

**REPUBLIC OF KENYA
IN TH EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
CAUSE NUMBER E024 OF 2025**

BETWEEN

JAMES WAIREGI WAMBUGUCLAIMANT

VERSUS

1. THE COUNTY GOVERNMENT OF NYANDARUA
2. COUNTY PUBLIC SERVICE BOARD, COUNTY GOVERNMENT OF NYANDARUA
3. COUNTY SECRETARY, COUNTY GOVERNMENT OF NYANDARUARESPONDENTS

RULING

1. Judgment was delivered in favour of the Claimant, on 19th December 2025.
2. The Respondents were ordered to reinstate the Claimant.
3. They filed an application dated 2nd January 2026, seeking orders that further proceedings are stayed; Judgment is set aside; all consequential orders are set aside; the suit is stayed pending hearing and determination of review and contempt applications in Nakuru E&LRC Miscellaneous Application E002 of 2025; Respondents are granted leave to file their Statement of Response out of time; and costs be borne by the Claimant.

4. The application is founded on the affidavit of Joseph Gatore, County Attorney Nyandarua, sworn on 2nd January 2026.
5. The Attorney explains that Judgment was made while the applications for review and contempt were pending in E&LRC Miscellaneous Application No. E002 OF 2025. The applications touch on the same parties and relate to the same subject matter. The application for review was filed before Judgment was made, and was due for determination on 27th February 2026.
6. The Claimant did not disclose the presence of the Miscellaneous Application to the Court, while prosecuting the Claim. He was in abuse of the process. His Claim is *sub judice*.
7. The Attorney states further that the Respondents were not served with the hearing notice and submissions filed by the Claimant to enable them respond. The Respondents have a good and arguable Response.
8. The Claimant opposes the application through his affidavit, sworn on 22nd June 2026. His position is that the Respondents were served with the Summons to enter appearance and the Statement of Response. They did not enter appearance or file the Statement of Response. The Respondents do not dispute their failure.

9. The Claimant states that the Miscellaneous Application was ancillary and did not bar the Claimant from prosecuting the Claim.
10. The Respondents have not suggested that failure to enter appearance and respond to the Claim, was due to inadvertence, accident or excusable mistake.
11. Judgment on record is regular and lawful, and should not be interfered with.
12. It was agreed by the Parties that the application is considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions at the last mention before the Court on 10th March 2026.

The Court Finds: -

13. There is an affidavit of service on record, sworn by Edward Maina Wachira, a licensed court process-server, sworn on 4th June 2024.
14. Wachira states that he served all the Respondents with:-
 - a. Certificate of urgency.
 - b. Notice of Motion.
 - c. Supporting Affidavit.

- d. Annexures.
 - e. Memorandum of Claim.
 - f. Verifying Affidavit.
 - g. Claimant's list of witnesses.
 - h. Witness statement of James Wairegi.
 - i. Claimant's list of documents.
15. The above documents do not include summons in form 2, as prescribed under Rule 25 of the E&LRC [Procedure] Rules, 2024.
16. There is no copy of the summons, annexed to the affidavit of service.
17. It appears that, the Claimant served his application made under certificate of urgency, with all the other pleadings, documents and witness statements, but omitted service of the summons.
18. Without proof that the Respondents received summons, the Judgment on record cannot stand.
19. All else appears to have been served by Wachira, except the summons. There was no way the Respondents could legally enter appearance and respond to the Claim, without the summons.
20. Based on the affidavit of service, the Court finds merit in the Respondents' application dated 2nd January 2026.

21. Othe arguments surrounding E&LRC Miscellaneous Application No. E002 of 2025 are peripheral to the Claim herein, and the Court would not have interfered with its Judgment based on the Miscellaneous Application, had the summons been shown to have been served in the Claim.

IT IS ORDERED: -

- a. Judgment on record is set aside.*
- b. The Respondents are granted leave of 14 days from the date of this ruling, to file and serve their Statement of Response.*
- c. Costs in the cause.*

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 30th day of April 2026.

James Rika

Judge

