Jubilee Health Insurance Limited v Riaga (Appeal E043 of 2025)
[2026] KEELRC 674 (KLR) (10 March 2026) (Judgment)

Neutral citation: [2026] KEELRC 674 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

APPEAL E043 OF 2025

NZIOKI WA MAKAU, J

MARCH 10, 2026

BETWEEN

JUBILEE HEALTH INSURANCE LIMITED ..... APPELLANT

AND

DAVID ODHIAMBO RIAGA ..... RESPONDENT

(Being an appeal from the Ruling and Order of Hon. D. K. Matutu (SPM) in Kisumu CMELRC No. E100 of 2022 delivered on 8th July 2025)

JUDGMENT

1. This appeal arises from the ruling of Hon. D. K. Matutu (SPM) delivered on 8th July 2025 in respect of the Appellant's application dated 2nd May 2025. In that application, the Appellant sought orders to set aside the ex parte judgment dated 29th August 2024, to be granted unconditional leave to defend the suit, and to have the execution process declared irregular. In the impugned ruling, the Trial Court dismissed the application, finding that the Appellant had taken an inordinately long period of approximately three years to take action in the matter despite having been served. The Court held that such indolence could not be countenanced. Aggrieved by that decision, the Appellant lodged a Memorandum of Appeal dated 17th July 2025 setting out the following grounds:

    1. That the Learned Trial Magistrate grossly misdirected himself in law and in fact in dismissing the Appellant's application dated 2nd May, 2025, as lacking in merit against the right to a fair hearing under Article 50 of *the Constitution* of Kenya, 2010.

    2. That the Learned Trial Magistrate misdirected himself in law and fact by failing to take into consideration relevant matters and judicial guidelines in determining applications for setting aside ex-parte judgments thereby erroneously dismissing the Appellant's application dated 2nd May 2025.

3. That the Learned Trial Magistrate erred in law and grossly misdirected himself on facts by failing to judiciously determine the matters canvassed by the Appellant in its application dated 2nd May 2025 and the further affidavit dated 23rd May, 2025 thereby occasioning miscarriage of justice.

4. That the learned trial magistrate erred in law and misdirected himself on the facts by failing to appreciate, or otherwise ignoring, the applicable principles governing applications for setting aside ex parte judgments, which had been clearly raised in the Appellant's application dated 2nd May 2025 and its written submissions dated 29th May 2025.

5. That the Learned Trial Magistrate erred in law and grossly misdirected himself on facts by taking into consideration factors that were irrelevant in arriving at the decision to dismiss the Appellant's application dated 2nd May 2025 on the grounds of lacking merit.

6. That the Learned Trial Magistrate erred in law and grossly misdirected himself in law and fact by failing to take into consideration issues canvassed by the Appellant which laid indisputable basis for setting aside the ex-parte judgment delivered on 29th August 2024.

7. That the Learned Trial Magistrate erred in fact and in law in failing to find that the execution of the decree dated 29th August 2024 was tainted with irregularities for failing to comply with Order 22 Rule 6 of the Civil Procedure Rules, 2010.

8. That the Learned Trial Magistrate erred in failing to exercise discretion judiciously in favour of the Appellant and/or failing to find that the Appellant's draft defense raised triable issues which required the court's interrogation through trial.

2. On the basis of these grounds, the Appellant urged this Court to allow the appeal with costs, set aside the ruling of the Trial Court, and substitute it with an order allowing the application as prayed.

3. The appeal was canvassed by way of written submissions.

Appellant's Submissions

4. The Appellant urged the Court to consider the following issues for determination:

   i. Whether the Learned Magistrate erred in law and in fact in finding that the Appellant was properly served with summons and hearing notices in accordance with the mandatory provisions governing service upon a corporate entity.

   ii. Whether the Learned Magistrate erred by prioritising considerations of finality and expedition over the Appellant's constitutional right to a fair hearing under Article 50(1) of *the Constitution*.

   iii. Whether the execution process commenced by the Claimant/Respondent was irregular and unlawful, and whether the consequential warrants of attachment, sale, and auctioneer's costs ought to be set aside.

5. On the question of service, the Appellant submitted that the Learned Magistrate erred in law and fact in holding that service upon the Appellant, a corporate entity, had been properly affected. It asserted that the Respondent's service on a clerical officer by the name of Erick Omondi contravened Order 5 Rule 3 of the Civil Procedure Rules mandating service upon corporations to be effected upon the Secretary, Director or other principal officer or at the registered office where such officers cannot be located. It was submitted that service on a junior employee did not satisfy the statutory requirements

and could not confer jurisdiction upon the court. Reliance was placed on Babs Security Services Ltd v Mwarua Yawa Nzao & 19 others [2019] KLR, where the Court of Appeal emphasized that the identity and authority of the recipient of court process is critical to valid service on corporate defendants.

