



**Kenya Concrete, Structural, Ceramic Tiles and Interior Design Workers  
Union v Mara Tea Limited; Sanjomu Auctioneers (Interested Party) (Cause  
E902 of 2022) [2025] KEELRC 1195 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1195 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E902 OF 2022  
CN BAARI, J  
APRIL 30, 2025**

**BETWEEN**

**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES AND INTERIOR  
DESIGN WORKERS UNION ..... CLAIMANT**

**AND**

**MARA TEA LIMITED ..... RESPONDENT**

**AND**

**SANJOMU AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. For determination is the Respondent/Applicant's motion application dated 14<sup>th</sup> November, 2024 brought pursuant to Order 10 Rule 11, Order 51 Rule 1 and 3, Order 40 rules 1,4(1) of the Civil Procedure Rules 2010, Section IA, 1B, and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, Article 159 and 50(1) of *the Constitution*. The Applicant seeks orders THAT:-
  - i. There be a stay of execution of the Judgment and Decree issued by this Honourable Court on 14<sup>th</sup> June, 2024 together with all consequential orders.
  - ii. This Honourable Court be pleased to set aside the judgment entered against the Applicant on 30<sup>th</sup> April, 2024 and all consequential orders.
  - iii. Upon setting aside of the impugned judgment, the Applicant be allowed to defend the suit and the same be heard on merit and this Honourable Court be pleased to admit the draft Statement of Response and the same be deemed as properly filed.



- iv. There be a declaration that the warrants of Proclamation of attachment and sale issued on 31<sup>st</sup> October, 2024 in furtherance of a decree issued on the 9<sup>th</sup> day of September, 2024 should be lifted, recalled and withdrawn.
  - v. There be an injunction restraining the Claimant and the Interested Party and his agents, auctioneers or any other person acting on their behalf, from towing, carrying away, selling/ auctioning goods by way of public sale or private treaty belonging to the Applicant pending determination of the Claim.
  - vi. The Interested Party herein be directed to tax its costs.
  - vii. Costs of this application be provided for.
2. The application is supported by grounds on the face thereof and the affidavit of Arthur Mwangi, the Human Resources Officer of the Respondent. The crux of the motion is that by a judgment dated 14<sup>th</sup> June, 2024 and a decree issued on 9<sup>th</sup> September, 2024, the Honourable Court (differently constituted) entered judgment against the Respondent/Applicant herein.
  3. The Applicant avers that the effect of the said decision is that the Respondent has commenced steps to execute the decree in the sum of Kshs.1,406,921.5, but has proclaimed/attached the Applicants movable property of Kshs.8,950,000/= through the Interested Party herein, and that there is fear and apprehension that the Claimant will proceed to auction the Applicant's properties.
  4. The Applicant states that it now seeks to set aside the judgment dated 14<sup>th</sup> June, 2024, and the Court proceedings thereto to enable it enter appearance in the matter, and defend the suit on merit in the interest of justice.
  5. It further avers that its failure to enter appearance in this suit and file its Statement of Response was inadvertent, and was occasioned by the fact that it was never served with Court summons, pleadings, mention notices, hearing notices and judgment notice. That it had no notice of the existence of the suit.
  6. The Applicant states that it only learnt of the matter upon being served with the warrants of proclamation and attachment dated 30<sup>th</sup> October, 2024, the Judgment dated 14<sup>th</sup> June, 2024 and Decree dated 9<sup>th</sup> September, 2024.
  7. The Applicant/Respondent avers that upon being served with the warrants of proclamation and attachment dated 30<sup>th</sup> October, 2024, the Judgment dated 14<sup>th</sup> June, 2024 and Decree dated 9<sup>th</sup> September, 2024, it proceeded to instruct the Advocate on record herein, as it had no prior knowledge of the existence of the suit.
  8. It is the Applicant's case that upon perusal of the judgment, it noted that the matter proceeded for hearing in absence of its Statement of Response and/or its evidence.
  9. That the Applicant is apprehensive that if stay of execution is not granted, the Claimant herein will proceed to execute at any given time having proceeded to issue the Applicant with Proclamation of attachment, repossession, distraint of movable property and warrant of attachment on 11<sup>th</sup> November, 2024.
  10. The Applicant/Respondent states that if the Claimant is allowed to proceed to effect the Judgment and decree and subsequently execute, it will be at high risk of suffering grave prejudice given the colossal amounts of money involved being the sum of Kshs.1,406,921.5 as tabulated by the Claimant, and the proclaimed items whose approximated value is Kshs. Kshs.8,950,000/=.



