



**Kang’ethe v Kang’ethe (Miscellaneous Civil Application
E027 of 2024) [2025] KEHC 9693 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E027 OF 2024**

E OMINDE, J

JULY 2, 2025

BETWEEN

SIMON KANG’ETHE APPLICANT

AND

NADHIFA SHARIF KANG’ETHE RESPONDENT

RULING

1. Before this Court is a Notice of Motion application dated 22nd March 2025 filed by the Applicant pursuant to Sections 1A, 1B, 3A and 95 of the [Civil Procedure Act](#) and Order 45, Order 50 Rule 5 and Order 51 Rule 1 to 3 of the [Civil Procedure Rules](#). Through this application, the Applicant has sought the following orders:
 1. That this Honourable Court be pleased to review paragraph 11 of its ruling herein delivered on 19/2/2025 and set it aside or vacate it.
 2. That costs of this application be in the cause.
2. The Application is premised on the grounds therein and the Supporting Affidavit sworn by the Applicant Simon Kang’ethe of even date. Subsequently the Applicant filed a Further Affidavit with their sub missions. In a nutshell the entire content of the Further Affidavit is premised on the allegation that the Court delivered a total of three Rulings in relation to one application.
3. The said Further Affidavit was filed without the leave of the court and in circumstances where the Respondent did not file Replying Affidavit, the pleadings had closed and parties directed to file their respective submissions if any. It was filed together with the Applicant’s submissions. In light of this development, it is my considered opinion that given the fact that the integrity of this court has now taken centre stage, and is the entire composition of the 38 paragraph Further Affidavit which as a consequence relegated the dispute between the parties herein to the very fringes of this Application, it necessary that the court puts the record straight and so even though totally out of place and filed



without leave, I will admit the said affidavit and deem it to have been properly filed so that it may create a proper basis of what I will state below.

4. It should be noted that in putting the record straight, the court is not overly concerned about all the aspersions cast upon it by both the Applicant and his Advocate Senior Counsel Dr Kamau Kuria because the facts of the record as I shall herein explain are straightforward and simple, but because it is necessary that given the unfortunate turn that these proceedings have taken, parties who lose cases in court on merit ought not to be given a free hand to make such spurious, unfounded, plainly and evidently false, baseless, malicious and damaging allegations against a Judge.
5. The issue raised in the said Affidavit was initially that two, which subsequently thereafter changed to three Rulings having been delivered by the court with regard to one application arose as follows; while perusing the application dated 22/03/2025 filed by the Applicant which application is the subject matter of this particular Ruling, the court noted an anomaly with the order in the Ruling of the court dated 19th February 2025 that the Application was seeking that the court vacates in the sense that it was not synchronised with the order that was in the physical copy of the Ruling that was in the court file.
6. At the inter parties hearing, the court pointed out to Senior Counsel Dr. Kamau Kuria appearing for the Applicant that the paragraph mentioned in his Application seemed to differ with that in the Physical Ruling in the Court file which had been read dated, signed in open Court. Counsel explained that the Ruling upon which his Application was premised was the one uploaded onto the CTS and that it is the correct Ruling and that if the court had a different Ruling, then it means that the court had written two different Rulings.
7. Of course, the court was very clear in its mind that there was only one Ruling in the matter for reasons that to prepare more than one Ruling in one application not only smacks on a lack of integrity on the part of the Judge but is also unethical, unprofessional and un-procedural. Further given the workload that courts have to handle on any given day, this court does not have the time, energy, effort, inclination and/or motivation to prepare extra rulings in one cause. In seeking to understand what could have happened therefore and why the two Rulings should differ, the Court caused the Court Assistant to immediately download the Ruling as posted onto the CTS as the court waited.
8. Upon the same being downloaded, the court compared it with the physical Ruling in the Court file. It turned out that the numbering of paragraphs and headings of the Ruling in the CTS were differently placed as compared to the placement of the same on the physical Ruling in the court file. In other words, upon the uploading of the physical Ruling onto the CTS platform, it got completely distorted such that compared to the physical Ruling in the Court file, the two appeared different on the face of it but upon a closer examination of both Rulings the court noted and it was clearly apparent that save for the difference in the numbering as already explained, the contents and substance of the physical Ruling on file and the Ruling posted onto the CTS were basically the same.
9. The Court then advised Counsel of this anomaly and further advised that since the substance of the Ruling was the same and the court had now understood the anomaly and he could proceed with his Application and the court will use the version of the Ruling that he has. Counsel however insisted and persisted on his allegation that the court had delivered two different Rulings notwithstanding the explanation given.
10. The court on its part having explained to Counsel the position and being satisfied that the issue of the alleged two rulings was a non-issue given its discovery of where the anomaly had come from directed that the parties file submissions on the Applicant's Application. Counsel for the Respondent elected not to respond to the Application and also stated that he will not file submissions but would rely entirely on the court record and this was noted. It is at the point of filings their submissions that the



