



Kenya Engineering Workers Union v Engineering Supplies Limited (Cause E006 of 2024) [2025] KEELRC 755 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 755 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E006 OF 2024
M MBARŪ, J
MARCH 6, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
ENGINEERING SUPPLIES LIMITED RESPONDENT**

RULING

1. The respondent, Engineering Supplies Limited, filed an application dated 24 January 2025 seeking to arrest or defer the judgment herein, set aside the proceedings of 21 January 2025, and grant leave to file submissions.
2. The application is supported by the affidavit of Faith Abwao Advocate, who avers that the matter was mentioned on 18 November 2024 to confirm filing written submissions. The advocate attending for the respondent indicated that submissions were to be filed on 20 February 2025 instead of 21 January 2025. No written submissions were filed when the court mentioned the matter on 21 January 2025 under the mistaken belief that the due date was 20 February 2025.
3. Abwao avers that the advocate's mistake should not be visited upon the client. The respondent has drafted written submissions and will do so and serve them once allowed to file out of time. The judgment is due for delivery on 20 February 2025 and should be deferred to allow the respondent to file and serve the written submissions.
4. The claimant did not attend or file a reply to this application.
5. On 16 October 2024, parties concluded the hearing and were allowed to file written submissions on or before 18 November 2024. Only the claimant complied.
6. On 18 November 2024, the respondent was in court and allowed seven (7) days to file submissions and mention on 21 January 2025.



7. On the due date, 21 January 2025, the respondent was absent and had not filed written submissions, so the judgment date was allocated for 20 February 2025.
8. In the supporting Affidavit of Faith Abwao, she avers that on 18 November 2024, the respondent attended, represented by counsel, holding brief and asking for more time to file written submissions. The advocate attending took note of the date as 20 February 2025.
9. However, where such averments are true, no written submissions were filed within 7 days as directed by the court on 18 November 2024. On 16 October 2024, parties had been given 32 days to file and serve written submissions. No valid reason was given for non-compliance. The additional time allowed on 18 November 2024 was not utilized.
10. The facts and details relating to the mentioned dates were taken by counsel attending and holding a brief for the respondent advocate. Such an advocate has not filed any affidavit as to why the wrong date was taken.
11. Not every error should be attached to the mistake of the advocate, and the same should be taken as an innocent mistake as held in *Nature Pharmacy Ltd & another v Gichubi* [2022] KECA 827 (KLR). Professional negligence should be called for what it is, as held in *George Buoro v Kenindia Assurance Company Limited* [2018] KEELRC 1106 (KLR)
12. The advocate attending should give an account for failure to file written submissions by 18 November 2024 and within 7 days after such date.
13. Returning the court to defer judgment to accommodate such professional negligence should not be allowed.
14. The application dated 24 January 2025, though not opposed by the claimant, is an abuse of the court process. The application is dismissed, with costs to the claimant assessed at Ksh.50,000 to be paid within 30 days, after which it should attract interest at court rates.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

