



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA NAIROBI**

**Civ case 957 of 99**

**DAVID C. MWANGI t/a SAM & SEMA MARKET  
CENTRE.....PLAINTIFF**

**-VERSUS**

**OCCIDENTAL INSURANCE CO. LTD..... 1ST DEFENDANT**

**AZARI INSURANCE BROKERS .....2NDEFENDANT/APPLICANT**

**RULING**

The Applicant is asking for a Stay of Execution and setting aside the default Judgment entered against it on the grounds that there was no proper service on the applicant. The application is supported by an affidavit of Marion Mutuota. I have considered the contents of this affidavit and I have also considered the submissions by the counsels.

The defendant being a Company it would suffice if the summons were left in the registered offices of the Company. The return of service of Mungai shows that the documents were left with the receptionist. He does not say that handing them over was part of the service by way of leaving them in registered offices of the Company. He says that the receptionist told him that she was empowered to receive summons. She now denies having said so and further denies that the process server identified himself to her. There are therefore serious doubts as to whether proper service was effected since the process could only have properly effected the service by leaving the summons in the offices of the Defendant which he did not.

For these reasons, I would allow the application and set aside the judgment and the subsequent orders.

The costs shall be in course.

**Dated and delivered this 25th day of February, 2000.**

**KASANGA MULWA**

**JUDGE**