6. The Appellant further submitted that the subordinate court erred in relying on alleged electronic service through the email addresses info@jubileekenya.com and nancy.kaskoka@allianz.com. It contended that the emails were either non-existent or generated automated responses which did not amount to proof of receipt by an authorised officer. It relied on Order 5 Rule 22B of the Civil Procedure Rules that requires electronic service to be effected through the Appellant's last confirmed and used email address supported by a delivery receipt.

7. Moreover, the Appellant averred that once service was disputed, the burden shifted to the party asserting service to demonstrate strict compliance with the law as was stated in Kenya Industrial Estates Ltd v Ann Wanjira Mungai [2016] eKLR. The Appellant equally submitted that the Court's conflation of technical service with effective service resulted in denial of the Appellant's right to be heard rendering the subsequent ex-parte judgment susceptible to being set aside, citing Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others [2016] eKLR. It maintained that the interests of finality and expedition did not trump the fundamental principle that parties must be notified of proceedings.

8. On the second issue, the Appellant submitted that the Learned Magistrate erred by prioritizing considerations of finality and expedition over the Appellant's constitutional right to a fair hearing under Article 50(1) of *the Constitution*. It asserted that the right to a fair hearing includes the right to adequate notice of proceedings and an opportunity to present one's case. While acknowledging the importance of expeditious disposal of cases under Article 159(2)(b) of *the Constitution* and section 20 of the *Civil Procedure Act*, the Appellant contended that procedural efficiency cannot override the fundamental right to be heard. The Appellant submitted that the subordinate court had focused excessively on the period of delay before the Appellant entered appearance, characterizing it as aloofness, without properly considering that the delay arose from defective service. The Appellant relied on a number of authorities including the case of Karuturi Networks Ltd & another v Daly & Figgis Advocates [2009] KLR, Babs Security Services Ltd v Mwarua Yawa Nzao & 19 others [2019] KLR, and Shah v Mbogo & another [1967] EA 116, to stress that delay alone cannot justify denial of a party's right to be heard where there has been defective service or other procedural impediments. In conclusion the Appellant submitted that the trial court misapplied its discretion under Order 12 Rule 6 of the Civil Procedure Rules by treating delay as overriding the Appellant's right to a fair hearing and by failing to consider that defective service constituted sufficient cause for the Appellant's non-appearance.

9. On the third issue, the Appellant submitted that the execution process initiated by the Respondent was irregular and unlawful. It asserted that execution of a decree must comply strictly with the safeguards set out in Order 22 Rule 6 of the Civil Procedure Rules, which requires that where judgment is entered in default of appearance, execution shall not issue unless the judgment-debtor has been served with at least ten days' notice of entry of judgment. The Appellant emphasized that the emails upon which the Respondent served the Notice of Entry of Judgment, Certificate of Costs and Decree, info@jubileekenya.com and nancy.kaskoka@alianz.com had been demonstrated not to belong to it. Furthermore, it maintained that the latter email was for an employee of Jubilee Allianz General Insurance (K) Ltd a completely separate entity. It clarified that the rightful email was talk2US@jubileekenya.com.

10. In view of the foregoing, the Appellant contended that failure to serve the notice of entry of judgment rendered the subsequent execution process, including the warrants of attachment and sale and the

proclamation of assets, irregular and unlawful. Reliance was placed on the case of Shaffique Allibhai v William Ochanda Onduru & another [2014] eKLR, where the court underscored that the notice requirement was enacted to prevent abuse of judicial process by unscrupulous decree holders who may seek to execute a judgment without proper knowledge of its existence by the judgment-debtor. It also referred to the case of Lonyangole Nguranyang v Abraham Lonyangat [2015] eKLR, where it was held that failure to serve notice of entry of judgment as required rendered subsequent execution irregular and the ex-parte judgment susceptible to setting aside. Consequently, the Appellant urged the Court to allow the appeal.

Respondent's Submissions

11. From the outset, the Respondent urged the Court to exercise its appellate jurisdiction in line with Republic v Kenya Revenue Authority & another [2019] eKLR, which held that:

> " An appellate court's jurisdiction is not to be exercised to re-evaluate evidence or substitute its own view where the findings of the court below are supported by evidence, unless it is plainly shown that the court below misdirected itself, acted illegally, or reached a conclusion that no reasonable court could have reached."

