



**Kiguru v Uptext East Africa Limited & another (Cause E1109 of 2024)  
[2025] KEELRC 2703 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2703 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1109 OF 2024  
SC RUTTO, J  
OCTOBER 3, 2025**

**BETWEEN**

**LINET WANJIRU KIGURU ..... CLAIMANT**

**AND**

**UPTTEXT EAST AFRICA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**UPTTEXT HOLDINGS BV ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What comes up for determination is the Respondents/Applicants' Notice of Motion dated 19<sup>th</sup> May 2024, seeking review of the Court's Ruling delivered on 2<sup>nd</sup> May 2025. In that Ruling, the Court directed the Applicants to deposit the sum of USD 14,000 in a joint interest-earning account held in the names of the Advocates on record for both parties. The Applicants further pray for an order staying execution of the said order pending the hearing and final determination of the suit herein.
2. The Notice of Motion is founded on the grounds set out on its face and supported by the Affidavit sworn on 19<sup>th</sup> May 2025 by Paul Van Der Linden. In summary, the Applicants contend that there exists an error apparent on the face of the record in that the Court, while rendering its Ruling of 2<sup>nd</sup> May 2025, misapprehended and misapplied the provisions of Rule 68(3) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
3. The Applicants further aver that the Court imposed a condition for the deposit of security without sufficient basis, as the threshold set out in law for such an order was not satisfied. In particular, the Applicants aver that the Claimant did not demonstrate, through concrete and cogent evidence, that the satisfaction of any decree or relief to be awarded in the event of success would be defeated, obstructed, or rendered nugatory.
4. In addition, it is argued that the Court improperly relied on what it termed as an admission of liability by the Applicants, together with an informal mention of potential bankruptcy. According



to the Applicants, these were not grounded in any formal documentation or legal process to make a substantive finding warranting the deposit of security.

5. The Applicants further assert that through their Replying Affidavit filed earlier, they had candidly explained that they were undergoing a business restructuring process and demonstrated that there is no intention or attempt to evade liability or dissipate assets. It is the Applicants' position that the Court erred both in law and fact by making substantive determination on disputed questions, such as alleged unpaid salary, at an interlocutory stage, contrary to the principle that such issues are to be fully ventilated at trial.
6. The Applicants are categorical that they continue to operate and are not subject to any formal insolvency, liquidation, administration, or any similar statutory process.
7. In response to the Notice of Motion, the Claimant filed a Replying Affidavit dated 13<sup>th</sup> June 2025 in which she deposes that the impugned Ruling was clear, well-reasoned, and based on evidence and submissions from both parties.
8. The Claimant maintains that the Court was correct in its interpretation and application of Rule 68(3) of the Court's Rules, particularly in holding that the Applicants' own correspondence disclosed a real risk that any eventual award could be defeated or frustrated.
9. She further avers, on the advice of her counsel which she believes to be true, that the Applicants are in effect, attempting to re-litigate the interpretation of Rule 68(3) and the merits of the earlier ruling under the guise of review. She contends that such a challenge can only properly be addressed by way of an appeal, not by an application for review.
10. The Claimant further avers that the Court, considering the parties' competing interests, ordered only a partial security deposit of USD 14,000 despite the claim being for USD 48,000. According to her, the Court exercised restraint and merely secured what was already substantially admitted and supported by evidence.
11. She further posits that the Applicants have not complied with the Court's Ruling and instead, have sought review without either providing alternative security or placing before the Court tangible evidence of their financial stability. She further refers to correspondence dated 30<sup>th</sup> May 2025 from the Applicants' advocates, in which she avers that they admitted that their client was unable to raise the sum ordered owing to financial constraints. In the Claimant's view, this admission demonstrates that the Applicants are in no position to honour a future judgment, thus justifying not only the preservation of the order but also an increase in the security amount.
12. The Claimant further avers that the Applicants have not yet filed their defence, and instead of progressing the suit to hearing, they continue to inundate the Court with what she terms frivolous applications calculated to delay and frustrate these proceedings.

### **Submissions**

13. The Motion was canvassed by way of written submissions. Both parties complied and the Court has considered the said submissions.

### **Analysis and Determination**

14. Upon considering the Notice of Motion, the Claimant's Replying Affidavit and the rival submissions, the Court has narrowed the issue for determination to whether the Applicants have established sufficient grounds to warrant review of the Ruling delivered on 2<sup>nd</sup> May 2025.



