

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA
Civil Suit 204 of 2004

KIMWELE MUNEENI
PLAINTIFF

VERSUS

CAROLINE MANGO

MAUREEN MUDI

THE STANDARD LTD
DEFENDANTS

R U L I N G

Application dated 10.11.2004 is by the Defendants. The prayers sought have been granted but the main prayer that the ex-parte judgement entered herein be set aside with all consequent orders and that the Defendants be allowed to file statement of defence to this suit is outstanding. The application is supported by affidavit sworn by Moses Kurgat who has attached a draft statement of Defence. There is also a further affidavit sworn by first defendant. This Defendant denies the summons to enter appearance was ever served upon her and that affidavit of service by Abelazo Mutus is not truthful. The affidavit of Regional News Bureau Chief also denies service shows that the company's registered office is in Nairobi where court process should be served.

I have perused the affidavits in support of application and of the Respondent. The only issue is whether summons to enter appearance and to attend to the application were served upon the Defendants as required by rules of procedure.

The other issue to justify setting aside judgment is; has the Defendant a defence to the Plaintiff's claim. The Respondents seem to emphasize the allegations made but these matters will be heard properly at the trial. I have perused the attached draft defence and I am satisfied that there are serious issues relating the support defence of the suit by Defendants.

The affidavit of service is not adequate to prove proper service. Corporates are served at their registered office. The third Defendant is a well-known newspaper publisher and their head office is in Nairobi. The first and second Defendants are employees of the company. They deny the alleged service and upon perusing the affidavit of service by Mr Mutua I am not convinced that they were served. They had nothing to lose by admitting the service, the principal, their employer would see to their representation.

In the circumstances I find the service of summons was effected irregularly. I set aside the judgement entered exparte in default and grant leave to the Defendants to file their defences within the next 14 days from today.

Costs shall be in the cause.

Dated 29th July 2005.

J.N. KHAMINWA

JUDGE