

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 172 OF 2018

(An appeal arising from the judgment and decree of the Hon. W Lopokoiyit, Resident Magistrate (RM), in Kakamega CMCCC No. 312 of 2017 of 29th November 2018)

JUDITH ANYANGO.....APPELLANT

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. In the course of preparing judgement in the appeal herein, I have established that the appeal was never served on the respondent. Instead, it was served on the advocates who acted for the respondent at the trial court.
2. The affidavits of service on record all indicate that the said advocates, Messrs. Kimanga & Company Advocates, received service, but endorsed that they had no instructions. Indeed, the said firm of advocates never placed itself on record as having been appointed to act in the matter for the respondent.
3. It should not be assumed that since a firm of advocates acted for a party at the trial, they would also act for the same party on appeal. The appeal is a separate suit or cause. The fresh court process should, therefore, be served on the party directly, so that it can instruct counsel to appear and act for it.
4. Consequently, it would be injudicious to proceed to determine the appeal herein, before the respondent is served directly, to enable it participate in the proceedings. Let service be done first on the respondent directly. The matter shall be mentioned after thirty days to confirm service. It is so ordered.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 26th DAY OF June 2020

W. MUSYOKA

JUDGE