

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

CAUSE NO. E165 OF 2021

(Before Hon. Lady Justice Agnes Kitiku Nzei)

ZAKAYO ROTIKENCLAIMANT

VERSUS

**HON. LEDAMA OLE KINA SENATOR,
NAROK COUNTY.....RESPONDENT**

AND

BETABASE AUCTIONEERSINTERESTED PARTY

RULING

1. According to the Court's record herein, the Court (**Dr. Jacob Gakeri, J**) delivered an ex-parte Judgment on **26th September, 2023** in the following terms:-

“59. In the upshot, Judgment is entered for the Claimant against the Respondent in the following terms:-

- (a) **Salary arrears Kshs.90,389.70.**

(b) Gratuity computed at 31% of the actual amount paid to the Claimant for the duration served.

(c) Equivalent of 2 months salary, Kshs.80,946/=.

(d) Costs of this suit.

(e) Interest at Court rates from the date hereof till payment in full”.

2. The Court observed as follows in the said ex-parte Judgment:-

“4. Despite service of the suit and notices by the Claimant’s Counsel as evidenced by the Affidavits of Service on record dated 10th September 2021, 13th September 2021, 9th November 2021, 1st December 2021, 9th December 2021 and 21st January, 2022, the Respondent neither filed a response nor participate in the proceedings in any way”.

3. The Court’s record further shows that costs of the suit, awarded to the Claimant in the said Judgment, were

subsequently taxed at **Kshs.162,214.67** vide the Taxing Officer's Ruling delivered on **29th October, 2024**. Execution Proceedings are shown to have subsequently issued pursuant to the Claimant's application in that regard.

4. It was upon proclamation of the Respondent/Applicant's movable properties in execution of the Court's decree herein that the Respondent filed the present application, **dated 18th December, 2025**, and sought the following Orders:-

(a) That the application be certified as extremely urgent and be heard ex-parte in the first instance, with service thereof being dispensed with due to the compelling and urgent nature of the reliefs sought.

*(b) That pending inter-partes hearing and determination of the application, the Court be pleased to order a stay of execution of the decree issued on **20th November, 2025** and all consequential orders thereto.*

*(c) That the Court be pleased to set aside the Judgment delivered on **26th September, 2023** and all consequential proceedings thereto, and*

*[to] grant the Respondent **leave to appeal therein out of time.***

- (d) That Parliamentary Service Commission be enjoined in this suit.*
- (e) That the Court makes such further or other relief as it may deem just and expedient.*
- (f) That costs of the application be provided for.*

5. The application sets out on its face the grounds on which it is brought, which grounds are substantially replicated in the affidavit of **Hon. Ledama Ole Kina** sworn on 15th December, 2025 in support of the application. It is deponed in the said supporting affidavit:-

*(a) that on 26th September, 2023, the Court delivered a judgment for a total of **Kshs.983,186.66**; and that the Respondent/Applicant was on 26th November, 2025 served with a proclamation of attachment by Betabase Auctioneers.*

(b) that the proclamation is in respect of the Respondent/Applicant's Personal Property; and that the Applicant is at risk of imminent loss of property through public auction.

- (c) that upon hearing of the Judgment and subsequent execution process, the Applicant approached the Parliamentary Service Commission (PSC) through the Clerk of the Senate, by formal written request, to assume legal responsibility for the matter herein.
- (d) that the PSC has a constitutional and statutory mandate under Article 127(6) of the Constitution of Kenya to provide services and facilities to enable Members of Parliament to perform their legislative, representation and oversight functions.
- (e) that in accordance with its mandate and practice, **the PSC has established the Narok Senate County Office,** and established such establishments across all counties, facilitated through an operations budget for office administration, staff salaries and procurement of goods and services necessary for legislative work.
- (f) that the acts forming the subject matter of claim herein arose in the ordinary course of official operations of the **Narok Senate County Office,**

undertaken within the constitutional framework established by PSC.

