



REPUBLIC OF KENYA



KENYA LAW
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**Gulbahar v National Hospital Insurance Fund (Civil Case 170 of 2017)
[2025] KEHC 16601 (KLR) (Civ) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE 170 OF 2017**

**SN MUTUKU, J
NOVEMBER 13, 2025**

BETWEEN

BULENT GULBAHAR PLAINTIFF

AND

NATIONAL HOSPITAL INSURANCE FUND DEFENDANT

RULING

1. Under determination are two applications. The first application is the Notice of Motion dated 5th November 2025 (1st the Application). It is brought by the Plaintiff (the Applicant) against the Defendant (the Respondent). The 1st Application is anchored on various provisions of the law as shown on the face of it and seeks the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. That the purported ruling delivered on 9th September 2025 by Hon. Lady Justice Rhoda Rotich, having been rendered after her transfer, during the High Court Annual recess, in the absence of parties and without prior notice, be set aside, expunged from the record, and declared a nullity ab initio.
 - iv. That this file be handled by Hon. Lady Justice Stella Mutuku and or reallocated to another Judge within the Civil Division for all further proceedings and directions.
 - v. That the costs of this application do abide the outcome of the suit or be provided for as this Honourable Court may deem just.



- vi. That this Honourable Court do make such further or other orders as it may deem fit in the interest of justice and fairness.
2. The application is supported by the grounds found on the face of it and in the Supporting Affidavit sworn by the applicant. In sum, the Applicant is accusing the Hon. Lady Justice Rhoda Ruto of procedural irregularities in respect of her ladyship's handling of this matter.
3. The Applicant has deposed that the Honourable Lady Justice Rhoda Ruto heard the Applicant's application for her recusal on 9th December 2024 and fixed a ruling date for 6th June 2025, six (6) months later, which date coincided with Madaraka Day public holiday; that at the time of fixing the ruling date, her ladyship knew or ought to have known that she had been transferred to another station, which transfer had been published in a Circular issued in December 2024 and that due to that transfer, the Judge lacked jurisdiction to handle a matter filed at Milimani Civil Division.
4. The Applicant claims that the Judge delivered a ruling on a public holiday, during the High Court recess and without notice to the parties, as a result of which the Judge breached Order 21 Rule 1 of the Civil Procedure Rules and Articles 47 and 50 of *the Constitution*.
5. The Notice of Motion dated 6th November 2025 (the 2nd Application) is brought under Order 1 Rule 10(2), Order 51 Rule 1 of the Civil Procedure Rules and sections 1A, 1B and 3A of the *Civil Procedure Act*. It seeks the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. That there be a temporary stay and arrest of the judgment scheduled for 14th November 2025 pending the hearing and determination of this application inter partes.
 - iv. That the Defendant, the defunct National Hospital Insurance Fund, be substituted with the Social Health Authority (SHA) established under the *Social Health Insurance Act, 2023*.
 - v. That all proceedings conducted after 22nd November 2023 in the name of SHIF be declared a nullity, and the matter be heard de novo before a different judge.
 - vi. That all testimonies, filings and submissions made on behalf of the defunct NHIF after 22nd November 2023, including those of Peterson Ngari, Gilbert Mugambi Osoro and the submissions filed by Ochieng, Achach & Kairo Advocates, be struck out as null and void.
 - vii. That the pleadings be amended accordingly, costs be in the cause and such further orders be made as the Court may deem just.
6. The Applicant has advanced grounds in support of the 2nd Application as shown on the face of it and in the supporting affidavit sworn by the Applicant on 6th November 2025.
7. The grounds can be summarized that the National Hospital Insurance Fund (NHIF) was established under the NHIF Act which has been repealed by *Social Health Insurance Act, 2023*; that NHIF ceased to exist and therefore it lacks capacity to sue or be sued and that despite that state of affairs, Hon. Lady Justice Rhoda Ruto proceeded to hear the matter.
8. The Applicant claims to have been away and only became aware of the repeal of the law and replacement of NHIF recently, necessitating the filing of this application; that substitution of the defunct NHIF with SHA is mandatory and inevitable to prevent procedural complications that would



arise if the matter were to proceed to judgment; that the Applicant stands to suffer irreparable prejudice if judgment were to be delivered in his favour as it would stand against a non-existent party.

