

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 80 OF 1999

NELSON MUGUKU NJOROGEPLAINTIFF

VERSUS

FURNCON LTD.....DEFENDANT

DIRECTIONS

1. The Plaintiff filed this suit on 15th January 1999. He claimed from the Defendant unpaid arrears of rent of KShs 610,843/60, costs and interest. The Defendant was no longer in the premises.
2. The record of the Court discloses that on 23rd September 2002 *ex parte* judgment was entered for the Plaintiff for the total sum of KShs 757,445/20 plus costs. The Plaintiff's costs were subsequently taxed and there were unsuccessful attempts at execution.
3. The court file appears to have then disappeared and irretrievably lost. An order for its reconstruction was sought and apparently obtained, and the file appears to have been reconstructed.
4. There appears to be pending an application by the Defendant dated 28th August 2007 for an order to set aside the *ex parte* judgment. There is also pending a further application by the Defendant (chamber summons dated 1st December 2010) seeking leave to amend the application to set aside *ex parte* judgment.
5. In the meantime the Plaintiff died on 10th December 2010. His legal representative, **Leah Wanjiku Muguku**, then applied by **notice of motion dated 2nd October 2012**, amended on 14th June 2013, for the main orders for revival of the suit, which is said to have abated, and for substitution of Leah Wanjiku Muguku in place of the deceased Plaintiff.
6. As I was perusing the file in preparation to write ruling on the said application I came across various old complaints by the Defendant that his signature had been forged at some point to falsify alleged service upon him. At some point the Court had ordered investigations into those allegations. I could not readily find on the record the result of the investigations.
7. I then saw a letter dated 19th September 2013 addressed to Court by the Defendant. It stated, *inter alia*, that he had visited the registry to peruse the court file but was advised that the file was not available as it was with the Judge for preparation of ruling for delivery on 27th September 2013; that he was surprised as he had not been served with notice for any hearing; and that he took exception at this state of affairs.
8. Indeed the amended notice of motion dated 14th June 2013 came up for hearing on 16th July 2013. Learned counsel for the Plaintiff informed the court that the Defendant had been duly served, and an affidavit of service filed on 15th July 2013 was referred to. It disclosed service by registered post, which service is ordinarily good service, the Defendant being a corporation.
9. However, given the acrimonious history of this matter, I will give the Defendant another chance to

be heard upon the amended notice of motion dated 14th June 2013. I will therefore strike out the proceedings of 16th July 2013 and direct that the application be heard *inter partes*. Appropriate further directions towards that end shall be given on 27th September 2013. It is so directed. Costs shall be in the cause.

DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2013