11. That the Applicant is ready and willing to abide by any conditions that this Honourable Court may set for the expeditious disposal of the suit.
12. It avers that there being already a judgment in the matter, the firm of Okweh Achiando & Company Advocates requires leave of this Honourable Court to urgently come on record for the Applicant in order to prosecute this Application.
13. That it is in the best interest of justice that judgment be set aside and the Applicant given leave to defend the suit to have the suit heard on merit as not only must justice be done, it must also be seen to be done being the Constitutional right of the Applicant.
14. The Applicant avers that the Claimant will suffer no prejudice if the orders sought herein are granted, as it will have an opportunity to be heard on merits and in accordance with the rules of natural justice.
15. The Applicant states that it has a good defense to this suit as demonstrated in its draft statement of Response herewith, as the grievants were lawfully terminated.
16. The Claimant/Respondent opposed the motion vide a Replying affidavit sworn by one Roy Mwenesi on 14<sup>th</sup> December, 2024. He avers that the dispute between the parties has been within the knowledge of the Applicant for as long as 14<sup>th</sup> July, 2022, where the Conciliators Certificate of resolved trade dispute dated 14<sup>th</sup> July 2022, shows at paragraph 2 of the findings that in-fact the Human Resource Manager who has sworn affidavits for both applications herein, made representations as early as 2022 which were recorded; citing reasons for termination of the grievants as constrains associated with Covid 19. He avers further that this non- disclosure by the Applicant is material.
17. The Claimant further avers that save for post judgment applications, the suit herein has been before court for at most seven occasions, and that on all the key occasions, he religiously served the Applicant and filed the requisite affidavits of service. He states further, that he took over conduct of the matter about one year and 5 months ago, and that he lodged his notice of appointment dated 29<sup>th</sup> March 2023.
18. It is the Claimant's assertion that to ensure proper service per the rules of this court, Counsel promptly checked the website of the Applicant <https://maratea.co.ke> that returned their publicly available email address being [info@maratea.co.ke](mailto:info@maratea.co.ke). It states that the Applicant has since taken down the said website as at 17<sup>th</sup> December 2024.
19. Counsel for the Claimant further avers that he subsequently equally lodged an official search with the Business Registration Services on 11<sup>th</sup> July, 2023 which returned official registered office details of the Respondent/Applicant including;
  - i. Mobile Phone number +254721951209 which number is very active on WhatsApp
  - ii. Email [vicky.patel@vegpro-group.com](mailto:vicky.patel@vegpro-group.com)
20. He states that on the 26<sup>th</sup> May 2023 at 5:14 pm, he served the Applicant through their email address [info@maratea.co.ke](mailto:info@maratea.co.ke) with notice for the court date of 7<sup>th</sup> June 2023 and attached summons, pleadings and documents, and that the matter was mentioned on the said date.
21. The Claimant avers that when the matter was scheduled for Mention before the Deputy Registrar Hon. Mutai on 21<sup>st</sup> June 2023, he wrote an email to the Applicant prior and informed them of the same through their email [info@maratea.co.ke](mailto:info@maratea.co.ke)
22. The Claimant counsel further states that on the 11<sup>th</sup> July 2023, immediately after he were issued with a date for formal proof by the honourable judge, he instructed his clerk to serve Notice of formal



- proof hearing which formal proof hearing was about four months five days away, and scheduled on 16<sup>th</sup> November 2023 which his clerk did and along with it again, attached all pleadings and documents of the suit.
23. He avers that this service was effected through;
    - i. The email info@maratea.co.ke (publicly available on website of applicant)
    - ii. The email VICKY.PATEL@VEGPRO-GROUP.COM (available through official search at Business Registration Services)
    - iii. He equally WhatsApp messaged the Applicant through their official line as appears in records obtained from business registration services +254721951209, which message returned blue ticks evidence that the Applicant saw the messages. That from the status, this number has been active on WhatsApp from February 2015 and remains active to date.
  24. The Claimant states that it subsequently proceeded with the formal proof hearing four months down the line on 16<sup>th</sup> November 2023, and without appearance of the Applicant despite serving them through at least three media and their having clearly seen the court documents at least in their WhatsApp from the read "blue ticks"; at this point it was obvious the Respondent was taking the ongoing proceedings as a pun and was not interested in participating.
  25. That Subsequently, the court rendered a judgment on notice in the absence of its counsel and that judgment was in favour of the Claimant.
  26. That it is clear on all relevant and key occasions the Applicant was informed of the proceedings, but chose to ignore and trash court process and proceedings save for filing a Notice of Appointment and the present twin Applications.
  27. The Claimant states that it has perused the draft response which raises issues relating to recognition that are not in dispute, and which therefore cannot form basis of any useful response even where the claim had been defended.
  28. The Claimant finally states that the Applicant has had over two years to plead and advance their position which they indolently failed to do and cannot be allowed to drag court and the Claimant over two years back, and as such, it is strongly opposed to grant of orders requiring the suit to be tried de-novo. It states that in any event; devoid of any single support documentation to the allegations of fact, the same are anchored on quicksand.
  29. The Claimant prays that the motion be dismissed with costs.
  30. In a further affidavit sworn by Arthur Mwangi on 3<sup>rd</sup> February, 2025, the Applicant avers that the failure to enter appearance in this suit and file a Statement of Response was inadvertent and was occasioned by the fact that the Applicant was never served with Court summons or pleadings.
  31. The Applicant further states that it is not aware of any conciliation meetings, and that a cursory look at the Conciliators certificate does not indicate that the Applicant was part of the conciliation meeting and that the findings can stem from hearing only one party.
  32. It avers further that the Applicant's email address is talktous(@)maratea.com and not info@maratea.co.ke as alleged by the Claimant. That the invalid email address clearly rubber stamps the fact that the Applicant was never served.



