



**Bakery, Confectionery, Food Manufacturing & Allied Workers Union (K) v Kenafri
Industries Limited (Cause E1035 of 2021) [2025] KEELRC 1297 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1297 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1035 OF 2021**

S RADIDO, J

MAY 8, 2025

BETWEEN

**BAKERY, CONFECTIONERY, FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT**

AND

KENAFRIC INDUSTRIES LIMITED RESPONDENT

RULING

1. The Court delivered judgment on 30 January 2025 and on 3 February 2025, Kenafri Industries Ltd (the Respondent) filed a Motion seeking orders:
 - i. ...
 - ii. ...
 - iii. THAT the Honourable Court be pleased to set aside the judgment entered on 30th January 2025 against the Respondent/applicant.
 - iv. THAT the Honourable Court be pleased to reopen the suit for the Respondent/applicant to cross-examine the Claimant/Respondent and prosecute its defence.
 - v. THAT the costs of this application be in the cause.
 - vi. THAT the Honourable Court be pleased to issue any other orders it may deem fit to achieve the ends of justice.
 - vii. THAT costs be in the cause.
2. The grounds in support of the Motion were that the Respondent failed to participate in the hearing due to an inadvertent mistake on the part of the advocate; the failure to attend the hearing was due to



a misdiarising of the hearing date; the application had been filed expeditiously and that the interests of substantive justice favoured the grant of the orders sought.

3. The Court gave directions on the Motion on 3 February 2025, and the Respondent filed its submissions on 10 February 2025.
4. Bakery Confectionery Food Manufacturing & Allied Workers Union (K) (the Union) filed a replying affidavit and submissions on 21 February 2025.
5. In the affidavit, the Union's advocate deponed that he served a hearing notice upon the Respondent; that there was no evidence of misdiarising of the hearing date; that the CTS system automatically updates the parties of dates, and that sufficient reasons had not been given for the grant of the orders sought.
6. Pursuant to leave, the Respondent's advocate filed a further affidavit on 28 February 2025, wherein he reiterated that he did not receive any notification from the CTS on the hearing date.
7. The Court has considered the Motion, affidavits and submissions.
8. The Respondent filed a Response which raised arguable points but it failed to attend the Court to advance its defence.
9. The failure to attend the hearing is attributed to a misdiarisation of the hearing date.
10. An examination of the CTS system indicates that the system generated an automatic sms notification which was sent to the parties' telephone numbers 254729xxxxxx, 254703xxxxxx and 254710xxxxxx.
11. The Respondent's explanation of misdiarisation in light of the fact that a hearing notice was served by the Claimant and a notification sent to the advocate's phone is doubtful.
12. The Respondent seeks an exercise of the Court's discretion (*Patel v E.A. Cargo Handling Services Ltd* (1974) EA 75). The discretion is exercised to do justice to the parties.
13. The Respondent had evinced an intention to defend the Cause by filing a Response and witness statement.
14. In this context, the Court will allow it to ventilate its defence on conditions.

Orders

15. In light of the above, the Court orders:
 - i. The judgment delivered on 30 January 2025 is set aside on conditions that the Respondent deposits the sum of Kshs 229,021/- in Court and pays the Claimant wasted costs of Kshs 20,000/- on or before the close of 15 May 2025.
 - ii. In default of compliance with the conditions, the order setting aside the judgment will stand vacated without any further order from the Court.
 - iii. If the conditions are complied with, hearing will be conducted on a date to be agreed on hereinafter.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 8TH DAY OF MAY 2025.

RADIDO STEPHEN, MCIARB

JUDGE



Appearances

For Claimant Amalemba & Associate Advocates

For Respondent Chege Kibathi & Co. Advocates

Court Assistant Wangu

