



Raiply Woods (K) Limited v Kiguru (Employment and Labour Relations Appeal E029 of 2023) [2026] KEELRC 1226 (KLR) (7 May 2026) (Judgment)

Neutral citation: [2026] KEELRC 1226 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E029 OF 2023**

MA ONYANGO, J

MAY 7, 2026

BETWEEN

RAIPLY WOODS (K) LIMITED APPELLANT

AND

JOSEPH KINYANJUI KIGURU RESPONDENT

(Being an appeal against the Ruling of Honourable Richard Odenyo, Senior Principal Magistrate delivered in ELDORET CMELRC NO. E011 OF 2023 on 5th October 2023)

JUDGMENT

1. This Appeal arises from a ruling delivered by the trial court in Eldoret CMELRC No. E011 of 2023 on the 5th October 2023.
2. A brief background is that, vide a Miscellaneous application dated 16th March 2023, the Respondent (Applicant in the trial court) sought the following orders: -
 - i. That this application be certified as urgent, and service thereof be dispensed with in the first instance.
 - ii. That the decision by the Director of Occupational Safety and Health Services rendered on 5th August, 2018 awarding the Applicant a sum of Kshs.540,943/= as against the Respondent be adopted as a judgment of court.
 - iii. That, execution of the award do proceed in the usual manner.
 - iv. That, Cost of the application be awarded to the Applicant.
3. The grounds upon which the application was premised were: -
 - i. That, the Applicant lost his left index finger on 5th June 2015 as he was operating the roller.



- ii. That, injury was assessed at 30%.
 - iii. That, Compensation was assessed by the Director of Occupational Safety and Health Services and notice given to the Respondent to pay.
 - iv. That despite the compensation being brought into the attention of the Respondent, the Respondent has failed and or neglected to pay the Applicant.
 - v. That the Respondent will not be prejudiced in anyway if the application sought is granted.
4. The Appellant in response to the application filed a Replying Affidavit sworn on 3rd April 2023 by Henry Aggrey Okola, its Human Resource Manager in which it averred that the Applicant had filed a similar application dated 2nd March 2020 in Eldoret CMELRC Miscellaneous application No. 44 of 2020, Joseph Kinyanjui Kiguru v Rai Plywood (K) Limited raising not only similar grounds as in the instant application but also seeking similar prayers which application was heard on merit and a ruling delivered on 19th January 2021 dismissing the application.
 5. Mr Okola further deposed that the Applicant subsequently filed an application dated 6th May 2021 in the Employment and Labour Relations Court vide Eldoret ELRC Miscellaneous Civil Application No. E007 of 2021 Joseph Kinyanjui Kiguru v Rai Plywood (K) Limited seeking the following orders: -
 - i. That the Applicant be granted leave and time be enlarged to enable him initiate these proceedings.
 - ii. That the Director of Occupational Health award of compensation made on 5th August, 2016 be deemed legitimate and this Honourable Court do order settlement of the award of Kshs. 540,943 thereof or give any other direction leading to settlement of the award failure of which execution to issue.
 - iii. Costs of the application be provided.
 6. It was averred that the said application was similarly heard on merit and a ruling was delivered on 18th March 2023 dismissing it.
 7. It was Mr. Okola's further averment that the Respondent filed another application dated 8th April 2023 seeking to have the ruling delivered on 18th March 2022 reviewed in Eldoret ELRC Miscellaneous Civil Application No. E007 of 2021 which application was also heard on merit and a ruling delivered on 21st November 2022 dismissing the said application.
 8. Further, the Respondent contended that the Applicant filed another application dated 9th February 2022 seeking leave to file this claim out of time without disclosing to the Court that he had made a similar application before the Employment and Labour Relations Court which was dismissed and that given the material non-disclosure on the part of the Applicant, the Court was misled into issuing orders granting leave to the Applicant to file this claim out of time which order led to the filing of the application dated 16th March 2023.
 9. The Respondent (now the Appellant) opposed the application dated 16th March 2023 arguing that the parties, issues and prayers sought in the instant application are directly and substantially the same as the ones sought in the dismissed applications filed in Eldoret CMELRC Miscellaneous Civil Application No.44 of 2020 and Eldoret ELRC Miscellaneous Civil Application No. E007 of 2021 and prayed that the application be dismissed for being res judicata.
 10. Further, the Respondent argued that given that the Applicant's cause of action arose on 5th August, 2016 upon the assessment of compensation under the [Work Injury Benefits Act, 2007](#) any viable claim



brought under the *Employment Act*, 2007 ought to have been brought within 3 years of 5th August, 2016 and as such, the instant claim is time barred and cannot be entertained by any court of law.

