



**Kipoto v Optiven Limited (Civil Case E227 of 2025)
[2025] KEHC 14610 (KLR) (Commercial and Tax) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14610 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E227 OF 2025
F GIKONYO, J
OCTOBER 9, 2025**

BETWEEN

ETHEL CHRISTINE MUDHOCHI KIPOTO PLAINTIFF

AND

OPTIVEN LIMITED DEFENDANT

RULING

1. The plaintiff filed the notice of motion dated 7th April 2025, under section 5(1) of the *Judicature Act*, seeking: -
 - (3) This Honorable Court be pleased to cite George Kariuki Wachiuri of ID No. xxxxxxxx and KRA PIN No. A002xxxxxxD and Mary Phrasiah Wacuka of ID. No. xxxxxxxx and KRA PIN No. A002xxxxxxI being directors and shareholders / principal officers to the defendant company for contempt of the court order issued and served on 26th March 2025. Further, the court do order their committal to civil jail for a period of six (6) months or for such period of time as this Honourable Court may deem fit.
 - (4) In the alternative to prayer 3 above, the court be pleased to impose a steep monetary fine against George Kariuki Wachiuri and Mary Phrasiah Wacuka jointly and severally for their disobedience to its order and order them to purge their contempt before the defendant can get audience of this court.
 - (5) The court do bar Ian Wachira Ndegwa advocate P105/19475/21 from appearing for the defendant in this matter and all pleadings and or documents filed by him, be struck out from the court record for practising without a valid practice certificate for the year 2025.
 - (6) The court do punish the said advocate personally for his professional misconduct.



- (7) Costs of this application be provided for.
2. The application is premised on the grounds set forth in its body, the supporting and supplementary affidavits sworn by the plaintiff on 7th April 2025 and 17th April 2025.
 3. The gist of the application is that the respondent failed to comply with the mandatory injunction, in terms of prayer 3 of the application of 20th March 2025, issued by the court on 26th May 2026.
 4. The applicant asserted that the respondent was duly served with the order and that its refusal to comply with the order is in contempt of court.
 5. The applicant challenged the claim by the respondent's counsel that the respondent complied as she confirmed with the court administrator that no such evidence exists in the court file.

Response

6. The respondent filed a preliminary objection (PO) dated 7th April 2025 the ground that this court lacks jurisdiction to entertain this suit as the issues raised in the application and the plaint pertain to the plaintiff's employment with the defendant.
7. The respondent also filed a replying affidavit sworn by its director and chief executive officer, Mr. George Kariuki Wachiuri on 7th April 2025.
8. It was deposed that the respondent, in compliance with the subject orders, through its duly appointed advocates, physically delivered to the court print outs of draft agreements for sale and transfers through its forwarding letter dated 26th March 2025.
9. It was also averred that the documents in question were received and a mark of acknowledgement of receipt was affixed on the forwarding letter.

Reply

10. Through the supplementary affidavit, the applicant maintained that the respondent did not comply with the orders. She claimed that the respondent has not filed the requisite documents in the Judiciary's Case Tracking System (CTS) and or physically served them as is the practice of filing documents.
11. The applicant impugned the documents which were attached to the letter dated 26th March 2025, by Ian Wachira Advocate. She highlighted that what is attached is a tampered, manipulated, hand-picked list of transactions that is not generated from the defendant's ERP system with accompanying print out to the captured emails.
12. The plaintiff contended that the list/ log was not generated from the ERP but compiled by Ian Wachira, the current head of legal, because: -
 - a. The data entries are not chronological as per the required dates. A prompt to the ERP to print out agreements generated between the captured dates would be chronological on the dates and time they were generated.
 - b. Some of the agreements included in the Log, purporting to have been prepared between 8th January 2025 and 28th February 2025 were actually prepared in 2023 and 2024. This is a clear indication that the list was tampered with.
13. The plaintiff averred that there was a further transaction by the defendant on Plot VP328 where an Agreement for Sale was issued in her name. She wrote to the client's advocates



