

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MACHAKOS

APPEAL NUMBER E037 OF 2025

BIZROCK GROUP LIMITED.....APPELLANT

-VERSUS-

FELIX OTIENO ODHIAMBO.....RESPONDENT

*(Being an Appeal from the Ruling and Order of the Hon. B. Ojoo (CM) delivered on  
23<sup>rd</sup> June 2025 in Mavoko MCELRC No. E264 of 2025)*

CORAM

*Before Lady Justice Jemimah Keli*

*C/A Otieno*

JUDGMENT

1. The Appellant herein, being dissatisfied with the Ruling and Order of the Hon. B. Ojoo (CM) delivered on 23rd June 2025 in Mavoko MCELRC No. E264 of 2025 filed a Memorandum of Appeal dated the 7<sup>th</sup> of July 2025 seeking the following orders: -
  - a) This appeal be allowed with costs to the Appellant.
  - b) The Ruling of Hon. B. Ojoo, CM, delivered on 23th June 2025 in Mavoko MCELRC Cause No. E264 of 2024 be set aside in its entirety.

- c) The Appellant's Notice of Motion Application dated 11<sup>th</sup> March 2025 be allowed as prayed, and Mavoko MCELRC Cause No. E264 of 2024 be struck out with costs.
  
- cl) The costs of this appeal and of the proceedings in the subordinate court be borne by the Respondent.

### GROUNDS OF THE APPEAL

- 2. The Honourable Magistrate erred in law and in fact by failing to give legal effect to a valid and unambiguous discharge agreement dated 2<sup>nd</sup> October 2024, which clearly waived any further claims by the Respondent, thereby extinguishing the cause of action.
  
- 3. The Honourable Magistrate misdirected herself regarding the applicable threshold under Order 2 Rule 15(1)(a) of the Civil Procedure Rules by failing to strike out a pleading that disclosed no reasonable cause of action, despite uncontroverted documentary evidence showing that the employment dispute had been conclusively settled.
  
- 4. The Honourable Magistrate erred in law by failing to evaluate and attach legal significance to the unchallenged documentary evidence annexed to the application particularly the signed discharge agreement and cheque acknowledgment which, on their face, conclusively settled the parties' employment relationship.



ii) Compensation for unlawful/unfair termination	Kshs. 221,100.00/=
iii) 10 months' unpaid leave allowance for 2024	Kshs. 10,747.92/=
iv) Severance pay from 2020 to 2024	Kshs. 42,377.50/=
iv) Service pay from 2020 to 2024	Kshs. 42,377.50/=
Total	Kshs. 335, 027.92/=

d) Costs of this claim and interest thereto from the date of filing of the claim.

e) Any other award that the court may deem fit.

(pages 1-6 of Appellant's ROA dated 14<sup>th</sup> August 2025).

14. In support of the claim, the Respondent filed his list of witnesses dated 3<sup>rd</sup> December 2024; list of documents of even date with the bundle of documents attached; and witness statement of even date (pages 8-15 of ROA).

15. The claim was opposed by the Appellant who entered appearance on 25<sup>th</sup> February 2025 and filed an amended statement of response dated 10<sup>th</sup> March 2025 (pages 16-26 of ROA).

16. In addition to the statement of response, the Appellant filed a notice of motion application dated 11<sup>th</sup> March 2025 brought under certificate of urgency seeking the following orders:

a) Spent

b) THAT pending the hearing and determination of this application, the directions issued by court on the 5<sup>th</sup> March, 2025 be stayed and this application be listed for hearing on priority basis.

c) THAT the court be pleased to strike out the suit herein as commenced vide the Statement of Claim dated of December, 2024 by the Claimant/Respondent in its entirety with costs.

d) THAT the costs of this Application and the entire suit be borne by the Claimant/Respondent.

17. The notice of motion was supported by the Grounds therein and the affidavit of RAMJI NARAN PATEL sworn on 11<sup>th</sup> March 2025.