Grounds of opposition

9. In opposition to the two applications, the Respondent filed Grounds of Opposition dated 12th November 2025 as follows:
 - i. That pursuant to Section 23(3)(e) of the *akn ke act 1956 39 Interpretation and General Provisions Act* (Cap. 2) and the Transitional Provisions under the First Schedule paragraph 3 of the Social Health *akn ke act 1985 1 Insurance Act, 2023*, all rights, powers, liabilities, and duties which immediately before the appointed day were vested in, imposed on, or enforceable by or against the Government for and on behalf of the National Hospital Insurance Fund (NHIF) were automatically transferred to, vested in, imposed on, or enforceable by or against the Social Health Authority (SHA). Accordingly, all pending suits and proceedings lawfully continue against SHA as the statutory successor to NHIF. Substitution does not invalidate any prior evidence or procedural steps, and the plea for a hearing de novo is misconceived, unnecessary, and contrary to the principle of statutory and procedural continuity.
 - ii. That pursuant to Order 1 Rules 9 and 10(2) of the Civil Procedure Rules, no suit shall be defeated by reason of misjoinder or non-joinder of parties; the Court retains discretion to add or substitute a party at any stage to enable complete determination of the fundamental issues in controversy.
 - iii. That under Sections 1A, 1B, and 3A of the *akn ke act 1924 3 Civil Procedure Act*, the Court is mandated to facilitate just, expeditious, proportionate, and affordable resolution of disputes; reopening the matter for a fresh hearing (hearing de novo) would waste judicial time, offend the overriding objective, and cause undue prejudice to the Defendant.
 - iv. That by virtue of Order 9 of the Civil Procedure Rules, advocates properly on record remain so until a duly compliant notice of change or withdrawal is filed and served; the statutory substitution of the Defendant does not retrospectively invalidate the acts or pleadings of counsel already on record.
 - v. That the purported application to “arrest judgment” is devoid of any express statutory foundation or procedural anchorage under the *akn ke act 1924 3 Civil Procedure Act* or the Civil Procedure Rules. The procedure is purely facilitative and demands that the Applicant demonstrate identifiable interim relief supported by cogent and specific grounds. The Applicant has failed to meet this threshold, rendering the application incompetent, frivolous, vexatious, and an abuse of the court process.
 - vi. That the Court, having heard the matter and reserved judgment, is functus officio save for powers exercisable under Section 99 of the *akn ke act 1924 3 Civil Procedure Act* and Order 45 (Review); the reliefs sought are thus untenable in law.
 - vii. That the allegations touching on recusal, bias, or the validity of rulings already delivered are governed by the review and appeal mechanisms under Order 45 and Order 42 of the Civil Procedure Rules, respectively; they cannot be disguised as applications to expunge the record or halt judgment wholesale.
 - viii. That any insinuations or assertions premised on the Honourable Judge’s previous public service are speculative, scandalous, and contrary to Article 160(1) and Article 10 of *akn ke act*



2010 constitution the Constitution of Kenya, 2010, which safeguard judicial independence and integrity.

