



EN Karomo & Associates Advocates v Wanene (Miscellaneous Application E185 of 2024) [2025] KEELRC 3060 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 3060 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E185 OF 2024**

**SC RUTTO, J
OCTOBER 31, 2025**

BETWEEN

EN KAROMO & ASSOCIATES ADVOCATES ADVOCATE

AND

LIZZIE NJERI WANENE CLIENT

RULING

1. Through a Notice of Motion dated 3rd July 2025, the Client/Applicant seeks, inter alia, the following orders: -
 - a. That the Honourable Court be pleased to issue an order for the unconditional release of motor vehicle registration number KDH XXXF to the Client/Applicant, in the good and proper mechanical condition that it was before its attachment on 23rd June 2025 pending hearing and determination of this application;
 - b. That the Honourable Court be pleased to set aside the Taxation Ruling delivered on 20th September, 2025, the Orders issued on 5th November, 2024 and the Taxation Ruling delivered on 15th April, 2025 and grant the Client/Applicant an unconditional leave to oppose the Client/Advocate Bill of Costs dated 12th June, 2025 and 20th February, 2025;
 - c. That in the alternative, this Honourable Court be pleased to enlarge the time within which a Notice of Objection to taxation and reference against the Rulings of the Honourable Court's Taxing Officer delivered on 20th September 2024 and 15th April 2025 ought to have been filed.
2. The Application is anchored on the grounds set out on its face and is supported by an Affidavit sworn on 3rd July 2025 by Lizzie Njeri Wanene, the Client/Applicant herein. Ms. Wanene deposes that she engaged the Respondent to undertake legal work for an agreed fee of Kshs 100,000/=, which she duly paid after the Respondent partially performed the work.



3. She states that a dispute later arose when the Respondent began demanding additional fees beyond the agreed amount. Following the fallout, she blocked all communication from the Respondent via WhatsApp, messaging platforms, and phone calls, a fact she believes the Respondent was well aware of.
4. Unbeknownst to her, the Respondent proceeded to file an Advocate–Client Bill of Costs dated 12th June 2024, a Notice of Motion dated 24th October 2024, and a Party & Party Bill of Costs dated 20th February 2025. She only became aware of these proceedings after an irregular attachment was levied against her property on 23rd June 2025. She avers that she managed to obtain copies of the said pleadings on 1st July 2025, after instructing her new advocates on record.
5. Ms. Wanene contends that service of the said pleadings was irregular and defective, as it was effected through an email address (XXX@gmail.com) that she no longer used, instead of her active address (XXX@gmail.com) and via WhatsApp, a platform the Respondent knew had been blocked and was inaccessible to her.
6. She asserts that she was condemned unheard, having never been given an opportunity to oppose the Advocate–Client Bill of Costs dated 12th June 2024, the Notice of Motion dated 24th October 2024, or the Party & Party Bill of Costs dated 20th February 2025.
7. Ms. Wanene further explains that her failure to file responses or a Notice of Objection within the prescribed timelines was neither deliberate nor negligent, but occasioned by her lack of knowledge of the taxation proceedings.
8. She avers that upon reviewing the Advocate–Client Bill of Costs dated 12th June 2024, she was alarmed to discover that the Respondent had deliberately failed to disclose that she had already paid him a total of Kshs. 129,850.00.
9. Ms. Wanene further states that she has suffered a grave miscarriage of justice, as the Respondent, through ICON Auctioneers, proceeded with an unlawful attachment of her motor vehicle, Registration Number KDH XXXF, without issuing the requisite Notice of Proclamation as required by law.
10. She adds that the attached vehicle, valued at approximately six times the decretal sum of Kshs 306,320.06, is her essential work tool, and its sale by public auction would occasion her immense and irreparable loss.
11. In opposition to the Application, the Advocate/Respondent filed a Replying Affidavit sworn on 11th July 2025 by Eliud Karomo. Mr. Karomo avers that in April 2021, the Applicant engaged his services to pursue a work injury claim against Unga Limited valued at Kshs. 8 million following the demise of her husband.
12. Mr. Karomo states that he diligently completed the assignment, but the Applicant never paid him the agreed fees, prompting him to file an Advocate–Client Bill of Costs dated 12th June 2024.
13. Mr. Karomo contends that the Applicant’s assertions that she was never served with the pleadings and was unaware of the proceedings before the Court are untrue and misleading.
14. He avers that he duly served the Advocate–Client Bill of Costs and the Notice of Taxation dated 10th July 2024 upon the Applicant via her WhatsApp account linked to mobile number 0712 XXX XXX. According to him, the Applicant subsequently blocked him, compelling him to serve later pleadings through her confirmed email address.



