

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL SUIT NO. 180 OF 2000

CHARLES SIMIYU MUSIMA PLAINTIFF

VS

JAMES WABWILE DEFENDANT

RULING

The defendant's advocate verbally applied to have Raphael Pamba, the deponent of the affidavit of service sworn on 9th July 2002 cross-examined over the affidavit. Mr. Onchiri cited order XVIII rule 2 of the Civil Procedure rules to back up his application.

Mr. Waswa for the plaintiff vehemently opposed the application on the ground that Order XVIII of the Civil Procedure rules do not apply to affidavits of service. He pointed out that the relevant provisions of the law is under Order V rule 16 of the Civil Procedure rules.

I have carefully considered the rivaling submissions. I think I am in agreement with the submissions of Mr. Waswa that when it comes to an application to cross-examine a serving officer, the relevant legal regime is under Order V of the Civil Procedure rules.

Order V rule 16 reads:

“On any allegation that a summons has not been properly served, the court may examine the serving officer on oath, or cause him to be so examined by another court, touching his proceedings and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit.”

It is also clear under Order V rule 32 that an application to cross-examine a deponent of an affidavit of service shall be made by summons. There is no room for an oral application unlike the case under Order XVIII rule 8 of the Civil Procedure rules.

Consequently the oral application by Mr. Onchiri for the respondent is dismissed with costs to the plaintiff.

DATED THIS 12th DAY OF March 2004

J.K. SERGON

JUDGE