



**Nyachoti v Jorgen Logistics Limited & another (Miscellaneous Application E026 of 2025) [2025] KEELRC 2404 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2404 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E026 OF 2025**

**K OCHARO, J  
JULY 24, 2025**

**BETWEEN**

**ZAPHANIA NYACHOTI ..... APPLICANT**

**AND**

**JORGEN LOGISTICS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KENYA TROPICAL SEA LIFE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion Application dated 5<sup>th</sup> March 2025, the 2<sup>nd</sup> Respondent/ Applicant seeks the following orders:
  - I. That the application be certified urgent, be heard, and orders issue ex parte in the first instance.
  - II. That this Honourable Court be pleased to issue a stay of execution of the Judgment entered on the 27<sup>th</sup> Day of February 2025 against the 2<sup>nd</sup> Respondent pending the hearing and determination of this application.
  - III. That this Honourable Court be pleased to set aside the Judgment entered herein on the 27<sup>th</sup> day of February 2025.
  - IV. That this Honourable Court reviews the Judgment entered herein on the 27<sup>th</sup> day of February 2025, Hon. Lucy Khahendi Sindani in favour of the Claimant.
  - V. That this Honourable Court do grant leave to the 2<sup>nd</sup> Respondent and an opportunity to defend the suit herein, as it has a good defence raising triable issues.
  - VI. That the costs of this application be provided for.
2. The application is based on the grounds outlined on its face, supported by an affidavit sworn by Nicholas Ngoli Inyangala, and a further affidavit by Jorgensen Rene Dalgaard.



3. The Respondent [Zaphania Nyachoti Orembe] resisted the application on the grounds set out in his replying affidavit sworn on 19<sup>th</sup> March 2025.

### **The Application**

4. The 2<sup>nd</sup> Respondent/ Applicant stated that evidence has emerged showing that the Applicant / Respondent was not its employee.
5. It was contended that the 2<sup>nd</sup> Respondent was neither a party in the proceedings that were pursuant to the stipulations of the [Work Injury Benefits Act](#) nor those that led to the adoption of the award by the court.
6. There was no service of summons or any court process that was served on him in respect of the proceedings before the Director of Occupational Health and Safety or those before the court, respectively.
7. The 2<sup>nd</sup> Respondent/Applicant only came to learn of the judgment when they were served with a notice of entry of judgment. They were unrepresented at the hearing of the Applicant's /Respondent's case. As such, they were condemned unheard.
8. The draft statement of Response to the statement of claim raises triable issues. They should be allowed to defend the claim.
9. The 2<sup>nd</sup> Respondent stands to suffer great prejudice if the judgment entered on the 27<sup>th</sup> February 2025 is not set aside and a decree flowing therefrom is not stayed. The 2<sup>nd</sup> Respondent shall have been condemned unheard, contrary to the tenets of natural justice.

### **The Response**

10. The Applicant/ Respondent asserted that the 2<sup>nd</sup> Respondent's application is frivolous, vexatious, bad in law, incoherent and an abuse of the court process.
11. He contended that he was an employee of the 1<sup>st</sup> Respondent at all material times. On 26<sup>th</sup> September 2023, while in the course of his employment, he was involved in a road traffic accident which resulted to an amputation of his right arm.
12. The accident was reported to the said Respondent who later reported the accident to the County Occupational Safety and Health officer in Kilifi. The form ML/Dosh/ Form 1 bears the 1<sup>st</sup> Respondent's details as his employer. Furthermore, the 1<sup>st</sup> Respondent indicated on the form that he was his sole employer, hence making it impossible for the 2<sup>nd</sup> Respondent to participate in any proceedings regarding the accident.
13. It is further asserted that on 4<sup>th</sup> November 2024, the County Occupational Safety and Health Office, Kilifi, assessed damages for the injury suffered by the Applicant, at KSHS. 2, 432, 769 and issued a notification to the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent didn't appeal against the award.
14. The 1<sup>st</sup> Respondent, Kenya Tropical Sea Life Limited and Kenya Tropical Sea Life [EPZ] Limited are all sister companies. However, he was an employee of the 1<sup>st</sup> Respondent, though sometimes, he would be assigned duties for the sister companies.
15. The 1<sup>st</sup> Respondent refused and or neglected to settle the Director's award, prompting him to file the matter herein. Service of court process in respect of the matter herein was effected on the Director



of the three companies, Rene Dalgaard Jorgensen, by WhatsApp mobile numbers xxx-xxx-184, xxx-xxx-445, and xxx-xxx-345.

16. Subsequently, the Court order herein was served on the said Director via email.
17. The Applicant asserts that he has enjoined the 2<sup>nd</sup> Respondent in this matter because he was from time to time assigned duties to perform for them, yet they were not his employer.

#### Analysis and Determination

##### i. Procedural History

18. For clarity of record, it is imperative to briefly set out the procedural history of this matter. Through an application dated 6<sup>th</sup> February 2025, Zaphaina Nyachoti Orembe vs Jorgensen Logistics Ltd, the Applicant sought the following orders;
  - I. That the court adopts the assessment of the director of occupational health and safety as an order of the court.
  - II. That a decree be issued in accordance with the assessment of the Director for the sum of KShs. 2, 432,769.
  - III. That the honourable court be pleased to award interest on the amount from the date of assessment at the rate of 14% per annum.
  - IV. That the costs of the application be paid by the Respondent.
19. On the 17<sup>th</sup> February 2025, the application was placed before me for orders ex parte. This Court directed that the application be served for an inter partes hearing on 27<sup>th</sup> February 2025.
20. On 27<sup>th</sup> February 2025, neither the Respondent nor their counsel was present in court to oppose the application. Considering the fact that the Court was satisfied that the application had been served on the Respondent and that they hadn't opposed it by filing an affidavit of service or grounds of opposition, coupled with the fact that they were not present in Court, this Court allowed the application. It adopted the Director's award as a judgment of the court.

##### ii. Determination

21. At no point between the initiation of the instant matter through the application hereinabove mentioned, and the issuance of the order, was the 2<sup>nd</sup> Respondent/ Applicant made a party to the proceedings herein. Certainly, the order issued was not in any manner expressly or by implication against him.
22. The proceedings had nothing to do with the 2<sup>nd</sup> Respondent at all. The order of 27<sup>th</sup> February 2025, too. I find great difficulty in finding relevance and reasonableness in the 2<sup>nd</sup> Respondent's / Applicant's assertion that it was not served with any court process, and thus condemned unheard contrary to the tenets of natural justice.
23. It is imperative to point out that this Court hasn't lost sight, that, from the material placed before it, the 2<sup>nd</sup> Respondent wasn't a party to the Work Injury proceedings before the Director, as it wasn't named as the employer of the Applicant, and indeed it wasn't.
24. It will be remiss of this Court, if I do not point out that the 2<sup>nd</sup> Respondent's application herein is couched confusedly, with the facts set out in its support so set in a manner that makes no sense at all, and the prayers sought, in a manner which presents immense difficulty as to whose order it desired to have set aside. This Court's or the Deputy Registrar's?



25. In light of the foregoing, it isn't difficult for this Court to reach the inescapable conclusion that the 2<sup>nd</sup> Respondent's application is destitute of merit, and is an abuse of the Court process. It is hereby dismissed with costs, which this Court assesses at KShs. 40,000.

**READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 24<sup>TH</sup> JULY, 2025.**

**OCHARO KEBIRA**

**JUDGE**

