



**Abinayo v House and Farm Company Limited (Employment and Labour Relations
Petition E061 of 2024) [2025] KEELRC 3082 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3082 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E061 OF 2024
HS WASILWA, J
NOVEMBER 5, 2025**

BETWEEN

RACHEL ABINAYO PETITIONER

AND

HOUSE AND FARM COMPANY LIMITED RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 15th May 2025 seeking orders that: -
 1. Spent
 2. this Honorable Court be pleased to set aside its proceedings of 5th May 2025 and stay the ruling delivered on the 8th May 2025 and stay its execution thereto pending hearing and determination of this Application.
 3. the Applicant be allowed to put in their response and they be granted a fair chance to be heard.
 4. the costs of this application be provided for

Respondent/Applicant's

2. The Applicant avers that it was not properly served with the Bill of cost and Taxation Mention Notice therefore they were not aware that the matter had been fixed for Mention on 5th May 2025 and subsequent ruling which was delivered on 8th May 2025
3. The Applicant avers that the Petitioner's Messrs. Masalia Loveto Advocates instead chose to serve the previous advocates namely; Kago .N Advocates who were on record during the period of trial without taking cognizant of the fact that they were no longer representing them but rather the firm of Ndiema & Company Advocates had filed a Notice of Change of Advocates immediately after the judgement



had been delivered and also filed a Notice of Appeal dated 29th November 2024 and made a request for typed proceedings.

4. It is the Applicants' case that the firm of Masalia Loveto and Company Advocates were duly served with the Notice of Change of Advocates dated 20th November 2024 and they were also served with the Notice of Appeal dated 29th November 2024. It even went ahead and filed Application for stay of execution of the High Court's judgement through a Civil Application No. E689 of 2024 which was heard and determined through a ruling dated 29th January 2025 by Hon. Justice Musila, Hon. Justice Tuiyot and Hon. Justice Mumbi Ngugi.
5. The Applicant avers that the Court of Appeal allowed the Application for stay of execution pending the substantive appeal on condition the 75% of the decretal sum be deposited in interest earning joint accounts of the two advocates representing the parties.
6. The Applicant avers that it was shocked when they received a phone call from their previous advocate namely; Messrs. Kago N. Advocates on the 7th May 2025 informing them that this matter was coming up for ruling on the 8th May 2025.
7. It thus filed an Application under certificate of urgency dated 7th May 2025 seeking to set aside the proceedings of 5th May 2025 and defer the ruling that was scheduled for 8th May 2025, However, despite filing a timely application seeking to defer the scheduled ruling, the said ruling was delivered on the 8th May 2025 and execution process initiated immediately.
8. The Applicant avers that if the aforesaid ruling is executed, it would render the present application nugatory and a mere academic exercise since the same would be overtaken by events as the Petitioner has moved to levy execution immediately upon the ruling.
9. It is the Applicant's case that there is good and sufficient cause for the taxation proceedings dated 5th May 2025 to be set aside and the ruling delivered on the 8th May 2025 be stayed to enable the Respondent to participate in the taxation proceedings and file their response according.

Petitioner/Respondent's Case

10. In opposition to the application, the Respondent a replying affidavit dated 20th July 2025.
11. The Respondent avers that the firm of Ndiema & Company Advocates has never been on record for the Applicant and that it only came on record after judgment had been entered against the Respondent which is unprocedural.
12. The Respondent avers that her previous advocates on record properly served the correct firm on record Kago N Advocates being with the Bill of Costs dated 9th April 2025 together with a Taxation Notice dated 1st May 2025.
13. They further filed a return of service with this Court and the Bill of Cost proceeded undefended as the said firm never showed up at the hearing.
14. It is the Respondent's case that the assertion that the Bill of Cost should have been served on Ndiema & Company Advocates and not Kago N Advocates is false and far-fetched.

Petitioners/Applicants' Submissions

15. The Applicant submitted that it changed its legal representative by appointing the firm of Ndiema & Company Advocates who filed and served the Notice of Change of Advocates dated 20th November 2024 and the Notice of Appeal dated 29th November 2024. However, the Respondent's Advocates



chose to serve the previous advocates namely; Kago .N Company Advocates who were on record during the period of the trial without taking cognizant of the fact that they were no longer representing the Respondent but rather the firm of Ndiema & Company Advocates had filed a Notice of Change of Advocates immediately after the judgement had been delivered and also filed a Notice of Appeal dated 29th November 2024.