- ix. That the pendency of a contempt application does not legally preclude delivery of judgment; under Sections 1A and 1B of the *akn ke act 1924 3 Civil Procedure Act*, the Court retains full case-management discretion and indeed had indicated that judgment would issue concurrently with the contempt ruling.
- x. That the applications offend Order 51 13(3) of the Civil Procedure Rules as the respondent was served only a day before the hearing of the application, thereby denying the Respondent sufficient time to prepare and file a substantive response. The short notice is prejudicial, offends the principles of fair hearing under Article 50(1) of *akn ke act 2010 constitution the Constitution*, and renders the application defective for want of proper service and compliance with procedural fairness.
- xi. That these applications amount to a collateral attack on concluded proceedings and are calculated to delay and frustrate the administration of justice contrary to Article 159(2)(b) and (d) of *akn ke act 2010 constitution the Constitution*, which enjoin courts to deliver substantive justice without undue regard to technicalities.

Oral submissions

10. Parties made oral submissions as directed by the court. Before he made his submissions, the Applicant raised two issues. He objected to the firm of Ochieng, Achach & Kaino Advocates representing the Respondent arguing that they are not properly before the court for failure to file Notice of Change of Advocates. Secondly, he asked the court to allow separate submissions for each of the two applications to avoid confusing the issues raised in each application.
11. Mr. Dudi replied to the issues raised to the effect that they are properly before the court as all the necessary documents were exchanged with the Applicant's former advocates, Ako Advocates LLP. On the second issue, counsel stated that the Respondent will submit on both applications.
12. I have considered the issues raised. From the records in the Case Tracking System (CTS), Ako Advocates LLP filed Notice of Appointment to act for the Applicant on 24th August 2020. The firm remained on record until 24th April 2025 when the Applicant filed a Notice to act in person.
13. The record, further, shows that initially, the Respondent was represented by Moronge & Co. Advocates who entered appearance for the Respondent on 7th December 2020. On 17th February 2021, the firm of Ochieng, Achach & Kaino Advocates entered appearance for the Respondent. This firm remained on record for the Respondent to date. Mr. Dudi's explanation that the firm of Ochieng, Achach & Kaino Advocates exchanged the relevant documents with the Applicant's former advocates has not been controverted.
14. After consideration of this matter, I find no prejudice on the part of the Applicant caused by the representation of the Respondent by Ochieng, Achach & Kaino Advocates. He has had legal representation through the firm of Ako Advocates LLP from 24th August 2020 until 25th April 2024 when he took over own representation. Any issue with the representation ought to have been raised and dealt with early enough if indeed there were procedural issues that would have resulted in prejudice to the Applicant. I will and do hereby dismiss the objection raised by the Applicant.
15. On the issue of arguing the two applications together, I foresee no issue with that directions given in this matter. I am satisfied that by arguing the two applications together, no party will be prejudiced.



16. Turning on the merits of the two applications, I have noted that both applications are intertwined. In his submissions in support of the 1st application, the Applicant submitted that there were procedural irregularities in that Hon. Lady Justice Rhoda Ruto delivered the Ruling on 6th June 2025 which was a public holiday, without notice to, and in the absence of, the parties; that at the time of delivering that ruling, the Judge was on transfer to Machakos High Court and therefore the Judge lacked jurisdiction to deal with the matter; that at the time of delivering that ruling, there were pending applications for contempt of court in which the Court had issued directions for submissions, which submissions were not done because of that ruling; that by so doing, the Judge denied the Applicant the right to fair trial and access to justice thereby breaching his rights under Articles 48 and 50 of *akn ke act 2010 constitution the Constitution* of Kenya; that the issues raised in the pending applications ought to be determined before judgment is delivered to avoid denial of justice; that arresting the delivery of judgment does not prejudice the Respondent but doing so will prejudice the Applicant.
17. On the 2nd Application, the Applicant argued that National Hospital Insurance Fund is defunct after the repeal of the NHIF Act and it must be substituted with Social Health Authority (SHA); that proceedings in this case prior to the repeal of NHIF Act were conducted by advocates who are no longer on record and that it was the duty of counsel for the Respondent to inform the court of the repeal and seek substitution.
18. He submitted that substitution of parties can be done at any stage of the proceedings and that this must be done before judgment is delivered failure to which he will be prejudiced. He submitted that evidence tendered after the repeal of the legislation is void ab initio.
19. Mr. Dudi for the Respondent relied on the Grounds of Opposition filed herein and submitted that he was present when the ruling was delivered by the Court. He submitted that this matter was assigned to Hon. Lady Justice Rhoda Ruto under the Rapid Results Initiative (RRI) that require matters to be finalized expeditiously and that the Applicant has filed numerous applications to delay the expeditious disposal of this matter.
20. Counsel submitted that the orders sought by the Applicant to arrest the delivery of judgment are not supported by the law and that the accusations against Hon. Lady Justice Rhoda Ruto have been determined by the Judge in her ruling for recusal in which she declined to recuse herself. Counsel urged that this court declines to allow the two applications.
21. In a rejoinder, the Applicant referred this court to paragraph 3 of the Ruling on recusal, arguing that highlighting of submissions did not proceed due to that ruling. He submitted that he intends to have the Defendant substituted to ensure that there is a party capable of being sued. He expressed apprehension that if the court were to rule in his favour, the Defendant may deny liability.

