



REPUBLIC OF KENYA



**Ridhwan Trading Company Limited & another v Mbarak & 3 others (Civil Suit 26 of 2017) [2024] KEHC 14206 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14206 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL SUIT 26 OF 2017  
RE ABURILI, J  
NOVEMBER 13, 2024**

**BETWEEN**

**RIDHWAN TRADING COMPANY LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**SULEIMAN NOOR OSMAN ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ZARAH OMAR MBARAK ..... 1<sup>ST</sup> DEFENDANT**

**FAMILY BANK KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**OKOTH MARK OKELLO ..... 3<sup>RD</sup> DEFENDANT**

**RICHARD ODHIAMBO OTIENO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. I have considered the application dated 12<sup>th</sup> November 2024 filed under certificate of urgency. I find no urgency involved. I do not certify it as urgent.
2. I have perused the grounds and affidavit in support. The application seeks orders for setting aside the order of dismissal for non-service upon the Defendants made on 4<sup>th</sup> November 2024 in the presence of Mr. Odhiambo counsel for the applicant who did not have evidence of service of the application upon the Defendants.
3. I have now been shown an affidavit of service sworn by Moses Musembi Nzomo process server on 12<sup>th</sup> November 2024 deposing that the applicants made effort to serve the Defendants whose advocates withdrew from acting for them, in vain.
4. The applicants admit that it was their fault not to file into court evidence of efforts made to serve the application hence, the dismissal of the suit for non-service.



5. The affidavit of service is sworn on 12<sup>th</sup> November 2024. I shall give the Applicants the benefit of doubt. I exercise discretion, review and set aside the order of 4<sup>th</sup> November 2024 dismissing the application of non-service and reinstate the application dated 2<sup>nd</sup> August 2024.
6. Having reinstated the application dated 2<sup>nd</sup> August, 2024, I proceed and set aside the order of 15<sup>th</sup> May 2024 dismissing this suit for non-attendance to prosecute and substitute thereof with an order reinstating the suit.
7. I further direct the Applicants to serve the defendants by way of substituted service by an advertisement in daily newspapers of nationwide circulation as well as through the defendant's last known postal addresses and or WhatsApp numbers for the hearing of the suit in the new term on 24<sup>th</sup> February 2025.
8. I so order.
9. Ruling to be typed and uploaded.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

