



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 824 OF 2000**

**CHARLES MUGAMBI M'BUTHIA ..... PLAINTIFF**

**VERSUS**

**ARUSHA EXPRESS COMPANY LIMITED ..... DEFENDANT**

**RULING**

Defendant No. 1, Arusha express Company Limited liability Company who have been brought to court together with one James Mwarare Koigi by Charles Mugambi M'Burithia the Plaintiff herein for the wrongful death of one N. M. Mugambi who is said to have been knocked down by the defendants vehicle.

This action in tout was filed on the 26.5.00. Efforts to trace the 1st, defendant, a limited liability company proved fruitless. The process server did a search at the Registrar of Companies office at Sheria House. He found the registered offices of the said company and a box number of 28807 Nairobi.

The company's office was closed. He was directed to Mombasa where the company offices too were closed. Two months later the process server served the summons to enter appearance, the plaint through the 1st defendant's postal address.

There was Interlocutory judgment entered on 7.6.02 against the 1st defendant by the principal Deputy Registrar. The executive officer who has been informed on numerous occasions gave dates for hearing of this suit before the High Court. This is the task of the Registrar of the High Court of Kenya.

By giving the said dates it contravened Order 9S r 6 Civil Procedure which I shall mention at a later stage. I requested the advocate to address me on the issue as to why he did not seek an alternative or substitute service from court. The advocate stated that Order V r 2 Civil Procedure permits him to service through registered post where the defendant cannot be traced.

As a rule serve or a corporation must be on the "secretary to the company the director or other Principal Officer of the corporation."

Basically what this means is that here should as far as possible be personal service on the said officers. Order 5 r 2 (b) Civil Procedure nonetheless reads,

"if the process server is unable to find any of the officers of the corporation mentioned in rule 2 (a) (above) by leaving it at the registered office of the corporation or sending it by prepaid registered post to the registered postal address of the corporation or of there is no registered office and on registered postal address of the cooperation by leaving it at the place where the cooperation carries on business or by sending it by registered post to the last know postal address of the cooperation."

Thus the process server had duly complied with services although this court would have wished that a more thorough search would have been made. The word Arusha may imply that a sister company may be in another country.

I now turn to Order 9A r 6 Civil procedure. The rules provides that where there are several defendants to a suit and if interlocutory judgment has been entered against one then the plaintiff must await the hearing of the other defendants suit. The plaintiff cannot hear the 1st defendants suit on assessment of damages when the 2nd defendants has not been served nor is he aware of this suit. The case must be heard

simultaneously.

I hereby direct that this matter is to be listed for hearing until the 2nd defendant is duly served and if he wishes to enter his defence.

That a copy of this ruling be made available to all the deputy registrars and to the executive officers who fixed this matter for hearing contrary to Order 9A r 6 Civil Procedure.

Dated this 13th day of November 2002 at Nairobi.

M.A. Ang'awa  
**JUDGE.**