



**Farmer's Choice Limited v Barasa (Civil Appeal E015 of 2026)
[2026] KEHC 5850 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E015 OF 2026
RN NYAKUNDI, J
MAY 4, 2026**

BETWEEN

FARMER'SCHOICE LIMITED APPLICANT

AND

BENSON BARASA RESPONDENT

RULING

1. Before this Court is a notice of motion dated 11th day of March 2026, brought under Section 1, 1A, 3A, 18, 63 (e) of the Civil Procedure Act, Orders 42 Rule 6(1) (2), Order 51 Rule 1, Order 50 Rule 6 Civil Procedure Rules, Article 159(2)(d) of the Constitution and all enabling provisions of the law. The applicant seeks the following orders:
 - a. Spent.
 - b. That this Honourable Court be pleased to issue directions as concerns its jurisdiction in relation to the adjudication of the Appeal case herein.
 - c. That this Honourable Court be pleased to grant necessary and/or appropriate orders in the interest of justice and fairness, including but not limited to an Order of transfer of the Appeal case herein to the Employment and Labour Relations Court and/or grant of leave to lodge an Appeal out of time in the Employment and Labour Relations Court.
 - d. That should the Honourable Court find the prayer of transfer of the Appeal case herein to the Employment and Labour Relations Court necessary, the Court be pleased to adopt the conditional orders for stay of execution pending hearing and determination of Appeal granted in the suit Eldoret CMCC No 565 of 2017-Benson Barasa -vs- Farmer's Choice Limited and/or issue fresh orders in respect to the grant of stay of execution pending the Hearing and determination of Appeal.



- e. That this Honourable Court be pleased to grant a temporary order of stay of execution as against the judgment/ decree in Eldoret CMCC No.565 of 2017-Benson Barasa -vs- Eldoret CMCC No 565 of 2017-Benson Barasa-vs-Farmer's Choice Limited pending inter parties hearing of the application herein.
 - f. That this Honourable Court be pleased to grant a temporary order of stay of execution as against the judgment/ decree in Eldoret CMCC No.565 of 2017-Benson Barasa-vs- Eldoret CMCC No 565 of 2017-Benson Barasa-vs-Farmer's Choice Limited pending the hearing and determination of the application herein.
 - g. That this Honourable Court be pleased to grant a temporary order of stay of execution as against the judgment/ decree in Eldoret CMCC No.565 of 2017-Benson Barasa-vs- Eldoret CMCC No 565 of 2017-Benson Barasa-vs-Farmer's Choice Limited pending the hearing and determination of an Appeal by the Applicant arising from the said suit.
 - h. That the costs of this application be in the cause.
2. Upon the grounds that:
1. The Applicant herein lodged the Appeal herein vide a Memorandum of Appeal dated 28/1/2026.
 2. That the Appeal herein is with regard to an award issued in Eldoret CMCCNo. 565 of 2017 - Benson Barasa -vs- Farmer's Choice Limited whereby judgement was delivered in favour of the Plaintiffs herein on10/12/2025.
 3. That the Appeal herein, is against the whole of the Judgment and Decree in the suit Eldoret CMCC No. 565 of 2017 - Benson Barasa -vs- Farmer's Choice Limited.
 4. That the Plaintiff/Respondent's claim in the suit Eldoret CMCC No. 565 of 2017 stems from a work injury claim.
 5. That the said suit was filed as a civil suit and proceeded as a normal suit before the Chief Magistrate's Court in Eldoret.
 6. That the said suit was not handled by the Directorate of Occupational Safety and Health Services (DOSHS), which falls under the Ministry of Labour.
 7. That it is provided under the law that the Employment and Labour Relations Court (ELRC) has appellate and supervisory jurisdiction over the Director's decisions.
 8. That the suit herein having been determined by a Magistrate before the Eldoret Chief Magistrates Court, guidance is required/directions to avoid confusion on the proper forum for Appeal.
 9. That at the time of filing the Appeal case herein, the Applicants' Advocates inadvertently did not look into the issue of jurisdiction having noted that the suit had been filed and proceeded before a magistrate Court from which Appeals arise to the Appellate Court herein.
 10. That filing of the Appeal case herein before a wrong Court if at all-was not intentional - but due to an oversight on the Advocates part.
 11. That the Applicant was aggrieved and dissatisfied with the whole of the decision and /or judgement in the trial suit Eldoret CMCC No. 565 of 2017 thus filed the Appeal herein.



