



**Dewdrop Enterprises Limited v Muthami & another (Petition 399 of 2018)
[2023] KEHC 2534 (KLR) (Constitutional and Human Rights) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 399 OF 2018

HI ONG'UDI, J

MARCH 29, 2023

BETWEEN

DEWDROP ENTERPRISES LIMITED PETITIONER

AND

WILLIAM MUTHEE MUTHAMI 1ST RESPONDENT

CHIEF MAGISTRATE'S COURT, MILIMANI COMMERCIAL

COURTS 2ND RESPONDENT

RULING

1. This ruling is in respect of the Petitioner/Applicant's Notice of Motion dated December 23, 2022 where it seeks the following orders:
 - a. That this Honourable Court be and is hereby pleased to order the attendance of the 1st respondent herein for cross-examination with regard to his statements in the Replying Affidavit dated 5/12/22;
 - b. That the costs of this Application be provided for.
2. It is premised on the grounds on the face of the application and the affidavit of Edward Thiong'o Wachira, the Petitioner's managing director. The same is dated December 23, 2022. In short the applicant wishes to have the 1st respondent herein summoned for cross examination on his averments in paragraphs 4 and 6 of the replying affidavit dated December 5, 2022.
3. The respondents filed grounds of opposition dated January 26, 2023 stating as follows:
 - i. That the application filed is misconceived and an abuse of the Court process purely meant to delay the cause of justice and ought to be struck out with costs.



- ii. That the Application as filed lacks merit and the same can only be attributed to ignorance on the part of the petitioner on the law and which is unfortunate.
 - iii. That this Application does not comply with provision of Section 4(2) of the Fair Administrative Action Act and it's bad law in its entirety as it is merely intended to re-open litigation in a matter that is already completed and a judgment delivered, thus it's a waste of time of this Honourable Court.
 - iv. That the Honourable Court certainly has more pending issues to sit on to deliberate and not the antiques of the Petitioners in dragging a matter beyond its lifespan for want of any other reasonable thing to do.
4. In its submissions dated February 16, 2023 the Applicant argues that the application has merit. Secondly that the right to cross examine is a key component of a fair trial as held in Manchester Outfitters Limited v Galot & 5 others (Civil case No 55 of 2012) [2021] KEHC 250 (KLR). He also referred to Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others Petition No 18 of 2014 as consolidated with Petition No 20 of 2014 Supreme Court [2014] eKLR.
5. The 1st respondent's counsel informed the Court on February 14, 2023 that she was not filing any submissions to the application.
6. The background to the present application is the Notice of Motion dated May 9, 2022. In response to the said Notice of Motion the 1st respondent filed a replying affidavit sworn on December 5, 2022. Paragraphs 4 and 5 of the said replying affidavit which are at the center of this application state as follows;
- Para 4 - That the Petitioner / Applicant is not keen to have his matter settled for good and it's evident from the multiple suits and applications he has filed to protect him from complying with lawful court orders and which applications are at my detriment as I am eager to have this matter settled, and this is just but a ploy by the petitioner/Applicant to delay my enjoyment of the fruits of the judgment.
- Para 6 – That further advised by my Advocates on record, advise I verily believe to be true, that Court Judgments are not made in vain and this Honourable Court should not allow the judicial process and the rule of law to be trampled upon and undermined by litigants such as Petitioner/Applicant herein. The costs as awarded remain unpaid and there is no evidence shown to the contrary.
7. The Applicant has averred that he wishes to have the 1st respondent summoned for cross examination to establish the authenticity of his stated eagerness to have this matter settled. Secondly he wants the 1st respondent to be provided with an opportunity to propose a payment plan for satisfying the 2nd respondent's order No 2 on exhibit ETW – 2 which is the Ruling in Chief Magistrates Court at Nairobi Milimiani Commercial Courts Civil Suit No 1139 of 2013.

Determination

8. The record shows that the matter herein was determined by Mwita J in his judgment delivered on 28th day of March 2019. An application for review/setting aside of the said Judgment was declined vide the ruling by Korir, J (as he then was) dated July 6, 2021.



9. That being the position I do not find any good reason to make me compel the 1st respondent to appear before this Court to explain his desire to have the matter settled. In any event he never averred saying it is him to settle the matter.
10. Secondly the Applicant cannot ask this Court to summon the 1st respondent to come here to explain how he will satisfy an order of a Magistrate's Court. This Court does not execute Orders or Decrees from the Magistrate's Courts, on their behalf.
11. What the 1st respondent has stated in the replying affidavit sworn on December 5, 2022 is a response to the Petitioner/Applicant's Notice of Motion dated May 9, 2022 and to which the Petitioner/Applicant has filed a supplementary affidavit by Edward Thiong'o Wachira dated December 23, 2022. The said supplementary affidavit is expected to have addressed any issues raised in the replying affidavit and the responses end there. The notice of motion dated May 9, 2022 is the substantive application to be heard.
12. The present application dated December 23, 2022 is bent on further delays to this matter. Based on the above I find no merit in the Application dated December 23, 2022 and I dismiss it with costs to the 1st respondent.
13. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 29TH DAY OF MARCH, 2023 IN OPEN COURT AT MILIMANI, NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT

