



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

CAUSE NO. E077 OF 2025

JAMES ANG'AWA

OKEYO.....**CLAIMANT**

VERSUS

GREEN WELLS ENERGIES LIMITED.....

.....**RESPONDENT**

RULING

1. By an application dated 28th January 2026, the Respondent seeks to set aside the *ex parte* proceedings and/or orders issued by this Court on 26th January 2026, and for the suit to

be set down for hearing on its merits. It also prays for costs to be provided for.

2. The application is supported by the affidavits of Ms. Jael Akinyi Onyango and Mr. Jude Ragot, both counsel from the firm of Owiti, Otieno & Ragot Advocates, which is on record for the Respondent. In summary, it is deposed that, owing to inadvertence, counsel Ms. Jael Akinyi, who attended court on 19th November 2025 when the hearing date of 26th January 2026 was taken, failed to inform Mr. Jude Ragot, who had personal conduct of the matter, of the said development. As a result, Counsel did not attend court on 26th January 2026. It is further deposed that Ms. Onyango did not forward the file to him. Additionally, it is explained that for the better part of November and December 2025, Mr. Ragot was engaged in processing travel documents and subsequently travelled to the United Kingdom, only resuming duty on 12th January 2026. Upon resumption, he became preoccupied with other matters. Counsel state that they only became aware that the matter had proceeded for hearing in their absence on 26th January 2026 upon receiving an email from the Claimant on 27th January 2026.

3. On the basis of the foregoing explanation, which they contend demonstrates inadvertence rather than deliberate default, the Respondent urges the Court to allow the application in the interests of justice. They further contend that the mistake of counsel ought not to be visited upon an innocent litigant.
4. The Claimant opposes the application through a replying affidavit and a Preliminary Objection, both dated 6th February 2026. He contends that the Respondent's Counsel's internal administrative lapses should not be visited upon him. According to the Claimant, Counsel for the Respondent was aware of the hearing date, and the Court, having satisfied itself of proper notice, rightly proceeded with the hearing. He therefore asserts that the Respondent has failed to meet the threshold for setting aside *ex parte* proceedings, having not demonstrated excusable mistake, sufficient cause, procedural injustice, or any violation of the rules of natural justice. Consequently, he urges the Court to dismiss the application as an abuse of the court process and a tactic intended to delay the course of justice. He further asserts

that allowing the application would occasion him unnecessary costs, undermine the principle of finality in litigation, and offend the rules of natural justice.

5. Although the Court directed parties to file written submissions, only the Respondent complied.

Respondent/Applicant's Submissions

6. The Respondent submits that it is entitled to the orders sought, reiterating that its failure to attend court on 26th January 2026 was purely inadvertent. It contends that it had previously been diligent in prosecuting the matter, including filing documents within the prescribed timelines, and that this isolated lapse should not result in the Respondent being shut out from the proceedings. The Respondent further asserts that the prompt filing of the present application, within a day of discovering the error, demonstrates its diligence and commitment to an expeditious resolution of the dispute. It invokes Articles 50(1), 47(1), 25(c), and 159(2) (d) and (e) of the Constitution to emphasize the fundamental right to a fair hearing. Reliance is also placed on the case of **Philip Chemwolo & another v Augustine Kubende**

[1986] KECA 87 (KLR), for the proposition that blunders will inevitably occur, and that such mistakes should not, absent fraud or intention to overreach, deprive a party of the opportunity to have its case determined on the merits. On that basis, the Respondent urges the Court to exercise its discretion in its favour, noting that it has a meritorious defence.

7. On the issue of costs, the Respondent submits that each party should bear their own costs. It contends that during the hearing, the Claimant relied on documents that had not been served upon it. According to the Respondent, those documents were filed long after the close of pleadings, and the Court ought to have adjourned the matter to allow for their service. The Respondent therefore maintains that allowing the *ex parte* proceedings to stand would amount to sanctioning an illegality. In the circumstances, it reiterates that this was the first instance in which it failed to act with expedition and urges the Court to allow the application.

Disposition

8. The issues for determination are whether the Respondent has laid before the Court sufficient material to permit a reopening of the case. The Counsels for the Respondent assert there was inadvertence and/or excusable mistake on their part which mistake they have owned up to and which mistake they urge should not be visited upon the innocent Respondent. They urge the application be allowed with each party bearing their costs since it is alleged the Claimant relied on documents that were filed after pleadings were closed and which in their view ought to have prompted the Court to decline to hear the Claimant on 26th January 2026.

9. The discretion to set aside is reposed in the Court and the discretion so availed to Court is wide, unfettered. The Court is permitted to exercise its discretion where an applicant shows the failure to act was unintentional. The Court notes the application herein was made promptly upon discovery a hearing had taken place. In this case, it seems there was inadvertence on the part of Ms. Jael Akinyi who failed to notify Mr. Ragot who unfortunately was preoccupied with the travel to the United Kingdom. The failure by Ms. Jael Akinyi to

notify her senior is what the Court considers to be sufficient to allow the reopening. The preoccupation with the visa to the United Kingdom if it were the sole reason advanced for the failure to attend Court would not have led to the orders being granted. It therefore was superfluous and is that leads to the conclusion that the Respondent will be mulcted in costs.

10. The Court permits a reopening of the case to permit the defence to present its case. The Respondent is to pay the Claimant thrown away costs of Kshs. 30,000/- within 7 days of the Ruling failing which the parties will be required to file final submissions. The Respondent will have to demonstrate payment of the sum ordered as directed by the Court when the case is mentioned on 20th April for further directions as to hearing.

It is so ordered.

Dated and delivered at Kisumu this 23rd day of March

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**