



**Music Copyright Society of Kenya v Mutua (Cause E586 of 2025)
[2025] KEELRC 3256 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3256 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E586 OF 2025
AK NZEI, J
NOVEMBER 14, 2025**

BETWEEN
MUSIC COPYRIGHT SOCIETY OF KENYA CLAIMANT
AND
DR EZEKIEL MUTUA RESPONDENT

RULING

1. On 15th July, 2025, Mr. Okubasu, learned Counsel for the Claimant herein, informed the Court that the Claimant had, upon filing the suit herein, realised that the dispute was one that could be adjudicated by the Chief Magistrate’s Court; and that he had already filed a Notice of Withdrawal of the suit, dated 2nd July, 2025. Counsel prayed that the suit be marked as withdrawn, with no Order as to costs.
2. On his part, Mr. Udoto Kongani, learned Counsel for the Respondent, told the Court that he had not been served with any Notice of Withdrawal of suit, and had filed a defence and Counter-Claim, and a replying affidavit in response to the Claimant’s application (dated 20th June, 2025). That the Respondent would proceed with his Counter-Claim, withdrawal of the Claimant’s suit notwithstanding. Counsel prayed that costs of the Claimant’s suit, if withdrawn, be awarded to the Respondent.
3. The Court allowed the withdrawal of the Claimant’s suit, together with the Claimant’s Notice of Motion dated 20th June, 2025, and awarded costs of the same to the Respondent. The Claimant was granted twenty one (21) days to respond to the Respondent’s Counter-Claim, and the matter was fixed for mention on 9th October, 2025 for appropriate directions.
4. On 9th October, 2025, Counsel for the Claimant informed the Court that two applications had been filed, the Claimant’s application dated 18th July, 2025 and the Respondent’s application dated 27th July, 2025. Counsel asked the Court to hear the application dated 18th July, 2025 first as it had been



filed first. Counsel for the Respondent, on the other hand, asked the Court to hear the Respondent's application dated 27th July, 2025 first as directions on filing of submissions thereon had already been given by the Duty Court on 6th August, 2025.

5. I ordered as follows:-

- “(1) The Notice of Motion dated 18/7/2025, which seeks the striking out of the Respondent's Counter-claim herein, shall be heard first, and shall be served forthwith and an affidavit of service filed.
- (2) The Respondent/Counter-Claimant shall file response to the application within 7 days of today.
- (3) The application shall be heard orally on 6/11/2025.”

6. On 15th October, 2025, however, the Respondent filed an urgent application dated 13th October, 2025 seeking the following Orders:-

- a. That the application be certified urgent, and be heard *ex parte* at the first instance, and on priority basis.
- b. That the Court be pleased to stay, and/or vacate the directions and/or orders issued on the 9th October, 2025 in respect of the Claimant's alleged application dated 18th July, 2025 pending hearing and determination of the application.
- c. That the Court be pleased to set aside and/or vacate the directions and/or orders issued on 9th October, 2025 in respect of the Claimant's alleged application dated 18th July, 2025 and that instead, the Court be pleased to give directions for the and/or hear and determine the Counter-Claimant's application dated 27th July, 2025 on the 6th November, 2025, which application has been served on all parties.
- d. That the Court be pleased to determine the matter herein expeditiously and [to] settle all the employment and labour related issues raised in the case herein, affecting the Respondent and one Richard Sereti with the Claimant before the close of this year's court calendar.
- e. That costs of the application be paid by the Claimant's Advocate.

7. The application is anchored on the supporting affidavit of Paul Andrew Udoto Kongani Advocate sworn on 13th October, 2025. It is deponed in the said supporting affidavit, *inter-alia*:-

- a. that on 9th October, 2025, Counsel for the Claimant brought to the Court's attention an application dated 27th July, 2025, and then misled the Court on an alleged application dated 18th July, 2025; and that the Court gave directions regarding the alleged application dated 18th July, 2025.
- b. that at the time of giving the said directions, there was no such application (dated 18th July, 2025) forming part of the Court's record.
- c. that according to the [Court's] E-Filing System, the firm of Okubasu & Munene Advocates uploaded 4 documents; an intended certificate of urgency and an intended Notice of Motion, which were neither dated nor signed; and a certificate of urgency and Notice of Motion dated 18th July, 2025, which documents were never paid for to form part of the Court's record.