33. The Applicant states that had the Claimant been acting in good faith in service of the Court documents, then nothing prevented them from serving the pleadings, court summons and notices physically on the Applicant by virtue of the fact that the said addresses did not belong to the Applicant.
34. That going by the Claimant's conduct, they were clearly stealing a match against the Applicant knowing too well that they did not have the locus standi to bring the present suit by virtue of the fact that there is no signed Recognition Agreement and Collective Bargaining Agreement between the Applicant and the Claimant.
35. Parties canvassed the motion by way of written submissions, which have been duly considered.

### **Analysis and Determination**

36. I have carefully considered the application by the Applicant/Respondent, the grounds and affidavit in support, the further affidavit and the Claimant's opposition captured in the replying affidavit together with the submissions by both parties. The issue that fall for determination is whether the Applicant/Respondent merits the grant of the reliefs sought.
37. In the case of Philip Kiptoo Chemwolo and Mumias Sugar Company Ltd -v- Augustine Kubede (1982-1988) KAR, the court had this to say on setting aside of an ex parte judgment: -

“The Court has unlimited discretion to set aside or vary a judgment entered in default of appearance upon such terms as are just in the light of all facts and circumstances both prior and subsequent and of the respective merits of the parties”.
38. To allow reopening of a case, is purely a matter of discretion which discretion the court addressed in the case of Samuel Kiti Lewa v Housing Finance Co of Kenya & another (2015) eKLR, as follows: -

“The court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion, the court should ensure that such re opening does not embarrass or prejudice the opposite party. In that regard, re-opening of a case should not be allowed where it is intended to fill gaps in evidence. Also, such prayer for re-opening of the case will be defeated by inordinate and unexplained delay.”
39. The Applicant contends that its failure to enter appearance in this suit and file its Statement of Response was inadvertent, and was occasioned by the fact that it was never served with Court summons or pleadings, mention notices, hearing notices and judgment notice. It avers further that it had no notice of the existence of the suit.
40. It is the Applicant's case that it only learnt of the matter upon being served with the warrants of proclamation and attachment dated 30<sup>th</sup> October, 2024, the Judgment dated 14<sup>th</sup> June, 2024 and Decree dated 9<sup>th</sup> September, 2024.
41. On their part, the Claimant's position is that the dispute between the parties has been within the knowledge of the Applicant as far back as 14<sup>th</sup> July, 2022, when the Conciliator issued a Certificate of resolved trade dispute dated 14<sup>th</sup> July 2022, and that the Human Resource Manager who has sworn affidavits for the Applicant herein, made representations as early as 2022 which were recorded; citing reasons for termination of the grievants as constrains associated with Covid 19.
42. For starters, the certificate of resolved trade dispute issued by the conciliator, does not expressly indicate that the Applicant participated in the conciliation process, and which decision as the Applicant argues, could have been reached without the participation of the Applicant.



43. Having said that, I note from the record that service to the Applicant from the time of filing suit until around June, 2023, was effected through email info@maratea.co.ke and telephone numbers +254746427922 and +254207866955, which contacts the Applicant denies being theirs.
44. I further note that the Claimant’s counsel did conduct an official search at the Business Registration Service, and that vide a certificate of search dated 11<sup>th</sup> July, 2023, the Applicant’s email address was indicated as being VICKY.PATEL@VEGPROGROUP.COM and their telephone numbers being +254721951209, which contact details the Claimant used to serve both the hearing notices and the pleadings filed in this matter, as evidenced by the annexures to their replying affidavit filed before this court.
45. The Applicant has also not told court when if at all, it changed its contacts details, specifically the email address to talktous(@)maratea.com. In the absence of prove of these changes, the Court is left no option but to go by the contacts details held at the Business Registration Services, which is retained as the Applicant’s official contact details.
46. In the case of Gladys Wakiuru Nyota v Pincle Njoroge & another (2020) eKLR the Court opined: -  
“....., re-opening of a case is not a matter of course. A court must consider each case on its own merits. As was held in the case of Joseph Ndung’u Kamau v John Njihia (Supra)and Standard Chartered Financial Services & 2 others v Manchester Outfitters (Suiting Division) Ltd & 2 others (Supra), the decision to re-open a case is a discretionary one. The rider is that such discretion must only be exercised sparingly to avoid injustice and miscarriage of justice.”
47. Further, in Shah V. Mbogo & Another (1967) EA 116, the Court of Appeal of East Africa stated: -  
“This discretion (to set aside ex parte proceedings or decision) is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”
48. The circumstances of this case in my respective view, do not warrant the re-opening of this matter. I find nothing pointing to inadvertence or excusable mistake or error on the part of the Applicant/ Respondent that is worthy of this court’s discretion, without occasioning injustice to the Claimant.
49. The Applicant’s motion dated 14<sup>th</sup> November, 2024 is therefore found devoid of merit and is dismissed in its entirety with costs to the Claimant.
50. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Mwenesi present for the Claimant/Respondent

Ms. Atieno h/b for Mr. Okwe for the Respondent/Applicant

Ms. Esther S - C/A

