



**Mativo v KCB Bank Kenya Limited (Cause E001 of 2021)  
[2023] KEELRC 1305 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1305 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E001 OF 2021**

**AK NZEI, J  
MAY 25, 2023**

**BETWEEN**

**BENEDICT KITHUKU MATIVO ..... CLAIMANT**

**AND**

**KCB BANK KENYA LIMITED ..... RESPONDENT**

**RULING**

1. When the suit herein came up for defence hearing on May 9, 2022, counsel for the respondent applied for an adjournment on ground that he needed to have some documents (listed on the respondents list of documents as item numbers 4,5,6 and 8) certified by the DCI – Wundanyi, as counsel for the claimant had indicated that he would object to production in evidence of uncertified copies thereof. The court allowed the adjournment and gave the following orders:-
  - a. the application for adjournment is allowed; and is marked as the last one on the part of the respondent.
  - b. the respondent is granted leave to file and serve a further list and bundle of documents placing on record certified copies of its documents Nos 4,5,6 and 8 within 14 days of today.
  - c. defence hearing on September 26, 2022.
2. The respondent did not file a further list of documents within the fourteen days’ timeline set by the court, and did not seek extension of the set timeline if, for any reason, it was unable to file the further list of documents in time. A further list and bundle of documents dated September 15, 2022 was filed by the respondent on September 16, 2022 outside the said fourteen days’ timeline, and without leave of this court.
3. On September 23, 2022, the claimant filed a notice of motion dated September 20, 2022 seeking orders:-



- a. that the court be pleased to strike out and/or expunge from the court’s record the respondent’s further list and bundle of documents dated September 15, 2022.
  - b. that costs of the application be provided for.
4. The application was opposed by the claimant and submissions thereon were filed by both parties. Upon considering the application, this court delivered a ruling on February 9, 2023 and rendered itself thus:-
- “ 12. The respondent’s further list and bundle of documents dated September 15, 2022 and filed in this court on September 16, 2022, out of time and without this court’s leave, is not legally on record. It is invalid and an illegality.
  13. consequently, the claimant’s notice of motion dated September 20, 2022 is merited and is allowed. The respondent’s further list and bundle of documents dated September 15, 2022 is hereby struck out, and is expunged from the court’s record.”
5. On February 24, 2023, the respondent filed an evenly dated notice of motion seeking the following orders:-
- a. that the time granted on May 9, 2022, for the respondent to file a further list and bundle of documents be extended to September 16, 2022, or for such other time as the court may deem fit.
  - b. that upon grant of prayer (a) above, the further list and bundle of documents dated September 15, 2023, which was struck out on February 9, 2023, be readmitted, and be deemed as being properly on record.
  - c. that costs of the application be in the cause.
6. The application is supported by a supporting affidavit of Joseph K. Yegon sworn on February 22, 2023, and is opposed by the claimant *vide* a replying affidavit sworn on March 1, 2023. Both parties filed written submissions for and against the application, which I have considered.
7. It is to be noted that *vide* its ruling delivered on February 9, 2023, this court found the respondent/applicant’s further list and bundle of documents dated September 15, 2022 to be “illegally on record and to be invalid and an illegality”, and proceeded to strike it out and to expunge it from the court’s record. The word expunge means to obliterate or to remove completely. The [Black’s Law Dictionary](#) (10<sup>th</sup> Edition) defines the word expunge as:
- “ To remove from record, list or book; to erase or destroySomething expunged is noted in the original record as expunged and is redacted from all future copies.”
8. The court having found the document sought to be re-admitted to have been invalid and an illegality that was not legally in the court’s record, and having struck it out and expunged it from the court’s record, there is absolutely nothing on record for this court to re-admit, even if time were to be extended as sought.
9. In my view, once a document is struck off and expunged from the court’s record, the document is in effect removed and obliterated from the court’s record, and ceases to exist in the form and presentation in which it was at the time of being struck off and expunged from the court’s record. The document goes outside the scope of the proceedings in issue. Asking a court to re-admit a document that the court



has struck off and expunged from its record, and particularly when the court's decision striking out and expunging the document from the court's record has not been varied and/or set aside on appeal, is an abuse of the court's process.

10. I find no merit in the respondent's notice of motion dated February 23, 2023. The same is hereby dismissed with costs.
11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25<sup>TH</sup> MAY 2023**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Mwinzi for Claimant

Miss Cheruiyot for Respondent

