



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bahati v Akich (Commercial Case E059 of 2025) [2026] SCC 1 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] SCC 1 (KLR)

**REPUBLIC OF KENYA  
IN THE SMALL CLAIMS COURT AT VOI  
COMMERCIAL CASE E059 OF 2025  
FM MULAMA, RM  
JANUARY 21, 2026**

**BETWEEN**

**SALOME BAHATI ..... CLAIMANT**

**AND**

**LUCAS SULE AKICH ..... RESPONDENT**

**RULING**

**A. Background.**

1. The application dated 17/11/2025 prays for the following orders;
  - a. That this honourable court be pleased to set aside and/or vary the judgment of this court dated 5<sup>th</sup> November 2025 and/any other consequential orders therein pending hearing and determination of this application.
  - b. That this honourable court be pleased to strike out the claimant’s claim for being an abuse of the court process as the same does not disclose any reasonable cause of action.
  - c. That the court be at liberty to make such further and other orders that it deems fit to meet the ends of justice.
  - d. Costs of the application.
2. The application is brought under the provisions on the face of the application and based on the 11 grounds on the face of the application which can easily be condensed into 3 grounds to wit that the applicant admits that he owed the claimant some amount and as a result he had been sued in Voi SCCOMM No. E034 of 2025 however, the same was withdrawn after it was settled. Secondly that after the withdrawal parties fell apart and there after the claimant in bad faith filed this claim where default judgment was entered in her favour without the respondent being heard and lastly that on the hearing date the respondent logged in online however due to unavoidable circumstances he left the platform after he rendered his notice of unavailability and unattendance through the chat box.



3. The application is opposed by a replying affidavit of Salome Bahati; the claimant. She avers and rightly so that the judgement that was entered by this court was a judgment on admission and not a default judgment. She further asserts that the said judgment can only be set aside on the same grounds as would justify the setting aside of a contract which is not the case herein. She placed reliance on the case of *KCB vs Benjob Amalgamated & another* CA No. 276 of 1997.
4. She further avers that this court can only review its decision on account of new and important matter or evidence which could not be produced in time when the decree was passed, mistake or an error apparent on the face of the record and for any other sufficient reason and lastly that the mere stating that Voi SCCOMM No. E034 of 2025 between the parties hitherto having been withdrawn is not sufficient reason to invalidate, set aside and/or vary a judgment on admission.
5. I have considered the averments in the application, supporting affidavit, replying affidavit and the supplementary affidavits as well as submissions filed herein.

#### **B. Issues for Determination.**

6. The following issues commend themselves for determination by this court.
  - a. Whether the applicant has satisfied the conditions for setting aside a judgment on admission.
  - b. Whether the claim can be struck out for being an abuse of the process of court as the same does not disclose any reasonable cause of action.
  - c. Who bears costs of the application.

#### **C. Analysis and Determination.**

##### **Whether the Applicant Has Satisfied the Conditions for Setting Aside a Judgment on Admission.**

7. I wish to point out that from the outset the following facts can be deduced from the record. First, at no point in the proceedings did the court ever enter a default judgment. To the contrary a judgment on admission was entered on 5/11/2025 and secondly, at no point on the said 5/11/2025 did the respondent appear in court whether in person or virtually and furthermore never engaged this court in the chat function of the Microsoft teams communicating his absence and/indisposition. The record also shows that the matter was called during call over and the respondent was absent despite the said date being taken with his consent and was placed aside for hearing at noon. The matter was reached at 1341 hours when judgment on admission was entered after the claimant informed the court that the claim was admitted.
8. Dealing now with the issue (a) as to Whether the Applicant has Satisfied the Conditions for Setting Aside a Judgment on Admission, I agree with the claimant that the grounds for setting aside a judgment on admission or a consent judgment are the same as those that would justify the setting aside of a contract see the case of *KCB vs Benjob Amalgamated & another* CA No. 276 of 1997.
9. the applicant has not even by way of rumours attempted to allude to any of those grounds in this case. In my view the applicant went on a frolic of his own addressing issues that although relevant to this matter but not addressing the test set by the practice of law in setting aside the judgment.
10. What I gather to be the main the issue in contention is regularity or otherwise of the judgment on admission that was entered for 2 reasons that the claim had been withdrawn earlier vide Voi SCCOMM No. E034 of 2025 on account that the same was settled and secondly that he was not present hence condemned unheard.