(pages 25-36 of ROA).

18. The gist of the Appellant's application was that the Claimant/Respondent's suit should be struck out as it did not disclose a cause of action against the Appellant/Respondent, being pegged on an issue that had been settled. They argued that the Claimant/Respondent signed a contract for termination of employment services dubbed "Clearance Form" dated 2<sup>nd</sup> October 2024 where he agreed to the termination of his services, acknowledged that the termination was just and fair and premised on gross misconduct, and stated that he had no further claims against the Appellant/Respondent upon payment of his terminal dues. The Appellant confirms that the Claimant/Respondent was paid his terminal dues of Kshs. 9,300/- vide cheque number 000961 and acknowledged receipt thereof.

19. In opposition to the application, the Claimant/Respondent filed a replying affidavit sworn on 25<sup>th</sup> April 2025 (pages 53-56 of ROA). While the Claimant/Respondent conceded that he executed the Clearance Form, he stated that he did so under economic duress since the

Appellant/Respondent was holding his terminal dues at the time, and he had no other source of income. The Claimant/Respondent argued that the discharge agreement (Clearance Form) lacks validity and did not extinguish his statutory claims under the Employment Act. The Claimant/Respondent insisted that his termination from employment vide a termination letter dated 1<sup>st</sup> October 2024 was procedurally unfair.

20. To counter the Claimant/Respondent's arguments, the Appellant filed a further affidavit sworn on 9<sup>th</sup> May 2025 (pages 62-69 of ROA).
21. The court gave directions for the application to be disposed of by way of written submissions and both parties complied (pages 40-52; 58-61 and 70-76 of ROA).
22. The Trial Magistrate Court delivered its ruling on the 23<sup>rd</sup> of June 2025 dismissing the Appellant's Notice of Motion dated 11<sup>th</sup> March 2025 on the premises that the Claimant/Respondent's replying affidavit and statement of claim raised triable issues that require canvassing at full trial. She therefore determined that the suit should be heard on its merits (ruling at pages 77-79 of ROA).

#### DETERMINATION

23. The appeal was canvassed by way of written submissions. Both parties complied.

#### Issues for determination

24. The Appellant, in their submissions dated 2<sup>nd</sup> February 2026 filed before this court identified the following issues for determination:
- i. Whether the discharge contract dated 2<sup>nd</sup> October 2024 clearly waived any further claims by the Respondent as against the Appellant, thereby extinguishing the cause of action.
  - ii. Whether the trial court properly applied the provisions of Order 2 Rule 15 of the Civil Procedure Rules in dismissing the Appellant's Application dated 11<sup>th</sup> March, 2025.
  - iii. Whether the Trial Court failed to appreciate and be bound by the law of precedence in rendering its decision.
25. On his part, the Respondent identified the following issues for determination in his submissions dated 27<sup>th</sup> February 2026:
- i. Whether the lower court erred in law and fact by finding that the statement of claim discloses triable issues and refusing to strike it out under Order 2 Rule 15 of the Civil Procedure Rules, 2010.
  - ii. Whether the purported discharge agreement dated 2<sup>nd</sup> October 2024 extinguishes the cause of action or bars the suit at the interlocutory stage.
  - iii. Whether the lower court failed to be bound by the decision in *Coastal Bottlers Ltd v Kimathi Mithika* [2018] eKLR or otherwise misapplied the law of precedent.
  - iv. Whether public policy, constitutional principles under Articles 41 and 159(2)(b) of the Constitution, and the doctrine of approbation and reprobation render the appeal unsustainable.
26. The court discerned from the appeal that the issue was whether there was a cause of action taking into account the discharge thus only one issue for determination – Whether

the discharge contract dated 2<sup>nd</sup> October 2024 waived any further claims by the Respondent as against the Appellant, thereby extinguishing the cause of action.

