



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Gilgil Telcoms Industries Limited & another v Nderitu & another
(Civil Appeal (Application) 147 of 2013 & Civil Appeal 137 of 2013
(Consolidated)) [2025] KECA 1041 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1041 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

**CIVIL APPEAL (APPLICATION) 147 OF 2013 &
CIVIL APPEAL 137 OF 2013 (CONSOLIDATED)**

MA WARSAME, JM MATIVO & PM GACHOKA, JJA

JUNE 5, 2025

BETWEEN

GILGIL TELCOMS INDUSTRIES LIMITED APPLICANT

AND

DUNCAN NDERITU 1ST RESPONDENT

TELCOM KENYA LIMITED & 55 OTHERS 2ND RESPONDENT

AS CONSOLIDATED WITH

CIVIL APPEAL 137 OF 2013

BETWEEN

TELKOM KENYA LIMITED APPELLANT

AND

DUNCAN NDERITU RESPONDENT

(Being a reference from the Order of this Court at Nairobi (W. Karanja, J.A.) dated 6th day of November, 2020 on an Application for settlement of terms relating to the Judgment of the Court of Appeal sitting in Nairobi (Alnashir Visram, W. Karanja & J. Mohammed, JJA.) in Civil Appeal No. 147 of 2023 consolidated with Civil Appeal No.137 of 2013)



RULING

1. This ruling determines the notice of motion dated 9th December 2020 filed by Gilgiltelcoms Industries Limited, (the applicant). The application is brought under Rule 55 of the Court of Appeal Rules, 2010. These were the rules in place as at the time the application was filed, heard and determined. The said rules have since been replaced by the Court of Appeal Rules, 2022, which came into force on 8th July 2022. Rule 55 of the repealed rules provided for a reference from a decision of single judge in the following words:

55. Reference from decision of a single judge

- (1) Where under the proviso to section 5 of the Act, any person being dissatisfied with the decision of a single judge— (b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the Court, he may apply therefor informally to the judge at the time when the decision is given or by writing to the Registrar within seven days thereafter.

2. The applicant did not apply informally to the single judge.

Instead, it filed a formal application 29th November 2018 which was grounded on Rules 33 and 34 of the Court of Appeal Rules, 2010. We shall revert to these provisions later, only to the extent that they are relevant to this determination.

3. A concise background of this litigation before the trial court culminating to the appeal before this Court and the ruling which triggered the application the subject of this ruling is necessary in order to contextualize the application before us.

Briefly, the respondents were terminated from employment by the appellants on 15th June 2006. They filed Civil Suit No. 165 of 2006 in the High Court, Nakuru seeking a declaration that they were entitled to payment of accrued salaries and house allowance arrears as per circulars described as 2 B, 1 B and the 10% increment awarded in the years 2001, 2003 and 2004 and 2005 respectively. They also prayed for an order directing the appellants to immediately pay their accrued salaries and house allowances arrears arising out of personnel circulars specifically referred to as Nos. 2B of 2001, 1B of 2003 and the 10% increment awarded in the years 2004 and 2005. They also prayed for costs of the suit and interests.

4. The suit proceeded to trial and by a Judgment dated 13th July 2011, the High Court found that the respondents had proved their case as against the appellants as prayed in their plaint. For the sake of clarity, the High Court declared that the respondents were entitled to be paid the improved terms of service that were negotiated on their behalf by their union with the Telkom Kenya Limited (57th respondent) in 2001, 2003, and 2004. In particular, the (1st to 56th respondents) were entitled to the improved terms of service as contained in personnel circulars Nos. 28 of 2001 and 18 of 2003, and the 10% increment that was negotiated and agreed in 2004 pursuant to the return-to-work formula signed by the 57th respondent and the union as per prayer (b) of the plaint. The 1st to 57th respondents were also awarded costs of the suit and interest from the date of the Judgment until payment in full.



5. Aggrieved by the said verdict, the appellants appealed to this court. Upon hearing the appeal, this Court, (Visram, Karanja and Mohamed JJ.A.) in its Judgment dated 4th November 2016, partially allowed the appellant's appeal. The learned justices stated:

“ 29. ...Therefore, we find that the trial judge did not err in granting the declaratory order to the effect that the respondents were entitled to the benefits under the revised terms of service...

34. The upshot of the foregoing is that the appeal herein succeeds in part to the extent that the order issued and award made in favour of the respondents in respect of accrued salaries and house allowance arrears is hereby set aside. Each party shall bear its own costs in this appeal.”

6. By a letter dated 11th October, 2018 the law firm of Odhiambo & Odhiambo Advocates forwarded a draft order to the firm of Wekesa & Simiyu Advocates and the law firm Chiuri Kirui & Rugo, Advocates for approval and/or amendment to pave way for the sealing of the order by the court. However, the order as drafted was not approved, therefore, as alluded to earlier, the applicant filed an application dated 29th November, 2018, premised on Rules 33 and 34 of the Court of Appeal Rules, 2010, seeking settlement of terms from the Judgment of the Court dated 4th November 2016. In their reply to the application, the respondents questioned the timelines within which the order should have been drafted and served, which had already lapsed.

