



**Okeyo v KCB Bank Kenya Limited (Cause E071 of 2025)  
[2025] KEELRC 2963 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2963 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E071 OF 2025  
JK GAKERI, J  
OCTOBER 30, 2025**

**BETWEEN**

**FREDRICK OKOTH OKEYO ..... CLAIMANT**

**AND**

**KCB BANK KENYA LIMITED ..... RESPONDENT**

**RULING**

1. Before the court for determination is the applicant's Notice of Motion dated 15<sup>th</sup> August, 2025 filed under Certificate of urgency seeking Orders that:-
  1. Spent.
  2. Spent.
  3. The Honourable court be pleased to review, set aside and or vary the whole of its Ruling delivered on 31<sup>st</sup> July 2025 by setting aside the Orders of injunction made as against Respondent/Applicant herein.
  4. The Application dated 24<sup>th</sup> July 2025 be reinstated and that the Respondent/Applicant be allowed to file its Replying Affidavit to the application for hearing and determination on merit.
  5. The claimant/Applicant be condemned to bear the costs of this application.
2. The Notice of Motion is based on the grounds set out on its face and the Supporting Affidavit of Benard Ogutu sworn on an unidentified date who deposes that when the claimant's application was filed, the claimant was ordered to serve the Respondent and hearing was scheduled for hearing on 31<sup>st</sup> July 2025.
3. The affiant deposes that the claimant served the documents on 25<sup>th</sup> July, 2025 at their Kisumu Branch and no response was filed owing to improper service.



4. That the claimant did not comply with Order 5 Rule 3 of the Civil Procedure Rules on serve upon a corporation and the applicants registered office is in Nairobi where service ought to have been effected.
5. The documents were received on 28<sup>th</sup> July, 2025 and instructions were issued on 31<sup>st</sup> July, 2025, but the matter had already been dealt with and the delay was attributable to ordinary processes of transmission from the branch to the registered office and the applicant acted in good faith.
6. That the claimant was aware of the terms and conditions of the facility he obtained from the applicant and in particular application of interest rate.
7. According to the applicant, the claimant appeared to have avoided proper service to take advantage of the courts ex parte to avoid contractual obligations which violated the applicant's right to fair hearing guaranteed by the Constitution.
8. That the claimant's prejudice, if any, if the application was allowed would be compensable by costs.

### **Response**

9. By a Replying Affidavit sworn on 27<sup>th</sup> August, 2025 in opposition to the instant application, the claimant deponed that the applicable Rules were the Employment and Labour Court (Procedure) Rules, 2024 and the Civil Procedure Rules were not applicable and the application was for dismissal for want of competence.
10. According to the claimant, the applicant did not act diligently in responding to the application as the Kisumu Branch Manager was a Principal Officer of the applicant and service was proper as the Manager ought to have rejected service.
11. That receipts of documents by the Kisumu Branch signified proper service as it was through the applicant's authorized officer.
12. The affiant avers that the applicant ought to have attached a draft response to the application sought to be reinstated.
13. That the applicant had sufficient notice of the hearing having been served on 25<sup>th</sup> July 2025.

### **Applicant's submissions**

14. Counsel submitted that a ruling or proceeding is deemed irregular and liable to be set aside where there was no proper service or no service at all as held in *Kiere V Karaiti & 6 others* [2023] KEELC 21046 (KLR).
15. On service of court process, reliance was placed on the sentiments of the court in *Robert Mugira Fabian V Athi River Mining Ltd* [2014] KEELC (792) (KLR) to urge the court to apply the principle enunciated in the case as service in the instant case was improper.
16. Counsel further submitted that the documents arrived in Nairobi on Saturday 26<sup>th</sup> July, 2025 and could only be acted on on 28<sup>th</sup> July 2025 having been deprived of 4 days it was condemned unheard as it was not accorded reasonable time to prepare a proper response.
17. Counsel urged that the Orders made by the court on 31<sup>st</sup> July 2025 were irregular and ought to be set aside.
18. Finally, counsel submitted that by granting temporary Orders the court re-wrote a binding contract existing between the parties contrary to the sentiments of the court in *National Bank of Kenya Ltd V*



Hamida Bana & 103 others [2017] eKLR, that the function of court is to enforce and give effect to the intention of the parties.