27. The grounds of the appeal are as stated above. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. [1968] EA 123 that:- *“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”*
28. The impugned ruling arose from the application of the appellant by way of Notice of Motion seeking for the suit to be struck for lack of cause of action on account of discharge agreement.
29. The appellant submitted that the discharge contract dated 2 October 2024 clearly waived any further claims by the Respondent as against the Appellant, thereby extinguishing the cause of action. That it is not in dispute that the Appellant and the Respondent herein entered into a valid discharge contract dated 2<sup>nd</sup> October, 2024, through which the Respondent waived and relinquished any claims against the Appellant concerning any

disputes revolving around their employment contract. For avoidance of doubt, the Respondent unequivocally stated as follows in the discharge contract: "I Felix Otieno Odhiambo of ID No. 33845280 hereby wish to confirm that I have been paid all my dues including; leave and service, current salary, notice, all overtimes, damages and am fully contented. I suffered no injuries during my time at Bizrock G. Ltd. I fully agree to the termination of my employment as just and fair to both me and my employer as per my contract pinned to gross misconduct. Breaking Barriers, Establishing Justice I have no other claims whatsoever to be launched against Bizrock G. Ltd, its directors and the whole management." That the Respondent received all his dues. The Respondent did not sustain any injuries during the period of his employment with the Appellant. The termination of the employment contract between the Respondent and the Appellant was just and fair. The Respondent undertook not to launch any further claims against the Appellant, its directors and the whole management. The discharge contract was duly signed by the Respondent herein, signifying his intention to be bound by the contents thereof. Despite the above uncontested facts, the Trial Magistrate in his Ruling dated 23d June, 2025 failed to enforce this contract and held as follows at paragraph 7 thereof: "Applying the above propositions in this case, the court finds that although the Respondent's application is intended to ensure an early resolution of the dispute between the parties, the Replying Affidavit and indeed, the Statement of Claim raises issues that require canvassing at a full trial. The Statement of Claim contests the basis of the nature and character of the separation process applied by the Respondent (employer). The applicant's contention that there exists a valid discharge contract dated 02.10.2024 in which the Claimant has relinquished any further claims against the Respondent is vehemently denied." The appellant contended that the trial court held as such, yet a

reading of the whole Ruling dated 23d June, 2025 does not in any section portray the court's analysis of the validity of the discharge contract dated 2<sup>nd</sup> October, 2024. Undoubtedly, the main issue that ought to have been addressed by the Trial Court was the issue of validity and applicability of the contract in dispute. The trial court, instead, only addressed the issue of striking out of pleadings under Order 2 Rule 15 of the Civil Procedure Rules, pursuant to which it failed to give effect to the intention of the parties herein. Noteworthy, the court disregarded the key fact that the Respondent acknowledged having freely signed the discharge contract dated 2nd October, 2024, signifying his intention to be bound by the terms thereof. In *Thara & Another v Actae Development Limited & Another* (Environment & Land Case 196 of 2015) [2022] KEELC 3382 (KLR) (26 July 2022 (Judgment)), the court held that parties to a contract in which they have voluntarily entered, are bound by its terms and conditions. The Respondent herein, being a signatory to the discharge contract dated 2td October, 2024, and having voluntarily executed the same, is bound by its terms, which include waiving any claims against the Appellant herein regarding their employment relationship and acknowledging receipt of all the employment dues in that respect. As such, filing a suit when there is a valid contract ousting such is contrary to the express of intention of the parties to the said contract. In *National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd & another* (2001) eKLR, the court held thus; "A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge. As was stated by Shah JA in the case of *Fina Bank Limited vs Spares & Industries Limited* (Civil Appeal No 51 of 2000) (unreported): "It is clear beyond peradventure that save for