11. The trial court upon considering the application dated 16th March 2023 and the Respondent's replying affidavit delivered its ruling on 5th October 2023 and held that the application was neither res judicata nor time barred. The application was therefore allowed.
12. It is the said ruling which is the subject of this appeal.
13. The Appellant (who was the Respondent in the lower court) was aggrieved by the said ruling and filed the instant appeal vide the Memorandum of Appeal dated 1st November 2023 on the grounds that: -
 - i. The learned trial magistrate erred in law and fact in allowing the application dated 16th March 2023 despite the same being res judicata.
 - ii. That the learned trial magistrate erred in law and fact in granting the Respondent leave to file the claim out of time without satisfaction of the requirement of law as to leave.
 - iii. That the learned trial magistrate erred in law and fact in granting the Respondent leave to file claim without considering the fact that the Respondent had filed a similar application at the Employment and Labour Relations Court and had been rejected and no appeal had been filed to challenge the court's decision.
 - iv. That the learned trial magistrate erred in law and fact in failing to hold that the court was functus officio having already determined a similar application vide its ruling dated 19th January 2021 by Honourable Naomi Wairimu.
 - v. That the learned trial magistrate erred in law and fact in granting the Respondent leave to file the claim out of time without any valid reasons and/or interrogation of the pleadings presented to it hence an erroneous decision in the circumstances.
 - vi. That the learned trial magistrate erred in law and fact in failing to consider the law with regard to limitation of action hence a decision which is unsupported by law.
 - vii. That the learned trial magistrate erred in law and fact in failing to hold that the application dated 16th March 2023 offended the provisions of Section 7 of the *Civil Procedure Act*.
 - viii. That the learned trial magistrate erred in law and fact in failing to uphold the principles of stare decisis and by failing to hold that it was bound by the decision of the Employment and Labour Relations Court.
 - ix. That the learned trial magistrate erred in law and fact in failing to consider all the rulings and/or decisions made by competent courts of law with jurisdiction hence an erroneous decision without any legal basis.
 - x. That the learned trial magistrate erred in law and fact in purporting to grant leave which amounted to it sitting on appeal of its own decision.
 - xi. That the learned trial magistrate erred in law and fact in failing to hold that the application was time barred and hence could not see the light of the day.
 - xii. That the learned trial magistrate erred in law and fact in failing to hold that the application by the Respondent was an abuse of the court process and amounted to forum shopping having being denied similar applications severally.



- xiii. That the learned trial magistrate erred in law and fact in applying the wrong principle in law and misdirected himself in granting the prayers sought without any legal justification.
 - xiv. That the learned trial magistrate erred in law and fact in failing to uphold the Provisions of Order 21 rule 4 of the Civil Procedure Rules, 2010.
14. Consequently, the Appellant prayed that this appeal be allowed, the ruling be set aside, and substituted by an order dismissing the Respondent's application with costs.
15. The appeal was disposed of by way of written submissions. The Appellant's submissions are dated 11th December 2025 while the Respondents submissions are dated 16th February 2026.

