



REPUBLIC OF KENYA



**Geni v Otuto (Employment and Labour Relations Cause
1124 of 2018) [2024] KEELRC 1653 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1653 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1124 OF 2018**

MN NDUMA, J

JUNE 27, 2024

BETWEEN

NELSON ONDIEKI GENI CLAIMANT

AND

TOM OTUTO RESPONDENT

RULING

1. By a notice of motion dated, 27/11/2023, the respondent/applicant seeks the following orders: -
 1. Spent
 2. That the honourable court be pleased to declare the ex-parte proceedings herein and subsequent judgment herein as improper, irregular, null and void *ab initio*.
 3. There be an order for stay of execution of the judgment delivered on 26th January, 2023 and consequential orders pending the hearing and determination of this application interpartes.
 4. This honourable court do issue an order to set aside the ex-parte judgment delivered on 26th January, 2023 and all subsequent proceedings.
 5. This honourable court do issue an order to set aside the ex-parte Taxation Ruling delivered by Hon. Fredrick M. Nyamora on 14th November, 2023.
 6. The honourable court do reopen this suit and make orders allowing the respondent/applicant and his witnesses to participate in the proceedings, call witnesses, produce evidence and tender documents for purposes of fair trial and just determination of real issues of dispute herein.
 7. That upon grant of the said orders the respondent/applicant be granted leave to file a defence and documents in support.



8. This honourable court be pleased to grant the respondent/applicant herein leave to defend the suit and the draft statement of defence annexed herein be deemed as duly filed upon payment of the requisite court fees.
9. The costs of this application be provided for.
2. The application is supported by grounds set out on the face of the notice of motion and in the supporting affidavit of the respondent/applicant which may be summarized that the court had no jurisdiction to hear and determine this suit ex-parte in that the claimant earned less than Kshs. 80,000/= a month since he earned Kshs. 20,000/= per month and going by the provisions of Gazette Notice No. 6024, in which the Hon. Chief Justice conferred jurisdiction to designated magistrate courts to hear and determine employment matters whose claimants earn not more than Kshs. 80,000/= a month.
3. That there was no proper service before the matter proceeded ex-parte and the judgment should be set aside, in any event.
4. The application is opposed as being misguided since this matter is *resjudicata* and the point raised can only be taken on appeal and that the Gazette Notice referred to did not and could not oust the jurisdiction of this court conferred to it by dint of Article 162 (2) of the Constitution of Kenya 2010 read with section 12 of the Employment and Labour Relations Court Act No. 11 of 2014.
5. The parties filed submissions which the court has carefully considered together with the depositions filed.
6. The court has arrived at the conclusion that the jurisdictional issue raised in this application is misconceived and an abuse of court process.
7. That the issue of jurisdiction after the court has rendered a judgment on the merits of the court can only be raised on appeal to the Court of Appeal.
8. That the court became *functus officio* on matters of law and fact determined by the court in the judgment dated 26/1/2023.
9. In the said judgment, the court specifically found that the respondent/applicant had been served with summons to enter appearance and statement of claim but the respondent had failed to enter appearance or file a statement of defence.
10. This was a finding of fact by the court that could be challenged by way of appeal. It was not argued by the applicant that this finding by the court was an error on the face of the judgment of the court which could be set aside in terms of Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. The affidavits of service were provided by the claimant/respondent for the court to reach that finding. The respondent/ applicant has not sought to impeach the process server who served the respondent/ applicant and filed the relevant affidavit of service.
11. Accordingly, this application lacks merit on both fronts as concerns the jurisdiction of the court and the fact that the court proceeded ex-parte.
12. Furthermore, this application was visited by inordinate delay, the same having been filed more than ten months after the judgment of the court was delivered on 26/1/2023.
13. The claimant/respondent would suffer injustice if the court set aside the judgment of the court since justice delayed is justice denied the suit having been filed in the year 2018, more than five (5) years from the date of filing this application.



14. Accordingly, the application is dismissed with costs.

DATED AT NAIROBI THIS 27TH DAY OF JUNE, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:-

M/s. Nchogu Omwanza & Nyasimi Advocates for respondent/applicant

M/s. Nyamweya Mamboleo Advocates for the claimant/respondent

Mr. Kemboi, Court Assistant

