



**Mbugua v Stempma Enterprises Limited; Tovuti Group Limited (Interested Party)  
(Petition E016 of 2024) [2025] KEELRC 2371 (KLR) (13 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2371 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
PETITION E016 OF 2024**

**ON MAKAU, J  
AUGUST 13, 2025**

**IN THE MATTER OF: THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLES 21,22(1), 23(1) & 3,28,30,31,41,47 AND 258 (1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE  
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES  
28, 30, 31, 41 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: SECTIONS 2, 4,26,27,28,30,35,36,41,44,45 AND  
87 OF THE EMPLOYMENT ACT 2007 OF THE LAWS OF KENYA.**

**AND**

**IN THE MATTER OF: SECTIONS 3 AND 12 OF THE  
EMPLOYMENT AND LABOUR RELATIONS COURT ACT, 2011.**

**AND**

**IN THE MATTER OF: RULE 4(1) AND 10(1) OF THE CONSTITUTION  
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF: SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT**

**BETWEEN**

**STANLEY NJEGA MBUGUA ..... PETITIONER**

**AND**

**STEMPMA ENTERPRISES LIMITED ..... RESPONDENT**

**AND**



## RULING

### Introduction

1. This ruling relates to the respondent's Notice of Motion dated 10<sup>th</sup> March 2025, seeking the following orders: -
  - a. That this application be certified urgent and heard ex-parte in the first instance.
  - b. That this Honourable court be pleased to set aside and/or vary the ex-parte orders issued on 12<sup>th</sup> February 2025.
  - c. That the Respondent/Applicant be granted leave to file a response to the application dated 23<sup>rd</sup> January 2025, and be heard on merit.
  - d. That pending the inter partes hearing and determination of this application, there be a stay of execution of the ex-parte orders issued on 12<sup>th</sup> February 2025.
  - e. That the costs of this application be in the cause.
2. The motion is supported by Affidavit sworn on 10th March 2025 by the respondent's sole Director Mr. Stephen Njenga Karanja and it is opposed by the Petitioner vide his replying Affidavit sworn on 11<sup>th</sup> March 2025.
3. In brief, the applicant's case is that the impugned orders were granted without it being given an opportunity of being heard and as it was not served with the court process. It contends that the orders granted exposes it to financial and reputational damage. Further, the orders infringe its clients' right to privacy and they are unconstitutional. It further averred that there is no evidence to prove that the phone number +254717272422 belongs to the petitioner.
4. The petitioner on the other hand contended that the respondent was duly served with pleadings and the Notice of motion dated 23<sup>rd</sup> January 2025 vide email babatasha2016@gmail.com and phone number +254707665734. He produced copy of CR-12 dated 5<sup>th</sup> December 2024 to prove that the said contacts belong to the respondent. He also attached copy of the Affidavit of service dated 29<sup>th</sup> January 2025 sworn by his Advocate who had effected the service on the respondent. He contended that the information sought is necessary in prosecuting his petition against the respondent.
5. The motion was disposed of by written submissions. I have considered the motion, Affidavits and the submissions. The issue for determination is whether the court orders issued on 12<sup>th</sup> February 2025 should be set aside and the respondent given leave to respond to the petitioner's motion dated 23<sup>rd</sup> January 2025.

### Analysis

6. The main reason for the instant motion was that the applicant was not served with pleadings leading to the impugned orders and therefore he was not accorded any opportunity to be heard. In addition, the applicant contends that the orders given are unconstitutional and will violate the right to privacy, of the applicant's clients.



7. To begin with, the court record is clear that the applicant was served with pleadings and the notice of motion dated 23<sup>rd</sup> January 2025. The court considered the Affidavit of Service dated 29<sup>th</sup> January 2025 before granting the impugned orders. The Affidavit of service has not been challenged. Rule 28(1) of the ELRC Procedure Rules, 2024 provides for several methods of service on a corporate body including:
  - “(v) sending the pleadings by electronic mail to the known email address of the corporate body.”
8. The applicant has also not denied that the email and the phone number used to effect service belonged to it or its sole Director. Even if there was denial, the CR-12 from the Company Registry would prove the applicant wrong. In the circumstances, I find that the applicant was duly served with the Notice of motion dated 23<sup>rd</sup> January 2025 and it failed to respond and attend court on 12<sup>th</sup> February 2025 for hearing. I further find that, the allegation that the orders were made without the applicant being accorded opportunity to be heard is factually wrong.
9. As regards the alleged breach of clients’ right to privacy, it has not been shown that the same will happen since every transaction done using the petitioner’s phone is not confidential information as between the respondent and the clients. Otherwise, why did the respondent use petitioners’ personal number instead of the director’s number or company’s private phone number?
10. The Notice of motion dated 10<sup>th</sup> March 2025 obviously lacks merits. In the circumstances, I dismiss it with costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 13TH DAY OF AUGUST, 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**