The Appellant's submissions

16. In its submissions, the Appellant framed the following issues for determination: -
- i. Whether the learned trial magistrate erred in law and in fact in entertaining and allowing a matter that was res judicata
 - ii. Whether the learned trial magistrate acted without jurisdiction by effectively sitting on appeal over earlier decisions, failing to apply the doctrine of stare decisis and thereby acting while functus officio.
17. On the first issue, the Appellant submitted that the learned trial magistrate erred in law by entertaining and allowing the Respondent's application dated 16th March 2023, and in granting leave to file a claim out of time, notwithstanding that the issue had already been conclusively determined by the Employment and Labour Relations Court. The Appellant further contended that the trial court erred in allowing the Respondent's prayer for adoption of the Director's award as a judgment of the court, despite the fact that a similar relief had previously been sought and dismissed in Eldoret CMELRC Misc. Civil Application No. 44 of 2020 and ELRC Misc. Application No. E007 of 2021.
18. It is the Appellant's submission that by allowing the application, the trial court effectively sanctioned the re-litigation of issues that had already been conclusively determined by courts of competent jurisdiction, contrary to the doctrine of res judicata as codified under Section 7 of the [*Civil Procedure Act*](#).
19. It is submitted that once a matter has been heard and determined by a competent court, a party cannot evade the bar of res judicata by filing successive applications seeking the same relief under different procedural guises. In support of this position, the Appellant cited the decision in *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others* [2017] eKLR and *Kenya Commercial Bank Limited & another v Muiri Coffee Estate Limited & 3 others* [2016] eKLR
20. The Appellant contended that upon dismissal of the initial application, the Respondent's only recourse, if dissatisfied, was to lodge an appeal and not filing multiple applications before courts of concurrent jurisdiction in a bid to secure a favourable outcome.
21. According to the Appellant, the Respondent proceeded to file Eldoret CMELRC Miscellaneous Civil Application No. E011 of 2023 through an ex parte chamber summons dated 9th February 2023, seeking leave to file the claim out of time without disclosing the earlier dismissals and the trial court on 21st February 2023, granted leave, following which the Respondent filed the application dated 16th March 2023 seeking adoption and enforcement of the DOSH award, which application was subsequently allowed on 5th October 2023.



22. Further, the Appellant submitted that the ruling by Honourable Justice J. Abuodha in ELRC Miscellaneous Application No. E007 of 2021 constituted a final determination declining leave to file the claim out of time and that granting the same orders by the trial court amounted to adopting the Director's award through the back door.
23. The Appellant therefore submitted that the learned trial magistrate erred in law by entertaining and granting a subsequent application seeking leave to file the claim out of time, notwithstanding that the issue had already been conclusively determined by courts of competent jurisdiction.
24. On the second issue, the Appellant contended that the learned trial magistrate gravely erred in law by purporting to re-determine matters that had already been conclusively adjudicated upon by courts of competent jurisdiction, including a superior court. It was argued that such action violated the doctrines of *functus officio* and *stare decisis*, and in effect amounted to the trial court sitting on appeal over a High Court decision. The Appellant maintained that this jurisdictional error rendered the impugned ruling null and void.
25. It was further submitted that the magistrate's court became *functus officio* upon delivery of its ruling on 19th January 2021 in respect of the Respondent's earlier application dated 2nd March 2020, as the court, by that ruling, conclusively determined the issue of leave to file the claim out of time, thereby exhausting its jurisdiction on that issue. The Appellant contended that the Respondent neither sought review nor preferred an appeal against that decision, but instead returned to the same court with successive applications seeking identical relief under different procedural guises.
26. The Appellant thus submitted that the learned trial magistrate misdirected herself both in fact and in law, as the application before her was plainly *res judicata*, the court was *functus officio*, and it lacked jurisdiction to reopen matters that had already been conclusively determined.
27. Consequently, the Appellant urged this Honourable Court to allow the Appeal, set aside the ruling delivered on 5th October 2023 in its entirety and substitute it with an order dismissing the Respondent's application dated 16th March 2023.

The Respondent's Submissions

28. On his part, the Respondent submitted on the following two issues: -
 - i. Whether the application dated 16th March 2023 was *res judicata*
 - ii. Whether the trial court lacked jurisdiction.
29. On the first issue, the Respondent submitted that for the doctrine of *res judicata* to apply, the previous suit must have been heard and conclusively determined on its merits, resulting in a final and binding decision.
30. Relying on the case of *Ikonika Resorts & Hotels Limited v Otieno* [2025] KEELRC 3324 (KLR), the Respondent submitted that dismissals based on procedural technicalities, without determination of substantive issues, do not trigger the doctrine of *res judicata*. In this regard, the Respondent submitted that in *Eldoret CMELRC Miscellaneous Civil Application No. 44 of 2020*, the Court did not render itself on the DOSH award, as the application was dismissed on jurisdictional grounds and in *ELRC Miscellaneous Civil Application No. E007 of 2021*, the application was dismissed for duplication and *res judicata* and not on the substantive merits of the claim.
31. The Respondent therefore submitted that these procedural dismissals did not bar the Respondent from instituting a fresh application once the defects had been cured. He asserted that the *ex parte*



leave granted on 24th February 2023 cured the limitation defect and enabled the filing of a competent application without offending the doctrine of res judicata.

