



REPUBLIC OF KENYA



KENYA LAW
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Khalwale & Company Advocates v Devyani Food Industries Kenya Ltd (Miscellaneous Application 206 of 2021) [2023] KEHC 18865 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION 206 OF 2021
HK CHEMITEI, J
JUNE 15, 2023**

BETWEEN

KHALWALE & COMPANY ADVOCATES RESPONDENT

AND

DEVYANI FOOD INDUSTRIES KENYA LTD APPLICANT

RULING

1. In its application dated July 5, 2022, the applicant prays for the following orders;
 - (a) That this court be pleased to set aside the ruling of Hon. Margaret Kyalo deputy registrar delivered on March 22, 2022 and order that the bill of costs dated August 24, 2021 be taxed de novo.
 - (b) That in the alternative this court be pleased to enlarge time for the applicant to file a notice of objection to the taxation proceedings herein together with reference to this court against the ruling of the deputy registrar dated March 22, 2022.
 - (c) That Christopher Mulinya the process server who purportedly effected service of the bill of costs dated August 24, 2021 upon the applicant be summoned for cross examination on the contents of his affidavits of service.
 - (d) That Christopher Mulinya the process server be compelled to produce his process servers' certificate for the years 2020 and 2021.
2. The applicant prayed for the costs of the application.
3. The application is grounded on the sworn affidavit of Paul Maina its counsel sworn on July 5, 2022 together with the annexures thereto and the grounds on the face of the application.



4. It is the contention of the applicant that it was not served with the impugned bill of costs and the affidavits of services by Christopher Mulinya were all full of lies and untruthful. He said that the said process server was never qualified and went ahead to exhibit the letter from the Process server's committee dated June 28, 2022 showing that the said person was not a process server.
5. The applicant went ahead to exhibit also the courier receipts from Securicor indicating that what was allegedly served upon it was addressed to a wrong address altogether and consequently was not able to defend the said bill before the deputy registrar.
6. The respondent vide the replying affidavit of Wilberforce Khalwale sworn on July 13, 2022 deponed that the application is unmerited for the simple reason that the applicant was well served with the bill of costs and that the said Christopher Mulinya was his staff and was thus authorised to swear the affidavits of services.
7. That on the issue of the practicing certificate he said that he petitioned for the same in 2021 after suspending it in 2020 because of Covid pandemic. Essentially, he prayed for the said application to be dismissed.
8. The court directed the parties to file written submissions which they have done and the court has perused the same together with the attendant legal authorities cites.
9. The main issue is whether the applicant was properly served with the bill of costs as it alleges. Looking at the replying affidavit by the respondent, it is evident that Christopher Mulinya the deponent of the affidavits of services was not qualified. The letter dated June 28, 2022 by the Process server's committee said as much.
10. More importantly is the admission by the respondent that the said Mr Mulinya and one Stella were his employees and therefore were right in effecting the services.
11. To the extent that he was not a licence process server, the purported services he effected were illegal and improper and more importantly the respondent was well aware of this or at least he knew that the services by Mr Mulinya were against the law leave alone allowing him to swear affidavits.
12. It is obvious that the deputy registrar relied on false affidavits of services in arriving at her decision. She was misled and or misdirected that the applicant had been properly served.
13. The issue of wrong addresses and whether to extent time to file a reference comes second in my view. The critical issue is the fact that an illegal person effected an illegal service. The issue as to whether Mr Khalwale did not have a practicing certificate for that period can as well be taken out as an issue in a later stage.
14. In the premises, this court finds merit in the application. The same is allowed to the extent that the ruling of the deputy registrar dated March 22, 2022 is hereby set aside and the bill of costs dated August 24, 2021 be set down for hearing afresh.
15. The applicant shall have the costs of this application.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 15TH DAY OF JUNE 2023.

H. K. CHEMITEI.

JUDGE