16. It is the Applicant's submission that all through these proceedings, the Respondent and her advocates were well aware that the firm of Ndiema and Company Advocates were on record for the Applicant but feigned ignorance and proceeded to serve the Notice of Taxation and Bill of Costs on the previous advocates and even proceeded to mislead this Court that they had effected proper service of the same.
17. The Applicant submitted that Petitioner's advocates fully participated in the proceedings at the Court of Appeal and served their response/documents to the firm of Ndiema & Company Advocates and their further correspondences has been channeled to the firm of Ndiema & Company Advocates and not Kago N. Company Advocates.
18. It is the Applicant's submission that it had never been informed by his previous advocates on the progress of the matter and it was only upon being served with the Taxation Notice that it learnt that the matter had proceeded ex-parte and a Ruling date issued for the next day.
19. The Applicant submitted that if the Application is not allowed, the Applicants will suffer substantial loss since the Respondent has already initiated execution proceedings in this matter. The Respondent instructed Moran Auctioneers who proclaimed its goods/assets and the Applicant has since paid Kshs. 500,000.00 to the Respondent's Advocates and Kshs. 150,000.00 to the said Moran Auctioneers.
20. The Applicant submitted that it has fully satisfied all the requirements for grant of stay of execution set out in NAIROBI HCC 5400 OF 1991 HALL EQUITORIAL LIMITED VS OLYMPIC FRUIT PROCESSERS, wherein it was held: "he must demonstrate to the satisfaction of this Court that substantial loss will ensue if the Order is not granted; that the application has been filed without delay and that he is willing and able to give such security as is ordered by the Court for the due performance of the decree."
21. The Applicant submitted that it has demonstrated in his supporting affidavit and the annexures contained therein that the instant Application is timely as it was filed without delay. Additionally, it will suffer substantial loss should the Respondent be allowed to levy the costs as awarded to her whereas the same is contested.
22. The Applicant submitted that the provisions of Order 9 rule 9 of the Civil Procedure Rules are not cast in stone and they do not therefore preclude this Court from exercising its discretion properly in the dispensation of justice by granting the Orders sought in the application.
23. It is the Applicant's submission that it did not willfully fail to file his response as he was not properly served with the Bill of Costs and the Taxation Notice as required by the law. It cited MOMBASA HCCC NO 204 OF 1990 NJOROGI VS PRESTIGE AIR SERVICES LTD and NAIROBI HCCA NO 27 OF 1982 MAINA VS MUGIRIA in which the courts indicated that if a defence by a Defendant has been brought to the notice of the court, however irregularly, should be considered.
24. The Applicant submitted that the Respondent has not demonstrated that she would be seriously prejudiced by this court allowing the Applicant's application and in essence allowing the suit to proceed to its full hearing.



Petitioner/Respondent's Submissions

25. The Petitioner/Respondent submitted that the Applicant never sought leave to come on record and therefore cannot purport to be the rightful advocate that should have been served with the Bill of Costs.
26. The Respondent submitted that the Applicant only sought leave in this application and thus lacks locus to file any pleadings on behalf of the Respondent. It cited *Chelule & another v Kuria & another* [2024] KEELC 88 (KLR), the court held: "As per Order 9 Rule 9 the correct procedure to be followed was for the counsel to seek leave to come on record, then file and serve the notice of change of advocates and thereafter file the instant application."
27. I have examined all the averments and submissions of the parties. The application seeks to stay the ruling of the Deputy Registrar of 8/5/2025 and execution thereof. The applicant has averred that he was never served with the application and that the petitioner applicant chose to serve his previous advocates who were no longer on record.
28. For the record I note that the petitioner filed a notice to appear in person dated 4/7/2025. It is also true from the record that judgment was delivered in this court on 15/1/2024. At the time of the delivery of judgment Mr Mungai was holding brief for Masolia for the petitioner and Mrs Wambua was holding brief for Kago for the respondents of the firm Kago N. & Company advocates.
29. Taxation was then done and a ruling delivered on 8/5/2025. There is no indication that the respondents filed any notice of change of advocates after the judgment on 15/1/2024 and if they did, they did not seek permission of this court. Any change thereof was null and void.
30. The petitioners therefore rightfully served the counsels on record for the respondent and the respondent cannot therefore aver that they were not aware of the taxation and therefore the application to set aside the taxation has no merited and is dismissed. Costs abide outcome of the appeal filed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF NOVEMBER 2025.

HELLEN WASILWA

JUDGE