32. The Respondent submitted that the trial court correctly found that the application dated 16th March 2023 was not res judicata, as the earlier rulings did not constitute a final determination on the merits of the claim.
33. On the second issue whether the trial court lacked jurisdiction, the Respondent relying on Gazette Notice No. 6021 of 22nd June 2018 submitted that the trial court had jurisdiction to hear and determine the application for adoption and enforcement of the DOSH award under the [Work Injury Benefits Act, 2007 \(WIBA\)](#).
34. According to the Respondent, the Magistrates' Courts, within their pecuniary limits, have jurisdiction to adopt and enforce DOSH awards so as to fill the lacuna in WIBA relating to enforcement mechanisms. In support of this position, the Respondent relied on the decision in *Edwin Songoroh & another v Amony Koech Yatich & another* [2021] eKLR.
35. It is the Respondent's submission that the claim herein, being Kshs. 540,943/=, falls well within the pecuniary jurisdiction of the trial court as the Respondent's salary, as reflected in the DOSH assessment, was Kshs. 16,868, thereby placing the matter squarely within the jurisdictional threshold of the Magistrates' Court.
36. The Respondent maintained that the doctrine of functus officio does not apply in the present case as the application dated 16th March 2023 was a fresh application filed after leave had been granted, which cured the earlier procedural defects relating to limitation.
37. The Respondent therefore contended that the earlier dismissals were procedural in nature and did not constitute a substantive adjudication of the issues, and therefore did not render the trial court functus officio.
38. In response to the Appellant's contention that the trial court violated the doctrine of stare decisis, the Respondent submitted that the trial court properly distinguished the earlier decisions of the Employment and Labour Relations Court. It is submitted that following the grant of leave on 24th February 2023, the Respondent's application was no longer time-barred and the issues before the trial court were therefore materially different from those previously determined.
39. In the end, the Respondent submitted that the application dated 16th March 2023 was not res judicata and that the trial court had jurisdiction to hear and determine the application.
40. The court was urged to dismiss the appeal with costs.

Analysis and Determination

41. This being a first appeal I am required to consider the evidence adduced, evaluate it and draw my own conclusions. See *Selle & Another Vs Associated Motor Boat Company Ltd & Others* [1968] EA 123.
42. Having considered the Record of Appeal and the submissions of the rival parties, the issues that arise for determination are: -
 - i. Whether the application dated 16th March 2023 was res judicata
 - ii. Whether the trial court lacked jurisdiction to entertain the application dated 16th March 2023



Whether the application dated 16th March 2023 was res judicata

43. The basis for the application of the doctrine of res judicata in Kenya is Section 7 of the [Civil Procedure Act](#). The material parts provide 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 one 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.”
44. The doctrine and the principle behind it was succinctly explained in the case of *North West Water Ltd V Binnie & Partners* [1990] 3 ALL E.R.547, where the court held:
- “Where an issue had been decided in a court of competent jurisdiction, the court would not allow that issue to be raised in a separate proceeding between different parties arising out of identical facts and dependent on the same evidence since, not only was the party seeking to re-litigate the issue prevented from doing so, by virtue of issue estoppel but it would also be an abuse of process to all, for the issue to be re-litigated.”
45. From a perusal of the record in the present case, it is clear that the Respondent had previously filed multiple applications seeking substantially similar reliefs, including: Eldoret CMELRC Miscellaneous Application No. 44 of 2020, dismissed on 19th January 2021; Eldoret ELRC Miscellaneous Civil Application No. E007 of 2021, dismissed on 18th March 2022 and an application for review dismissed on 21st November 2022.
46. The relief sought in all these applications was essentially the adoption and enforcement of the DOSH award. The application dated 16th March 2023, seeks similar reliefs.
47. The Respondent has argued that the dismissal of the applications was procedural in nature and did not amount to a determination on the merits.
48. The doctrine of res judicata is premised on the concept that a course of action, once determined by a court of competent jurisdiction, should not be re-litigated before the same or another court of competent jurisdiction save by way of a review or an appeal.
49. The issue that was before the courts that have been referred to by the Appellant was the adoption of the award of the Director.
50. An adoption is not a cause of action. It is part of the process of execution. This is clearly the implication of sections 51 and 52 of the [Work Injury Benefits Act](#) which provide that the decision of the Director can only be reviewed or appealed: The sections are reproduced below:
51. Objections and appeals against decisions of the Director
- (1) Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.
 - (2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made



