



**Makae v Habo Group of Companies (Cause 179 of 2016)
[2025] KEELRC 1953 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1953 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 179 OF 2016
M MBARÚ, J
JUNE 30, 2025**

BETWEEN

JONATHAN MULEWA MAKAE CLAIMANT

AND

HABO GROUP OF COMPANIES RESPONDENT

RULING

1. The respondent, Habo Group of Companies, filed an application dated 18 March 2025 under the provisions of Order 22 rule 22 and Order 45 rule 1 of the Civil Procedure Rules, seeking orders for the court to stay execution and review its orders issued on 31 May 2023 under application dated 2 February 2023, and to set them aside on the grounds of lack of jurisdiction.
2. The application is supported by the affidavit of Hezron Awiti Bollo, who states that he is a former director of the respondent company. At the time of the ruling on the application dated 2 February 2023, the respondent company had long been dissolved. On 29 January 2021, the respondent company ceased to exist, and no proper service was effected to enable the respondent to attend and address that application.
3. With the company's dissolution, there was no principal officer who could accept service as envisaged under the Civil Procedure Rules.
4. Order 22, Rule 38 of the Civil Procedure Rules, which informs the proceedings herein, is predicated upon the existence of the respondent company as a company within the meaning of section 3 of the *Companies Act*. Upon the dissolution of the company pursuant to section 897 (4) of the *Companies Act*, all the assets of the respondent vested in the state with effect from the date of the dissolution. The impact of Section 905(1) of the *Companies Act* is that the respondent could not answer the prayers sought in the application dated 2 February 2023, and in particular could not be examined regarding the properties of the respondent company, as they had vested in the state.



5. The dissolution of the respondent company rendered the application dated 2 February 2022 otiose, and therefore, the court lacks jurisdiction to hear this matter, and the orders sought should be granted.
6. In reply, the claimant filed his Replying Affidavit by Kitonga Kiiva, Advocate, who states that there is a judgment in favour of the claimant for payment of Ksh. 459,600 plus costs and interest from 9 June 2017. On 12 September 2017, the claimant submitted a Bill of Costs, which was taxed at Ksh. 84,090, and a Certificate of Costs was issued on 11 December 2017. This was communicated to the respondent to pay the decretal sum plus costs; however, they failed to comply, leading to execution proceedings. Objections to the execution were raised.
7. On 16 September 2020, the claimant commenced fresh execution proceedings only to learn that the respondent company had been dissolved and its assets could not be traced. This led to an application dated 2 February 2023 seeking orders to compel the directors of the respondent company to attend court and be orally examined regarding the business affairs of the respondent. The application was served, but the attending advocates declined to acknowledge receipt. On 8 May 2023, the respondent directors cited in the application were all served, but they failed to attend court. The court delivered a ruling on 31 May 2023, lifted the corporate veil of the respondent company, and imposed personal liability on the directors at the time of dissolution.
8. Kiiva Advocate avers that the claimant filed an application dated 29 October 2024 for execution and committal of the directors to civil jail. The court allowed the application on 23 January 2025 by requiring the directors to attend and show cause why they should not be committed to civil jail.
9. The instant application is filed to delay the application filed by the claimant. The matters addressed in the instant application have already been considered and hence should be dismissed with costs.
10. Hezron Awiti Bollo filed his Supplementary Affidavit, stating that on 23 February 2021, the claimant was aware that the respondent company had been dissolved. The application following the dissolution was not served, and the company directors were unaware of the proceedings leading to the current application. The claimant has committed material non-disclosure by failing to inform the court that the respondent company had been dissolved.

Determination

11. The essence of the respondent's immediate application is to stay execution and review the orders issued on 31 May 2023, under the application dated 2 February 2023, and set them aside on the grounds of lack of jurisdiction.
12. The application is premised on Order 22 rule 22 and Order 45 rule 1 of the Civil Procedure Rules. The respondent further urged the court that, under Order 22 rule 38, there is no jurisdiction to hear this matter as the respondent company is dissolved and its assets vest in the state; hence, the orders issued on 31 May 2023 are otiose.
13. Whereas, under Order 22 Rule 22 of the Civil Procedure Rules, a party is permitted to request the court to set aside its orders, but they must provide compelling reasons to justify the relief sought. In this case, the respondent's directors claim that there was no service. The claimant maintains that they served the advocates on record and also used the postal addresses listed in the CR12 form in the respondent company's register, and proceeded to serve the directors.
14. In the Supplementary Affidavit of Hezron Awiti Bollo, the issue of service is not addressed, particularly the personal service of the directors through their stated postal addresses. The court, in addressing the application dated 2 February 2023, analysed the matters before it and established proper service.



- 15. The respondent further seeks a review of the orders issued on 31 May 2023 on the basis that they were not served with the subject application and relies on Order 45, Rule 1 of the Civil Procedure Rules. For the court, any review application should be based upon the Employment and Labour Relations Court (Procedure) Rules. An applicant must demonstrate the error apparent on the face of the record, the mistake, the need for clarification, or other sufficient cause. Save to urge the court that there was no proper service, the instant application fails the threshold for a review application. No good cause is demonstrated to justify a review of the orders issued on 31 May 2023. Since that date, several other applications have been filed by the claimant without the respondent or its directors seeking any review until the application seeking the personal attendance of the directors to show cause why they should not be committed to civil jail was filed, served, and a date allocated.
- 16. This application for review at this stage can only be regarded as an abuse of the court process.
- 17. The respondents also assert that the court lacks jurisdiction to hear the matter under Order 22 Rule 38 of the Civil Procedure Rules. They argue that since the respondent company has ceased to exist, there is no entity against which orders can be issued. Order 22, Rule 38 of the Civil Procedure Rules pertains to the attachment of agricultural produce and is unrelated to the current claim concerning employment and labour relations. The attempt to invoke these provisions to argue that the court has no jurisdiction is unnecessary and irrelevant, as it has no bearing on these proceedings.
- 18. In the ruling and orders of 31 May 2023, the court thoroughly addressed the respondent’s conduct since the judgment was delivered in this matter. To argue that the court lacks jurisdiction upon the company’s dissolution is to attempt to re-litigate the same issue already settled with finality. Returning to the same matter constitutes an abuse of the court process.
- 19. Accordingly, the application dated 18 March 2025 is an abuse of the court process and is hereby dismissed. Costs awarded to the claimant.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30 JUNE 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

