



Maningi & 2 others v Kwale International Sugar Co. Ltd (Cause 872 of 2017) [2026] KEELRC 1232 (KLR) (8 May 2026) (Ruling)

Neutral citation: [2026] KEELRC 1232 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 872 OF 2017**

**AK NZEI, J
MAY 8, 2026**

BETWEEN

**NAOMI SYOKAU MANINGI 1ST CLAIMANT
SELEMANI OMARI ROJOJO 2ND CLAIMANT
AMANI ABDALLA MWASUPI 3RD CLAIMANT**

AND

KWALE INTERNATIONAL SUGAR CO. LTD RESPONDENT

RULING

1. While serving at the Mombasa Employment and Labour Relations Court, I delivered a Judgment in the suit herein on 25th July, 2024. Trial had opened before Ndolo, J on 15/12/2020, and the Claimants' case had been prosecuted before her. The Respondent's case opened, and was prosecuted before me. The Court's said Judgment was thus based on the proceedings and/or evidence taken before Ndolo, J and before myself.
2. The Court observed as follows in the said Judgment:-
 - “9. Trial opened on 15/12/2020 before Ndolo, J. On the said date, the Court was informed by Counsel for the Claimants that the 1st Claimant was deceased. The 3rd Claimant testified as CW-1 . . .
 11. A person by the name Nderu Suleiman Mwangi is shown to have testified on 15/3/2021, and to have told the Court that he was testifying on behalf of the 2nd Claimant. The said person is, however, not named as a party to the suit herein, and was not listed by the Claimants as their witness. Indeed, I have not seen the said person's witness statement on record. The 2nd Claimant



never appeared in Court to testify, and his case was closed by the Court on 18/5/2023.”

3. On 25th July, 2024, I entered Judgment for the 3rd Claimant as follows:-

“28. In sum, and having considered written submissions filed on behalf of both parties, Judgment is hereby entered for the 3rd Claimant against the Respondent as follows:-

a. One month salary in lieu of notice Kshs.10,954/=.

b. Unpaid leave Kshs.11,788/=.

c. Underpayment Kshs.81,206/=.

d. Compensation for unfair termination of employment
Kshs.87,632/=.

Total = Kshs.191,580/=

29. The awarded sum shall be subject to statutory deductions pursuant to Section 49(2) of the *Employment Act*.

30. The Respondent shall issue a certificate of service to the 3rd Claimant pursuant to Section 51(1) of the *Employment Act* within 30 days of this Judgment.

31. The 3rd Claimant is awarded costs of the suit and interest on the awarded sum at Court rates. Interest shall be calculated at Court rates from the date of this Judgment.”

4. On 2nd August, 2024, Counsel for the Claimants filed a Notice of Motion dated 2/8/2024 seeking the following Orders:-

a. Spent.

b. That the Court be pleased to issue Orders for fresh typing of the handwritten proceedings for the suit (sic).

c. That the Court be pleased to review the Judgment issued on 25th July, 2024.

d. That costs be in the cause.

5. The application sets out on its face the grounds on which it is brought, and is based on the supporting affidavit of Naomi Siokau Maningi (the 1st Claimant herein) and Joan Jackline W. Munene Advocate, both sworn on 2/8/2024. It is deponed in the said supporting affidavits:-

a. that both the 1st and the 3rd Claimants appeared before the Court physically and gave evidence by adopting their written statements and giving further evidence on the suit herein.

b. that the 2nd Claimant failed to show up in Court severally on dates when he was required to do so.

c. that the 1st Claimant is alive, and had all along been in communication with the Claimants' Advocates.

d. that the 1st Claimant does not know Nderu Suleiman Mwangi shown in the Judgment as having testified in the suit herein, and that the said person was not one of the Claimants herein.



- e. that errors in the record appear to have been occasioned during the typing of proceedings, as the handwritten proceedings are correct and contain a true reflection of what transpired at all times in relation to the suit.
 - f. that the erroneous typed proceedings have prejudiced the 1st Claimant/Applicant as it resulted in declaration that the 1st Claimant's suit had abated, regardless of her being alive.
 - g. that the 1st Claimant/Applicant is willing to physically appear in person to confirm her identity; if the Court deems it fit.
 - h. that the Respondent will not be prejudiced if the application is allowed, as both parties will be accorded an opportunity to have a proper record of the proceedings, and subsequently a Judgment.
6. The Respondent opposed the application vide its grounds of opposition dated 20/10/2024, and filed its own application dated 20/9/2024 seeking review and/or variation of this Court's aforesaid Judgment on ground that in computing the awards made in favour of the 3rd Claimant, the Court relied on the Regulation of Wages (General) (Amendment) Order 2015 instead of the Regulation of Wages (Agricultural Industry) (Amendment) Order 2015.
7. The aforesaid two applications came up in Court before me on 24/9/2024, and I directed that the same be mentioned before the in-coming Judge on 14/11/2024 for directions as I was then on transfer (from Mombasa).
8. Surprisingly and despite the provisions of Rule 74(2) of the Employment and Labour Relations Court (Procedure) Rules 2024, the Court file was sent to me for hearing and determination of the said application. The said sub-rule provides as follows:-
- “(2) An application for review of a decree or order of the Court under sub-rule (1) shall be made to the Judge who passed the decree or made the order sought to be reviewed or to any other Judge if that Judge is not attached to the Court station.”
9. When the matter was first listed before me at the Employment and Labour Relations Court – Nairobi on 29/9/2025, I sought the Principal Judge's directions vide my orders of even date. Vide his orders of 28/10/2025, the Hon. Principal Judge directed that this Court determines the said two applications; and that thereafter the case file be returned to Mombasa for further proceedings in the suit. The said two applications are now before me for determination pursuant to this Court's directions given on 5/11/2025.
10. Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-
- “(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the Judgment or ruling –
- a. if there is discovery of a new and important matter or evidence which, despite exercise of due diligence, was not within the knowledge of that person or could not be produced by that