12. That the Applicant has taken note of the trial Court's reasoning in the Ruling on application for stay of execution pending hearing and determination of Appeal-dated and delivered on 11th day of March, 2026, whereby the Court stated that the Appellate Court herein has authority/ capacity to determine the issue of its jurisdiction and further that the Respondent herein may have a valid argument as concerns the issue of jurisdiction.
13. That the Applicant herein is desirous of presenting its aggrievement byway of an Appeal, for Hearing and determination in the interest of justice.
14. That the issue of jurisdiction, the Applicant has noted is a material issue and thus seeks that the same be addressed, so that the Applicant can have its grievance as can be noted from the contents of the filed Memorandum of Appeal herein, addressed.
15. That the Applicant prays for a chance to be allowed to exercise its constitutional right to Appeal and thus seeks directions from this Court to issue directions that will serve it justice and/or allow it exercise the right to appeal.
16. That the Applicant is desirous of mitigating the grievous irreparable damage it shall suffer, should the Appeal herein proceed to conclusion in the wrong forum.
17. That the Court herein has the requisite jurisdiction and/or powers to make decisions and/or orders that serve the ends of justice.
18. That Article 159(2) (d) of *the Constitution* gives guidance on the issue of justice and fairness as regards procedural technicalities and the Applicant prays that the Honourable Court considers the same.
19. That the Applicant thus prays for issuance of necessary and appropriate orders to serve the ends of justice and prays for an order of transfer of the Appeal case herein, to the Employment and Labour Relations Court for hearing and determination and/or grant leave to lodge an Appeal out of time in the Employment and Labour Relations Court should the Honourable Court herein deem it appropriate.
20. That no prejudice shall be suffered by the Respondent herein, should the Appeal suit herein be transferred to the correct forum, since the Respondent shall still have a chance to participate in the same.
21. That the Appeal case herein has been listed for Mention on 29th May, 2026, which is more than 2 months away and the Applicants prayers herein, need urgent redress, hence the Application herein.
22. That the Applicant herein has been granted pre-conditional orders of stay of execution in the trial suit Eldoret CMCC No. 565 of 2017, that are meant to be complied with within 30 days, failure to which the temporary orders of stay of execution shall lapse.
23. That the Applicant runs a risk of further execution in the trial suit, after the expiry of 30 days and the Applicant is not sure of the time the issues raised herein shall be concluded thus stay of execution orders are necessary, in the pendency of determination of the application herein.
24. That in the circumstances, I pray that this Honourable Court do issue, stay of execution orders in Eldoret CMCC No. 565 of 2017, in the pendency of the Hearing and determination of this Application.



