

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
MISC. APPLICATION NO. E037 OF 2025

GERISHON WANDERI MAINA.....APPLICANT

AND

ROWLA CONSTRUCTION COMPANY LIMITED.....1ST
RESPONDENT

LAIKIPIA TECHNICAL TRADING INSTITUTE.....2ND
RESPONDENT

DIRECTOR OF OCCUPATIONAL SAFETY
AND HEALTH SERVICES.....INTERESTED
PARTY

RULING

1. The Applicant has moved this Court through a Notice of Motion dated 11th June 2025, seeking the following orders:

- 1) *That the order of this court made on 14th November 2018 in Nyeri ELRC Cause No. 455 of 2017, referring that file for determination and disposal by the Interested Party, be reviewed by setting aside and that file be returned to this court for hearing and disposal.*
- 2) *That costs be in the cause.*

2. The Notice of Motion is supported by the grounds set out therein and the averments contained in the Supporting Affidavit of **Gerishon Wanderi Maina**, the Applicant herein. Mr. Maina deposes that he is the Claimant in *Nyeri ELRC Cause No. 455 of 2017*, a matter arising from work-related injuries. He avers that at the time of filing his claim, the applicable law, the Work Injury Benefits Act (WIBA), had been declared unconstitutional by the High Court in its judgment dated 4th March 2009 in *LSK v AG & another (2009) eKLR*, insofar as it conferred jurisdiction on the Interested Party to handle such claims.
3. Mr. Maina further avers that while his claim was pending, the Supreme Court overturned the High Court's judgment through its decision rendered on 3rd December 2019, affirming the intervening Court of Appeal decision that such claims fall within the jurisdiction of the Interested Party. He adds that the Supreme Court's judgment included a saving provision stipulating that cases already pending before this Court should continue to be heard and concluded here, necessitating practice directions to that effect.
4. He further states that on 28th April 2023, the Hon. Chief Justice issued relevant practice directions confirming that claims similar to his should be heard and determined by this Court.

5. Mr. Maina avers that, in the intervening period, this Court, by an order dated 14th November 2018, had referred his claim to the Interested Party for determination and disposal.
6. He further states that, by a letter dated 14th April 2025, the Law Society of Kenya informed its members, including his advocate on record, that following engagement with the Hon. Chief Justice regarding the practice directions, it was clarified that affected matters, such as his, should be returned to this Court for hearing and disposal.
7. According to Mr. Maina, his claim, as referred to the Interested Party, has to date not been addressed in any manner, as no steps have been taken to determine it.
8. He further states that his attempts to have his claim returned to this Court for hearing and disposal have been unsuccessful.
9. Mr. Maina avers that he has suffered, and continues to suffer, significant prejudice due to the delay in resolving his claim, while he continues to endure the effects of the work-related injuries which rendered him paraplegic.

10.The Respondent and the Interested Party did not file any response to the Applicant’s Notice of Motion. As such, the Motion is unopposed.

11.The Notice of Motion was canvassed through written submissions. Only the Applicant filed written submissions, which have been considered by the Court.

Analysis and Determination

12.It is evident that the sole issue for determination is whether the Applicant’s Notice of Motion has merit, specifically, whether the Court should set aside the order referring the matter to the Directorate of Occupational Safety and Health Services (Director) and instead have it returned to this Court for hearing and determination.

13.The resolution of this issue largely depends on the interpretation of the ***Supreme Court’s decision in Law Society of Kenya v Attorney General & another [2019] eKLR*** and the subsequent practice directions issued by the Hon. Chief Justice on 28th April 2023.

14.In its judgment, the Apex Court stated the following at paragraph 85: -

“[85] In agreeing with the Court of Appeal, we note that it is not in dispute that prior to the enactment of the Act, litigation relating to work-injuries had gone on and a number of the suits had progressed

up to decree stage; some of which were still being heard; while others were still at the preliminary stage. All such matters were being dealt with under the then existing and completely different regimes of law. We thus agree with the Appellate Court that claimants in those pending cases have legitimate expectation that upon the passage of the Act their cases would be concluded under the judicial process which they had invoked. However, were it not for such legitimate expectation, WIBA, not being unconstitutional and an even more progressive statute, as we have shown above we opine that it is best that all matters are finalized under Section 52 aforesaid". Underlined for emphasis

15. Fundamentally, all pending matters filed before the commencement of WIBA, whether initiated under the Workmen's Compensation Act or under common law, were to be concluded under the legal framework that existed at the time, based on the principle of legitimate expectation. Further, and upon WIBA coming into force, such cases would continue to be determined through the judicial process already invoked. Only claims arising after the commencement of WIBA would proceed before the Director, as provided under Section 52 of WIBA.

16. From the record, the Applicant's claim seeking compensation for work-related injuries was filed in this Court on 4th December 2017, after the commencement of WIBA but before the Supreme Court's decision.

17. In support of his Motion, the Applicant has relied extensively on the practice directions issued by the Hon. Chief Justice on 28th April 2023. These directions provide *inter alia* that claims for compensation arising from work-related injuries, filed after the commencement of WIBA but before the Supreme Court's decision, and pending before this Court or a magistrates' court, should proceed to conclusion before the respective courts. Essentially, the suits remained where they were filed before the Supreme Court judgment.

18. It is apparent that the order of this Court referring the matter to the Director was made prior to the Supreme Court's judgment and the practice directions issued on 28th April 2023.

19. It is the Applicant's contention that no action has been taken to determine his claim since it was referred to the Director. However, despite these assertions, he has not demonstrated the steps he undertook to facilitate the determination of the claim by the Director. In particular, the Applicant has not shown that the prerequisite requirements under WIBA were fulfilled, namely, reporting the

injury to the Director under Section 22 and filing a formal claim to allow for investigation and assessment.

20. I must say that the Interested Party's failure to respond to the instant Notice of Motion has further compounded the uncertainty regarding the steps, if any, taken by the Applicant and the Respondent to have the claim processed in accordance with the provisions of WIBA.

21. Notwithstanding the foregoing, the Court has taken note of the prolonged delay in finalizing the claim. In the interests of justice, and in line with the directions issued by the Hon. Chief Justice through Gazette Notice No. 5476 of 28th April 2023, the Court is inclined to allow the Applicant's Motion dated 11th June 2025.

22. Accordingly, the order made on 14th November 2018 in Nyeri ELRC Cause No. 455 of 2017 is hereby set aside. Consequently, the said claim shall proceed for hearing and determination before this Court.

23. There will be no orders as to costs.

DATED, SIGNED and DELIVERED at NYERI this 24th day of March 2026.

.....

STELLA RUTTO

JUDGE

In the presence of:

For the Applicant	No appearance
For the Respondent	No appearance
For the Interested Party	No appearance
Court Assistant	Ndati

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

COPY