### **Respondent's submissions**

19. As to whether service of process was proper, counsel relied on the provisions of Rule 28(1) of the Employment and Labour Relations Court (Procedure) Rules 2024, to urge that the Kisumu Branch Manager of the Respondent Bank was an authorized officer of the respondent having accepted service and Rule 28(1) was complied with.
20. As to whether the application was merited, counsel submitted that the application was not merited as the applicant had not attached a draft response to the respondent's application dated 24<sup>th</sup> July 2025, which rendered the instant application incurably defective.
21. Reliance was placed on the sentiments of the court in Thomas Odhiambo Okello V Peter Wanyama [2019] eKLR to urge that the instant application was for dismissal.
22. Counsel further submitted that reliance on the terms of the loan arrangement could only avail the Applicant/Respondent if the termination of employment was fair but in this case, it was contested.
23. Counsel relied on the sentiments of the court in Abraham Nyambane Asiage V Barclays Bank of Kenya Ltd [2013] KEELRC 230 (KLR) to urge that where a termination of employment is unlawful, the employer's right to withdraw the special loan facility to the employee is withheld.
24. Counsel urged that reliance on Order 51(2) of the Civil Procedure Rules, 2010 was a technicality which the court ought to overlook.
25. Finally on costs, counsel urged that they ought to follow the event and the same should be awarded to the claimant/respondent.

### **Analysis**

26. A brief history of the case is essential to contextualize the instant application.
27. The claimant/respondent instituted this suit vide a memorandum of claim dated 24<sup>th</sup> July 2025 and filed on even date together with a Notice of Motion filed under Certificate of Urgency seeking a temporary injunction to restrain the Applicant/Respondent from increasing the claimant's interest rates on the unsecured loan and mortgage facility pending inter partes hearing of the Notice of Motion as well as pending the hearing and determination of the application and the main suit.
28. When the matter came up on 25<sup>th</sup> July, 2025 the court directed the claimant's counsel to serve the respondent and the application be responded to within 4 days in readiness of inter partes hearing on 31<sup>st</sup> July, 2025.
29. Evidence on record reveals that the claimant's counsel served the Applicant respondent's Kisumu Branch on 25<sup>th</sup> July, 2025 and the documents were dispatched to the registered office of the respondent and received on 28<sup>th</sup> July, 2025 and instructions issued on 31<sup>st</sup> July, 2025.
30. In the meant time on 31<sup>st</sup> July, 2025 inter parties hearing proceeded as envisioned but in the absence of the Applicant/Respondent.
31. Counsel for the claimant informed the court that he served on 25<sup>th</sup> July, 2025 and prayed for the grant of prayers No. 3 and 4 of the Notice of Motion.



