

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL NO. E189 OF 2024

JUMA HARDWARE LIMITED

APPELLANT

-VERSUS-

MIRIAM TUNGANI & 2 OTHERS.....

.....RESPONDENTS

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The court delivered a judgment in the appeal on the 5th February 2025 as follows-‘In the upshot the appeal is held merited for the foregoing reasons. The judgment of the lower court is set aside and substituted as follows:-

Judgment is entered for the claimant for payment of terminal dues as per the tabulations before the trial court by the Appellant and the 2nd respondent jointly and severally :-

Mirima Tungani -gross pay of Kshs. 60,091 with interest at court rates from the date of the judgment of the lower court,

Eunice Khayesi Gross pay at Kshs. 88.572 with interest at court rates from the date of judgment,

Paul Chuma- Gross pay of Khs. 78,069 with interest at court rates from the date of judgment.

Costs of the suit.

The amounts above to be tabulated and Decree drawn for payment under the decretal sum held by the advocates in joint account within 30 days of judgment.

Each party to bear own costs in the appeal.’’

2. Subsequently, the applicant filed an application dated 10th March 2025, of which the court delivered a ruling dated 20th June 2025 and held as follows: ‘The court declares that it is now functus officio on the validity of the appeal. The applicants ought to move the higher court if they are not satisfied with the decision. The court found it difficult to understand the orders sought by the applicant. The order for the deposit of the decretal sum held by Gikera & Vadgama Advocates to pay the decretal sum in the appeal judgment of 5th February 2025; deposit balance of the amount held by the advocates with the court related to execution. The deposit was security for performing the judgment. The law firm of Gikera & Vadgama stated that the applicant’s former advocates Messers Lemmy Regau Advocates, co-signatories to the account have refused to sign the necessary release forms due to outstanding legal fees owed to them by the applicants. The Court’s position is that the money deposited in joint account was not the property of the advocates. It was security for both decree amount and costs. The court in the judgment made the following order :- ‘The amounts above to be tabulated and Decree drawn for payment under the decretal sum held by the advocates in joint account within 30 days of judgment. The court determined all issues with finality and on non-compliance with court orders, the court ought to be moved

accordingly for enforcement. The instant application is held to be bad and an abuse of court process and is dismissed. For non-compliance with the judgment of the court, the respondent does not deserve costs. The application is dismissed with no order as to costs.”

3. The applicant yet again has filed the instant application by way of Notice of Motion dated 27th November 2025 seeking the following orders-

a. spent

b. This Honourable Court be pleased to issue an order compelling the Respondent's Directors and the ASL Limited to produce information evidencing the cessation and/or acquisition date of the Respondent's business; AND to further produce the Respondent's most recent Business Permit for purposes of confirming its last date of existence at its known physical address.

c. This Honourable Court be pleased to grant an order compelling the firm of Gikera & Vadgama Advocates to produce the following information: -

(i) the Resolution of the Respondent's Board of Directors permitting one Joy Impano to swear affidavits as its authorized officer; and

(ii) the bank statements dated 12th July 2023 to 18th November 2025, to account for the banking of the decretal sum.

d. If the information sought under Orders No. (2) and (3) together with the averments herein establish that the Respondent did not authorize the filing of the appeal, and that all the orders issued by this Honourable Court in favour of the Respondent were obtained fraudulently, the Applicants pray that this Honourable Court be pleased to declare that its Appeal Judgment and the Decree of 5th February 2025 are a nullity, and

enforce the judgment and the decree of 9th March 2023 of the Chief Magistrates' Court (Hon. S.A. Opande) in ELRC No. E438 of 2021.

