



Sleek Trading Company v Nguluku & another (Miscellaneous Civil Application E303 of 2024) [2025] KEHC 5748 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E303 OF 2024**

J NGAAH, J

MAY 9, 2025

BETWEEN

SLEEK TRADING COMPANY APPLICANT

AND

SAMUEL MATHEKA NGULUKU 1ST RESPONDENT

MORRIS MUVENGI MUSYA 2ND RESPONDENT

RULING

1. By an application dated 30 September 2024 Sleek Trading Company (hereinafter, “the company”) filed an application that sought, amongst other prayers, the firm of E.M. Omulama and Company Advocates, come on record and represent it in place of its previous advocates. The company also sought an order for stay of execution of the judgment delivered by the Honourable G. Sogomo on 16 August 2024 pending the hearing of the application and an intended appeal. It also sought an order for extension of time to file an appeal against the lower court’s judgment and, in that regard, prayed that the draft memorandum of appeal exhibited to the affidavit in support of the application be deemed as duly filed and served upon payment of the requisite fees.
2. The record shows that the application was placed before Ng’arng’ar, J. under a certificate of urgency on 2 October 2024. On the material date, the learned judge directed that the application be mentioned on 15 October 2024 for further orders. However, on this date, the court set the application for mention on 10 December 2024.
3. Meanwhile, by an application dated 15 October 2024, filed under a certificate of urgency on even date, the company again moved this Honourable Court to

“grant prayers 2 and 3 of the application dated 30 September 2024.”



These prayers were couched as follows:

- “2. That the Honourable Court grants leave to the firm of Omulama E.M. & Company Advocates to come on record for the applicant herein in place of Garane & Somane advocates.
 3. That the Honourable Court be pleased to issue an order for stay of execution of the judgement delivered by Hon. G. Sogomo on 16th August 2024 and all other consequential orders issued against the applicant, pending hearing and determination of the application herein and the intended appeal.”
4. In the alternative to these prayers, the applicant asked the court to
- “be pleased to issue an order for status quo, subsisting pending hearing of this application and the application dated 30th September 2024”.
5. The court did not certify the application urgent but directed that it be served for mention for directions on 24 October 2024 for further orders or directions. The record of the proceedings of 24 October 2024 shows that Ms. Mukoya, the learned counsel for the company was the only counsel who appeared in court on the material date. There was no appearance for the rest of the parties. After Ms. Mukoya made brief submissions, the court ruled that:
- “Application dated 30. 9. 2024 is allowed. The appeal be filed within 30 days from today.”
6. Against this background, Samuel Matheka Nguluku, the 1st respondent, who apparently obtained the judgment whose execution has been stayed by the order of 24 October 2024 has filed the instant application before court. The application is dated 4 December 2024; the applicant seeks the following orders:
- “2. That the Honourable Court please (*sic*) find that the purported service of the respondent’s application dated 30/09/2024 and that of 15/10/ 2024 by O.E. Mukoya Advocate was defective and improper.
 3. That the honourable court please(*sic*) to set aside the ex parte proceedings and vacate all subsequent orders arising therefrom of the application dated 30.09. 2024 and that of 15/10/2024.
 4. That upon the said ex parte proceeding (*sic*) and orders arising therefrom being set aside and vacated, the 1st respondent herein be granted leave to defend and file his response and oppose the said application dated 30.09.2024 unconditionally.
 5. That the Honourable Court be please (*sic*) to cite the (*sic*) O.E Mukoya Advocate for perjury for misleading and giving false information in terms of service of process.”
7. The applicant has also prayed that the learned counsel for the company be condemned to pay the costs of the application.
8. The company has opposed the application and filed a replying affidavit sworn by Hannan Asif who introduces himself in the affidavit as a director of the company. The crux of his depositions, pertinent



to the disposal of this application, is that the company's applications were not properly served because they were served on the wrong email address. In Asif's words:

“...The same seems like an honest mistake, not to meant to mislead the court or short change any party to these proceedings.”

9. At the hearing of the application Ms. Mukoya reiterated and admitted that indeed the applicant had not been properly served but failure to serve was not deliberate.
10. In the face of these admissions, and considering that the applicant's application is grounded on the fact of want of service as a result of which orders potentially prejudicial to the applicant were made without according him the opportunity to be heard, the applicant's application is effectively not contested. In these circumstances, the applicant ought to be given opportunity to respond to the application dated 30 September 2025 before the court can make its determination. I, therefore, hereby allow the applicant's application, more particularly, in terms of prayers 2 and 3. Considering that service was mistakenly effected on the wrong email address, I am not prepared to grant prayer 5 of the motion. Parties will bear their respective costs.
11. As far as the disposal of the application is concerned, I direct that the responses to the application dated 30 September 2025 be filed within 7 days of the date of this ruling. Submissions on behalf of the company will then be filed and served within seven days of the date of service of the responses to the application. Submissions in response to the applicant's submissions will be filed and served within seven days of the date of service of the applicant's submissions. Highlighting of submissions will be on 24 September 2024. It is so ordered.

SIGNED, DATED AND DELIVERED ON 9 MAY 2025

NGAAH JAIRUS

JUDGE

