety and Health Services (Director), and a DOSH/WIBA 4 Form was duly completed. Upon assessment, his



- permanent incapacity was rated at 40%, and the compensation payable to him was assessed at Kshs. 1,225,680.65.
4. He states that the Director issued a demand to the Respondent for payment on 28th March 2025, followed by a reminder on 3rd July 2025, but the Respondent persistently refused or neglected to settle the assessed amount.
 5. The Applicant further avers that his advocates issued a demand letter dated 28th August 2025, yet the Respondent continued to refuse or neglect to pay the assessed compensation of Kshs. 1,225,680.65.
 6. He contends that more than 90 days have elapsed since the demand was issued, and the Respondent has not lodged an appeal against the Director's assessment.
 7. In response to the Motion, the Respondent filed a Replying Affidavit sworn on 3rd October 2025 by its Human Resource Manager, Gloria Migayi. Ms. Migayi confirms that the Applicant is indeed an employee of the Respondent and that he was injured on 26th March 2024 at the Respondent's premises, the accident having been caused by mould core failure.
 8. Ms. Migayi further avers that the Respondent promptly issued a notice of the accident in compliance with the *Work Injury Benefits Act* (WIBA). Following the accident, the Applicant received treatment at Mariakani Cottage Hospital and was placed on sick leave for 78 days. He was subsequently referred to Nairobi West Hospital, where he underwent corrective surgery on 3rd August 2024 and thereafter attended outpatient reviews in August and September 2024.
 9. According to Ms. Migayi, the Respondent met all the Applicant's medical expenses and continued paying his salary throughout the period he was on sick leave. She explains that the Applicant's claim could not be settled promptly due to the ongoing corrective treatment and the duration of his sick leave.
 10. Ms. Migayi acknowledges that the Applicant's treating doctor assessed his permanent incapacity at 40%. She states that this led the Respondent's insurer to appoint another doctor for an independent medical review, who assessed the degree of permanent disability at 10%, a significant variance from the initial assessment.
 11. She avers that on 13th March 2025, the Respondent referred the Applicant to DOSH for a further review to determine a fair award, and was advised to lodge an objection.
 12. On 28th March 2025, the County Occupational Safety and Health Officer issued a demand to the Respondent for payment of Kshs. 1,225,680.65 to the Applicant, should the Respondent agree with the assessment.
 13. Ms. Migayi states that on the same day, 28th March 2025, the Respondent lodged an Objection through the DOSHMIS online system.
 14. She further avers that on 3rd July 2025, the County Occupational Safety and Health Officer, Nairobi, issued a letter indicating that the compensation due to the Applicant was overdue. The Respondent responded through a letter dated 11th July 2025, explaining the circumstances that had delayed settlement.
 15. On 16th September 2025, the Secretary of Occupational Safety and Health Services communicated the decision on the Respondent's Objection to the Directorate's earlier decision of 28th March 2025, granting conditional relief pursuant to Sections 25, 51, and 53 of the *WIBA*. The following orders were further issued:



