



**Ngoci v Broadview Security Limited (Appeal E038 of 2022)  
[2025] KEELRC 2373 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2373 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
APPEAL E038 OF 2022  
ON MAKAU, J  
AUGUST 14, 2025**

**BETWEEN**

**DENNIS WAITHAKA NGOCI ..... APPELLANT**

**AND**

**BROADVIEW SECURITY LIMITED ..... RESPONDENT**

**RULING**

1. This ruling relates to the respondent's Notice of Motion dated 9<sup>th</sup> December 2024 seeking the following orders: -

SUBPARA a.

That the Honorable Court be pleased certify this application as urgent and the same be heard ex-parte in the first instance and on priority basis thereafter.

SUBPARA b.

That this Honorable Court be pleased to grant leave to the Firm of M/s STEVE MURIIRA & CO. ADVOCATES to come on record for the Applicant/Respondent in the appeal.

SUBPARA c.

That this Honorable Court be pleased to stay the execution of the judgment/decree of this Honourable court dated 8<sup>th</sup> March 2024 pending the hearing and determination of this Application.

SUBPARA d.

That this Honorable Court be pleased to set aside the judgment/decree of this Honourable Court dated 8<sup>th</sup> March 2024.

SUBPARA e.



That this Honorable Court be pleased to issue an order setting aside the judgment and proceedings of the trial court and allow the applicant to prosecute its case in the trial court on merit.

SUBPARA f.

That costs of this Application be provided for.

2. The motion is supported by an Affidavit sworn on 9<sup>th</sup> December 2024 by the respondent's HR Manager, Hawa Guyo, and it was opposed by the appellant vide his Replying Affidavit sworn on 3<sup>rd</sup> March 2025.
3. The applicant's case was that it was served with the initial pleadings in the lower court and entered appearance but did nothing more after the appellant informed it that he intended to withdraw and abandon the matter. Thereafter the appellant never served it with anything else until 29<sup>th</sup> November 2024 when it was served with execution documents dated 19<sup>th</sup> November 2024.
4. It averred that the application herein was made without delay and unless the prayers sought are granted, it will suffer irreparable harm.
5. The appellant's case, on the other hand, was that Hawa Guyo has not proved that she is the applicant's HR Manager; that the applicant was aware of the proceeding of the lower court because it was served and it entered appearance but failed to file defence; and that the applicant was equally served with the appeal but failed to participate.
6. It is further appellant's case that the applicant has not explained why it never filed defence and/or whether it has a reasonable defence. He further averred that the alleged irreparable harm has not been demonstrated. Consequently, he prayed for the dismissal of the motion with costs because it is a delaying tactic.
7. The motion was disposed of by written submissions. I have considered the motion, Affidavits and submissions and the only issue for determination is whether the application should be allowed.
8. The basis of the application herein is that the applicant was not aware of the proceedings in this court or the court below and it only became aware when it was served with execution documents on 29<sup>th</sup> November 2024 by auctioneers who visited its premises. However, I find no merits in that explanation because there is evidence and admission that the applicant was served with process in the lower court and entered appearance. The allegation that the appellant indicated his intention to withdraw the suit has not been supported by documentary evidence.
9. In view of the fact that service of summons and initial pleadings was admitted, I find that the lower court judgment was regular. The award of damages by the trial court was upheld on appeal and as such it will not be shaken by the motion before the court. Besides the procedure adopted by the applicant to challenge the lower court judgment before this court is faulty and therefore the motion fails with respect to the judgment of the trial court.
10. As regards the challenge on the judgment in the appeal, the only variation made to the trial court judgment was Kshs.42,000 being two months salary as compensation for unfair termination. Before the court allowed the appeal to proceed *ex parte*, it confirmed that the appeal had been served on the Respondent. There was evidence of service of the record of appeal and Hearing notice upon the Respondent/Applicant on 3<sup>rd</sup> March 2023 at Gitimbine, Meru-Nairobi Road behind Club Garanga. The service was upon one Dorothy Kajuju, secretary in the Applicant's office.



11. The applicant has not denied, in its supporting Affidavit, that it has an office on address indicated in the Affidavit of service. It has also not denied that on 3<sup>rd</sup> March 2023 it had employed a secretary by the name of Dorothy Kajuju. Consequently, I find and hold that the applicant was duly served with both the Record of Appeal and a hearing notice and deliberately waived its right to be heard on the appeal as it did in the lower court.
12. In conclusion, and for the reasons highlighted above, I find no merits in the notice of motion dated 9<sup>TH</sup> December 2024 and dismiss it with costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF AUGUST, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**ORDER**

This ruling 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**

