



**Gathoni v Chege (Civil Miscellaneous E231 of 2023)
[2025] KEHC 15737 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15737 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL MISCELLANEOUS E231 OF 2023
DO CHEPKWONY, J
NOVEMBER 3, 2025**

BETWEEN

PETER GICHERU GATHONI APPLICANT

AND

RACHAEL WAMBUI CHEGE RESPONDENT

RULING

1. On 9th September, 2025, this Court delivered a ruling in respect of a Notice of Motion application dated 30th November 2023, wherein it allowed the same on condition that the Applicant deposits the entire decretal sum in court within thirty (30) days from the date of the said ruling. The court further included a default Clause to the effect that failure by the Applicant to comply with the condition would render the application automatically dismissed. The matter was then fixed for mention on 13th October, 2025 for parties and or their counsel to confirm compliance and take further directions.
2. As at 13th October, 2025, it was pointed out that the Applicant had not made the deposit of the decretal amount in court and he and or his counsel were not in attendance to make any representation on compliance of the orders issued vide the ruling delivered on 9th September, 2025. The Respondent's counsel, M/S Muthagani confirmed to court that they had served the Applicants with the mention Notice on 17th September, 2025 upon being asked by the court to confirm whether they had done so because on 9th September, 2025, the ruling with orders/directions for compliance was delivered in the absence of the Applicant and or counsel. The Respondent's counsel then urged the court to enforce the default Clause issued on 9th September, 2025.
3. The court deferred the ruling on this to 16th October, 2025 to enable it confirm service of orders and mention Notice upon the Applicant and or counsel.
4. The court has gone through the Case Tracking System(CTS) and confirmed that an Affidavit of Service dated 17th September, 2025 and sworn by Richard Otieno was filed and it confirms that the Applicant's



advocates, M/S Kimondo Gachoka & Co. Advocates were served with the mention Notice on 12th September, 2025 and they have not attended court or sent representation to explain their absence.

5. Given that the orders and or direction issued in the ruling delivered on 9th September, 2025 were clear on the consequence of non-compliance and the non-attendance by the Applicant and or his counsel in court, the court proceeds to enforce the default Clause and orders that:-
- a. The Notice of Motion application dated 30th November, 2023 is hereby dismissed with costs to the Respondent for failure to comply with Court Orders of 9th September, 2025.
 - b. The interim orders in place be and are hereby discharged and the Respondent is therefore at liberty to execute.
 - c. The Deputy Registrar to open an appeal file and call for and avail the original record f proceedings as directed on 9th September, 2025.
 - d. Mention on 20th January, 2026 for parties to take directions on hearing of the appeal.
 - e. Directions/orders and Notice to be served upon the Applicant and or its counsel.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF NOVEMBER, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance for and by the Applicant

M/S Muthagani counsel for the Respondent

Court Assistant – Martin/Sakina

