



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 9 OF 2015**

**(FORMERLY COMMERCIAL AND ADMIRALTY SUIT NO. 362 OF 2014)**

**HASS PETROLEUM LIMITED.....PLAINTIFF**

**VERSUS**

**A.O. BASID LIMITED.....DEFENDANT**

**R U L I N G**

1. By a Motion on notice dated 12<sup>th</sup> January, 2015, the Defendant sought several prayers including a prayer that the process server who effected service of Summons in this matter be summoned for purposes of cross-examination.
2. The application was fully canvassed by way of written submissions which were highlighted on 23<sup>rd</sup> March, 2015 by learned Counsel. Having perused the Affidavits on record, I note that the entire application cannot be determined without first considering the prayer for the cross-examination of the process Server as sought in Prayer No. 6 of the Motion. The veracity of the averments in the various Affidavits on record can only be ascertained upon cross-examination of the Process Server. To determine the application in the current form will cause prejudice to the parties in that it will be difficult to ascertain which Affidavit to believe and the basis thereof.
3. In this regard, it was imperative that the prayer No. 6 should have been canvassed first before the rest of the prayers are canvassed. Accordingly, for the interests of justice I grant that prayer and will direct that the Process Server Willis Agayi who swore the Affidavit of Service of 13<sup>th</sup> October, 2014 that was the basis of the judgment in default, be summoned to appear before court for cross-examination on his said Affidavit of Service. This will enable the Plaintiff defend its Judgment and the Defendant establish whether or not it was served with the process that culminated in the Judgment of 16<sup>th</sup> December, 2014.

It is so ordered.

**DATED and DELIVERED** at Nairobi this 5<sup>th</sup> day of June, 2015.

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**A MABEYA**

**JUDGE**