



**Ochuro v Wathome (Miscellaneous Civil Application
E099 of 2025) [2025] KEHC 7571 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION E099 OF 2025**

EN MAINA, J

MAY 29, 2025

BETWEEN

LEONARD OUMA OCHURO APPLICANT

AND

BENARD MWAURA WATHOME RESPONDENT

RULING

1. In the Notice of Motion dated 27th March 2025 filed under Certificate of Urgency, the Applicant sought orders as follows;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. This Honourable court do exercise its discretion in reviewing the ruling by the Hon Adjudicator Ms. Benta Luova made on the 4th day of March 2025 wherein the said magistrate barred the Respondent from making an oral statement which the Respondent/ Applicant had requested to make in support of his formal statement of defence already files and served in contravention of the Applicant's constitutional rights.
 - e. The court do exercise its supervisory role and allocate this matter to another adjudicator.
 - f. Costs of this Application be provided for."
2. The Application is supported by an affidavit sworn on 27th May 2025 wherein the Applicant contends that he has always been cooperative and that he has attended court to facilitate free, fair, transparent and objective trial but that the Adjudicator caused his case to be closed prematurely without giving him an opportunity to present his case. He therefore prays that the ruling of the Adjudicator be reviewed so



that he can be allowed to file his witness statement and thereafter adduce his evidence. It is also urged that the case be assigned to another Adjudicator.

3. In oral submissions made before this court on 28th April 2025, Counsel for the Respondent contended that the orders sought were overtaken by events as judgment had already been delivered and also that the Applicant herein did not file a statement as had been directed.

Determination.

4. This court has considered the record of the Small Claims Court, the application, the rival submissions of Counsel for the parties and the law. From the record this application arises from the ruling delivered by the Adjudicator on 4th March 2025. The said ruling prevented the Applicant from adducing his evidence for reason that he had not filed and served his witness statement and as such that would have amounted to an ambush.
5. The record shows that thereafter the Adjudicator proceeded to set the case for judgment and in the course of these proceedings this court was informed that the judgment was delivered on 11th April 2025.
6. The Small Claims Act leaves it to that court to come up with its own rules of procedure. The record shows that the Advocates for the parties went before the Adjudicator for pretrial on 19th February 2025 and agreed on how the case would proceed. Before that, 10th December 2024 the Applicant had been granted 14 days to comply. However, even by the time the claimant in the case closed his case the Applicant had not complied.
7. The Applicant contends that his right to be heard was violated but I do not agree given that he was granted sufficient time to comply with the directions of the court but he failed to do so. One of the hallmarks of the small claims court is the expeditious disposal of cases and it is incumbent of parties thereat to co-operate to achieve that objective. The Applicant was represented and Learned Counsel very well understood the consequences of not filing a witness statement.
8. Upon review of the proceedings, this court is not persuaded that the threshold for infringement of constitutional rights elucidated in the case of *Anarita Karimi Njeru v Republic* [1979] KECA 12 (KLR) has been met. The Applicant was indolent and despite being given chances to file the pleadings or documents he wanted to rely upon, the same was not done.
9. Moreover, the judgment having been delivered, this application was overtaken by events and all the Applicant can do is to appeal the judgment.
10. In the end, the application is dismissed with costs to the Respondent.
11. The lower court file be transimitted back to the lower court forthwith.

It is so ordered.

RULING SIGNED, DATED AND DELIVERD VIRTUALLY ON THIS 29TH DAY OF MAY 2025.

E.N. MAINA

JUDGE

In the presence of:

Mr. Osewe for the Applicant

Ms Achola for Respondent

Geoffrey – Court assistant

