



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA, AT MOMBASA

CIVIL, COMMERCIAL AND ADMIRALTY DIVISION

ADMIRALTY CAUSE NO. 3 OF 2021

SEO HYUDHO & 15 OTHERS.....CLAIMANTS

-VERSUS-

THE OWNERS OF THE FISHING VESSEL

FV 'RA HORAKHT'.....DEFENDANT

(Admiralty claim *in rem* against the owners of the fishing vessel 'Ra Horakht')

RULING

1. On 13th October, 2021, the claimant herein lodged a claim against the owners of the fishing vessel (FV) 'Ra Horakht' claiming *inter alia* that the defendant has neglected to pay the claimants wages amounting to USD 247,255.00, an amount that is still accruing. On the same day, the claimant filed an Application Notice under certificate of urgency for the arrest and custody of the said fishing vessel that was docked at Liwatoni Mombasa, within Kenya's territorial waters.

2. According to the affidavit of service sworn by one Boniface Musyoka Joseph, a Court Process Server, he averred that he effected service of the said pleadings on 13th October, 2021. He deposed that he fixed a copy of the claim form on the starboard side of the fishing vessel 'Ra Horakht' in a position where it was reasonably expected to be seen. He further deposed that the Captain also acknowledged service of the claim form by signing a copy of the same and affixing thereon the seal of the said vessel.

3. On 29th October 2021, Mr. Ousa Okello, learned Counsel for the claimants filed another Application Notice under certificate of urgency seeking *inter alia* for judgment in default of the filing of an acknowledgment of service. The Application Notice was supported by the affidavit of Seo Hyundo, the 1st claimant and the Captain of the fishing vessel 'Ra Horakht'. He acknowledged receipt of the pleadings served by Boniface Musyoka and deposed that after receipt of the same, he instructed his Counsel, Mr. Okello to inform the defendant about the service. The said Captain further deposed that the claimants' Counsel sent the pleadings via email on 25th October, 2021 as exhibited at annexure "SH II". He averred that in the email the owners and the agents were duly informed by a letter about the claim instituted against them.

4. The Counsel for the parties appeared before this Court on 9th November, 2021 and Mr. Okello submitted that the claim documents were served on the vessel on 13th October, 2021 in accordance with Rule 68.3 sub-rule 6(1)(a) of the Civil Procedure Rules of England and therefore the 14 days to file an acknowledgment of service had since elapsed. He further submitted that the defendant had not sought leave from the Court for extension of time to file an acknowledgement of service.

5. Mr. Anangwe, learned Counsel for the defendant indicated that he had not seen the Application Notice dated 28th October 2021.

6. This Court has to be satisfied that there was proper service before it can enter judgment in default of the filing of an acknowledgment of service. I have considered the pleadings and the brief submissions by Mr. Okello and the circumstances leading to the filing of the acknowledgment of service, as well as the applicable law. CPR 61.3 of England (CPR) sets out the procedure for filing an acknowledgment of service. It is drawn as follows -

" (1) This rule applies to claims in rem.

(2) A claim in rem is started by the issue of an in rem claim form as set out in Practice Direction 61.

(3) Subject to rule 61.4, the particulars of claim must –

(a) be contained in or served with the claim form; or

(b) be served on the defendant by the claimant within 75 days after service of the claim form.

(4) An acknowledgment of service must be filed within 14 days after service of the claim form.

(5) The claim form must be served –

(a) in accordance with Practice Direction 61; and

(b) within 12 months after the date of issue and rules 7.5 and 7.6 are modified accordingly.

(6) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service. (emphasis added).

7. It is not in dispute that an acknowledgment of service for an Admiralty claim *in rem* should be filed within 14 days of the service of a claim form. The issue that arises is whether the service effected herein was proper service. The claim forms were served on the fishing vessel and to the Captain of the said vessel. The crew and the Captain are the ones who have filed the claim herein against the owners of the fishing vessel. The Captain (Seo Hyundo), deposed that the owners of the vessel (defendant) only got to know of the claim against them when they received the email on 25th October 2021.

8. Service of pleadings by a plaintiff to a defendant is an essential step in commencing or even proceeding with litigation. Service is critical because it is the only way in which a defendant can be notified of a suit filed against him/her/it. The claim form in this cause was served to the Captain and another copy was fixed on the starboard of the fishing vessel. According to the Captain, he informed Mr. Okello Advocate to inform the owners of the said vessel about the claim herein. Annexure “**SH II**” shows that service of the claim form was effected on the defendant and its agent on 25th October, 2021, through emails sent to ‘**info@thenefersetcorporation.com**’ and ‘**info@eadf.co.ke**’. In the said emails, the claimants’ Counsel attached a letter addressed to ‘**The Neferest Corporation Ltd**’ and copied to ‘**East African Deep Sea Fishing**’. Taking into consideration the nature of the claim before this Court and the fact that the claimants are the Captain and the crew of the fishing vessel and that in the claim filed herein, they allege that the defendant has abandoned them and has not paid their wages, this Court is of the finding that proper service of the claim was effected on 25th October, 2021, and not before that date.

9. It would be prejudicial to the defendant if the 14 days within which it was required to file an acknowledgment of service were to be computed from 13th October, 2021 as the defendant was not aware of the claim against them. It is evident that once the defendant received the email informing them of the claim, they moved with speed and filed their acknowledgment of service four days later.

10. This Court holds that the acknowledgment of service by the defendant was filed within the 14 days provided under the provisions of Rule 61.3(4) of the CPR of England. The defendant is therefore directed to file their statement of defence to the claim dated 12 October, 2021, within 14 days of this ruling.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 19TH DAY OF NOVEMBER, 2021. In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April, 2020 and subsequent directions, the ruling herein has been delivered through Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of –

Mr. Ousa Okello for the claimants

Mr. Anangwe for the defendant

Mr. Oliver Musundi – Court Assistant.