15. Upon realizing that the Applicant had blocked his number, he used his associate's mobile phone to serve her with the application for judgment on 8th October 2024.
16. Mr. Karomo further asserts that he personally attempted to serve the Certificate of Taxation dated 9th May 2023 at the Applicant's residence but was denied entry by the security guards acting on her instructions.
17. He adds that the Applicant was further made aware of the court proceedings through the service of a Proclamation Notice by the auctioneers, which she allegedly refused to accept.
18. According to Mr. Karomo, the Applicant's failure to access or check her email inbox cannot be construed as lack of proper service.
19. He maintains that he has demonstrated that proper service was effected, and/or effort to serve the Applicant, and that the judgment on record remains unchallenged on appeal and therefore should not be set aside through this Application.
20. Mr. Karomo further contends that the Applicant should not be permitted to seek refuge in the same Court whose process she previously ignored.
21. He adds that the Applicant has not denied instructing him to act on her behalf in the work injury claim, nor has she disputed that he successfully executed the assignment. Consequently, he asserts that he is entitled to payment for the professional services rendered.
22. In further opposition to the Application, one Jeremiah Kiarie Muchendu swore an Affidavit dated 18th July 2025. Mr. Muchendu describes himself as a Class "B" licensed auctioneer duly authorized under the [Auctioneers Act](#).
23. Mr. Muchendu avers that on 29th May 2025, he received instructions from the Respondent to obtain warrants of attachment and sale from the Court to execute a decree for the sum of Kshs 306,320.06 owed to the Respondent.
24. Upon receiving the warrants on the same day, 29th May 2025, he proceeded to the Applicant's residence, where he served her with a proclamation notice demanding settlement of the decretal amount within seven days. He states that the Applicant declined to accept service of the proclamation notice.
25. After the expiry of the seven days, on 10th June 2025, he proceeded to the Applicant's residence at Gachichio Apartments in Kiambu with the intention of attaching the proclaimed goods and other attachable assets. However, access to the premises was denied by the security personnel stationed at the gate.
26. Consequently, he sought police assistance from the Court to facilitate entry into the premises, and on 19th June 2025, he was granted break-in orders authorizing police support in executing the Court's decree.
27. Mr. Muchendu deposes that on 23rd June 2025, accompanied by officers from Kiambu Police Station, he returned to the Applicant's residence and attempted to engage her, but she refused to open the door and subsequently blocked their calls.
28. After waiting outside the premises for approximately 45 minutes, they called for a breakdown to tow the motor vehicle. Upon the arrival of the breakdown, the Applicant opened the door and handed over the car keys. They thereafter attached the motor vehicle, registration number KDH XXXF (Subaru Forester), and served her with a Notification of Sale, which she acknowledged by signing.



29. On 24th June 2025, the attached motor vehicle was duly advertised for sale by public auction in compliance with legal requirements. Upon expiry of the seven-day notice period, the vehicle was sold to the highest bidder on 2nd July 2025.
30. Mr. Muchendu asserts that on 3rd July 2025, they were served with a Court order staying the sale of the motor vehicle, but by that time, the order had been overtaken by events, as the sale had already been concluded on 2nd July 2025.
31. In a rejoinder, the Applicant filed a Supplementary Affidavit sworn on 21st July 2025, wherein she maintains that she was never served with any Notice of Proclamation. She further contends that she does not own several of the household items listed in the schedule of movable property attached to the alleged notice dated 29th May 2025, namely a refrigerator, microwave, water dispenser, sound system, and television set. She believes that the said document was fabricated with the intention of misleading the Court.
32. Ms. Wanene further denies ever declining to receive the purported Notice of Proclamation dated 29th May 2025, asserting that no such notice was served upon her. She adds that the security guard at her residence never informed her of any visit by M/s Icon Auctioneers for purposes of attachment.
33. She also disputes the Respondent's claim that her motor vehicle, registration number KDH XXXF, was sold, noting that no documentary evidence has been furnished to prove such a sale. She avers that upon checking her e-Tims portal on 10th July 2025 at 2:50 p.m., the motor vehicle remained registered in her name, and no transfer had been initiated.
34. Further, Ms. Wanene avers that she stopped using the email address relied upon by the Respondent after it became full and had duly notified him of her new email address. She believes that the Respondent acted maliciously by continuing to use an inactive email address for service.
35. She adds that she had settled the Respondent's dues for the work completed as at the time of terminating his legal services and that the Respondent did not finalize all the tasks assigned to him.
36. In Ms. Wanene's view, the actions and conduct of the Respondent, together with his agent, M/s Icon Auctioneers, amount to a grave travesty of justice to her detriment.
37. In a rejoinder to the Applicant's Supplementary Affidavit, Jeremiah Kiarie Muchendu filed a Supplementary Affidavit contending that the Applicant has not approached the Court with clean hands. He reiterates that the Applicant was duly served but deliberately instructed her security guards to deny them access to the premises, thereby necessitating the obtaining of a Breaking-in Order and police assistance to execute the court's directives.
38. Mr. Muchendu further avers that the Applicant subsequently issued a letter to them through the firm of Nyokabi Nganga & Company Advocates.
39. He also contends that the purchaser who emerged as the highest bidder at the auction is under no prescribed limitation period within which to effect transfer of the attached motor vehicle and may do so at his own discretion.

