

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA

CAUSE NO. E112 OF 2024

GIDEON MUSAU MANG'OKA CLAIMANT

VERSUS

KENYA EVANGELICAL LUTHERAN CHURCH

Through the NATIONAL EXECUTIVE COUNCIL RESPONDENT

RULING

The claimant filed an application dated 29 October 2025 seeking leave to allow the firm of Munee Katu & Associates Co. Advocates to come on record on his behalf instead of the firm of Ndeto Kay Advocates after the close of the case. The claim also seeks that the orders and proceedings of 13 October 2025 dismissing the suit be set aside, and that the case be reopened and heard on merit. The matter be transferred before the lower court for hearing and determination on merit.

The claimant filed his Supporting Affidavit and avers that he is willing to prosecute his case, despite proceeding in person. On 22 May, 5 June and 19 June 2025, the matter was before mediation, where his advocates attended, but the respondent failed to attend. When the matter was mentioned in court on 31 July 2025 to confirm the status of the mediation, the claimant's advocate was indisposed and could not attend court.

The claimant avers that on 13 October 2025, he had just appointed new advocates when the matter was dismissed on the ground that he was not represented, despite being present in court. The matter and new advocates had not been mapped in the system to allow filing of the Notice of Appointment and Change of Advocates.

The claimant's rights in employment will be violated if the matter is not heard on merit.

In reply, the respondent filed the Replying Affidavit of Chacha Lucas Matiko, advocate, who avers that the claimant has repeatedly failed to prosecute this matter and missed several court sessions. Mediation is confidential, and the claimant cannot rely on such a process to urge his case herein.

The court issued a notice to show cause why the claim should not be dismissed for non-attendance. The notice was served upon the claimant on 1 October 2025, personally and to the advocate on record. The

claimant failed to address the notice or attend court when the matter was dismissed on 13 October 2025.

Pursuant to Order 9 Rule 9 of the Civil Procedure Rules, which is similar to ELRC Rule 16 and 38, no advocate may come on record for a party after judgment without consent or a formal application to the court.

The claimant has appointed new advocates without meeting the legal threshold. The firm of advocates sought to represent that the claim is not properly on record. They lack the *locus standi* to urge this application, which should be dismissed with costs.

Determination

Indeed, this matter came up in court on various dates to confirm the progress on the mediations.

On 31 July 2025, the Deputy Registrar mentioned the matter, and the parties reported that they were unable to agree. A mention date was allocated for 23 September 2025.

On the due date, the claimant did not attend.

The court issued a notice to show cause why the suit should not be dismissed. It was allocated on 13 October 2025.

On the due date, the claimant sought to be represented by new advocates. The advocates had not yet been mapped into the system. The claimant was absent from court when his case was heard.

There being no attendance on the part of the claimant, the suit was dismissed for lack of attendance and prosecution with costs to the respondent.

After filing the application dated 29 October 2025, the claimant's advocates filed a Consent dated 9 October 2025, stating that there is consent between Munee Katu & Associates Co. Advocates to come on record on his behalf instead of the firm of Ndeto Kay Advocates. This Consent, although post-dated to 9 October 2025, is filed after the fact, along with the respondent's Reply Affidavit.

This is an abuse of the court process.

The gist of Order 9 Rule 9 of the Civil Procedure Rules is to ensure the orderly conduct of proceedings before the court once a final order has issued. In this case, upon the dismissal of the suit on 13 October 2025, such was a final order.

Before appointing new advocates, the claimant is required to obtain the previous advocates' consent, which has now been served by the consent

dated 9 October 2025. His new advocates have also sought leave to come on record. See [Ashioya v Amunaya \[2025\] KEELC 8322 \(KLR\)](#), where the court emphasised that parties should not manipulate records to showcase a matter and circumvent the procedures under Order 9 Rule 9 of the Civil Procedure Rules. One should either obtain consent or seek leave to come on record post judgment as held in [Nyakundi v Onkoba & 5 others \[2025\] KEELC 7462 \(KLR\)](#).

With the application seeking leave to come on record and the consent of the previous advocates addressed, it is only fair that the claimant should attend and be represented by his new advocates. However, non-attendance in court is a conduct that should not be simply addressed. Upon being allocated a mention date, as the right-holder, the claimant had a duty to personally or through his appointed advocates attend court and secure his rights.

To secure the rights of each party, the claim shall meet the costs due to the respondent based on his claimed one-month wage of Ksh. 44,043 to be paid within 14 days. This will return the parties to the drawing board, allowing the court to hear the matter on the merits.

On the application that the matter be placed before the lower court, indeed, the claimant under paragraph (4) of the Memorandum of Claim asserts that he was earning a wage of Ksh. 44,043 per month, and his last posting was in Mombasa. Under Legal Notice No. 6024 of 2018, such a matter should be filed before the trial court as the first point of call. This is to secure access to justice.

Accordingly, the application dated 29 October 2025 is allowed and the following orders issued;

- a) The firm of *Munee Katu & Associates Co. Advocates* is properly on record for the claimant.**
- b) The suit is hereby reinstated on condition that the claimant shall meet the respondent's costs of Ksh. 44,043 to be paid within 14 days, failure to which, the order of dismissal shall stand effective 12 February 2026.**
- c) The suit shall be placed before the Chief Magistrate, Mombasa ELRC division, on 16 February 2026 for hearing directions.**

Delivered in open court at Mombasa, this 22nd day of January 2026.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant:

..... and