7. By a ruling dated 6th November 2020, (the subject of this reference), Karanja, JA. sitting as a single judge of this Court, addressing the respondent's contestation that the prescribed time lines for filing the application had lapsed, held that, held that since the appeal partially succeeded, either party could have initiated the draft order. Regarding the gravamen of the application which was settlement of the terms of the order, he learned Judge held that since the award by the High Court in respect of accrued salaries and house allowance arrears was set aside, that meant that all the other orders granted by the High Court, including the order on costs remained intact. Accordingly, the learned judge upheld the draft order dated 4th November, 2016 as drafted by the law firm of Odhiambo and Odhiambo Advocates.

8. Aggrieved by the decision of the single learned Judge, vide letter dated 11th November 2020, the applicant applied for the variation, discharge and or reversal of the decision of the single judge pursuant to Rule 55 (1) (b) of the Court of Appeal Rules, 2010. In response to the said communication, by an e-mail dated 19th November, 2020, the Registrar of this Court informed the parties that an order of settlement is not subject to a reference under Rule 55 of the Court of Appeal Rules, 2010. Vide an e-mail dated 26th November 2020, the appellant notified the Registrar of this Court that pursuant to Rule 14(4) of the Court of Appeal Rules, 2010, they were dissatisfied by his decision embodied in his e-mail dated 19th November, 2020 and they therefore requested that the matter be referred to the Judge for decision thereon. For the sake of clarity, Rule 14 (4) of the repealed rules provided as follows:

“ Any person who is dissatisfied with a decision of the Registrar or of the Registrar of a superior court rejecting any document under the powers conferred by this rule may require the matter to be referred to a judge for his decision and an application under this sub-rule may be made informally at the time when the decision is given or in writing within seven days thereafter.”

9. The appellant is now before a full bench of this Court by way of a reference pursuant to Rule 55 (1) (b) of the repealed rules reproduced earlier. In its application dated 9th December 2020, the applicant



seeks to have the decision of the single judge varied, discharged, or reversed. Both parties filed written submissions dated 19th May 2025 and 15th May 2025 respectively which they highlighted orally.

10. In his submissions, the applicant's counsel Mr. Wekesa maintained that the draft order as drawn by the 1st -55th respondents does not reflect and embody the Court's final decision as pronounced in its judgment dated 4th November, 2016. Specifically, counsel took issue with what he termed as the purported introduction of an order which reads: "That a declaratory order do issue to the effect that the respondents are entitled to the benefits under the revised terms of service" which he described as an outright introduction of an order not part of the final orders in said Judgment. Counsel maintained that to introduce the said order by way of settlement of terms of the order is tantamount to a single judge sitting on appeal and varying clear final orders of a three-judge bench which is a monstrous miscarriage of justice. For authority Mr. Wekesa cited the Supreme Court decision in *Communication Commission of Kenya & Others vs. Royal Medial Services Limited & Others* [2015] KESC 15 (Ruling) which underscored the need to safeguard the sanctity, integrity, wholesomeness and accuracy of court orders.
11. On behalf of the respondent, Prof Ojienda SC. maintained that it was evident that the ruling dated 6th November, 2020 settled the import of this Court's Judgment delivered on 4th November 2016 which affirmed that the respondents were entitled to the declaratory orders granted by the trial court in HCC No. 165 of 2016 on 13th July, 2011, save that this Court finally set aside the computation as submitted by the respondents because they were in the nature of special damages needed to be pleaded and proved. Counsel maintained that the applicant's assertion that the said Judgment is incapable of execution is premised on a wrong interpretation and understanding of the Judgment itself and the ruling by Karanja, JA.
12. Prof. Ojienda cited the Supreme Court decision in *Apungu Arthur Kibira vs. Independent Electoral & Boundaries Commission & 3 Others* [2019] eKLR in support of the holding that since the decision of a single judge entails exercise of discretion, an applicant must demonstrate that the decision was based on a whim, was prejudicial or was capricious.
13. We have carefully considered the application, the parties' diametrically opposed positions, and the law. Rule 34 of the repealed rule provided:

" 34. Preparation of orders

1. Where a decision of the Court was given in a criminal application or appeal, the order shall be drawn up by the Registrar who, in drawing up the order, shall not be required to consult the parties or their advocates.
2. Where a decision of the Court was given in a civil application or appeal—
 - a. the party who has substantially been successful shall within 14 days from date of judgment prepare a draft of the order and submit it for the approval of the other parties;
 - b. the party to whom the draft has been submitted shall approve the same within seven days from the date of delivery;



- c. if all parties approve the draft, the order shall, unless the presiding judge otherwise directs, be in accordance with it;
- d. if the parties do not agree on the form of the order, or if there is non-compliance with sub-rules (a) and (b), the form of the order shall be settled by the presiding judge or by such judge who sat at the hearing as the presiding judge shall direct, after giving all the parties an opportunity of being heard;
- e. if the parties are unable to agree which party was substantially successful, the Registrar, on the application of either party, which application may be made informally, and after giving all parties an opportunity of being heard, shall direct by which party the draft is to be prepared, and such direction shall be final.