Submissions

40. The Application was canvassed by way of written submissions. Both parties filed written submissions, which the court has duly considered.



Analysis and Determination

41. Having considered the Application, the parties' respective Affidavits, and the rival submissions, it is the Court's considered view that the central issue for determination is whether to set aside the Taxation Ruling delivered on 20th September 2024, the orders issued on 5th December 2024, and the subsequent Taxation Ruling delivered on 15th April 2025, or whether to enlarge the time within which the Applicant may file a Notice of Objection to taxation and a Reference against the said Rulings.
42. In the case of *Pithon Waweru Maina vs Thuka Mugiria* (1982-88) 1 KAR 171 Bosire J [as he then was] held that the power to set aside judgment is discretionary; the discretion is unlimited provided it is properly exercised; it being judicial discretion must be exercised on the basis of evidence and sound legal principles; the Court has powers to set aside on terms as are just; the Court is obliged to look at the defence the Applicant /Defendant may be having to the claim; if a party establishes a reasonable defence and which appears on the face of the pleadings to contain considerable merit, the Court ought to be inclined towards setting aside.
43. And further, in the case of *Shah vs Mbogo & Anor* (1967) E.A 470 Court of Appeal for Eastern Africa held as follows: -

“Applying the principle that the Court’s discretion to set aside an ex parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought (whether by evasion or otherwise) to obstruct or delay the cause of justice, the motion should be refused.”
44. In the instant case, the Applicant’s primary reason for her non-participation in the taxation proceedings relating to the Advocate–Client Bill of Costs dated 12th June 2024 is that she was unaware of its filing, as well as of the subsequent Notice of Motion dated 24th October 2024. She avers that she only became aware of the proceedings following what she describes as an irregular execution by way of attachment on 23rd June 2025.
45. The Applicant further challenges the mode of service of the said pleadings, asserting that the Respondent effected service through an inactive email address and via the WhatsApp messaging application, where she had already blocked him.
46. The Respondent, on his part, admits that the Applicant had indeed blocked him on WhatsApp after he had served her with the Advocate–Client Bill of Costs and the Notice of Taxation dated 10th July 2024.
47. In support of this assertion, the Respondent produced a screenshot of the WhatsApp message sent to the Applicant, showing that he transmitted the Bill of Costs and the Notice of Taxation scheduled for 24th July 2024. The screenshot reveals the Applicant’s response stating: “Doing the same thing and expecting different results is the definition of insanity.”
48. It is further noteworthy that the Applicant did not dispute having received the Application for judgment certification, which the Respondent claims to have served through his associate’s mobile number on 8th October 2024.
49. From the foregoing, it is apparent that the Applicant was served with the Bill of Costs and the Notice of Taxation and was therefore aware of the taxation proceedings relating to the Bill of Costs dated 12th June 2024. What remains uncertain, however, is whether service was properly effected in respect of the subsequent proceedings.