11. As to whether the claim has been settled vide Voi SCCOMM No. E034 of 2025, it is clear and not in dispute that the said claim was withdrawn on account that it had been settled as per the notice of withdrawal dated 17/6/2025. the applicant now seeks to rely on this statement in his favour to indicate that the claim was indeed settled. He does not in real sense show proof of how the same is settled. Subsequently this claim is filed and interestingly, he files a response denying the claim stating that when the claim was first filed presumably vide Voi SCCOMM No. E034 of 2025 they agreed to settle the matter out of court and which he paid the whole money in cash.
12. Vide another response titled “Response To Salome Mutuku’s Claim Attached” the respondent states as follows in the 1<sup>st</sup> and last paragraphs respectively;

“I would wish to begin by declaring that I accept fully her claim of Kshs 200,000, less one moth premium of Kshs 20,000...

Finally, I put it to the court that I did not refuse to pay Salome her money to warrant this court case. Our sexual relationship dishonored the agreement on a mutual understanding. However, since we are no longer in a relationship, I commit to continue paying her the money on a monthly basis without failure, or pay her the full balance in case I get that amount of money at once. I am ready to do all that it takes to pay her the money, even if I’ll have to surrender my property to be held in trust by the court until I finish paying her the money.

I beg for your mercy, the Honorable Judge.

Yours sincerely,

Lucas Akich.”

13. From the foregoing it is thus clear to me that the respondent admitted the claim and it is what informed the claimant in my view to inform the court that the claim had been admitted and referred the court to the said document and judgment on admission was entered.
14. With that in my mind, I do not think neither the court nor the claimant can be faltered for taking the decision it took. Furthermore, no explanation of any sought has been given in the application and/ or the supplementary affidavit despite the issue of the admission being conspicuous in the response to the application. No contrary view has been expressed as to how the same was obtained instead the applicant directed all his energies to a default judgment that was never entered in this matter.
15. Flowing from the analysis above, it is clear in my mind that that the applicant has not demonstrated to this court any proof of any condition for setting aside a judgment on admission to wit either fraud, misrepresentation, mistake or undue influence or duress.
16. Courts have further held that courts will only allow an application for setting aside judgment on admission if the admission by the respondent is not clear, equivocal and ambiguous. See the case of *Cassam vs Sachania* [1982] KLR 191. A look at the extracted portion of the response/statement the admission is in my view clear, unequivocal and unambiguous.
17. Having found that the admission was clear, unequivocal and unambiguous and that there being no grounds of either fraud, misrepresentation, mistake or undue influence or duress it is the finding of the court that the conditions for setting aside a judgment on admission have not been proved and/or demonstrated to the satisfaction of this court and hence no reason to disturb the said judgment on admission that was entered on 5/11/2025.



18. If for any other reason however, I was to agree with the respondent that he paid the amount in full and none is owing, the same way he attached the mpesa statement of Kshs. 20,000/= he should have attached evidence of payment of the balance that the claimant is claiming.

**Whether the Claim Can Be Struck Out for Being an Abuse of the Process of Court as the Same Does Not Disclose Any Reasonable Cause of Action**

19. As to whether the claim should be struck out for being an abuse of the process of court as the same does not disclose a reasonable cause of action, it would be a sad day in the history of litigation if this court were to strike out a claim for the said reason when the claim by the applicant is that the claim was paid in full yet he has not attached any such proof and seeks to rely on a notice of withdrawal in another matter although involving the same parties. It is trite that he who alleges must prove. He alleges to have cleared the debt, he ought to have demonstrated by evidence so that the court is in a position to find out whether there is a cause of action or not. This is not the case herein. I therefore decline the invitation to strike out the claim on that basis.

**Who Bears Costs of the Application.**

20. Costs follow events. The application is opposed and since the same is destined for dismissal, it is clear that it was defended effectively and as such the claimant is awarded costs of the application which shall be assessed by this court in the concluding paragraphs of this ruling.

**D. Dispositon**

21. The application dated 17/11/2025 is wholly without merit and it is consequently dismissed with costs to the claimant.
22. The costs are hereby assessed at Kshs. 3,500/=
23. It is so ordered.

**DATED, DELIVERED AND SIGNED AT VOI LAW COURTS THIS 21<sup>st</sup> DAY OF JANUARY, 2026.**

**F. M. MULAMA**

**ADJUDICATOR/RM**

In the presence of:

Court Assistant: - Daniel Damise.

Mwazighe for Applicant.

Machora for the for claimant

