



**Balo v Babs Security Services Limited (Cause 24 of 2016)
[2024] KEELRC 1555 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1555 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 24 OF 2016
M MBARŪ, J
JUNE 13, 2024**

BETWEEN

SAMUEL MWASHOMBO BALO CLAIMANT

AND

BABS SECURITY SERVICES LIMITED RESPONDENT

RULING

1. The respondent, Babs Security Services Limited filed an application dated 23 April 2024 under the provisions of Rule 13(4), 16(1) of the [Industrial Court \(Procedure\) Rules](#), 2010 seeking orders that;
 1. Spent.
 2. The firm of Ngigi Karomo & Associates Advocates be granted leave to come on record for the respondent/application Babs Security Services Ltd.
 3. The court be pleased to grant a temporary stay of execution against the claimant...
from attaching the proclaimed movable assets of the application pending the hearing and determination of this application.
 4. This court be pleased to set aside the irregular ex parte interlocutory judgment entered herein against the respondent and the final judgment delivered on 9 December 2016 ex bedibio justitiae.
 5. The court be pleased to summon the Process Server who allegedly served the respondent with a summons for cross-examination on the contents of his Affidavit of Service.
 6. The court be pleased to grant leave to the respondent to file its response to claim out of time to enable the respondent to participate in the trial by defending the suit.
 7. Costs be in the cause.



2. The application is supported by the affidavit of Isaac Macharia Wambui the managing director of the respondent.
3. In reply, the claimant filed his Replying Affidavit he filed a memorandum of Claim on 21 January 2016 and the summons served on 27 January 2016 and the respondent received the same on 8 February 2016. There was no attendance or response filed. The claimant continued to serve the respondent with all court notices but no effort was taken to address it. Affidavits of service were filed and the court heard the matter and delivered judgment which is subject for execution. The respondent did nothing until the execution proceedings commenced.
4. To begin with, the respondent has filed the instant application on invalid and non-existent provisions cited as Rule 13(4), 16(1) of the *Industrial Court (Procedure) Rules*, 2010. This renders the entire application invalid.
5. The fact that the claim was filed in the year 2016 does not take the respondent backwards in terms of inapplicable rules of procedure. The instant application is filed and dated 23 April 2024 and the applicable Rules of Procedure are not Rule 13(4), 16(1) of the *Industrial Court (Procedure) Rules*, 2010 which are obsolete.
6. The court proceedings are regulated under the *Employment and Labour Relations Court (Procedure) Rules*, 2016. Any application of this nature should be premised under the correct rules of procedure. To apply invalid rules is not a mere technicality that the court can cure.
7. The application being invalid should be dismissed.
8. However, on the issues at hand, the judgment herein was issued on 9 December 2016.
9. The judgment was ex parte after the respondent failed to enter the appearance of file a response which is noted in the judgment. The court was satisfied that the respondent had been properly served. Indeed, the respondent in the Supporting Affidavit of Isaac Macharia Wambui aver that the ex parte judgment was obtained devoid of proper service and contrary to what the Process Server stated in the Affidavit of Service, as the managing director, he is the only one who should have been served.
10. The referenced Affidavit of Service confirms that the process server effected service upon the respondent and was received by the Secretary/receptionist Maggie who signed and stamped the Notice of Summons. Indeed, under Rule 12 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 service upon a corporate body is allowed to be effected upon the officer of such entity.
11. Rule 12 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 requires that;
 - 12.(l) Service on a corporate body may be effected-
 - a. on the secretary, director or any other principal officer of the corporate body;
 - b. where the process server is unable to find any of the officers of the corporate body mentioned in subparagraph (a), by
 - (i) leaving the pleadings at a conspicuous place at the registered office of the corporate body;
 - ...
12. Service upon the secretary, director or principal officer of the corporation is allowed. Where such officers are not available for service, the Process Server is allowed to serve any of the officers of the corporate body ... leave the pleadings at a conspicuous place at the registered office of the corporation.



13. In this case, where the secretary/receptionist was not the officer designated by the respondent to receive a summons, by accepting and stamping the summons, the same was left at the registered offices of the respondent. The respondent does not deny the description of its offices and that the stamped document relates to its instruments.
14. There was proper service as per the court rules. Even where the respondent is to apply Rule 13(4), 16(1) of the Industrial Court (Procedure) Rules, 2010 similar provisions are applied word for word.
15. In addition, the respondent is seeking the court to summon the Process Server to be cross-examined on the Affidavit of Service. This is addressed above; service was proper and the court addressed itself to the motions of the law and rules of procedure and addressed the claim on the merits. The need to call the process server is thus addressed, orders sought in this regard are not justified.
16. In conclusion, at the heart of an application seeking to set aside an ex-parte judgment is that the respondent has a good response to the claim and if locked out of court will be prejudiced and unable to ventilate the same. Therefore, the court must ask the question of whether the applicant has a reasonable defence which is usually referred to as whether the defence is filed already or if the draft defence is annexed to the application, raises triable issues. See Mureithi Charles & Another v Jacob Atina Nyagesuka [2022] eKLR; Sbar v Mbogo & another [1967] EA 116.
17. In this case, the respondent has filed a response attached to the Supporting Affidavit of Isaac Machaira Wambui that has 9 paragraphs all comprised of mere denials and devoid of any work records required under Section 10(6) and (7) of the Employment Act, 2007. The respondent also asserts that it has a counterclaim which is not particularized. To thus allow and reopen the case would be a wild goose chase without any response. In the case of Ragbir Singh Chatte v National Bank of Kenya Limited Civil Appeal No. 50 of 1996, the Court of Appeal held;
18. If a general traverse ... were held to be sufficient and effectual, that would render meaningless provisions such as Order VI Rule 9(3) of the Civil Procedure Rules and even the decisions of this Court such as Magunga General Stores v Pepco Distributors Limited [1988-92]2 KAR 89. The position of the law... is that a mere denial or general traverse in defence is not sufficient and a defendant who does not specifically plead to all the issues raised in a plaint risks the probability of his defence being struck out or being held to constitute an admission of the issues raised in the Plaint.
19. The analysis above does not place the respondent in good standing before the court to enjoy the orders sought.
20. Application dated 23 April 2024 is devoid of any merit and is hereby dismissed with costs to the claimant.

DELIVERED IN OPEN COURT AT MOMBASA THIS 13 DAY OF JUNE 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... **and**

