

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA**

Miscellaneous Application 67 of 2001

ELIZABETH AWUOR

.....
APPLICANT

VERSUS

**RAPHAEL OGOLA
OCHIENG**

.....
RESPONDENT

RULING

The petitioner seeks an order that the ruling delivered on 4.6.2002 be set aside and that all subsequent orders be set aside. The ground for the application is that the petitioner was not served with a hearing notice to attend court on 4.6.2002.

The application is opposed by the Respondent. When the application dated 10/2/2001 came up for hearing on 4.6.2002 the petitioner is shown to have been absent.

A process server had filed an affidavit of service indicating that the petitioner was served with a hearing notice on 6.4.2002. The learned Judge – Hon. Mr. Justice Ringera informed that the petitioner was duly served. I have no reason to differ with him on that finding.

I have read through the pleadings filed herein the application dated 10.2.2001 was filed in court on 9.5.2001. According to the record, the affidavit of service filed by the petitioner on 5.6.2001 it is indicated that the said application was served on the petitioner on 12.5.2001. I did not come across any grounds of opposition on a replying affidavit filed by the Respondent/Applicant in that application. The implication is that even if the Petitioner was present in court on 4.6.2002 the application would have probably proceeded ex parte by the applicant/Respondent.

I therefore see no merit in this application which I dismiss with costs to the respondent, Elizabeth Awuor Mhunda.

Dated this 18th day of May 2010.

D.A ONYANCHA
J U D G E