those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain." (Emphasis added) The Respondent herein did not raise any allegations of coercion, fraud or undue influence leading to the signing of the discharge contract dated 2nd October, 2024. As such, it was only imperative the court enforces the intention of the parties hereto as expressed in the discharge contract. Failure by the court to enforce the intention of the parties to the discharge contract dated 2nd October without providing an analysis and reasons thereof is a clear derogation from the well settled law of contract. The issue of whether or not the Statement of Claim as filed by the Respondent raises triable issues was immaterial at that interlocutory stage. The court was only tasked to determine the validity and enforceability of the contract presented before it, which it did not. Such a misdirection deserves to be set aside in its entirety. The appellant further submitted that the trial court disregarded a binding authority of the Court of Appeal in Coastal Bottlers Limited vs Kimathi Mithika (2022) eKLR. was emphatic that once an employee voluntarily signs a discharge agreement relinquishing any further claims from their employers as regards the employment, they are barred from bringing to court such claims as the agreement stands binding and final. In so doing, the court expressed itself in paragraph 21 of its judgment as follows: "In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent's termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the respondent's part at the time he executed the same. It did not matter that

the amount thereunder would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties..’’ That the above holding of the Court of Appeal is binding to this court as well as the trial court which delivered the Ruling challenged herein. The impact of this position is that an employee who has signed a discharge contract upon termination of his employment cannot raise further claims against such an employer, as he or she is deemed to have entered into a valid contract, relinquishing his or her further claims as regards the same. In this case, the parties waive the jurisdiction of the court or any tribunal in hearing claims regarding the employment and/or its termination. The trial court in delivering its Ruling dated 26th June, 2025 disregarded this binding authority and dismissed the Appellant's application without giving any reasons whatsoever. For avoidance of doubt, the trial court did not at any point in its Ruling mention and/or appreciate the judgment of the Court of Appeal as cited by the Appellant. This is contrary to the law of judicial precedence, which requires all courts below the Court of Appeal to be bound by its decisions.

28. Conversely, the respondent submitted that the cornerstone of the Appellant’s Appeal is the assertion that the discharge agreement is conclusive and binding, thereby ousting any cause of action. That the argument is legally unsustainable and flies in the face of the evidence on record. In his Replying Affidavit dated 25th April 2025 (paras 4(a)–(d)), the Respondent deposed on oath: a) the agreement was signed under economic duress the Appellant withheld terminal dues, leaving him financially and emotionally distressed with no alternative means of livelihood; b) he was compelled to sign to receive even the meagre final salary; and c) the agreement is vitiated and cannot extinguish statutory rights. Compounding the duress is the direct contradiction between the discharge

agreement (which alleges “gross misconduct”) and the Appellant’s own termination letter dated 1st October 2024 (FOO-1), which cites retrenchment due to lack of work. This inconsistency raises a live triable issue on the true reason for termination and the reliability of the discharge document. That even assuming that the agreement appears regular on its face, Section 3(6) of the Employment Act, 2007 renders any agreement purporting to waive the Act’s protections null and void. A discharge agreement cannot absolve an employer from liability for unfair termination or preclude the court from inquiring into fairness as was held in the seminal case of *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR. The lower court rightly declined to determine these disputed questions of fact and law on affidavit evidence alone. To have done otherwise would have been to conduct a mini-trial at the interlocutory stage precisely what Order 2 Rule 15 prohibits. On whether the lower court failed to be bound by the decision in *Coastal Bottlers Ltd v Kimathi Mithika* [2018] eKLR or otherwise misapplied the law of precedent. This is a mis-characterisation of both the law and the facts. In *Coastal Bottlers*, the Court of Appeal held a discharge agreement binding because: (i) there was no allegation or evidence of duress or coercion; (ii) the employee did not dispute signing or the agreement’s import; and (iii) no separate procedural unfairness in the underlying termination was pleaded. The court emphasised the absence of vitiating factors. The present case is materially distinguishable on every point: explicit sworn evidence of economic duress, a contradictory termination letter, and detailed pleadings of breaches of Section 40 retrenchment procedure. The learned trial Magistrate was therefore neither required nor permitted to apply *Coastal Bottlers* mechanically to facts that bear no resemblance to it.