- d. that rules governing filing of Court documents/applications require payment of the prescribed fees before the documents can become part of the Court record.
 - e. that the Notice of Motion uploaded on to the CTS does not amount to an application, as it has no supporting affidavit.
 - f. that there was no application dated 18th July, 2025, regarding which the Court could give directions; and that the directions given cannot be complied with.
8. The foregoing application, which is now before me for determination, was placed before me under a Certificate of Urgency on 15th October, 2025. I certified the application as urgent, and gave directions on service of the same and filing of response thereto; and fixed the same for hearing on 28th October, 2025.
 9. The Claimant filed grounds of opposition dated 22nd October, 2025 and stated, inter-alia:-
 - a. that the application is incompetent and fatally defective for failing to state or specify the enabling provisions of the law under which it is brought, contrary to Order 51 Rule 4 of the Civil Procedure Rules 2010; and for being predicated on non-existent or unsubstantiated pleadings, particularly the allegations of a non-existent application dated 18th July, 2025.
 - b. that the application dated 18th July, 2025, seeking to strike out the Respondent's Counter-Claim, is filed before the Court and has been served on the Respondent.
 - c. that in accordance with Order 51 Rule 4 of the Civil Procedure Rules and Rule 47 of the Employment and Labour Relations Court Procedure Rules, a Notice of Motion need not be accompanied by a supporting affidavit, unless there is evidence being adduced.
 10. When the application came up for hearing on 28th October, 2025, Counsel for the Claimant/Respondent told the Court that although uploaded earlier, the application dated 18th July, 2025 "was not paid for until 16th October, 2025, when it was duly filed and served."
 11. It is trite that a Court document is deemed as having been duly filed when it is presented for filing and the assessed Court filing fees is duly paid. As stated by the Court of Appeal for Eastern Africa in *Motel Schweitzer – vs – Thomas Cunningham & Another* [1955] 22 EACA 252, a document is generally considered duly filed only when it has been lodged at the Registry and the prescribed fees has been paid.
 12. With the advent of e-filing of Court documents, a Court document is deemed as having been duly filed when the document is uploaded onto the Court's e-filing portal and the assessed Court filing fees has been paid. In *Ngigi – vs – Momai Investments Limited*[2023] KEHC 17344 (KLR), the Court stated that when the Court's online filing platform experiences downtime, parties should forward their documents to the Court via email, in which case the Court ought to assess the Court fees payable on the same day and to activate the suit upon payment of Court fees.
 13. As admitted by Counsel for the Claimant/Respondent, the Notice of Motion dated 18th July, 2025 was not filed until 16th October, 2025 when Court filing fees thereon was paid. It follows that the directions given by this Court on 9th October, 2025 regarding the said application were given on a non-existent application. The same are hereby re-called, and are set aside. The Court shall proceed to consider and to determine the Respondent's Notice of Motion dated 27th July, 2025. The matter shall be mentioned in Court on 16th December, 2025 to confirm filing of written submissions on the said application as directed by the Duty/Vacation Court on 6th August, 2025.



14. I cannot conclude this Ruling without asking this question: Did Counsel for the Claimant mislead the Court on 9th October, 2025 into giving directions on “a Notice of Motion dated 18th July, 2025” while knowing that no such application existed as the same had not been filed.” The answer to this question appears to be in the affirmative. Advocates are officers of the Court, and the last thing that a court of law expects is to be misled by its officers.
15. That said, and having considered the submissions filed, the Notice of Motion dated 13th October, 2025 is hereby allowed in the following terms:-
 - a. The directions given by this Court on 9th October, 2025 regarding a Notice of Motion dated 18th July, 2025 are hereby re-called, and are set aside.
 - b. The Court shall proceed to consider and to determine the Respondent’s Notice of Motion dated 27th July, 2025. The said application shall be mentioned in Court on 16th December, 2025 to confirm filing of written submissions thereon as directed by the Duty/Vacation Court on 6th August, 2025.
 - c. Costs of the application are awarded to the Respondent/Applicant.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Odego for the Claimant/Respondent

Mr. A. Kongani for the Respondent/Applicant

