



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 114 OF 2010

ALEX MWANGI MAINA

DAVID MIRERA WACHI

JOSEPH KIHURA GACHUKI

Suing on their own behalf and on behalf of 198 other

Employees of MBO-I-KAMITI FARMERS CO. LTD).....PLAINTIFF

-VERSUS -

MBO-I-KAMITI FARMERS CO. LTD.....DEFENDANT

RULING

1. The application before me is for the setting aside of the *ex parte* judgement which was granted against the Defendant, **MBO-I-KAMITI FARMERS CO. LIMITED**.
2. Basically, the Defendant asserts that it was never served with the Summons to enter Appearance.
3. The defendant asserted that at the material time, it did not have an Operations Manager named **GABRIEL KAMAU**. Therefore, when the process server alleged that the Summons were served upon the defendant, in the presence of the Operations Manager named Gabriel Kamau, that could not have been possible.
4. Secondly, the defendant said that the company had only one employee named Ngugi. That employee was a Security Officer, and he was not based at the defendant's Headquarters, at **ANMER ESTATE**.
5. In the affidavit of service, the process server had said that he effected service upon the defendant at their Head-Quarters, at Anmer Estate. This is what the process server stated in his affidavit;

“v). THAT I proceeded to the main building and found the Managing Director of the defendant company, who introduced himself as Mr. Ngugi, and he was in the company of a Mr. Gabriel Kamau, who I later learnt was the Operations Manager to whom I introduced myself and the purpose of my visit.

vi). THAT on the same day, that is to say 5th March, 2010 I tendered the Complaint and Summons to Enter Appearance to Mr. Ngugi the Managing Director of the defendant company, in the presence of the Operations Manager, and the said Mr. Ngugi accepted service by endorsing a copy of the Complaint and Summons with the stamp of the Defendant Company and also by appending his signature at the back of both documents”.

6. Those are the particulars which the process server provided in his affidavit, which was filed in court on 31st March 2010.
7. However, in a Replying Affidavit sworn by **DAVID MIRERA WACI**, the 2nd plaintiff in this case, he said;

“THAT I am aware of my own knowledge that Mr. Ngugi who was served with summons goes by the full names of Samuel Ngugi, and to my recollection was the Public Relations Officer of the Defendant Company at the time of service”.

8. **DAVID MIRERA WACI** deponed that he was a former General Manager of the defendant company. Therefore, he would have been expected to know most if not all of the senior employees.
9. He has said that he had personal knowledge that the plaint and summons were served upon **SAMUEL NGUGI**, who was the **PUBLIC RELATIONS OFFICER**.
10. David Mirera Waci did not specify the circumstances through which he acquired personal knowledge about the person who was served with the Plaint and Summons.
11. The process server did not mention in the affidavit of service, that David Mirera Waci was present when service was being effected.
12. In any event, the process server did not serve the summons upon the defendant’s Public Relations Officer. The process server was very clear that he served the defendant’s Managing Director.
13. In those circumstances, I find that there is a serious doubt about the identity of the person who was served with the plaint and summons, on behalf of the defendant. That finding is sufficient to warrant the setting aside of the *ex parte* judgement, as it was not regular.
14. Secondly, the defendant appears to have plausible responses to the claims in the Plaint. I so find because the 2nd plaintiff has confirmed that although they had a claim of more than Kshs. 113,000,000/-, that claim had been substantially reduced to a sum of Kshs. 28.6 million.
15. Justice demands that the defendant be accorded an opportunity to put forward its Defence to the plaintiff’s claims.
16. Accordingly, the *ex-parte* judgement is hereby set aside forthwith. I also set aside all consequential proceedings and orders which were made after the *ex-parte* judgement was granted.
17. The defendant is granted unconditional leave to file its Defence. However, the defendant has **TEN (10) DAYS** from the date of this Ruling to file its Defence.
18. Finally, the costs of the application dated 24th November 2014 are awarded to the Defendant.

DATED, SIGNED and DELIVERED at NAIROBI this 7th day of October 2015.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mutembei for the Plaintiffs

Mutiso for the Defendant

Collins Odhiambo – Court clerk