### Decision

30. The application before the lower court leading to the impugned ruling was hinged under Order 2 rule 15 of the Civil Procedure Rules to wit-‘15. Striking out pleadings [Order 2, rule 15]

(1)At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—(a)it discloses no reasonable cause of action or defence in law; or(b)it is scandalous, frivolous or vexatious; or(c)it may prejudice, embarrass or delay the fair trial of the action; or(d)it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.(2)No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.’

31. The application sought to strike out the suit on the grounds that the termination was vide effluxion of time, and secondly, the parties had signed a contract of discharge on termination. The existence of the discharge was not in dispute. The discharge was titled ‘clearance form’ dated 2<sup>nd</sup> October 2024 and was produced before the court (page 35 of ROA) and stated as follows- ‘*Ref: CLEARANCE FORM*

*I FELIX OTIENO ODHIAMBO... of ID No 33.845280 hereby wish to confirm that I have been paid ALL, my dues including; leave and service, current salary, notice, ALL overtimes, damages and am fully contented. I suffered no injuries during my time at Bizrock G. Ltd.*

*I fully agree to the termination of my employment as just and fair to both me and my employer as per my contract pinned to gross misconduct.*

*I have no other claims whatsoever to be launched against Bizrock G. Ltd, its directors and the whole management.”* The letter of termination dated 1<sup>st</sup> October 2024 was also produced to effect that the termination was due to reduced work.(page 14 of ROA).

32. The appellant accused the trial court of failure to apply the decision they relied on in their application. I proceed to consider and apply the decision. The Court of Appeal in Coastal Bottlers Ltd v Mithika [2018] KECA 523 (KLR) considered the consequence of a discharge as follows- ‘17. *Firstly, the competency of the suit was attacked on the basis of the settlement agreement which the appellant believed took away the respondent’s right to make further claims. While considering the said agreement, we bear in mind that employment contracts are governed by the general law of contracts. This much was restated by this Court in Krystalline Salt Limited vs. Kwekwe Mwakele & 67 others [2017] :-*

*“... it is important to bear in mind that in Kenya, employment is governed by the general law of contract as much as by the principles of common law now enacted and regulated by the Employment Act and other related statutes. In that sense employment is seen as an individual relationship negotiated between the employee and the employer according to their needs.” [Emphasis added]*18. *Whether or not a settlement agreement or a discharge voucher bars a party thereto from making further claims depends on the circumstances of each case. A court faced with such an issue, in our view, should address its mind firstly, on the import of such a discharge/agreement; and secondly, whether the same was voluntarily executed by the concerned parties.*19. *As such, we respectfully disagree with the submissions made on behalf of the respondent to the effect that this Court in the Thomas De La Rue Case found such agreements could not bar further claims. Our understanding*

of that decision is that the Court simply stated that the answer lay with the facts of each case. In its own words, this Court in the aforementioned case expressed: “We would agree with the trial court that a discharge voucher per se cannot absolve an employer from statutory obligation and that it cannot preclude the Industrial Court from enquiring into the fairness of a termination. That is however, as far as we are prepared to go. The court has, in each and every case, to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed when the employee was seized of all the relevant information and knowledge.” [Emphasis added]<sup>20</sup>. Apart from tabulating the respondent’s entitlement, the settlement agreement also read in part: “I Kimathi Mithika of ID No... certify having received the sum of Kenya Shillings one million five Hundred Sixteen Thousand, Two Hundred and Eighty One (Kshs. 1,516,281) being my full and final payment due to me from Coastal Bottlers Limited as follows:...

