



**Mwale & another v National Council For Law Reporting (Civil Suit
E006 of 2021) [2022] KEHC 13490 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL SUIT E006 OF 2021
WM MUSYOKA, J
SEPTEMBER 23, 2022**

BETWEEN

JULIUS MWALE 1ST APPLICANT

TIMAZ & TUMAZ ENTERPRISES LIMITED 2ND APPLICANT

AND

NATIONAL COUNCIL FOR LAW REPORTING RESPONDENT

RULING

1. The application for determination is dated January 10, 2022. It is brought at the instance of the Attorney General, for the respondent in the originating notice of motion dated November 1, 2021. I shall refer to National Council for Law Reporting as the respondent. It seeks the setting aside of an interlocutory judgment that was entered in the matter on November 11, 2021, and admission of an attached replying affidavit as response to the originating notice of motion dated November 1, 2021.
2. The affidavit in support of the motion is sworn by Jack Mwimali, the Chief Executive Officer of the respondent. He does not deny the electronic service of the originating notice of motion, but says that the service was done within a very short period of time before the hearing, which did not afford the respondent adequate time to inform the Attorney General to respond. He further argues that the respondent was a government entity and the Attorney General ought to have been joined as a party. He accuses the applicants of failing to serve the Attorney General.
3. The response by the applicants to the originating notice of motion is by Julius Mwale, the 1st applicant, *vide* an affidavit sworn on February 28, 2022. He avers that the pleadings and the orders of November 5, 2021 were served electronically on the respondent, in accordance with the applicable rules. He avers that the court process was served at the offices of the respondent on November 8, 2021. Documents are attached to the affidavit as proof of the service.



4. Directions were given on February 28, 2022, for disposal of the application, dated January 10, 2022, by way of written submissions. Both sides have complied, by filing written submissions, supported by authorities. I have perused through the same and noted the arguments made.
5. The matter is fairly straightforward. The respondent does not deny service, but prays that the orders of November 5, 2021 be set aside, to allow it to place its case before the court. Its case is essentially that it is a state entity, mandated by statute to collect decisions of judges of superior courts and of publishing them. It is argued that the order to have the ruling, relating to the applicants, pulled down, sets a bad precedent, and does not bode well for the discharge of the statutory mandate of the respondent.
6. The record before me is clear that the respondent was served with the order of November 5, 2021, but it would appear that not much was done to ensure that the respondent was represented in court on November 11, 2021 when the matter came up. A court order should always be taken seriously by the parties, and effort should always be made to respond to it. The mere fact that the respondent is a state entity is not good enough. The state is not a special party. It is bound by the same rules as private entities and individuals. The state enjoys no special privileges when it comes to compliance with court orders. I see no good reason why the respondent did not have representation in court on November 11, 2021, after it was duly served with court process on November 5, 2021.
7. Anyhow, I note that the respondent moved with some level of alacrity, to comply with the orders of November 11, 2021, by way of pulling down the ruling in question. I also note that the same alacrity was employed with respect to applying to have the orders of 11th November set aside.
8. In the interest of justice, I am inclined to grant the prayers sought in the application dated January 10, 2022. I shall allow the same, to enable the respondent defend the suit. I shall accordingly set aside the orders of November 11, 2021 and admit the respondent's reply to the originating notice of motion dated November 1, 2021, being the affidavit of Jack Mwimali, of November 10, 2021. The matter shall be set down for mention, at the delivery of this ruling, for directions on disposal of the originating process.
9. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23RD DAY OF SEPTEMBER 2022

W M MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Mulama, instructed by Javier Georgiadis & Sylvester Law LLP, Advocates for the applicants.

Mr. Juma, for Mr. Nyauma, instructed by the Attorney General, for the respondent.

