

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E301 OF 2023

(Before Hon. Lady Justice Agnes Kitiku Nzei)

**KENYA UNION OF COMMERCIAL
FOOD AND ALLIED WORKERSCLAIMANT**

VERSUS

SONADO CERAMICS LIMITEDRESPONDENT

RULING

1. According to the Court's record herein, hearing of the suit herein proceeded partly before **Jacob Gakeri, J** on 10th July, 2024 whereby the Claimant's first witness (**CW-1**) testified in chief and was cross-examined.
2. When the matter **first** came up for hearing before me **on 3rd October, 2024**, the Court was informed that the Claimant wished **to re-examine CW-1** and to call a second witness. The Court ordered for typing and certification of the Court's proceedings, and fixed the matter for mention **on 11th November, 2024** to confirm typing and certification of

proceedings. The said date was fixed in the presence of both parties.

3. On **11th November, 2024**, however, only Counsel for the Respondent attended Court. The Court confirmed that the Court's proceedings had been typed and certified as ordered, and fixed the suit **for further hearing on 17th February, 2025**. The Respondent was ordered to serve a hearing notice on the Claimant, and to file an affidavit of service.
4. On **17th February, 2025**, however, hearing was adjourned at the instance of the Claimant. The Court was told that **Mr. Nyumba** for the Claimant had been taken ill in the morning of the said hearing date. The Respondent **did not object** to the Claimant's application for adjournment. The hearing was adjourned, and the suit was fixed for further hearing on **22nd July, 2025**.
5. On **22nd July, 2025**, there was **no** appearance on the part of the Respondent. **Mr. Nyumba** re-examined **CW-1** and closed the Claimant's case; telling the Court that the Claimant's 2nd witness had not availed himself. The Court

closed the Respondent's case and gave timelines for filing of written submissions by both parties, and fixed the matter **for mention on 16th October, 2025** to confirm compliance and to fix a Judgment date. The Claimant was ordered to serve notice on the Respondent and to file an affidavit of service.

6. Thereafter, the Respondent filed a **Notice of Motion dated 29th July, 2025** seeking the following Orders:-

(a) *Spent.*

(b) *That the Court be pleased to set aside and/or vacate the orders issued on 22nd July, 2025 closing the Respondent/Applicant's case and directing parties to file submissions.*

(c) *That the Court be pleased to reopen the hearing and [to] grant the Respondent/Applicant leave to cross-examine the Claimant's 2nd witness.*

(d) *That the Court be pleased to reopen the hearing and [to] grant the Respondent/Applicant [leave] to present its defence.*

(e) *That costs of the application be in the cause.*

7. The application sets out on its face the grounds on which it is brought, which grounds are substantially replicated in the affidavit of **KANEEZ ZEHRA NOORANI** sworn on 29th July, 2025 in support of the application. I have read and considered the depositions made in the said affidavit.
8. The foregoing is the application before me for determination. The application is expressed to be brought under **Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act**; and is opposed by the Claimant/Respondent vide a replying affidavit of **Rebecca Muthoki**, which I have considered.
9. Parties filed written submissions for and against the application pursuant to this Court's directions in that regard, which I have considered.
10. This Court is a superior court of record, and the Court's record is as I have preceded to set out in this Ruling. The Respondent/Applicant's Counsel was in Court **on 17th February, 2025** when the suit was fixed for further hearing **on 22nd July, 2025**, and indeed participated in the fixing of

the same. Come the date fixed for further hearing (**22nd July, 2025**) and neither the Respondent nor its Counsel attended Court; despite the matter having been on the days' cause list. **No valid reason** has been given **for non-attendance** on the part of the Respondent/Applicant.

11. The foregoing notwithstanding, and for the purpose of facilitating the just, expeditious, efficient and proportionate resolution of the dispute herein pursuant to Section 3(1) of the Employment and Labour Relations Court Act, I hereby **allow** the Notice of Motion dated 29th July, 2025 in the following terms:-

(a) This Court's Order dated 22nd July, 2025 closing the Respondent's case is hereby set aside, and the Respondent is allowed to present its case/defence.

(b) Costs of the application, assessed at Kshs.10,000/= shall be paid by the Respondent to the Claimant within fourteen (14) days of this Ruling.

(c) The suit shall be fixed for defence hearing.

12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
20TH DAY OF FEBRUARY 2026**

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:

Mr. Muunda for the Claimant/Respondent

Miss Kamau for the Respondent