Analysis and determination

22. I have not had the benefit of reading the case file which is still being held by Hon. Lady Justice Rhoda Ruto. I have however read the records in the CTS and what has been presented before me. It is factual that judgment in this matter is slotted for Friday, the 14th November 2025. Given that this matter was referred to this court upon the application of the Applicant, I deem it necessary to pronounce my findings before the 14th November 2025 to avoid inconveniencing the parties and the Court handling the matter.
23. I have no reason to doubt that the matter was assigned to Hon. Lady Justice Rhoda Ruto through RRI. I want to believe that by the time her transfer to Machakos High Court came through, the Judge had not finalized the matter. In obedience to the Constitutional command of expeditious disposal



of cases under Article 159(2) (b) of *akn ke act 2010 constitution the Constitution* and the Overriding Objective under Section 1A of the *akn ke act 1924 3 Civil Procedure Act*, the Judge proceeded with the case awaiting conclusion of the same.

24. I will consider whether the Applicant's two application are merited.
25. From the outset, I wish to clarify that the practice, as I know it, is that for good order and to avoid prejudicing parties or unnecessarily delaying a matter, a judge who has been transferred to another Division or Station before finalizing a matter must proceed with the matter to its conclusion unless for any reason recorded that judge is not able to do so or for the reason that a directive has been issued allocating the file to another judge. Such a transferred judge does not cease to have jurisdiction by reason of a transfer to another Division or Station.
26. My reading of the 1st Application discloses that the only substantive prayer in that application is prayer number 3 seeking to set aside the ruling on recusal. The 1st Application is anchored on, inter alia, Order 45 Rule 1 of the Civil Procedure Rules. The cited provision relates to review of decree or order. It is worded thus:
 - (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
27. The legal requirement under the above provision is for the Applicant seeking review of court orders to satisfy the Court that he has met the threshold specified under Order 45 Rule 1 as follows:
 - i. That he has discovered a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or
 - ii. That there is some mistake or error apparent on the face of the record, or
 - iii. That there is any other sufficient reason, and
 - iv. That the application has been filed without unreasonable delay.
28. The Applicant has not presented any material to support any of the above requirements. He relied on the allegation that parties were not notified of the ruling date which, in any case, fell on a public holiday. However, he did not controvert the submission by Mr. Dudi that he was present during the delivery of that ruling.
29. Setting aside an order of the court is discretionary. That discretion must be exercised judiciously to ensure that justice is served to all the parties in the case. The party moving the court must satisfy the court that he she deserves such an order.



