



REPUBLIC OF KENYA



KENYA LAW
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**Ndungu v Kamau & another (Civil Appeal 182 of 2019)
[2025] KEHC 5429 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5429 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 182 OF 2019
DO CHEPKWONY, J
APRIL 24, 2025**

BETWEEN

SAMUEL WAINAINA NDUNGU APPELLANT

AND

ELIAS MWAURA KAMAU 1ST RESPONDENT

MUTWIRI M'IKIAO 2ND RESPONDENT

RULING

1. Mutwiri M'ikiao, the 2nd Respondent/Applicant herein filed a Notice of Motion application dated 14th March, 2025 under Certificate of Urgency seeking various orders and on 19th March, 2025, the Court issued Directions that the application be served upon the other parties for them to file their respective responses and thereafter parties to exchange written submissions within prescribed timelines. The matter was then fixed for mention before this court on 23rd April, 2025. On this day of 23rd April, 2025, Counsel for the 2nd Respondent/Applicant informed the court that they had served the application and orders upon the Appellant and the Auctioneers Return of Service to confirm this had been duly filed but no response had been filed. He then sought for further directions on that application.
2. This court has gone through the Case Tracking System and notes that indeed an Affidavit of Service sworn by Geoffrey Kimotho on 22nd April, 2025 had been filed to confirm that he had served the Auctioneer through Whatsapp vide Cellphone Number 0743xxxx17. It is also indicated therein that he had attached an image of the Whatsapp page to confirm service upon the said party.
3. However, upon observing the Affidavit of Service, the court notes that the same is irregular in that the alleged image of Whatsapp has not been attached thereon to provide proof of service. Further, it is noted that the said service was effected upon the Auctioneer only. Having filed the application, the 2nd Respondent ought to have been served the same upon the Appellant too as directed by the court since he is also a party in this appeal.



4. For these reasons, the court finds that the service was improper and proceeds to issue fresh directions as follows:-
- a. That the 2nd Defendant to hereby serve the Appellant and the 1st Respondent with the application dated 14th March, 2025 within 7 days.
 - b. The Respondents to file their respective responses if need be, within 7 days of being served with the said application.
 - c. The application to be canvassed by way of written submissions.
 - d. The parties to file and exchange their written submissions within fourteen (14) days of each other with the 2nd Respondent going first. The 2nd Respondent be at liberty to file and serve a further affidavit alongside his written submissions if need be.
 - e. Matter to be fixed for Mention on 2nd June, 2025 for purposes of confirming compliance and for further Directions.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF APRIL, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Rereu holding brief for Mrs. Wang'ombe counsel for Appellant

Court Assistant - Martin

