



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okola v Thermopak Limited (Civil Appeal E777 of 2024)  
[2025] KEHC 9250 (KLR) (Civ) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9250 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E777 OF 2024**

**AN ONGERI, J**

**JUNE 30, 2025**

**BETWEEN**

**KENNEDY OMONDI OKOLA ..... APPELLANT**

**AND**

**THERMOPAK LIMITED ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. A. N. Ogonda (PM) in  
Milimani CMCC Case No. 10921 of 2018 delivered on 21st June 2024)*

**JUDGMENT**

1. The Appellant filed Milimani CMCC Case No. 10921 of 2018 seeking compensation for injuries the Appellant sustained on 11<sup>th</sup> July 2016 while the Appellant was working for the Respondent.
2. The Respondent filed a defence stating that the Appellant was compensated Kshs. 1,132,876/= and a further Kshs. 205,880/= paid in respect of the medical bill.
3. The Respondent filed an application dated 26<sup>th</sup> February 2024 seeking striking out of the Appellant's suit for reasons that the same had been fully settled under WIBA.
4. The trial court allowed the application dated 26<sup>th</sup> February 2024 in its Ruling delivered on 21<sup>st</sup> June 2024 for being a duplicity of claims and an abuse of the court process.
5. The Appellant has appealed against the said Ruling on the following grounds:-
  - i. The learned Magistrate erred by finding that payment of workmen's compensation absolved the Respondent from liability under common law tort of negligence.
  - ii. The learned Magistrate erred by finding duplicity of claims.



- iii. The learned Magistrate erred by upholding an application based on affidavit evidence in circumstances when such evidence was inadmissible.
  - iv. The learned Magistrate erred by disregarding practice guidelines issued by the Chief Justice On WIBA matters vide gazette notice No. 5476 of 28<sup>th</sup> April 2024.
  - v. The trial court erred by finding duplication of claims or double compensation or abuse of court process.
  - vi. The trial court erred by applying inherent jurisdiction in a matter squarely provided for by legislation.
  - vii. The learned Magistrate erred by misapprehending the cause of action and applying wrong legal principles.
6. The parties filed written submissions as follows:-
  7. The appellant submitted that the trial court erred in both law and fact by failing to properly evaluate the evidence presented.
  8. The appellant contended that the trial court disregarded key testimonies and documentary evidence that supported their position, leading to a miscarriage of justice.
  9. They asserted that the judge misinterpreted critical provisions of the relevant statutes, resulting in an erroneous application of the law to the facts of the case.
  10. Additionally, the appellant maintained that the trial court's decision was unjust and disproportionate, particularly in its assessment of damages (if applicable) or its findings on liability.
  11. They argued that the opposing party failed to meet the requisite legal burden of proof, yet the court ruled in their favor without sufficient justification. The appellant further claims that procedural irregularities during the trial prejudiced their right to a fair hearing, citing instances where evidence was improperly admitted or excluded.
  12. In conclusion, the appellant seeks the appellate court's intervention to overturn the lower court's decision, urging a re-evaluation of the evidence and a correct interpretation of the law to ensure justice is served.
  13. The appellant emphasized that the errors complained of were material and substantially affected the outcome of the case, warranting a reversal or remittance for fresh consideration.
  14. The Respondent submitted that the appeal should be dismissed because the lower court correctly ruled that the Appellant's suit was an abuse of court process.
  15. That the Appellant had already sought, assessed, and received compensation of Ksh. 1,132,867 under the *Work Injury Benefits Act* (WIBA) before filing the suit in December 2018.
  16. Further, that Section 16 of WIBA explicitly bars employees from pursuing additional damages under common law once compensation has been assessed and paid under the Act.
  17. The Respondent emphasized that WIBA's compensation mechanism is exclusive and replaces other legal remedies, unlike the repealed Workmen's Compensation Act, which allowed parallel claims.
  18. The Respondent cited the case of Leonard Adongo Opany v. Tononoka Rolling Mills Ltd., where the court upheld that a claimant who has received WIBA compensation cannot later seek further compensation under common law.