- e. This Honourable Court be pleased to order the Advocates to forthwith release the decretal sum presently held as security for payment of the legal fees of Lemmy Regau & Co. Advocates, and to remit to the Applicants the excess amount-being Kshs. 32,325.00 as at 19th January 2026 in compliance with this Honourable Court's oral order delivered on 21st July 2025.
 - f. This Honourable Court be pleased to grant appropriate remedies for the violation of the Applicants' right to proper certificates of service, as per the law.
 - g. This Honourable Court be pleased to make such other or further orders, including ancillary or consequential reliefs, as the ends of justice may require.
4. The application was based on the grounds stated therein and the supporting affidavit sworn on the 5th December 2025 by Miriam Tungani, the applicant, authorised to represent all the applicants.
5. The application was opposed by the advocate of the respondent vide grounds of opposition dated 16th January 2026 drawn by Gikera & Vadgama advocates as follows-
- a. That this Honourable Court is functus officio in respect of all the matters raised in the Applicants' Application, the Court having heard, determined, and rendered a final Judgment on 5th February 2025, together with a Decree extracted pursuant thereto.
 - b. That the issues raised in the Application were directly and substantially in issue in the Appeal, raised by the Applicant herein and were either determined by the Court or ought

to have been raised during the hearing of the Appeal, and are therefore res judicata and from re-litigation. barred³. That the Applicants are impermissibly inviting the Court to sit on appeal over its own final judgment, contrary to settled principles of law and in blatant disregard of the doctrine of finality of litigation.

- c. That this Honourable Court lacks jurisdiction to reopen, review, interrogate, nullify, or set aside its Judgment and Decree of 5th February 2025 otherwise than through the prescribed appellate or review mechanisms provided in law, none of which have been properly invoked.
- d. That the Applicants' prayers seeking declarations that the Appeal Judgment and Decree are a nullity are misconceived, legally untenable, and amount to a collateral attack on a valid and subsisting judgment of a court of competent jurisdiction.
- e. That all matters touching on the existence, capacity, locus standi, and authority of the Respondent to institute and prosecute the Appeal were within the knowledge of the Applicants during the pendency of the Appeal, and the Applicants are estopped from re-introducing the same under the guise of a post-judgment application.
- f. That even if, which is expressly denied, the Applicants' assertion that the Appellant was non-existent were to be accepted, it would logically follow that there would be no legal entity against whom the Applicants could lawfully execute the judgment, rendering the reliefs sought internally inconsistent and untenable in law.
- g. That the Certificates of Service have already been issued and placed on record, and no substantive issue remains pending before the Court in that regard capable of grounding the far-reaching orders now sought.

- h. That the Applicants' allegation that Counsel lacked authority to swear affidavits is legally unsustainable, as it is settled law that an advocate may properly swear an affidavit on behalf of a client in respect of non-contentious, procedural or formal matters, and matters within counsel's personal knowledge arising from conduct of the proceedings, and such affidavits do not render the proceedings incompetent.
- i. That the only outstanding issue, if any, relates solely to costs, which costs must be dealt with strictly in accordance with the Decree issued pursuant to the Judgment of 5th February 2025 and through the statutory process of taxation, if not agreed upon by the parties.
- j. That the Applicants' attempt to re-litigate factual disputes, seek production of evidence, and mount allegations of fraud, perjury, or abuse of process after delivery of final judgment is an abuse of the court process, calculated to delay final settlement and undermine the authority of the Court.
- k. That allegations of fraud, illegality, or misconduct if at all require strict pleading, proof, and invocation of proper jurisdiction, none of which has been satisfied.
- l. That the Application offends the principles of certainty, finality, and orderly administration of justice, and if allowed, would set a dangerous precedent by permitting endless post- judgment litigation.
- m. That the Application is frivolous, vexatious, misconceived, incompetent, and an abuse of the process of this Honourable Court, and ought to be dismissed with costs.

Decision

6. The applicant further filed written submissions. The respondent relied on the grounds of opposition. The issue for determination is whether the application is merited.

7. It is trite that litigation must come to an end. The court is functus officio on any issue in the application which relates to the merit of the Judgment, namely –‘In the upshot, the appeal is held merited for the foregoing reasons. The judgment of the lower court is set aside and substituted as follows:-

Judgment is entered for the claimant for payment of terminal dues as per the tabulations before the trial court by the Appellant and the 2nd respondent jointly and severally :-

Mirima Tungani gross pay of Kshs. 60,091 with interest at court rates from the date of the judgment of the lower court,

Eunice Khayesi Gross pay at Kshs. 88,572 with interest at court rates from the date of judgment,

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Costs of the suit.

The amounts above to be tabulated and Decree drawn for payment under the decretal sum held by the advocates in joint account within 30 days of judgment.

Each party to bear own costs in the appeal.’’

