



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1825 of 2000**

**LIMURU DAIRY FARMERS CO-OPERATIVE SOCIETY LTD.....PLAINTIFF**

**versus**

**1. LIMCREST FARMERS CO. LTD**

**2. GEOFFREY NGUGI GAKURU**

**3. GEORGE KIMUNYA GAKURE.....DEFENDANTS**

**RULING**

This application dated 28<sup>th</sup> September 2004 and expressed to be brought under Order V Rule 2 and Order IXA Rule 10 and 11 of the Civil Procedure Rules seeks order that the Interlocutory Judgment entered herein against the 1<sup>st</sup> Defendant be set aside; that this Honourable Court be pleased grant leave to the 1<sup>st</sup> Defendant to defend the suit, that the defence attached herein be treated as fully filed and that the costs be of this application be costs in the cause.

The application is based on the grounds that the 1<sup>st</sup> Defendant was not served with summons to Enter appearance or with copy of the plaint and that the Defendant has a valid defence to the plaintiff's claim. The application is also supported with an affidavit sworn by Nelson Njogu Mungai in which he has deponed that he is the Manager of the 1<sup>st</sup> Defendant Limacrest Farmers Company Ltd and a former Secretary/Manager of the plaintiff; that the 1<sup>st</sup> Defendant has never been served with summons to enter Appearance or with a copy of the plaint, that the 1<sup>st</sup> Defendant does not have a director known as Geoffrey Ngugi Gakuru, who was purportedly served by the process serve Mr. Mbote as stated in the return of service; that the 1<sup>st</sup> Defendant has a director known as Geoffrey Ngugi, Kagura and that since the disputed therein involves a Co-operative Society and its members or former members, the dispute should be referred to arbitration.

The application is also supported by an affidavit

sworn by Geoffrey Ngugi, Kagura who has deponed that he is a director of the 1<sup>st</sup> Defendant and denies to have served on behalf of the 1<sup>st</sup> Defendant and denies to have served on behalf of the 1<sup>st</sup> Defendant.

The application is opposed by the Respondent.

Mr. Mureithi, counsel for the 1<sup>st</sup> Defendant/Applicant submitted that there was no proper service on the applicant. He referred to the affidavit of return of service by M. Mbote in which he has deponed in paragraph 6 that since the 2<sup>nd</sup> Defendant is a director of the 1<sup>st</sup> Defendant Company, he tendered him a copy of the summons and plaint on behalf of the 1<sup>st</sup> Defendant which he accepted and signed. But the 2<sup>nd</sup> Defendant has sworn an affidavit in which he has stated that the summons were served on a completely different person called Geoffry Ngugi, Kaguru and not him. I have perused the record and that is the position.

The person who acknowledge receipt of service is indicated as Geoffrey Ngugi, Kaguru. Since service was not affected on the manager of the 1<sup>st</sup> Defendant and the person who was allegedly served on behalf of the 1<sup>st</sup> Defendant is not a director of the 1<sup>st</sup> Defendant, it follows therefore that there was no proper service.

I have also looked at the Draft Defence annexed herein and in my opinion it raises a valid triable issue for determination.

The applicant's application is therefore allowed in terms of prayer 1, 2, 3 and 4.

The applicant to pay requisite fee for the filing of the defence and serve the same upon the plaintiff within 7 days from the date of this ruling.

Dated and delivered at Nairobi this 19<sup>th</sup> day of June 2006.

**J.L.A. OSIEMO**

**JUDGE**