*(g) that there are serious and triable issues of law and fact in the case herein, particularly regarding the property **(sic)** to be sued, and the capacity in which the claim ought to be determined.*

6. The application is opposed by the Claimant/Respondent vide a statement of grounds of opposition dated 6th February, 2026, on grounds:-

(a) That the application is misconceived, incompetent and an abuse of the Court process, bad in law, frivolous and vexatious.

(b) That the application does not disclose justification for inordinate delay of three years after delivery of Judgment herein.

(c) The application is brought under no known provisions of the rules of the Employment and Labour Relations Court.

7. The application was first placed before me under a certificate of urgency on **19th January, 2026**, and I issued

an interim order staying execution of the Court's decree herein pending hearing and determination of the application.

Prayers (a) and (b) in the application are thus spent.

8. Parties have filed written submissions on the application pursuant to the court's directions in that regard.
9. Having considered the application, the affidavit sworn in support of the same and the grounds mounted by the Claimant/Respondent in opposition of the application, the sole issue falling for determination is **whether the orders/reliefs sought by the Respondent/Applicant in prayers (c) and (d) in the application are capable of being granted.**
10. It is to be noted that service of summons and pleadings filed herein is **not** denied by the Respondent/Applicant. Indeed, no reason is given as to **why** the Respondent did **not** enter appearance in the suit, did not defend the suit, and did not participate in the Court proceedings herein.

11. The Court's record shows that the suit herein was on **23rd February, 2021** instituted against the Respondent/Applicant, **Hon. Ledama Ole Kina**, vide a Memorandum of Claim dated 17th February, 2021. The Parliamentary Service Commission is **not** shown to be, or to have been a party to the suit as on **26th September, 2023** when the Court's Judgment/decree was passed against the Respondent/Applicant, **Hon. Ledama Ole Kina**. The issue of **liability** regarding the cause of action herein stands determined by the Court against the **sole** Defendant (Respondent) herein (**Hon. Ledama Ole Kina**); and the reliefs sought against the said Respondent (Applicant) in favour of the Claimant/Respondent granted. The Parliamentary Service Commission is **not**, and has never been a party to the suit herein.

12. The Respondent/Applicant's prayer **"to set aside the Judgment delivered on 26th September, 2023 and all consequential proceedings thereto and to grant the Respondent leave to appeal out of time"** is clearly a strange prayer that cannot be granted by a Court of law. A party cannot **"appeal"** against a Judgment that is set aside.

The Respondent/Applicant has not sought leave to defend the suit out of time **if** the Judgment herein is set aside, and has **not** given any reason and/or shown any reasonable cause as to why he did **not** defend the suit.

13. Parties are always bound by their pleadings as presented by them to a Court of law. It was stated as follows in the case of **Daniel Otieno Migore - vs - South Nyanza Sugar Company Limited [2018] eKLR:-**

“It is now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded.

That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral Commission & Another - vs - Stephen Mutinda Mule & 3 Others [2014] eKLR, which

cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji [NIG] - vs - Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance of pleadings:-

“. . . it is now a trite principle in law that parties are bound by their own pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded . . .”

14. The prayer for enjoinder of the Parliamentary Service Commission to the suit herein is, also, **not** capable of being granted; **as the Court's Judgment delivered on 26th September, 2023 is still in place**, and has not been set aside. As already stated in this Ruling, the Respondent/Applicant has **not** given/demonstrated any good/valid reason and/or shown any reasonable cause as to why the Court's Judgment should be set aside. A new party

cannot be enjoined to a determined suit; that is, to a suit wherein the rights of parties to the suit have already been determined by a Court of competent jurisdiction, and that determination has **not** been set aside as by law provided.

15. In the upshot, and having considered written submissions filed herein, I find **no** merit in the Notice of Motion dated **15th December, 2025**, and the same is hereby dismissed with costs.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS

24TH DAY OF APRIL 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. Tonge Yoya for the Claimant/Respondent

Miss Muinde for the Respondent/Applicant

No appearance for the Interested Party