25. That the Respondent herein, had commenced execution process in the trial suit Eldoret CMCC No. 565 of 2017 and the Applicant/Appellant herein is apprehensive that should the temporary stay of execution orders in force in the trial suit lapse in the pendency of determination of the Application herein, further execution shall ensue to the detriment of the Applicant herein.
 26. That the Decree of the trial Court's award on damages involves a colossal amount of money currently standing at Kshs. 2,550,169 as per warrants of attachment dated 4th February, 2026. The said amount is huge and for the Applicant to lose the same, an irreparable loss shall be incurred considering and taking note of the Kenyan Economy and how much time it takes to accumulate such an amount of money and as such the Applicant is much apprehensive of such imminent loss.
 27. That the Respondent is a man of straw and shall not be able to refund the said monies upon a successful Appeal.
 28. That the Applicant and its insurer, Jubilee Insurance Company Limited currently operating and/or trading as Sanlam Allianz General Insurance(Kenya) Limited, are ready and willing to abide by any such reasonable conditions as the Court may order in regard of the prayers sought herein.
 29. That the Applicant together with its insurer are ready and willing to abide by any such reasonable conditions as the Court may order in regard of the prayers sought herein and ready and willing to furnish security pending the hearing and disposal of the application herein and the Applicant's appeal and are open/amenable to the adoption by this Honourable Court, of the conditional orders of stay of execution in the trial suit Eldoret CMCC No. 565 of 2017 or abide/comply with fresh orders/conditions that may emanate from the Court herein.
 30. That the Applicant brings this application in good faith, for the interest of justice and without undue delay.
 31. That it is in the interest of justice that the application herein be allowed.
3. In support of the application is the affidavit sworn by Walter Laktano Kessem who deponed as follows:
1. That I am a male adult of sound mind and disposition hence competent to make and swear this affidavit.
 2. That I am a Manager-Oasis Pig Unit of the Applicant herein duly authorized under seal by the Appellant company to swear this Affidavit and very conversant with the issues leading to the Application before this honourable Court, hence duly authorized to swear this affidavit on behalf Appellant/Applicant.
 3. That the suit herein was heard and determined, whereby judgment was delivered on 10/12/2025 in the suit Eldoret CMCC No 565 of 2017-Benson Barasa-vs-Farmer's Choice Limited in favour of the Plaintiff.
 4. That this Honourable Court in its Judgement, apportioned liability at 100% against the Defendant/Applicant herein and ordered that the Defendant/Applicant pay the Plaintiff a total sum of Kshs. 2,139,460/= in damages, plus costs.
 5. That the Applicant herein was advised by its advocates about the judgment and the award of the Lower Court and was not satisfied with the entire award, considering the circumstances of



the case. It then sought for advice of its advocates and its insurer, Jubilee Insurance Company Limited, who advised that the judgment be appealed on Liability and the award of General damages.

6. That thus the Appeal herein, was lodged vide a Memorandum of Appeal dated 28/1/2026 by our instructed Advocates-M/s Mose, Mose & Mose Advocates.
7. That my Advocates on record have notified me and which information I verily believe to be true, that at the time of filing the Appeal herein, they inadvertently did not look into the issue of jurisdiction having noted that the suit had been filed and proceeded before a magistrate Court from which Appeals arise to the Appellate Court herein.
8. That filing of the Appeal case herein before a wrong Court if at all-was not intentional but due to an oversight on the Advocates part.
9. That the Respondent's claim in the suit Eldoret CMCC No. 565 of 2017 stems from a work injury claim.
10. That the said suit was filed as a civil suit and proceeded as a normal suit before the Chief Magistrate's Court.
11. That the suit Eldoret CMCC No. 565 of 2017 was not handled by the Directorate of Occupational Safety and Health Services (DOSHS), which falls under the Ministry of Labour.
12. That my Advocates on record have informed me, which information I verily believe to be true, that it is provided under the law that the Employment and Labour Relations Court (ELRC) has appellate and supervisory jurisdiction over the Director's decisions.
13. That the suit herein having been determined by a Magistrate before the Eldoret Chief Magistrates Court, guidance is required/directions to avoid confusion on the proper forum for Appeal.
14. That I am aware that my Advocates on record filed in the suit Eldoret CMCC No 565 of 2017- Benson Barasa-vs- Farmer's Choice Limited an Application for stay of execution pending the Hearing and determination of the Appeal herein.
15. That the said Application was heard and a Ruling delivered on the 11th of March, 2026 (today).
16. That my Advocates on record have informed me and which information I verily believe to be true, that they have taken note of the trial Court's reasoning in the Ruling dated and delivered on 11th day of March, 2026 particularly, that the Appellate Court herein has authority/capacity to determine the issue of its jurisdiction and further that the Respondent herein may have a valid argument as concerns the issue of jurisdiction.
17. That the Applicant herein is desirous of presenting its aggrievement by way of an Appeal, for Hearing and determination in the interest of justice.
18. That the issue of jurisdiction, the Applicant has noted is a material issue and thus seeks that the same be addressed, so that the Applicant can have its grievances as can be noted from the contents of the filed Memorandum of Appeal herein-addressed.
19. That the Applicant prays for a chance to be allowed to exercise its constitutional right to Appeal and thus seeks directions from this Court to issue directions that will serve it justice and/or allow it exercise the right to appeal.