32. In the interest of justice, the court granted prayer No.3 thus restraining the Applicant/Respondent from increasing interest rates on the two loans pending the hearing and determination of the Notice of Motion dated 24<sup>th</sup> July 2025 and a mention was slated for 2<sup>nd</sup> October 2025 for further directions.
33. However, the Applicant/Respondent filed the instant Notice of Motion seeking the Orders reproduced elsewhere in this Ruling. The court gave directions on service and inter partes hearing on 2<sup>nd</sup> October 2025 on which date the court gave directions on the filing and exchange of submissions due for confirmation on 14<sup>th</sup> October 2025 and further directions on the filing and exchange of submissions were given and a further mention slated for 23<sup>rd</sup> October, 2025 for a Ruling date.
34. The singular issue for determination is whether the respondent was properly served.
35. The principles that govern service of court documents on other parties are well settled.
36. Rule 28 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides that:
1. Service on a body corporate may be effected—
    - (a) on the secretary, director or any other authorized officer of the corporate body; or
    - (b) where the process server is unable to find any of the officers of the corporate body mentioned in subparagraph (a), by—
      - (i) leaving the pleadings at a conspicuous place at the registered office of the corporate body;
      - (ii) sending the pleadings by registered courier service to the registered office of the corporate body;
      - (iii) leaving the pleadings at a conspicuous place where the corporate body carries out business;
      - (iv) sending the pleadings by registered post to the last known postal address of the corporate body if it does not have a registered office or postal address; or
      - (v) sending the pleadings by electronic mail to the known email address of the corporate body.
37. While the applicant's case is that service was not effected upon it until 28<sup>th</sup> July, 2025 when the documents were actually received at its Nairobi office, the claimant/respondent maintained that service through the Kisumu Branch Manager was effective as he accepted service and was thus presumed to be an authorised office of the applicant as evidenced by the Affidavit of service dated 28<sup>th</sup> July, 2025.
38. The centrality of service of document on the other party to litigation cannot be over-emphasized. It is the bedrock of the right to be heard or fair hearing. An unserved suit is patently incomplete for adjudication.
39. See James Kanyaiita Nderitu & another V Marios Philotas Ghikas & another [2016] KECA 470 (KLR) Sangram Singh V Election Tribunal Koleh AIR 1955 SC 664 AT 711.
40. It requires no gainsaying that the right to be heard is non-derogable. Natural justice dictates that a person must be made aware of the suit against him or her.
41. Rule 28(1) of the Employment and Labour Relations Court (Procedure) Rules 2024 is clear on how service on a corporation ought to be effected.



42. The Corporation Secretary is identified first followed by a director and any other authorized office of the corporate body suffices, in that Order.
43. In *Shengo V Nihal Construction Ltd* [2025] KEELRC 854 (KLR) Nduma J. stated:
- What the above rule requires is that service on the company Secretary or director be given priority and where service on the said persons cannot be effected, then the other means specified under the subrule is to be applied...”
44. It is common ground that the claimant/Respondent serviced its documents upon the Manager of Kisumu Branch of the respondent bank without ascertaining whether he was an authorised officer receipt of the documents notwithstanding.
45. A response was required within 4 days in readiness for inter partes hearing on 31<sup>st</sup> July 2025 and by serving its documents upon a branch manager, who to all intents and purposes was not the decision maker on how the matter would proceed, unfairly prejudiced the applicant which remained unaware of the suit until the documents were received at the registered office of the company on 28<sup>th</sup> July 2025. The four (4) started running from the date of receipt of the documents.
46. With no evidence to demonstrate that the Kisumu Branch Manager of the applicant’s bank was a duly an authorised officer, the claimant/respondent took the easier route to see a branch manager as opposed to effecting service at the respondent’s registered office in Nairobi where policy decisions are made he effect of which was to deny the applicant the constitutional right to be heard on the application dated 24<sup>th</sup> July, 2025 whose reinstatement it now seeks.
47. It is trite that the court has discretion to vary or set aside its Orders. However, for the court to exercise its discretion favourably, the applicant is required to lay a basis by demonstrating that there was sufficient cause for the court to vary or set aside its Orders.
48. In the instant application, the court is satisfied that the applicant has demonstrated that there was sufficient basis for the court to set aside the ex parte Orders made on 31<sup>st</sup> July 2025 whose effect is to reinstate prayer Number 3 of the Notice of Motion dated 24<sup>th</sup> July 2025 for inter partes hearing and determination.
9. This being a court of equity and based on the circumstances of this case, it is only fair that the applicant be heard on the claimant/Respondent’s Notice of Motion dated 24<sup>th</sup> July 2025.
50. The upshot of the foregoing is that the Notice of Motion dated 15<sup>th</sup> August 2025 has merit and is granted in terms of prayer Numbers 3 and 4.

Each party to bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

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 has 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.

