



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE NO. 378 OF 2002**

**AMOS JOSIAH MUYUMBU & ANOTHER ..... PLAINTIFF**

**VERSUS**

**ELDORET EXPRESS SERVICES LTD ..... DEFENDANT**

**R U L I N G**

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The application before me is for the setting aside of this courts judgment (Mbitto,J.) (Heard under Order 17 r 10 CPR).

The suit originally was filed on the 4th of March 2002. It is a running down matter whereby one Agnes Nekesa Wakhunga (now deceased) was a fare paying passenger in the defendants vehicle when an accident occurred on 13.12.00 at 7.30 p.m. involving two other vehicles. The deceased died and the defendant – a limited liability company was sued.

The deputy registrar under powers given to him under order 48 Civil Procedure Rules entered an Interlocutory Judgment against the defendant for failure to enter appearance and file defence. The matter proceeded for hearing on assessment of damages before Mbitto J on 23.1.03. The written submission was to be filed by 28.2.03 and judgment in favor of the plaintiff was delivered on the 6.2.03.

The plaintiff attached the defendants vehicle in realisation of the decretal sum awarded. This promoted the application dated 10.11.03 which is the subject matter of this ruling. The applicant/defendant stated that as a limited liability company, its main offices are in Nairobi and Eldoret. The affidavit of service indicates that service was made on the Managing Director in Kitale. The applicant denied that Kitale was their Principal registered office and that one Mburu was the managing director. He was infact not known to the defendants.

The respondent/plaintiff in reply stated that the deputy Registrar satisfied himself of the service and as such service is in order.

I have perused the documents in this file relating to service and note that the applicant has indeed brought to light new matters which may generally not have been within the knowledge of the deputy registrar.

The first is that the summons to enter appearance gave the address for the defendant as Eldoret Express Bus Services Ltd, NAIROBI. Service was undertaken in Kitale yet the stamp acknowledging service is for Eldoret and not Kitale.

The rules under the Civil Procedure Act requires that service on a coprate institution must be upon a principal officer of the said company. Failure to find that principal officer, services may be done by registered post to their registered offices.

The respondent had not shown that the same was indeed at the registered offices and that the said principal officers are so.

As the issue of service to my mind is doubtful, I would in the circumstances allow the application and set aside the Interlocutory Judgment and the judgment for quantum.

I hereby give leave to the defendant to file their defence within 21 days of to days date. A reply may be filed 14 days after service.

The costs of this application is awarded to the plaintiff/respondent.

**Dated this 28th day of January 2004 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**

**Rachier & Co. advocate the for plaintiff**

**S.W. Ndegwa & Co. Advocates for the defendant**