



**Gikundi v Kenya National Chamber of Commerce and Industry & 2 others  
(Cause E013 of 2021) [2025] KEELRC 1422 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1422 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E013 OF 2021  
ON MAKAU, J  
MAY 16, 2025**

**BETWEEN**

**DAVID MUTUMA GIKUNDI ..... CLAIMANT**

**AND**

**KENYA NATIONAL CHAMBER OF COMMERCE AND  
INDUSTRY ..... 1<sup>ST</sup> RESPONDENT**

**KENNETH MWENDA MUTHINJA ..... 2<sup>ND</sup> RESPONDENT**

**BEALINE KENYA AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction**

1. This ruling relates to two applications dated 14<sup>th</sup> June 2024. The first is the Notice of motion filed by the 2<sup>nd</sup> respondent seeking the following orders: -
  - a. That this Honourable court be pleased to certify this application as urgent and be heard at the first instance.
  - b. That this Honourable court be pleased to issue an order of stay of execution restraining the claimant acting by himself, or acting through his agents, his assignees, his auctioneers (especially Bealine Kenya Auctioneers) or anybody acting at his behest from attaching, impounding and/or retaining the applicants property in execution of the decree issued in this case pending the hearing and determination of this application.
  - c. That this Honourable court be pleased to issue an order of stay of execution restraining the claimant acting by himself, or acting through his agents, his assignees, his auctioneers (especially Bealine Kenya Auctioneers) or anybody acting at his behest from attaching,



impounding and/or retaining the applicants property in execution of the decree issued in this case pending the hearing and determination of this suit.

- d. That this Honourable court be pleased to issue an order calling Vivian Loice Aketch for purpose of being examined as to the truthfulness of the affidavit sworn on 19/5/2021.
  - e. That this Honourable court be pleased to set aside the judgment and proceedings in this case and reopen it and allow the 2<sup>nd</sup> respondent file his response to the statement of claim.
  - f. That the costs of this application be in the cause.
2. The second is filed by the objectors, Grace Wambura Ngunjiri and Mwalimu Utensils Stores and General Supplies seeking the following orders: -
- a. This application be certified urgent and be heard ex parte in the first instance.
  - b. There be stay of execution of the judgment and decree herein dated 16/06/2023 pending the hearing and determination of this application.
  - c. The proclamation of attachment of the Objector's properties i.e. motor vehicle registration number KCT 137E and 3 laptops, 4 table benches, 10 chairs, 50 plastic chairs, 30 3" pipes, 10 king size doors, 50 high density mattresses, 50 plastic pipes and motors for water sucking in execution of the decree herein be raised.
  - d. The costs of this Application be in the cause.
  - e. Any other order be made at this Honourable Court may deem fit.
3. The claimant filed replying Affidavit sworn on 24<sup>th</sup> September 2024 opposing the application for setting aside of the impugned judgment but he never mentioned the objection proceedings. The applications were canvassed by written submissions.
4. Having considered the motions, affidavits and submissions filed by both sides following facts were not disputed: -
- a. That the claimant was employed by the 1<sup>st</sup> respondent.
  - b. That the 1<sup>st</sup> respondent is a Limited liability company with capacity to sue or be sued in its own name.
  - c. That the 2<sup>nd</sup> respondent was the chairman of the 1<sup>st</sup> respondent.
  - d. That the claimant's employment was terminated by the employer, the 1<sup>st</sup> respondent.
  - e. That the claimant brought this suit and took out summons to serve the respondents.
  - f. That the respondent's failed to enter appearance and the suit proceeded by formal proof culminating in the impugned judgment on 16<sup>th</sup> June 2023.
  - g. That the claimant executed the decree through Bealine Kenya Auctioneers who proclaimed a vehicle and assorted movable assets from the objectors.
5. The following issues are in dispute: -
- a. Whether the impugned judgment was irregular and should be set aside.
  - b. Whether the attached goods belong to the objectors.



- c. What are the appropriate orders for the court to grant in the circumstances of the case.

### **Irregular judgment**

6. A regular judgment is one where a defendant was properly served with pleadings and summons to enter appearance but failed to enter appearance. In such circumstances, the court has wide discretion to set aside the judgment upon terms that are just.
7. On the other hand, an irregular judgment is one where there is a procedural defect, that is, where the defendant was not served with pleadings and summons to enter appearance. In such a situation, an irregular judgment must be set aside whether the defendant has a defence or not. All what the defendant needs to satisfy the court is that the judgment was irregular (See *Yoashin Engineering Corporation v Aria Architects Ltd* (2023) KECA 872 (KLR)).
8. In the instant case, the 2<sup>nd</sup> respondent deposed that he was never served with the court process by Vivian Aketch Advocate as alleged in her Affidavit of Service dated 19<sup>th</sup> May 2021 which was used to prove service of the pleadings and summons. The said denial of service has not been contested by Vivian Aketch Advocate.
9. Without any affidavit by Vivian Aketch Advocate to rebut the allegation by the 2<sup>nd</sup> respondent leads to the inference that the 2<sup>nd</sup> respondent's allegation is true and no service was done on him as alleged in the said Affidavit of service. Therefore, I find that there was a defect in the procedure followed by the claimant to get the impugned judgment that rendered the judgment irregular.
10. The effect of the foregoing conclusion is that the irregular judgment is set aside which means that the objection proceedings are now otiose. Accordingly, the appropriate orders to grant are: -
- a. The judgment of this court delivered on 16<sup>th</sup> June, 2023 is hereby set aside together with all the proceedings in the case.
  - b. The suit is hereby re-opened and the respondents granted leave to file and serve response to the statement of claim within 14 days of this Ruling.
  - c. The objection proceedings are now overtaken by events as there is now no decree upon which the attachment can be based.
  - d. The claimant will have 7 days to file a reply to the Response if need be.
  - e. The claimant is awarded throwaway costs of Kshs.10,000 to be paid within 21 days of this ruling and in default he will be at liberty to execute.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 16TH DAY OF MAY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