and the relief or order which the objector claims, or the question which he desires to have determined.

52. Director's reply
- (1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.
 - (2) An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision.
51. It is clear from the foregoing that the rights and obligations of the parties were determined with finality by the Director. Section 52 of WIBA expressly provides that any party not satisfied with the decision of the Director may seek a review before the Director or appeal to this court.
52. There was indeed an application for review of the Director's award by the Appellant herein which led to the Respondent being subjected to a second medical assessment. The Appellant did not appeal against the second assessment of the compensation payable to the Appellant that is the subject of all the applications mentioned in this appeal. Therefore, as far as that award of the Director is concerned, it became final after the time for review and appeal lapsed. What has been before the courts since then is the process of execution of that award which must be adopted as the courts decision for purposes of extracting a decree.
53. It is therefore my finding that the doctrine of res judicata is not applicable to the application that was before the trial court. The court was not determining the rights of the parties. there was no suit before the trial court. What was before the court was an application to execute the decision of the Director that had not been contested by an application for review or an appeal as provided in sections 51 and 52 of WIBA. The trial court had only been requested by the Respondent to adopt the decision of the Director for purposes of extracting an order or decree so that the court could execute the same. The court was thus in the process of executing the award of the Director which came to the court for that purpose only.
54. The process of execution is not subject to the doctrine of res judicata. If an application for execution is defective and is dismissed by the court, there is no bar to the holder of the decision making another application for execution. There is no limit to the number of times such applications can be made, until the judgment debtor settles the decretal sum.

Whether the trial court lacked jurisdiction to entertain the application dated 16th March 2023

55. The Appellant contended that the trial court lacked jurisdiction, having become functus officio and having acted in violation of the doctrine of stare decisis.
56. The doctrine of functus officio dictates that once a court has performed its function and rendered a final decision on a matter, it lacks jurisdiction to revisit the same issue, except as provided for under the law.
57. Having come to the conclusion that the doctrine of res judicata is not applicable to the instant proceedings and that the various decisions of the courts were made in the process of execution, the issue of jurisdiction as urged by the Appellant does not arise. As already stated, if a party makes a



mistake in the process of execution, its right to execute does not get extinguished. It is free to file another application for execution unless it time barred by section 4(4) of the *Limitation of Actions Act*.

58. Section 4(4) of the *Limitation of Actions Act* provides:

An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

59. At the time the Respondent came to court the limitation period for executing his award had not lapsed. His applications for extension of time for filing the application was therefore made in error. So were all the applications that were dismissed.

60. It is worth noting here that the WIBA Act does not specifically provide for the mode of execution of the awards of the Director. It is this courts view that the awards of the Director may thus be adopted for purposes of execution in either the Magistrates Courts or in this court as both courts have jurisdiction under section 29 of the *Employment and Labour Relations Court Act*. This apparent confusion (or the different schools of thought) on the procedure for execution of the awards of the Director in WIBA matters will persist until such time that the jurisdiction for purposes of execution of WIBA awards shall have been delineated by legislation or rules under either the *Work Injury Benefits Act* or the *Employment and Labour Relations Court Act*.

61. Consequently, this Court finds that the appeal herein has no merit with the result that the same is dismissed with costs.

62. Orders accordingly

DATED, SIGNED AND DELIVERED AT ELDORET ON

THIS 7TH DAY OF MAY, 2026

MAUREEN ONYANGO

JUDGE