Applicant filed the same with the Further Affidavit comprised of the allegations against myself as the Judge who had handled the Application as I have herein above summarised.

11. For the record, and in light of the allegations now made by Senior Counsel against myself, suffice it to say that after the court rose on this particular day, out of concern over the anomaly that I had noted, I raised the issue with the Directorate of ICT. The said Report was received by the Deputy Director, Systems Engineering Mr. Stephen Ikileng. The Report was recorded as Incident on CTS Import Feature Issue Affecting Judgement Format for the Case No. HCFMISC/E027/2024, April 2025. It is annexed at the end of this Ruling.
12. The Assistant Director subsequent to receiving my report raised the issue with the Registrar Automation Hon Elizabeth Tanui via an email dated 2nd April 2025 and recommended solutions. A copy of the email communication titled Judgement Digitisation Of Errors/publishing In CTS is also annexed at the end of the Ruling. Lastly, a Copy of the physical Ruling that was read dated and signed in open court that is in the court file, and a copy the Ruling that the Court Assistant downloaded from the CTS upon my instructions on the date of inter parties hearing is also annexed at the end of this Ruling.
13. Thereafter, the Assistant Director ICT advised on how Judgements and Rulings should be uploaded on the CTS going forward to avoid further distortions as the Directorate looks to a lasting solution to the problem and it is on the strength of these directions that I advised the Court Assistant to pull down the distorted Ruling and upload a new copy of the physical Ruling in the court file afresh as now directed by the Directorate ICT hence the so called third Ruling.
14. All the communication I have referred to and annexed to this Ruling are self-explanatory and they answer all the allegations that have been made against me in the Further Affidavit and the Submissions filed on behalf of the Applicant by Senior Counsel Dr Kamau Kuria. The Applicant and his Counsel are at liberty to familiarise themselves with the said documents as annexed in their own time and I will therefore not belabour their contents in this Ruling.
15. The above said, I have considered the Application dated 22nd March 2025 and the same is now hereby allowed in its entirety. In this regard, my entire Ruling dated 19th February 2025 together with any and all the consequential orders given thereto, and including the interim orders granted in favour of the Applicant dated 30th October 2024 is now hereby vacated and set aside.
16. Further, in light of the aspersions cast against the integrity of my person as a Judge by the Applicant and his Counsel the genesis of which I have herein explained, I cannot in all conscience proceed with this matter and any other matter involving these two parties going forward. I therefore now hereby disqualify myself from handling this matter and any other matters related thereto.
17. As a consequence, this matter is now hereby referred to the Hon Mr. Justice J. Wananda before whom it was being heard and before whom it is still live and active for his directions on the Applications dated 28th October 2024 filed by the Applicant herein and the Application dated 8th November 2024 filed by the Respondent which were both the subject of the Ruling that I have now herein vacated in its totality. The parties are to appear before the Deputy Registrar on 24th July 2025 for purposes of taking a date for mention before Mr. Justice Wananda.

READ DATED AND SIGNED AT ELDORET ON 2ND JULY 2025

E. OMINDE

JUDGE