person at the time when the decree was passed or the order was made;

- b. on account of some mistake or error apparent on the face of the record;
- c. if the Judgment or ruling requires clarification; or
- d. for any other sufficient reason.”

11. The applications were argued orally before me on 9/12/2025. Counsel for parties also placed reliance on their respective written submissions earlier filed.
12. It was argued on behalf of the 1st Claimant/Applicant that the proceedings taken before Ndolo, J, as typed, contained some evidence and entries which were not in the Honourable Judge’s handwritten proceedings. That there may have been a mix-up in the proceedings at the point of typing in the Court’s typing pool whereby proceedings from another case may have found their way into the typed proceedings herein. That this Court, relying on the typed proceedings herein, made a finding that the 1st Claimant was deceased, and that her case had abated. That this was an error.
13. The Respondent did not rebut the foregoing assertion, but rather blamed the Claimants for failing to address any concerns they may have had with the typed proceedings before the Respondent’s case was taken.
14. According to the Court’s record herein, the Court made an Order on 29/11/2021 to the effect that “the Court’s proceedings so far taken be typed”. Proceedings are shown to have been typed. It is in the process of typing that a mix up in the proceedings as typed is alleged to have occurred. Typing of Court proceedings is ordinarily ordered when a Judge takes over the conduct of particular Court proceedings from another Judge who is either transferred from the Court station where the suit in issue is instituted, or for some other reason ceases to preside over the case. More often than not, typing of such Court proceedings is ordered where the Judge taking over conduct of the proceedings is unable to decipher the other Judge’s handwriting.
15. Carefulness and due diligence is required of those charged with the duty of typing Court proceedings, and both the persons charged with such duty of typing and their supervisors should always ensure that Court proceedings as typed are a true copy of the proceedings as recorded by hand. The Deputy Registrar must always certify the correctness of the typed proceedings before the file is placed before a Judge for taking of further proceedings.
16. In its aforesaid Judgment, this Court stated:-
 - “ 15. From the proceedings herein, and as already stated in this Judgment, this Court was on 15/12/2020 informed by Counsel for the Claimants that the 1st Claimant is deceased. The record does not show when the 1st Claimant died. The record is however clear that the 1st Claimant was never substituted. His claim has, therefore, since abated . . .”
17. The foregoing forms the basis of the 1st Claimant’s application dated 2/8/2024. The 1st Claimant has deponed that she is alive; and her Counsel has denied having given instructions to the effect that the 1st Claimant was deceased. It has been argued that this part of the typed proceedings, alongside the evidence of one Nderu Suleiman Mwangi, is not part of the proceedings herein as already stated in this Ruling.



18. This being the case, then the alleged mix-up at the point of typing of the Court’s proceedings amounts to an error apparent on the face of the record, and to a good reason on the basis of which this Court’s Judgment delivered on 25th July, 2024 can be reviewed and set aside.
19. It was stated as follows in the case of National Bank of Kenya Limited –vs- Ndungu Njau [1997] eKLR:-
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground of review. . . .”
20. In view of all the foregoing, and having considered written submissions filed on behalf of both parties and oral submissions made by Counsel for both parties on 29/9/2025 and 9/12/2025 respectively, I am satisfied that this Court’s Judgment delivered on 25th July, 2024 ought to be reviewed and set aside. Recomputation of the awards made in favour of the 3rd Claimant as sought by the Respondent cannot be considered, in view of the Court’s finding that the Judgment must be reviewed and set aside on account of the undisputed mix-up in the typing of the Court’s proceedings.
21. In the upshot, the applications dated 2/8/2024 and 20/9/2024 respectively succeed to the extend of review of this Court’s Judgment and are hereby allowed in the following terms:-
- a. This Court’s Judgment delivered on 25th July, 2024 is hereby reviewed, and is set aside.
 - b. The suit shall be heard a fresh, and on priority basis, at the Employment and Labour Relations Court – Mombasa.
 - c. This Court’s Deputy Registrar shall forthwith return the Court file herein to the ELRC-Mombasa.
 - d. The suit will be mentioned before the trial Judge at Mombasa on 24th June, 2026 for appropriate directions.
 - e. Each party shall bear its own costs of the applications.
22. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MAY 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:



Miss Obunde for the 1st and 3rd Claimants

No appearance for the Respondent