15. Rule 74 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 (ELRC Rules), delineates the circumstances under which this Court may review its orders or decisions. The permissible grounds are:
  - a. discovery of new and important matter or evidence not within the knowledge of the applicant despite due diligence at the time of the original ruling;
  - b. existence of a mistake or error apparent on the face of the record;
  - c. where the judgment or ruling requires clarification; or
  - d. any other sufficient reason.
16. The Application is premised on the Applicants' contention that the Court failed to appreciate that the threshold under Rule 68(3) of the ELRC Rules had not been met, as there was no concrete or cogent evidence demonstrating that satisfaction of any relief granted would be defeated or frustrated. The Applicants further assert that the Court erred both in law and fact by making a conclusive determination on the contested issue of unpaid salary at an interlocutory stage, contrary to the principle that such matters ought to be fully ventilated at trial.
17. For clarity, Rule 68(3) of the ELRC Rules empowers the Court to make orders requiring the deposit of security for relief sought in a pending suit where it appears to the Court that there is a risk that the ultimate satisfaction of a potential judgment could be defeated or frustrated.
18. The Applicants herein insist that this threshold was not met as the Claimant did not place before the Court cogent evidence to demonstrate that satisfaction of any relief would be frustrated.
19. For proper context, it is necessary to revisit the basis upon which the Court issued its order in the Ruling of 2<sup>nd</sup> May 2025. In this regard, the Court took into account correspondence from the Applicants' Director, Mr. Paul van der Linden, wherein he expressly indicated that the company was declaring bankruptcy. The Court further considered his express admission in the Replying Affidavit, sworn on 4<sup>th</sup> March 2025, acknowledging the Claimant's entitlement to unpaid salary for the period worked prior to her resignation.
20. While the Applicants now seek to diminish the import of the foregoing admissions, the Court was entitled to draw the reasonable inference that such statements created a real and substantial risk that any award, if granted, could be defeated by reason of financial instability.
21. It is this Court's respectful view that Rule 68(3) does not require proof of imminent bankruptcy or liquidation; it requires the Court to exercise its discretion where there is a credible apprehension that the ultimate satisfaction of a potential judgment could be defeated or frustrated.
22. What's more, the Court did not make a blanket order for security covering the entire claim of USD 48,000. Instead, it directed a partial deposit of USD 14,000, being a proportionate amount that reflected what was substantially admitted and evidenced. In so doing, the Court balanced both parties' interests, that is, the Claimant's right to secure the fruits of a potential judgment and the Applicants' right not to be unduly burdened at an interlocutory stage.
23. The Court further observes that under Rule 74(1) of the Rules, the grounds for review are narrowly circumscribed, thereby limiting both the Court's jurisdiction and the scope of review.
24. In the present case, the grounds advanced in support of the application for review do not disclose any error apparent on the face of the record nor do they fall within any of the categories envisaged under Rule 74(1) of the ELRC Rules to warrant a Review.



25. With tremendous respect, the issues raised by the Applicants challenge the merits of the Ruling, a matter that squarely belongs to an appellate process. To permit such a challenge under the guise of review would be to expand the scope of review jurisdiction and set an undesirable precedent whereby parties seek to reargue issues already determined.

26. On this issue, the Court concurs and is bound by the decision of the Court of Appeal in the case of National Bank of Kenya Ltd vs Ndungu Njau [1997] eKLR, where it was held as follows:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. otherwise we agree that the learned judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it”. (Underlined for Emphasis).

27. The Court reiterates that in the present case, the Applicants’ dissatisfaction with the findings in the Ruling may very well constitute grounds of appeal, but certainly not review.

28. The Court further applies the reasoning in the case of Francis Njoroge vs Stephen Maina Kamore [2018] eKLR, thus: -

“Indeed, if parties were allowed to seek review of decisions on grounds that they are not in a position to carry out the orders sought to be reviewed, or rather that the orders are not convenient to them, then a dangerous precedent would be set in which court decisions that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review... This is a court of justice but not court of convenience such that it has to consider the conflicting interest of the parties.”

29. In conclusion, the Court finds that the Applicants have not met the threshold for the grant of review orders as contemplated under Rule 74(1) of the ELRC Rules.

30. Consequently, the Application is dismissed with an order that costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant/Respondent Ms. Mosoti

For the Respondents/Applicants Ms. Cherotich instructed by Ms. Kioko



Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