12. On the issue of service, the Respondent submitted that the lower court correctly found that the Appellant had been properly served with summons and other court documents. It asserted that physical service was effected on the Appellant's clerical officer Erick Omondi as evinced by the affidavit of service and the process server's license on record. He contended that the Appellant neither sought to cross-examine the process server nor produced an affidavit from Erick Omondi denying receipt of the documents. Moreover, the Appellant did not deny that Erick Omondi was its employee. In view of the totality of the foregoing, the Respondent maintained that presumption of proper service could be construed.Reliance was placed on Shadrack Arap Baiywo v Bodi Bach [1987] eKLR, for the proposition that once service is detailed in an affidavit, the burden shifts to the party disputing service to rebut it. He also cited Kenya Industrial Estates Ltd v Ann Wanjira Mungai [2016] eKLR, which underscored that mere denial without evidence is insufficient.The Respondent further submitted that subsequent notices, including mention notices, hearing notices, the notice of entry of judgment, and taxation notices, were served electronically through the email address info@jubileekenya.com. He maintained that the Appellant acknowledged receipt through the address Talk2Us@jubileekenya.com, which generated an automated response confirming that the communication had been received. In view of the latter acknowledgement the Respondent averred that the two email addresses were connected hence the Respondent could not credibly deny receipt. Buttressing his point, the Respondent highlighted pages 58, 62, 66, 68 and 70 of the record of appeal evincing receipt of notices to which the Respondent failed to respond to for nearly three years, only being roused after execution commenced in May 2025. The Respondent maintained that the three-year delay amounted to wilful default. He cited Shah v Mbogo [1967] EA 116, for the proposition that deliberate inaction cannot justify setting aside of judgment.

13. With respect to the allegation of irregular execution, the Respondent submitted that the issue had not been raised before the Lower Court and was being introduced for the first time on appeal. He asserted that raising the issue at this stage amounted to abuse of the appellate process. He maintained that no evidence had been produced to demonstrate any procedural defect in the execution process. The Respondent further averred that even if minor defects existed, such defects would be curable under the slip rule pursuant to sections 99 and 100 of the *Civil Procedure Act*, and would not justify setting aside a judgment. The Respondent also submitted that the interlocutory judgment and subsequent proceedings were regular, lawful, and properly reasoned. He asserted that the Trial Court

correctly applied the principles governing the setting aside of judgments and found no evidence of accident, inadvertence, or excusable mistake that would justify the exercise of discretion in favour of the Appellant. Reliance was placed on the case of Musa Owuor v John Ochieng [2017] eKLR, where it was held that a judgment is regular where service has been properly effected and the defendant fails to enter appearance or file a defence,and Kenya Commercial Bank Ltd v Nyantange [1990] KLR 481, which emphasizes that courts should not aid parties who seek to evade their obligations. Further reliance was placed on Republic v Kenya Revenue Authority & another [2019] eKLR, for the proposition that an appellate court cannot re-evaluate factual findings supported by evidence unless they are manifestly unreasonable.

14. Regarding whether the judgment could be set aside, the Respondent submitted that an appellate should not interfere with the discretion of a trial court where the judgment is supported by evidence and the proceedings were regular. He relied on Nyangoma v Republic [2015] eKLR, where it was held that appellate interference is only justified where the lower court's decision is shown to be perverse, illegal, or wholly unreasonable. In conclusion, the Respondent submitted that the record demonstrated proper service of summons and notices, wilful default by the Appellant, and the regularity of the interlocutory judgment and subsequent execution process. He therefore asserted that the appeal was an abuse of the appellate process and an attempt by the Appellant to avoid its obligations. The Respondent accordingly urged the Court to dismiss the appeal with costs, confirm the validity of the interlocutory judgment and execution process, and order the release to the Respondent of the money deposited in court as security for the appeal.

Disposition

15. The issue for determination is whether there is merit in the motion before the Court. The Court is cognizant that there is assertion of the infringement to the constitutional right to a fair hearing under Article 50(1) of *the Constitution*. The Appellant in the arguments advanced indicates the correct email address is talk2US@jubileekenya.com. There is evidence that there was electronic service through the email addresses info@jubileekenya.com and nancy.kaskoka@allianz.com. It is doubtful that the second email address was correct and the only email address the Court can consider for service is info@jubileekenya.com which the Respondent herein used.

16. The disputed service was only challenged at the point of execution. The Appellant did not deny that the email address info@jubileekenya.com is its email address or when it stopped using the said email address. The only discomfiture is the service on a clerical officer.

17. The Respondent's service on a clerical officer by the name of Erick Omondi Esq. was not only improper but also contravened Order 5 Rule 3 of the Civil Procedure Rules which mandates service upon corporations to be effected upon the Secretary, Director or other principal officer of the corporation or at the registered office where such officers cannot be located.

18. The Court thus allows the appeal to the extent the matter is remitted to the Chief Magistrate's Court at Kisumu for hearing and disposal by any other Magistrate other than Hon. Matutu SPM. The sum held as security will continue to be so held pending the hearing and determination of the case before the Chief Magistrate's Court. There will be no order as to costs on this Appeal granted the Respondent took an inordinately long period before moving the Court.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 10TH DAY OF MARCH 2026

NZIOKI WA MAKAU, MCIArb.

JUDGE