30. My careful consideration of the 1st Application and the arguments for and against that application leads me to the conclusion that the Applicant has not provided material to this court to persuade it that the 1st Application is merited.
31. In respect of the 2nd Application, I have considered the same and the arguments of the parties. The Application seeks to arrest the delivery of judgment slated for 14th November 2025 to allow the substitution of the Respondent with SHA because according to the Applicant the Respondent (NHIF) is defunct following repeal of NHIF Act and that the correct Respondent is SHA established under the SHA Act.
32. The Applicant is also seeking orders to strike out, for being null and void, all evidence on behalf of the Respondent after 22nd November 2023 as well as amending the pleadings to align with the current situation. His arguments are that if the Court were to rule in his favour, then he would have no party to execute against because the party he sued, the NHIF, no longer exists.
33. In response to the arguments by the Applicant, the Respondent has argued through his Grounds of Opposition and oral submissions that section 23(3) (e) of the *akn ke act 1956 39 Interpretation and General Provisions Act* (Cap. 2 Laws of Kenya, and the Transitional Provisions under the First Schedule, paragraph 3 of the SHA Act, all rights, powers, liabilities and duties of NHIF automatically transferred to, vested in, imposed on, or are enforceable by the SHA.
34. Counsel also cited Order 1 Rule 9 and 10 (2) of the Civil Procedure Rules that no suit shall be defeated by reason of misjoinder on non-joinder of parties.
35. I have considered the 2nd Application. As argued by Mr. Dudi, the Applicant has not provided any legal basis to support his prayer to this court to arrest or temporarily stay the judgment scheduled to be delivered on 14th November 2025.
36. Section 23(3) (e) of the *akn ke act 1956 39 Interpretation and General Provisions Act* provides that:
- Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal shall not—
- (e) affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.
37. Further under the Transitional Provisions found in the First Schedule paragraph 3 of the SHA Act, 2023 it is provided as follows, that:
- On the appointed day, all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Fund shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.
38. The "appointed day" is defined to mean the day appointed for the coming into operation of the Social Health *akn ke act 1985 1 Insurance Act*, 2023.
39. It is my understanding that the repeal of NHIF Act does not affect the rights, powers, liabilities and duties that fell under its ambit as these automatically get transferred to SHA. SHA, therefore, inherits



all rights, powers, liabilities and duties that initially fell on the NHIF. Simply put, the Applicant has nothing to fear should his claim against NHIF succeed.

40. My careful analysis leads me to this conclusion that the Applicant has failed to satisfy this court why it should grant him the prayers seeking to arrest the delivery of judgment by Hon. Lady Justice Rhoda Ruto. The law allows him to enforce a judgment in his favour against SHA, which Authority took over all obligations and liabilities from the NHIF.
41. After careful consideration of this matter, I find no evidence to persuade this court to declare the evidence adduced in this case null and void or to order the case to start de novo.
42. It is my finding, therefore, that the Applicant has failed to demonstrate why he seeks the orders contained in the 1st and 2nd applications. For that reason, I decline to grant any of the two applications. I have noted that Hon. Lady Justice Rhoda Ruto gave a reasoned ruling as to why she declined to recuse herself. In any case, once she delivers the judgment in this matter, there will be no reason for her to continue handling this matter unless there is an application that requires her personal involvement in the matter.
43. I wish also to point out that this is an old matter and parties should exhibit the desire to have the matter concluded. I urge the parties to obey the constitutional command under Article 159 (2) (b) that justice shall not be delayed, and to be guided by Section 1A of the *akn ke act 1924 3 Civil Procedure Act* that provides that:
 - (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court (emphasis added).
44. I am satisfied that no party will be prejudiced in this matter, and further, the avenues for approaching the superior courts, in the order of the hierarchy of the courts, will still be open for any party who may not be satisfied with the judgment or any ruling delivered in this matter.
45. I award costs in the two applications to the Respondent.
46. Orders shall issue accordingly. Each party is at liberty to apply should the need arise.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF NOVEMBER 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Bulent Gulbahar the Plaintiff Applicant

Mr. Dudi instructed by Ochieng, Achach & Kaino Advocates for the Defendant Respondent