14. The applicant is now before us pursuant to Rule 55 (1) (b) of the repealed rules reproduced earlier. In determining a reference under the above rule, this Court can only interfere with the unfettered discretion of the single judge if he/she exercised his/her discretion injudiciously, or if he/she had misdirected himself/herself by considering a matter he/she ought not to have considered, or where there's a serious error in the application of the law, a manifest injustice, or where the single judge's decision is based on a flawed interpretation of the facts before him/her. Importantly, this bench must appreciate that the single Judge was exercising an unfettered discretion though he/she is enjoined to exercise it judicially. To surmount the above threshold, an applicant was required to demonstrate that the single Judge took into account irrelevant factors or that he/she failed to take into account relevant factors or that taking into account all the circumstances of the case, the decision is plainly wrong. (See this Court's decisions in *Benson Mbuchu Gichuki vs. Evans Kamende Munjua & 2 Others* [2006] eKLR and *Hezekiah Michoki vs. Elizaphan Onyancha Ombongi* [2015] eKLR).
15. This application will turn on the question whether the applicant has met the above threshold. In order to answer this pertinent question, we have carefully read the judgment of this Court dated 4th November 2016 and the ruling rendered by the single Judge, the subject of this reference. A detailed analysis of the decision of the single judge leaves no doubt that she extensively examined the said Judgment and even quoted the definitive paragraphs in the judgment as follows:
- “29. ..We are convinced that the 2nd appellant in executing the recognition agreement and issuing the revised terms thereunder not only did it for the benefit of its employees but also the 1st respondent's employees. Therefore, we find that the trial Judge did not err in granting the declaratory order to the effect that the respondents were entitled to the benefits under the revised terms of service.”
16. We find nothing to suggest that the learned judge took into account some irrelevant factors or that she failed to take into account relevant factors nor did the applicants point out any relevant factors that were ignored or irrelevant factors that were taken into account.



17. The other question is whether the decision is plainly wrong, or that there's a serious error in the application of law, a manifest injustice. The question here is whether the order as drawn accurately reflects the court's judgment. This requirement is premised on the necessity that an order is a faithful representation of the court's ruling/judgment and that it must be effectively executed or relied upon. Court orders are essentially a written form of the court's decision, and they should be drafted in a way that clearly conveys the intended outcome. In our considered view, the order as drafted accords with paragraphs 29 and 34 of the judgment reproduced verbatim at paragraph 4 of this ruling. To suggest otherwise is a clear misreading of either the orders as drafted or the judgment or both or an attempt to assign the judgment an unintended meaning.
18. The orders as drafted are not uncertain nor is the language used both in the judgment and the ruling ambiguous. The learned Judge correctly analyzed both the order and the judgment and correctly held that the orders made by this Court in the Judgment dated 4th November 2016 at paragraphs 29 are as reflected in the draft order dated 4th November 2016 by the Registrar of this Court. We find no reason to find otherwise.
19. It is also important for us to point out that it appears the applicant only read paragraph 34 of this Court's judgment dated 4th November 2016 and forgot the key principles for interpreting court judgments. Judgments should not be interpreted mechanically, but instead, it is essential to focus on the context, the intention behind the language, and the overall judgment rather than treating each paragraph or sentence as a stand-alone decision. It is advisable to analyze the context surrounding the use of any words or phrases and to determine the intended meaning. Equally important is the need to look for indications of whether the terms are meant to be inclusive or exclusive based on the surrounding text and the judgment's purpose. This approach ensures a more accurate understanding of the judgment. These principles were best explained in the Southern African case of *Firestone South Africa (Pty) Ltd vs. Genticuro AG 1977 (4) SA 298 (A) (Trollip JA)* in which the court made some general observations about the rules for interpreting a Court's judgment or order. It stated:
- “...the basic principles applicable to the construction of documents also apply to the construction of a Court's judgment or order: the Court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual well-known rules. As in the case of any document, the judgment or order and the Court's reasons for giving it must be read as a whole in order to ascertain its intention. If on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, in such a case not even the Court that gave the judgment or order can be asked to state what its subjective intention was in giving it. But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the Court's granting the judgment or order may be investigated and regarded in order to clarify it...”
20. Had the applicant considered the context, it would have appreciated that when writing the Judgment, the full bench was not writing on a clean slate. Conversely, they were aware of the preceding paragraphs in the same decision, in which, as pointed out earlier, they had clearly made a definitive finding which remained unchanged by paragraph 34 of the same judgment.
21. Arising from our analysis of the facts, the parties' submissions, the authorities, the law and the conclusions arrived at on each and every issue determined, we are satisfied that the learned Judge acted within the remit of her discretion, therefore, there is absolutely no basis for us to interfere with her finding. It follows that this reference is devoid of merit, therefore, the applicant's notice of motion dated 9th December 2020 is hereby dismissed with costs to the respondents.



DATED AND DELIVERED AT NAKURU THIS 5TH DAY OF JUNE, 2025.

M. WARSAME

.....

JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR

