



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kuria v Kinyanga & 2 others (Civil Suit E111 of 2019)  
[2025] KEHC 1378 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1378 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E111 OF 2019  
PM MULWA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**MARY JOSEPHINE WANJIKU KURIA ..... PLAINTIFF**

**AND**

**THOMAS KINYANGA ..... 1<sup>ST</sup> DEFENDANT**

**JANE NJERI MUCHIRI ..... 2<sup>ND</sup> DEFENDANT**

**GLOBUS TOURS AND TRAVEL LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Applicant brought a Notice of Motion dated 16<sup>th</sup> January 2020 asking the court to specifically include prayer no.5 in the Plaintiff's Notice of Motion dated 29<sup>th</sup> April 2019 which was granted in paragraph 21 of the Ruling delivered on 26<sup>th</sup> November 2019 by Hon. Maureen A. Odero but left out in the final orders in paragraph 22.
2. The application was supported by the grounds on the face of it and by the sworn Affidavit of Mary Josephine Wanjiku Kuria who stated that in the final directions in paragraph 22, the Judge granted the injunction in terms of prayer 6 of the Notice of Motion leaving out prayer 5.
3. In response, the Respondents filed Grounds of Opposition dated 7<sup>th</sup> February 2020 on the following grounds;
  - a. The Notice of Motion is incurably defective and same does not lie in law.
  - b. The provisions under which the application is brought cannot be the basis for the court to grant the prayers sought in the circumstance.



- c. The Notice of Motion is a grave abuse of the due process of the court and is for dismissal.
  - d. The application is premature, null and void in law and is for dismissal.
  - e. The Plaintiff inexcusably omitted to comply with mandatory provisions of the law before filing the present application.
  - f. The Application is incompetent as drawn and an abuse of the court process.
  - g. The Plaintiff's application is grossly misconceived in law, fatally defective and ought to be struck out.
  - h. The application is an abuse of the court process and contrary to public policy.
4. In addition, the Defendants filed a replying affidavit dated 28<sup>th</sup> February 2020 and they stated that the issues raised by the Applicant were substantially dealt with by a court of competent jurisdiction.
  5. Further, they argued that on 17<sup>th</sup> January 2020 the Applicant filed an application asking the court to grant them additional orders contrary to the applicable law. The application dated 29<sup>th</sup> April 2019 invoked the discretionary powers of the court which powers were exercised judiciously.
  6. The court has carefully considered the written submissions filed by the Applicant and frames the only one issue for determination; whether the application is merited.
  7. It was the Applicant's submission that the court exercises its discretion to correct the error in the Ruling, as the injunction referred to in paragraph 22 of the court's determination is sought in prayer number 5 and not prayer number 6 of the application dated 29<sup>th</sup> April 2019. The Applicant sought the inclusion of an order of injunction specific to prayer number 5 of the application which preserves the subject matter pending the hearing and determination of the suit.
  8. In opposition, the Respondent held the position that where a party is aggrieved by a decision of the court the law provides them with an avenue for redress by filing an appeal or filing a review. As such the application is not only misinformed but fails to meet the legal threshold to entitle the court to interfere with the Ruling.
  9. The court has perused the Ruling dated 26<sup>th</sup> November 2019 and the final orders were;  

“Accordingly, I do allow the present application and grant an injunction in terms of prayer 6 of the Notice of Motion dated 29<sup>th</sup> April 2019. Further, I do make orders in terms of prayer 7. Costs of this application are awarded to the Plaintiff/Applicant.”
  10. However, the Applicant contended that the final orders should include prayer number 5 which reads;  

“THAT pending the hearing and determination of this suit an injunction be and is hereby issued to restrain the Respondents and each of them, whether by themselves or by their respective servants or agents or any of them or otherwise however and whether in the case of the second Defendant by their Directors, officers, subsidiary companies, servants or agents or any of them or otherwise howsoever, from doing the following acts or any of them that is to say, interfering by way of cash withdrawals or transfer from any or all bank accounts held in the name of the 3<sup>rd</sup> Respondent and further restrained from removing from the jurisdiction of this court or from disposing of, dissipating diminishing or in any



way howsoever dealing with any of the assets owned by the 3<sup>rd</sup> Respondent within the jurisdiction”.

11. The court has carefully perused the impugned Ruling in totality and it is clear that the injunction was granted to the Applicant. The court observes that in support of the above prayer 5 above the court stated;

“...in the event no injunction is granted there is a real risk that the 1<sup>st</sup> Defendant will continue on this withdrawing spree to the detriment of the Plaintiff as he may, go as far as to withdraw all the funds paid in by debtors.”

12. Whereas the court takes cognisance that where a party is aggrieved by a decision of the court the law provides them with an avenue for redress by filing an appeal in the Court of Appeal or by filing a review; it would be unjust and a waste of judicial time to have the Applicant go that route.

13. In light of this, the court invokes Article 159 (2) (d) of *the Constitution* which states that justice should be dispensed without undue regard to procedural technicalities. In the case of Zacharia Okoth Obado v Edward Akong’o Oyugi & 2 others [2014] eKLR, the Supreme court stated as follows;

“In the Law Society case, this Court reiterated its earlier decision when it warned itself on a blanket invocation of Article 159 thus: “Indeed, this Court has had occasion to remind litigants that Article 159(2) (d) of *the Constitution* is not a panacea for all procedural shortfalls. All that the Courts are obliged to do is to be guided by the principle that “justice shall be administered without undue regard to technicalities.” It is plain to us that Article 159 (2) (d) is applicable on a case-by-case basis”.

14. The Respondents herein have not demonstrated that they will suffer any prejudice. In view of the wording of the Ruling and in the spirit of administering justice the court finds that this case is appropriate for the application of Article 159 (2)(d) of *the Constitution* in favour of the Applicant. The application dated 16<sup>th</sup> January 2020 is allowed as prayed. No orders as to costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Ochieng h/b for Mr. Mwangi for Plaintiff

Mr. Osundwa for Defendants

Court Assistant: Carlos

