



Mawanga estate in the outskirts of Nakuru town, whereupon he served him with the said Notice. The process server then continues to say that he knew the said judgment debtor by virtue of previous process he had personally effected unto him in this matter. I note that nowhere in his previous affidavit of service did he say that he met or had seen the applicant herein. In fact, in this second affidavit of service sworn on 1<sup>st</sup> April, 2011, he says he was accompanied by the plaintiff's son "for purposes of identifying and pointing out to me" the applicant. It is not true therefore that he knew the applicant by virtue of any previous service. The foregoing completely shatters the credibility of this process server which goes to the root of this application.

The applicant may therefore be right that he was never served with any summons to enter appearance, that he lived in Nakuru as confirmed by the 2<sup>nd</sup> affidavit of service and that he was not aware of this suit. Bearing that in mind, I am persuaded that the applicant's application must succeed. Accordingly, the judgment entered in this court on 30<sup>th</sup> July, 2009 is hereby set aside and all proceedings relating thereto must fall by the way side.

The 2<sup>nd</sup> defendant is hereby granted leave to file his defence within 14 days of today. The applicant shall also have the costs of this application.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 20<sup>th</sup> Day of September , 2011***

**A. MBOGHOLI MSAGHA  
JUDGE**