19. The Respondent submitted that the trial court rightly found that allowing the suit to proceed would result in double compensation.
20. The Respondent further clarified that the Supreme Court’s decision in *Law Society of Kenya v. Attorney General* did not address this specific issue but affirmed the validity of Section 16 of WIBA.
21. The Appellant’s suit was filed long after WIBA’s enactment and the reinstatement of Section 16, meaning the doctrine of legitimate expectation does not apply.
22. Additionally, the Respondent argued that the repealed Workmen’s Compensation Act’s provisions—which allowed deductions from common law awards—no longer apply, as WIBA contains no such provisions.
23. While the application to strike out the suit cited Order 2 Rule 15(1)(a) and (d), the trial court correctly focused on abuse of process under (d), in line with the *Civil Procedure Act* and constitutional principles of justice.
24. The Respondent concluded that the appeal is without merit and should be dismissed with costs.
25. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether it would support the findings of the trial court. In *Selle – Vs- Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

26. The issues for determination in this appeal are as follows:-
  - i. Whether the trial court disregarded the guidelines issued by the Chief Justice on WIBA vide Gazette Notice No. 5476 of 28<sup>th</sup> April 2024.
  - ii. Whether the appeal should be allowed and the suit reinstated for hearing.
27. The appeal before this court raises critical issues regarding the interplay between compensation under the *Work Injury Benefits Act* (WIBA) and common law claims in negligence, as well as the application of the Chief Justice’s guidelines on WIBA matters.
28. I have carefully considered the submissions, the relevant legal framework, and the jurisprudence emanating from Kenyan courts, this court finds that the appellant’s contention that the trial magistrate erred in finding that payment under WIBA absolved the respondent from liability under common law negligence is unsustainable.



29. Section 16 of WIBA expressly provides that an employee who has claimed or received compensation under the Act shall not be entitled to pursue any other remedy against the employer, whether under common law or otherwise.
30. The said Section states as follows;
  - “ 16. 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.”
31. This position was affirmed in the case of Leonard Adongo Opany v. Tononoka Rolling Mills Ltd(supra), where the court held that WIBA’s compensation mechanism is exclusive and replaces other legal remedies.
32. The appellant’s attempt to distinguish this case is unpersuasive, as the statutory bar under Section 16 is unequivocal.
33. The trial court correctly applied this principle to strike out the suit as an abuse of process, given that the appellant had already received compensation under WIBA before filing the suit.
34. On the issue of duplicity of claims, the appellant’s argument that the trial court misapprehended the cause of action is without merit.
35. The record demonstrates that the appellant sought compensation for the same injuries under both WIBA and common law, which amounts to double compensation.
36. As held in Kenya Revenue Authority v. Menginya Salim Murgani [2010] eKLR, a party cannot be allowed to pursue parallel claims for the same injury under different legal regimes.
37. The trial court’s finding on this point was therefore sound in law and fact.
38. The appellant’s reliance on the Chief Justice’s guidelines issued vide Gazette Notice No. 5476 of 28th April 2024 is misplaced.
39. While the guidelines provide procedural directions for handling WIBA matters, they do not override the substantive provisions of WIBA, particularly Section 16.
40. The guidelines were not intended to create new rights or remedies but to streamline the adjudication of claims under the existing statutory framework.
41. The trial court’s decision was consistent with the Act’s provisions, and no prejudice was occasioned to the appellant.
42. Regarding the admissibility of affidavit evidence, the appellant has not demonstrated how the trial court erred in admitting or relying on the respondent’s affidavits.
43. The application to strike out the suit was properly supported by evidence of the compensation paid under WIBA, and the appellant had ample opportunity to rebut this evidence.
44. The procedural irregularities alleged by the appellant are not substantiated and do not warrant interference with the trial court’s ruling.



- 45. The appellant’s argument that the trial court misapplied its inherent jurisdiction is also unfounded.
- 46. The court’s power to strike out a suit for abuse of process is derived from both the Civil Procedure Act and its inherent jurisdiction to prevent misuse of judicial resources.
- 47. In the case of DT Dobie & Company (Kenya) Ltd v. Joseph Mbaria Muchina & Another [1980] eKLR, the Court of Appeal emphasized that courts must not shy away from striking out suits that amount to an abuse of process.
- 48. The trial court’s exercise of this jurisdiction was judicious and in line with established principles.
- 49. In conclusion, the appeal lacks merit. The trial court correctly applied the law in striking out the suit as an abuse of process, given the appellant’s prior receipt of compensation under WIBA.
- 50. The appellant’s attempt to pursue a common law claim for the same injuries is statutorily barred and would result in unjust enrichment.
- 51. The appeal is accordingly dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF JUNE 2025 IN OPEN COURT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellant

.....for the Respondent

