



**Hacienda Development Limited v Lekairab (Appeal E044 of 2025)
[2026] KEELRC 430 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 430 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E044 OF 2025
M MBARŪ, J
FEBRUARY 19, 2026**

BETWEEN

HACIENDA DEVELOPMENT LIMITED APPELLANT

AND

SANGIDA LEKAIRAB RESPONDENT

*(Being an appeal arising from the judgment of Hon. Gathogo Sogomo
delivered on 21 February 2025 in Mombasa MCELRC No. E772 of 2023)*

JUDGMENT

1. The appeal arises from the judgment delivered on 21 February 2025 in Mombasa MCELRC No. E772 of 2023. There are 4 grounds of appeal on the basis that the learned magistrate shut out the appellant from the seat of justice and was thus denied the right to a fair hearing when judgment was delivered, while there was a pending interlocutory application. The trial court was unable to hear the application under a Certificate of Urgency because the duty court placed the matter before it after judgment had been delivered. The subject application was seeking leave for documents to be filed on the appellant's behalf, since the previous advocate on record had failed to file them, despite being in his custody for over a year.
2. It is thus the appellant's case that, before judgment was delivered by the trial court, the firm of M/S Muturi Gakuo and Kibara Advocates appeared on record for the appellant on 11 February 2025. The matter was scheduled for a hearing on 12 February 2025. The request for time to peruse the file was declined. The court directed the parties to file written submissions and, in the course of doing so, realised that the previous advocates had not filed crucial documents. The previous advocate had been granted time to file these documents under Rule 35 of the Employment and Labour Relations Court (Procedure) Rules on 29 January 2024.



3. The information contained in the documents not filed is crucial to the response and for the just determination of the suit. They demonstrate that the appellant lost property worth Ksh. 2,212,634 under the respondent's watch, which was reported to the police. The respondent was paid Ksh. 108,000 upon the appellant's director recognizing that he had personal problems. These records were provided to the former advocates, but they failed to file them with the court before judgment was issued.
4. The appeal is that in the application dated 20 February 2025, the application sought that the judgment date be vacated and the case reopened to allow the appellant to file its documents. The application was sent down for hearing on 25 February 2025 after judgment had been delivered. The application was withdrawn due to being overtaken by events.
5. The appellant is thus seeking that the appeal be allowed, the judgment of the trial court be set aside, the hearing of the application dated 20 February 2025 be reinstated and heard on the merits, and the case be reopened for hearing on the merits.
6. The appellant relied on the case of Kenya Trypanosomiasis Research Institute v Anthony Kabimba Gusinjilu [2019] eKLR; Wachira Karani v Bildad Wachira [2016] eKLR; and Kiprotich v Maara Civil Appeal 35 of 2022 on the basis that everyone has the right to be heard by an impartial and independent court under Article 50 of *the Constitution*. The mistake of an advocate should not be visited against the client who is innocent. The court's overall objective is to administer justice.
7. The respondent's case is that, under Rule 59 of the Court Rules, the court may proceed to and determine a suit on the pleadings. This is to avoid delay and ensure the expeditious determination of disputes.
8. The court should not assist parties to stall justice as held in China Road and Bridge Corporation v Mbao [2025] eKLR. The appellant failed to comply with the court's directions despite having been afforded sufficient time to file its pleadings. On 7 April 2025, the court ordered the appellant to deposit the decretal sum with the court, but the appellant failed to do so. The discretion sought to be applied in the appellant's favour is not justified. The appeal is without merit and should be dismissed with costs.

Determination

9. This is a first appeal. The court is authorised to review the record, reassess the finding, and reach its conclusions.
10. However, in this case, the subject judgment sought to be challenged is not the issue. The only matter the appellant has raised is that the hearing should be reopened. The judgment of 21 February 2025 is not challenged.
The foundation of the appeal is lost.
11. The appeal is that the appellant filed an application dated 20 February 2025 seeking to set aside the delivery of the judgment that was due on 21 February 2025; the setting aside of proceedings and orders issued on 30 October 2024 and 12 February 2025, closing the case and directing the filing of written submissions. The appellant also sought to reopen the case and be granted leave to file documents and witness statements.
12. The basis of this application was that the appellant had instructed advocates who were allowed time to file documents, but failed to do so. On 29 January 2024, the court granted the appellant time under Rule 35 of the Court Rules to file its documents, including witness statements, but no documents were filed.