I confirm that, I have no further claim against the Company whatsoever.”<sup>21</sup>. In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent’s termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the respondent’s part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties. In Trinity Prime Investment Limited vs. Lion of Kenya Insurance Company Limited [2015] eKLR this Court, while discussing the import of a discharge voucher which is more or less similar as the agreement in question observed:’ The execution of the discharge voucher, we agree with

*the learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”*<sup>22</sup>. All the ELRC was required to do was to give effect to the intention of the parties as discerned from the settlement agreement. Our position is fortified by the sentiments of Sir Charles Newbold P in Damondar Jihabhai & Co Ltd and another vs. Eustace Sisal Estates Ltd [1967] EA 153 that:-

*“The function of courts is to enforce and give effect to the intention of the parties as expressed in their agreement. In the English Court of Appeal case above - Globe Motors Inc & Others vs TRW Lucas Electric Steering Ltd & Others (supra) – Lord Justice Beatson stated as follows:-*

*'Absent statutory or common law restrictions, the general principle of the English law of contract is [that parties to a contract are free to determine for themselves what obligations they will accept]. The parties have the freedom to agree whatever terms they choose to undertake, and can do so in a document, by word of mouth, or by conduct.”*<sup>23</sup>. Giving effect to the parties’ intention meant that the ELRC could not entertain the suit filed by the respondent. This is because the respondent had waived his rights to make any further claim in relation to his relationship with the appellant.’’ The foregoing was the decision relied on by the appellant before the trial court.

33. The court finds that Section 45(3) of the Employment Act gives an unqualified statutory right to employees to challenge their termination of employment where they deem the same as unfair . It states, ' An employee who has been continuously employed by

*his employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.’*

Whereas it was not in dispute, there was a discharge signed by the employee post the termination, the discharge under the clearance form and the termination were questioned by the employee. The Court of Appeal in Mithika (above) of importance held as follows-  
*‘19. As such, we respectfully disagree with the submissions made on behalf of the respondent to the effect that this Court in the Thomas De La Rue Case found such agreements could not bar further claims. Our understanding of that decision is that the Court simply stated that the answer lay with the facts of each case. In its own words, this Court in the aforementioned case expressed:*

*“We would agree with the trial court that a discharge voucher per se cannot absolve an employer from statutory obligation and that it cannot preclude the Industrial Court from enquiring into the fairness of a termination. That is however, as far as we are prepared to go. The court has, in each and every case, to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed when the employee was seized of all the relevant information and knowledge.” [Emphasis added]”*

The Court of Appeal in Mithika applied the De La Rue case as outlined above. The court finds that the Court of Appeal in the De La Rue case acknowledged that the mere existence of discharge did not oust the statutory right of the employee to challenge the fairness of the termination. I find this is consistent with the provision of section 45(3) of the Employment Act. The trial court has to hear the dispute on the merits to determine the validity of the discharge contract and whether or not it applies to deny the claims before the court. The Court of Appeal in De La Rue case stated – *‘The court has, in each and every case, to make a determination, if the issue is raised, whether the discharge voucher was freely and*

willingly executed when the employee was seized of all the relevant information and knowledge.’

34. The Respondent in the suit before the lower court has questioned the reason of termination and the procedure followed. The clearance form containing the clause on the discharge and the termination letter stated different reasons for termination. The claimant also questioned the termination dues. The Trial Magistrate Court delivered its ruling on the 23<sup>rd</sup> of June 2025 dismissing the Appellant’s Notice of Motion dated 11<sup>th</sup> March 2025 on the premises that the Claimant/Respondent’s replying affidavit and statement of claim raised triable issues that require canvassing at full trial. The trial court therefore determined that the suit should be heard on its merits (ruling at pages 77-79 of ROA). The court finds the suit raised triable issues capable of attracting a defense, including the defense of the discharge contract. Order 2 Rule 15 of the Civil Procedure Rules could not apply for the suit to be struck out. The trial court correctly found that the suit and replying affidavit to the application raised triable issues. The issue of validity of the discharge could only be determined after hearing the evidence. The court finds no basis to interfere with the decision of the trial court.

35. The appeal is dismissed with costs to the respondent.

36. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 8<sup>TH</sup>  
DAY OF MAY, 2026.

JEMIMAH KELI

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Ms Manyara h/b Ochieng

Respondent –Langat