Submissions

14. The application was canvassed through written submissions. The applicant and the respondent filed written submissions dated 7th May 2025 and 16th May 2025 respectively.
15. The applicant submitted that she has established the four elements required to make a case for the respondent to be held in contempt. She relied on the following cases: -
 1. Kenya Human Rights Commission v Attorney General & 2 Others [2018] eKLR
 2. DKG v EG [2021] eKLR
 3. Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR
 4. Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KLR 828
 5. Mogi v Diamond Trust Bank Kenya Ltd & 2 others (Civil Case E941 of 2021) [2024] KEHC 102 (KLR)
 6. T. N. Gadavarman Thiru Mulpad v Ashok Khot and Anor [2006] 5 SCC
16. The respondent argued that the suit has been filed in the wrong court, and that the dispute falls under the exclusive jurisdiction of the Employment and Labour Court. The respondent asserted that the applicant's primary claim pertains her employment with the respondent with rebuttable claims made in relation to arrangements made during her employment with the respondent.
17. The respondent contended that in the absence of an employer-employee relationship, it would be impossible for the applicant to form her claim against the Respondent herein.
18. The respondent maintained that it fully complied with the orders of 26th March 2025. That the respondent delivered the requisite printouts together with their activity logs to the Deputy Registrar of the Court which were received 27th March 2025, shortly after the orders were given. That evidence of delivery was communicated to the applicant through the letter dated 28th March 2025.
19. The respondent faulted the applicant for seeking to its director in contempt without first seeking to lift the corporate veil.
20. The respondent relied on: -
 1. Republic v Mohammed & another (Petition 39 of 2018) (2019) KESC 47 (KLR)
 2. Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR
 3. Mukuha v Gashwe & 14 others (Civil Application E064 of 2023) [2023] KECA 1482 (KLR) (8 December 2023) (Ruling)
 4. Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd 1989 KLR
 5. Samuel Kamau Macharia & Another v Director of Public Prosecutions & others (Petition No. 9 (E011) of 2022)
 6. Peter Muriuki Ngure v Equity Bank (K) Ltd [2018] eKLR
 7. Republic v Anti-Counterfeit Agency & 2 others Ex-Parte Surgippharm Limited [2014] eKLR



8. Stephen Somek Takwenyi & Another v David Mbutia Githare & 2 Others Nairobi (Milimani) (HCCC No. 363 of 2009)

Analysis and Determination

21. The first issue is whether the court has jurisdiction to hear and determine the suit. It is to be determined first because where a court finds that it has no jurisdiction, it must down its tools.
22. The respondent's PO is based on the ground that this court lacks jurisdiction to entertain this suit as the issues raised in the application and the plaint pertain to the plaintiff's employment with the defendant.
23. In the plaint, the applicant indicated that this court has jurisdiction over the dispute.
24. Article 165(3) (a) of *the Constitution* provides that the High Court has unlimited original jurisdiction in criminal and civil matters.
25. However, under Article 165 (5) (b), the High Court does not have jurisdiction over matters falling within the jurisdiction of the courts contemplated in Article 162 (2) (a) & (b).
26. The Employment and Labour Relations Court, established under Article 162 (2) (a) of *the Constitution*, has the exclusive jurisdiction to hear and determine disputes relating to or arising out of employment between an employer and an employee.
27. Section 12 of the *Employment and Labour Relations Court Act* provides that: -
- “ 12. Jurisdiction of the Court
- (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including —
- (a) disputes relating to or arising out of employment between an employer and an employee;
- ...”
28. In this suit, the dispute emanates from the employer-employee relationship between the parties. The plaintiff's claim against the defendant is for fraud and negligence. In summary, the plaintiff's claim is that the defendant continued to use her name in some conveyancing documents after her resignation.
29. Some argue that such claims of fraud and negligence may be litigated before the High Court or ELRC. The argument fosters concurrent jurisdiction.
30. Despite the high possibility of concurrent jurisdiction, in my considered view, the dispute in this matter is between an employer and its former employee. Therefore, the appropriate jurisdiction is of the Employment and Labour Relations Court. The defendant's PO dated 7th April 2025 succeeds on that basis.
31. Nevertheless, the ELRC should be able to determine the contempt application as the orders in question were issued lawfully within the concurrent jurisdiction of the court. Any documents filed with or deposited to the DR of this Division be handed over to the DR of the ELRC for sharing with the applicant as the law may permit.



Disposal

32. In conclusion, I direct that this file be transferred to the Employment and Labour Relations Court for hearing and determination. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025 THROUGH TEAMS ONLINE APPLICATION.

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F. GIKONYO M

JUDGE

In the presence of: -

Simiyu for Plaintiff

Wachira for Respondent

CA Kinyua