13. Upon the appointment of new advocates, the appellant sought to address the matter. However, the judgment date had been set, and parties were directed to file written submissions.
The appellant thus applied and withdrew the application dated 20 February 2025.
The basis for the withdrawal was that the same had been overtaken by events.
14. The trial court's judgment was delivered as scheduled on 21 February 2025. The application that sought to reopen the matter for hearing on the basis that the appellant had been locked out of the seat of justice was withdrawn.
15. Under Rule 34 of the Court Rules, a party is allowed to amend its pleadings before they can close. However, once pleadings have closed, they can only be amended with the leave of the court
 34. A party may amend pleadings before service or before the close of pleadings:
Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.
16. In this case, the pleadings closed on 30 October 2024, and the court proceeded under Rule 21 of the repealed Court Rules, which allowed the filing of written submissions.
17. The matter came up in court on 12 February 2025 to confirm the filed written submissions, and on the due date, the learned magistrate allocated the matter for judgment on 21 February 2025.
The judgment was delivered as scheduled on 21 February 2025.
18. On the eve of the judgment, 20 February 2025, the appellant filed the application replicated in this appeal. It was allocated a hearing date for 25 February 2025. On the due date, the appellant's advocate withdrew the application, having been overtaken by events.
19. The appeal arises from the judgment delivered on 21 February 2025 and not the orders relating to the application dated 20 February 2025, which has since been withdrawn, having been overtaken by events. To relitigate such an application as the subject of this appeal is pure abuse of the court process.
20. Where indeed pleadings closed on 30 October 2024, the appellant had the remedy of filing an application seeking to reopen the matter to be allowed to file their documents. On 29 January 2024, the court granted the parties 45 days to file their records and documents. The appellant did not comply.
21. Where indeed such a lapse arose out of the negligence of the outgoing advocate, such a matter should be directly addressed and not revert to abuse of court process. See *Kakunia v Ndung'u practising as Annie W Thoronjo & Co Advocates* [2023] KEHC 17324 (KLR); *Kapule v Milly Class Works Limited* [2025] KEELRC 46 (KLR); and *Julius Mbaabu Marete v Tom Ayora, Nyeri Shuttle Limited, Kinyua Monicah & Mchezo Coaches Limited* [2018] KEHC 5791 (KLR). The courts reasserted that:

The right to be heard under Article 50 of *the Constitution* does not create a panacea to allow professional negligence as held in *Floris Pierro & Midland Company Limited v Giancarlo Falasconi* (as the administrator of the estate of Santuzza Billioti alias Mei Santuzza) [2014] KECA 827 (KLR). The claimant had the right to seek out his advocates to render an account for him. Otherwise, stalling for over 8 years is not justified. The various hearing dates were allocated to the claimant in the presence of his appointed advocates, but his failure to attend court for the hearing cannot be justified. The negligence that led to the dismissal of his suit cannot be justified, as held in *John Elias Kirimi v Martin Maina Nderitu, City Council of*



22. The court emphasized that:

Article 159(2) (d) of *the Constitution* does not cure all sorts of negligent commissions and omissions by parties so long as their actions are not satisfactorily explained to the court's satisfaction. Justice demands that the court process be vindicated from the blatant negligence of parties and their advocates. Justice shall not be delayed - Sections 1A, 1B, and 3A of the *Civil Procedure Act* on the overriding objectives of the Act to achieve the just, expeditious, proportionate and affordable resolution of disputes.

23. Re-opening of proceedings already concluded should only apply in exceptional cases. It should not be a matter of course. A good cause must be established to take back the court and parties to a concluded matter. Particularly where parties have enjoyed wide latitude and allowed sufficient time to file pleadings, to allow the reopening of proceedings would negate the principles under section 3 of the *Employment and Labour Relations Court Act*, which requires expedited disposal of employment disputes.

24. Thus, to persuade the court to apply its discretion and return to the same matter that was conducted out to have been addressed before the trial court first and not through the appeal process. This is in recognition of the core principles for discretionary orders as appreciated in *Kibue v Qibue & 2 others* [2025] KEHC 18673 (KLR) that:

Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.

25. This position is reiterated in the case of *Kebande v Arasa (Environmental and Land Originating Summons E004 of 2022)* [2024] KEELC 7103 (KLR), where the court held that:

It will need quite a compelling case to allow a plaintiff reopen his case after a defendant has already testified, presented his evidence and witnesses, and has closed his case. The hurdle at this stage of the case is much higher than in an instance where the plaintiff is applying to reopen his case before the defendant has testified. It should be appreciated that a defendant or respondent responds to the case of the plaintiff/applicant as presented. A defendant may even opt not to call evidence based on what the plaintiff has presented, or decide not to call other witnesses, depending on the evidence that the applicant has tabled. There can be great prejudice to a defendant if a plaintiff is allowed to reopen his case after the defendant has already closed his. It would appear in our case that the respondent did not see it necessary to call her surveyor witness or present a survey report, given that the applicant had presented none.

26. What displays itself in the application at hand is that maybe the applicant feels that there were some gaps left in his evidence, which he was hoping the defendant would fill, but now that the defendant has not taken that path, he wishes to reopen his case so as to fill them. That, as I have said, is not the intention of the exercise of the court's discretion in allowing a party to reopen his case.



27. That aptly captures the matter at hand. The appellant had the opportunity to file a response together with its records, including witness statements. There was a further opportunity allowed by the trial court to address that. These chances were not applied with diligence or completeness. It cannot thus be a case that upon applying to re-open the case, and judgment was delivered, then the subject application was withdrawn and is not made the subject of appeal.

28. As outlined above, to allow such practice to take root would be an impediment to the rule of law.

Accordingly, the appeal is without merit and is hereby dismissed. Costs awarded to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 19TH DAY OF FEBRUARY 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and