50. Regarding service of the hearing notice for the Application dated 24th October 2024, scheduled for 5th December 2024, the Respondent deposed in an Affidavit of Service dated 4th December 2024 that he served the Applicant via WhatsApp on 7th November 2024. Notably, he did not specify the number used to effect service. This was a significant omission, considering the Respondent's admission that the Applicant had already blocked him on WhatsApp.
51. In the circumstances, the Court is inclined to give the Applicant the benefit of doubt regarding whether she was duly served with the hearing notice for the Application dated 24th October 2024, which culminated in the entry of judgment in favour of the Respondent against her in the sum of Kshs 273,145.20, as per the Certificate of Taxation dated 7th October 2024.
52. Notably, the ensuing execution process emanated directly from that judgment entered on 5th December 2024, thereby necessitating an inquiry into its propriety.
53. The Applicant has consistently maintained that she was never served with a Notice of Proclamation and that she does not own several of the household items listed in the schedule of movable property annexed to the proclamation notice dated 29th May 2025.
54. In response, Mr. Muchendu, the auctioneer, deposed that the Applicant obstructed access to her premises. Given that assertion, it remains unclear to the Court how he was able to describe and assign estimated values to the items listed in the proclamation notice without gaining entry into the Applicant's premises.
55. Another issue that comes to the fore is whether the Applicant's motor vehicle was indeed sold. In this regard, Mr. Muchendu avers that following the attachment, the motor vehicle was advertised for sale and eventually sold by public auction on 2nd July 2025 to the highest bidder, one Dorcas Muthoni Mbau. To this end, he annexed a copy of the sale advertisement and a certificate of sale indicating that the auction took place at Rajema Storage Yard, Kiambu Road.
56. Several concerns arise from this account. First, the auctioneer did not disclose the purchase price of the motor vehicle, despite the fact that the decretal amount stood at Kshs 306,320.06 while the proclamation notice valued the motor vehicle at Kshs 2,200,000.00. Second, there is no evidence that an application was made to court to facilitate the transfer of ownership as required under Rule 17(5) and (6) of the Auctioneers Rules.
57. Additionally, there is no evidence that the auctioneer issued a purchase receipt to the alleged buyer, as required under Order 22 Rule 64(2) of the Civil Procedure Rules and Rule 18(3) of the Auctioneers Rules. Indeed, no documentation has been produced showing that the proceeds of the purported sale were remitted to the Court or to the Respondent, nor has an itemized account of such proceeds been presented.
58. On the basis of the material before it, the Court finds that the execution process leading to the alleged sale of the Applicant's motor vehicle was fundamentally flawed.
59. With respect to the Bill of Costs and Notice of Taxation dated 20th February 2025, it is not disputed that the Respondent served the Applicant via her email address, XXX@gmail.com.
60. The Applicant contends that the said email address was no longer in use as the inbox was full, and she had informed the Respondent as much. On this score, she annexed a screenshot of a WhatsApp message sent to the Respondent.
61. In light of this dispute, it is necessary to revisit the legal framework governing service of court process through electronic means, specifically via electronic mail.



62. Order 5 Rule 22B of the Civil Procedure Rules provides:
- (1) Summons sent by electronic mail shall be sent to the defendant's last confirmed and used email address.
 - (2) Service shall be deemed effected when the sender receives a delivery receipt.
 - (3)
 - (4) An officer of the court who effects service shall file an affidavit of service attaching the delivery receipt confirming service.
63. Similarly, Rule 26(1) and (2) of the Employment and Labour Relations Court (Procedure) Rules, 2024 provide that:
- (1) A summons sent by electronic mail shall be sent to the respondent's last confirmed and used email address.
 - (2) Service shall be deemed effected when the sender receives a delivery receipt.
64. It follows that service by electronic mail is only deemed effective upon receipt of a delivery confirmation. Notably, the Respondent's affidavit of service contains no such delivery receipt as required under the aforementioned provisions.
65. In *Sifuna & Sifuna Advocates v Patrick Simiyu Khaemba* [2021] eKLR, the Court while discussing subject on Proof of service under sub-rule 2 of Rule 22B, the court stated thus:-
- “...Sub-rule 2 provides that the sender must receive “a delivery receipt” as a confirmation that service has been effected. In my view, the sub-rule was meant to cure the mischief of parties sending documents to emails of others keeping quiet about it and taking advantage of others lack of knowledge of the activity in their email.”
66. As stated herein, the Respondent's Affidavit of Service did not contain the sender's delivery receipt as required by Rule 22B (4) of the Civil Procedure Rules and Rule 26(2) of this Court's Rules. The Court therefore finds the purported service of the Bill of Costs and Notice of Taxation dated 20th February 2025 by email on 11th March 2025 to have been defective.
67. This casts doubt on whether the Applicant indeed received the email sent by the Respondent on 11th March 2025, transmitting the Bill of Costs dated 20th February 2025 and the Notice of Taxation scheduled for 20th March 2025.
68. In the final analysis, the Court finds merit in the Application dated 3rd July 2025 and accordingly issues the following orders:
- a. Icon Auctioneers are hereby directed to unconditionally release the Applicant's motor vehicle, registration number KDH XXXF, forthwith;
 - b. The orders issued on 5th December 2024 are hereby set aside, and the Applicant is granted leave to file a Notice of Objection and Reference out of time against the Taxation Ruling delivered on 20th September 2024. Such filing to be done within fourteen (14) days from the date of delivery of this Ruling;
 - c. The Applicant shall deposit the sum of Kshs. 306,320.06 in Court within twenty-one (21) days hereof; and



- d. The Taxation Ruling in respect of the Bill of Costs dated 20th February 2025 is hereby set aside and the matter is remitted for fresh taxation.
- e. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Karomo for the Advocate/Respondent

Mr. Mureithi for the Client/Applicant

Millicent Court Assistant

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 15th March 2020 and subsequent directions of 21st 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