20. That the Applicant is desirous of mitigating the grievous irreparable damage it shall suffer, should the Appeal herein proceed to conclusion in the wrong forum.
21. That the Court herein has the requisite jurisdiction and/or powers to make decisions and/or orders that serve the ends of justice.
22. That Article 159(2) (d) of *the Constitution* gives guidance on the issue of justice and fairness as regards procedural technicalities and the Applicant prays that the Honourable Court considers the same.
23. That the Applicant thus prays for issuance of necessary and appropriate orders to serve the ends of justice and prays for an order of transfer of the Appeal case herein, to the Employment and Labour Relations Court, should the Honourable Court herein deem it appropriate.
24. That no prejudice shall be suffered by the Respondent herein, should the Appeal suit herein be transferred to the correct forum, since the Respondent shall still have a chance to participate in the same.
25. That the Appeal case herein has been listed for Mention on 29th May, 2026, which is more than 2 months away and the Applicants prayers herein, need urgent redress, hence the Application herein.
26. That the Applicant herein has been granted pre-conditional orders of stay of execution in the trial suit Eldoret CMCC No. 565 of 2017, that are meant to be complied with within 30 days, failure to which the orders of stay of execution shall lapse.
27. That the Applicant runs a risk of further execution after the expiry of 30 days and the Applicant is not sure of the time the issues raised herein shall be concluded thus stay of execution orders are necessary in the suit Eldoret CMCC No. 565 of 2017, in the pendency of determination of the application herein. I thus pray for stay of execution orders from this Honourable Court.
28. That the Respondent herein had already commenced execution process and the Applicant/Appellant herein is apprehensive that should the temporary stay of execution orders currently in force in the trial suit Eldoret CMCC No. 565 of 2017, lapse in the pendency of determination of the Application herein, further execution shall ensue to the detriment of the Applicant herein.
29. That the Decree of the trial Court's award on damages involves a colossal amount of money currently standing at Kshs. 2,550,169 as can be noted in the warrants of attachment dated 4th February, 2026
30. That the said amount is huge and for the Applicant to lose the same, an irreparable loss shall be incurred considering and taking note of the Kenyan Economy and how much time it takes to accumulate such an amount of money and as such the Applicant is much apprehensive of such imminent loss.
31. That the Respondent is a man of straw and shall not be able to refund the said monies upon a successful Appeal.
32. That the Applicant and its insurer, Jubilee Insurance Company Limited currently operating and/or trading as Sanlam Allianz General Insurance (Kenya) Limited, are ready and willing to abide by any such reasonable conditions as the Court may order in regard of the prayers sought herein.