- a. The Directorate noted that the degree of disablement awarded was inconsistent with the First Schedule of the [Work Injury Benefits Act](#).
 - b. The Applicant shall be facilitated by the Objector (Respondent) to appear before the Work Injury Evaluation Clinic (WIEC) Panel at DOSHS Headquarters for reassessment on or before 7th October, 2025 with prior booking and Referral Form from [WIBA](#) Division.
 - c. Further to the decision communicated by the Directorate of Occupational Safety and Health Services, the WIEC panel's Medical Report shall be used in determining compensation and the decision shall be communicated to the affected parties.
16. According to Ms. Migayi, she contacted the Department of Occupational Safety and Health on 23rd September 2025 and secured an appointment for the Applicant to attend the Work Injury Evaluation Clinic on 25th September 2025, in compliance with the Director's directions.
 17. She states that the Directorate sent a text message to the Applicant via his mobile number, notifying him to present himself at Safety House, Industrial Area, Nairobi, on 25th September 2025. A copy of this message was shared with her by the Directorate.
 18. After booking the appointment, she called the Applicant to her office, together with her colleague, Sarah Njogu, and informed him of the scheduled Work Injury Evaluation Clinic reassessment. The Applicant indicated that he was agreeable to the arrangement.
 19. On 25th September 2025, Sarah Njogu sent the Applicant Kshs. 200 as transport facilitation to attend the reassessment, and the Respondent assumed that he had proceeded to the venue.
 20. Ms. Migayi further avers that the Applicant was scheduled for the night shift at the Respondent's premises on the same date, and therefore, the amount remitted to him was sufficient to facilitate his travel to the reassessment venue.
 21. She states that on 26th September 2025, she contacted the Directorate's offices and was informed that the Applicant had not attended the reassessment.
 22. She adds that on Sunday, 28th September 2025, the Applicant refunded the Kshs. 200 to Sarah Njogu.
 23. In Ms. Migayi's view, the effect of the Directorate's decision is that there is no award capable of being adopted by this Honourable Court.
 24. She further asserts that the Applicant filed the present application approximately 10 days after receiving the communication from the Directorate, in an effort to obstruct the implementation of that decision.
 25. It is her position that the Applicant ought to have exhausted the dispute resolution mechanisms provided under the [WIBA](#) before approaching this Court.
 26. In her Further Affidavit dated 23rd October 2025, Ms. Migayi states that on 6th October 2025, she sought guidance from the Secretary of Occupational Safety and Health Services regarding the next steps in light of the Applicant's failure to attend the reassessment as directed in the letter dated 16th September 2025.
 27. The Directorate responded, confirming that the demand for payment issued on 28th March 2025 had been effectively varied.
 28. Ms. Migayi opines that the instant application is premature, and there is no subsisting award capable of being adopted by this Court.



Submissions

29. On 28th October 2025, the Court directed that the Application be canvassed through written submissions. Only the Respondent complied with this directive and filed submissions, which the Court has duly considered.

Analysis and Determination

30. It is evident that the central issue for determination is whether the Court should allow the Notice of Motion dated 26th September 2025 and adopt the award issued by the Director on 28th March 2025.
31. While the Applicant contends that more than 90 days have passed since the demand was issued to the Respondent and no appeal has been lodged, the Respondent takes a contrary position, asserting that it filed an Objection to the Director's award on 28th March 2025.
32. In support of this position, the Respondent annexed to its Replying Affidavit a copy of its Objection to the Directors' award. Notably, the Objection aligns with Section 51(1) of the [Work Injury Benefits Act](#), which requires an aggrieved party to lodge an objection to the Director's assessment within 60 days.
33. The Respondent also relied on a letter dated 16th September 2025 bearing the decision of the Directorate on its objection. In that decision, the Directorate directed the Respondent to facilitate the Applicant's appearance before the Work Injury Evaluation Clinic panel at its headquarters for reassessment on or before 7th October 2025. The medical report arising from that reassessment was to inform the final determination of compensation.
34. According to the Respondent, the Applicant failed to present himself before the Work Injury Evaluation Clinic panel for reassessment despite being facilitated.
35. Worthy to note is that the Applicant did not challenge or rebut these assertions by the Respondent and this Court has no reason to doubt the same.
36. Additionally, the Respondent produced a letter dated 13th October 2025 from the Secretary of the Directorate confirming that the payment demand issued on 28th March 2025 had been effectively varied. A copy of the letter was also sent to the Applicant.
37. The foregoing demonstrates that the process before Directorates remains pending and has not been concluded within the framework of Sections 51 and 52 of the [Work Injury Benefits Act](#). Consequently, the matter has not crystallised, and this Court's jurisdiction has been invoked prematurely.
38. In light of the above, the Court finds the instant Motion Application to be premature and, accordingly, lacks jurisdiction to grant the orders sought.
39. To this end, the Notice of Motion dated 26th September 2025 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 17TH DAY OF FEBRUARY, 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Masua for the Applicant.

Mr. Kamwaro for the Respondent.



Ndati - Court Assistant.

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.