8. The court found its ruling of 20th June 2025 was with finality on all issues under the said application as follows-‘The court declares that it is now functus officio on the validity of the appeal. The applicants ought to move the higher court if they are not satisfied with the

decision. The court found difficult in understanding the orders sought by the applicant. The order for deposit of the decretal sum held by Gikera & Vadgama Advocates to pay the decretal sum in the appeal judgment of 5th February 2025; deposit balance of the amount held by the advocates with the court related to execution. The deposit was security for performing the judgment. The law firm of Gikera & Vadgama stated that the applicant's former advocates Messers Lemmy Regau Advocates, co-signatories to the account have refused to sign the necessary release forms due to outstanding legal fees owed to them by the applicants. The Court's position is that the money deposited in joint account was not the property of the advocates. It was security for both decree amount and costs. The court in the judgment made the following order :- 'The amounts above to be tabulated and Decree drawn for payment under the decretal sum held by the advocates in joint account within 30 days of judgment.' The court determined all issues with finality and on non-compliance with court orders, the court ought to be moved accordingly for enforcement. The instant application is held to be bad and an abuse of court process and is dismissed. For non-compliance with the judgment of the court, the respondent does not deserve costs. The application is dismissed with no order as to costs.' The application was by the applicant.

9. Further the court on the 21st July 2025 following an application by Tungani, the Applicant, on behalf of all the applicants ordered as follows-
 - a. The decretal sum with accrued interests of 28 months be released from the joint account by Gikera & Vadgama advocates in 14 days and paid to the mobile MPESA numbers to be provided by Tungani, the applicant, in the course of the day.

- b. The costs be held in the joint account as security for costs for Lemmy Regan Advocates.
- c. The certificate of service be issued in the name of the employer under section 51 of the Employment Act.
- d. No further application in the matter without the leave of the court.
- e. Mention on 22nd September 2025 to confirm compliance and close file .’’

10. The applicant further filed the instant application dated 27th November 2025. I have considered the application and the grounds of opposition. The court finds that it has, in past decisions as stated above, addressed the merits of the appeal and the response with finality, and that it is functus officio on all issues save for costs. Any attempt to address the issues raised, save for the costs settlement, amounts to res judicata and sitting as an appellate court in its decisions. The court was satisfied that the certificates of service issued to the applicants complied with section 51 of the Employment Act, as they indicated the employer, job held, and period of service. Section 51 of the Employment Act provides the certificate of service to contain the following particulars- ‘(2) A certificate of service issued under subsection (1) shall contain—

- (a) the name of the employer and his postal address;
- (b) the name of the employee;
- (c) the date when employment of the employee commenced;
- (d) the nature and usual place of employment of the employee;
- (e) the date when the employment of the employee ceased; and

(f) such other particulars as may be prescribed.’’ The court considered the certificates of service issued to the applicants and found that they met the conditions under section 51 of the Employment Act (page 20 of the application).

10. The court has found merit on the order of costs only. The applicant has sought the following order on costs- ‘This Honourable Court be pleased to order the Advocates to forthwith release the decretal sum presently held as security for payment of the legal fees of Lemmy Regau & Co. Advocates, and to remit to the Applicants the excess amount-being Kshs. 32,325.00 as at 19th January 2026 in compliance with this Honourable Court's oral order delivered on 21st July 2025.’

The advocate client's bill of costs was taxed at Kshs. 117,525 on the 7th November 2025 by Hon Naiduya. (page 40 of the application) The applicant, in paragraphs 9 and 10 of her affidavit in support of the application, justified the order sought on the basis of costs. In response, this was not denied. I allow the prayer and Order that the Respondent’s Advocates (Gikera and Vadgama advocates) to forthwith release the monies presently held as security for payment of the legal fees of Lemmy Regau & Co. Advocates to the said law firm, and to remit the excess amount, being Kshs32,325.00 as at 19th January 2026 to the applicants in compliance with this Honourable Court's order of 21st July 2025. The money will be released to Tungani's mobile number on behalf of the applicants within 15 days. This is the court's final decision as far as this dispute is concerned. I make no order as to costs. The file is marked as closed.

11. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF
MARCH 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Applicant – Ms. Tugani Applicant

appellant/Respondent- Ms. Mpano Advocate