33. That the Applicant together with its insurer are ready and willing to abide by any such reasonable conditions as the Court may order in regard of the prayers sought herein and ready and willing to furnish security pending the hearing and disposal of the application herein and the Applicant's appeal and are open/amenable to the adoption by this Honourable Court, of the conditional orders of stay of execution in the trial suit Eldoret CMCC No. 565 of 2017 or abide/comply with fresh orders/conditions that may emanate from the Court herein.
 34. That it is my humble prayer that this Honourable Court allow the Applicant to ventilate its grievance and exercise its right to appeal.
 35. That the Applicant brings this application in good faith, for the interest of justice and without undue delay.
 36. That it is in the interest of justice that the application herein be allowed.
4. This application was canvassed by way of written submission which in the part of the respondent was to the effect that the appeal if any does not fall within the jurisdiction of this Court. The basis outlined by learned Counsel for the Respondent is that the claim subject matter of the appeal is a work injury occupational hazard whose jurisdiction is vested on the Employment and Labour Relation Court. In support of the submissions on jurisdiction the learned Counsel based reliance on the Constitutional provisions under Articles 162(2)(a), 165(5) (6) of *the constitution* and Section 12(1) (2) of the *Employment and Labour Relations Court Act*. In addition, learned Counsel in adverting to the issues of jurisdiction cited the legal principles in the following cases: The Owners of the Motor Vessel Lillian 'S' v Caltex Kenya Limited [1989] KLR, Arura v Vegpro (K) limited & Another [2025] KEHC 13696(KLR), Mohamed v Diamond Industries Ltd (2018) eKLR, Bwana Mohamed Bwana v. Silvano Buko Bonaya & 2 Others (2015) eKLR and Boniface Waweru Mbiyu v Mary Njeri & Another [2005] eKLR.
 5. The Applicant and intended Appellant learned Counsel in the notice of motion applied for stay of execution against the judgment of the Trial Court in Eldoret CMCC No. 565 of 2017 Benson Barasa vs Farmers Choice Ltd. My reading of the ruling dated 11th day of March 2026 by the Learned Trial Magistrate Honorable Sifuma is captured as follows:
 - a. A conditional stay of execution is hereby granted pending the hearing and determination of Eldoret HCCA No. E015 of 2026.
 - b. Out of the decretal sum, the Applicant shall pay to the Respondent's Advocates Kshs. 500,000/ =within 30 days from today.
 - c. The balance of the decretal sum shall be deposited into a joint interest-earning account in the names of both firms of Advocates within 30 days from today.
 - d. The Applicant shall settle the costs of the proclamation done by Eshikhoni Auctioneers on 4th February, 2026 within 30 days from today.
 - e. In default of any of the above conditions, the stay order shall automatically lapse; and the Respondent shall be at liberty to proceed with execution.
 - f. Costs of this application shall abide the outcome of the Appeal in Eldoret HCCA No. E015 of 2026.
 6. If this decision is correct and I have no reason to doubt its pronouncement, then the notice of motion seeking an order for this Court to grant a temporary order of stay of execution as against the judgment



of the Trial Court in terms of Clause 5, 6 & 7 runs foul the provisions of Section 7 of the *Civil Procedure Act* on the doctrine of res judicata as provided under this provision states that:

- (56) The doctrine of “res judicata” is provided for under Section 7 of the *Civil Procedure Act* in that: - “No Court shall, try, any suit or issue in which the matter directly and substantially 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 issue in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”
- (57) The *Civil Procedure Act* has also provided explanations with respect to the application of the res judicata rule. Explanation 1-6 are in the following terms:

Explanation (1) —The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation (2) —For the purposes of this section, the competence of a Court shall be determined irrespective of any provision as to right of appeal from the decision of that Court.

Explanation (3) —The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation (4) — Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation (5) — Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation (6) — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

- (58) This Court in the case of Kenya Commercial Bank Limited v. Muiiri Coffee Estate Limited & another Motion No. 42 of 2014 [2016] eKLR (Muiiri Coffee case) held as follows regarding the doctrine of res judicata: “[52] Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. Such a perception has a basis in comparative jurisprudence; in the Ugandan case of Hon. Norbert Mao v. Attorney-General, Constitutional Petition No. 9 of 2002; [2003] UGCC3, the petitioner brought an action on behalf of 21 persons from his constituency, for declarations under Article 137 of the Uganda Constitution, and for redress under Article 50 of that Constitution. The matter arose from an incident in which officers of the Uganda Peoples Defence Forces attacked a prison, and abducted 20 prisoners, killing one of them. Unknown to the petitioner, another action had already been filed under Article 50, seeking similar relief; and Judgment had been given in Hon. Ronald Reagan Okumu v. Attorney-General, Misc. Application No.0063 of 2002, High Court HCT 02 CV MA 063 of 2002. The Constitutional Court dismissed the petition, on a plea of res judicata, declining the petitioner’s pleas that certain important constitutional declarations now sought, had not been accommodated in the



earlier Judgment. [53] In *Silas Make Otuke v. Attorney-General & 3 Others*, [2014] eKLR, the High Court of Kenya agreed with the Privy Council decision in *Thomas v. The AG of Trinidad and Tobago* (1991) LRC (Const.) 1001, in which the Board was “satisfied that the existence of a constitutional remedy as that upon which the appellant relies does not affect the application of the principle of *res judicata*”. [54] The doctrine of *res judicata*, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

7. One has got to look at the wordings and statements contained in the ruling of the Trial Learned Magistrate with regard to execution under Order 42 Rule 6 of the CPA, that the doctrine of *res judicata* applies in equal measure against the three remedies on stay applied by the same very Applicant before this appeal Court. It is interesting that the applicant did not even mention in the notice of motion that there was an existing decision by the Trial Court on the same set of facts under the express provisions of Order 42 Rule of the CPR. In my view to that extent, the applicant is estopped to re-litigate on the same issues before this forum. The other limb is on jurisdiction, there is no doubt from the body of the judgement that the learned trial magistrate made the following observations:
 - a. The case for the plaintiff is that he was an employee of the defendant as a general casual worker from 2009, before he was later confirmed on permanent employment in February, 2011 where he worked until 31st January, 2017 when he resigned; that he was stationed in the pig fattening section of the defendant's Rosemark Pig Unit/Division under Joshua Mutwiri as his supervisor and John Mwanhi as his Unit manager; that he worked alongside Godfrey Adaji and Michael Kimaru; that his work involved carrying on his back 50kg or 70 kg of pig feed from the company lorries to the stores; carrying on wheelbarrow pig feed and drums of water to the pig feeding troughs and carrying; that in August, 2015 he started feeling pains and reported to his supervisor but who told him it was normal due to the heavy weights he was lifting; that he continued relieving the pain through painkillers; that however, on 15th February, 2016 he reported to work at about 7 am when the pain became unbearable after he had worked for an hour; that his supervisor allowed him to seek treatment at MTRH where he underwent ultrasound check that revealed an anterior abdominal wall defect, diagnosed as left inguinal hernia and was recommended to undergo medical operation on 3rd May, 2016; that after undergoing the operation, he was admitted for three days, discharged and put on six weeks sick leave; that thereafter, his employer declined to extend the leave and instead placed in the farm clerk's office for a month where the clerk was away on annual leave; that he was then ordered to resume his duties in the fattening section, forcing him to resign on 31st January, 2017.
 - b. The plaintiff blamed the defendant for his injury for, inter alia, failing to provide him with a safe environment.
8. It goes without saying from these facts, that the subject matter falls within Section 12(1)(2) of the *Employment and Labour Relations Court Act*. In Kenya the Courts have ruled now and again that Courts' competence is fundamental voiding proceedings where jurisdiction is lacking. The law is now settled in the various authorities with regard to jurisdiction of a Court in the case of *locus classicus* case



of *The Owners of the Motor Vessel Lillian 'S' v Caltex Kenya Limited* [1989] KLR where the Court held:

“jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdictions, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. In my view and in consonant with Art. 162(2)a as read with 165(b) of *the Constitution* of Kenya 2010, Section 12(1) (2) of the Employment and *Labour Relations Act*, this Court lacks jurisdiction to determine the issues between an employee and employer with regard to creating a safe environment for work to prevent any risk of injuries which are likely to be suffered by the employee in the course of his/her employment requiring that damages be assessed and be paid by the employer for breach of that contractual duty.
10. These constitutional provisions expressly limit the competence of the High Court to adjudicate this claim on appeal. The effect of such limitations on jurisdictions based on *the constitution* and the statute is to render this Court incompetent to hear the cause of action which is also improperly before it. This Court cannot therefore assume both personal and subject matter jurisdiction so as to exercise powers of transfer to the Employment and Labour Relations Court. What this means is, this is not a forum of conveniens.
11. For those reasons and with respect to the Applicant and intended Appellant the application is dismissed conditioned on res judicata and lack of jurisdiction. It is trite law that the Court cannot transfer a non-suited suit which in the first place it is required to down tools going by the dicta in *Owners of the Motor Vessel Lillian 'S' v Caltex Kenya Limited* [1989] KLR. I make no orders as to costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH MAY 2026.

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R. NYAKUNDI

JUDGE

