

**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CIVIL APPEAL NO. E667 OF 2021**

**MARTIN ADIPO OWAGO.....**  
**APPELLANT**

**=VERSUS=**

**CHRISTOPHER KIGWE GATHECHA.....**  
**RESPONDENT**

**(Being an appeal from the Ruling of Hon. M. Mutua  
(RM/Adjudicator) in Nairobi Small Court Case No. E154 of  
2021 delivered on 22<sup>nd</sup> September 2021)**

**JUDGMENT**

1. This is an appeal from the Ruling of the Nairobi Small Claims Case No. E154 of 2021 dismissing the Appellant's claim for want of prosecution.
2. The trial court further said that no certificate of service was filed indicating that the claim was served.
3. The Appellant has filed this appeal on the following amended grounds of appeal:-

**(i) The Learned Magistrate erred in law and fact when he dismissed the Claimant's suit on the ground**

**that the Statement of Claim had not been served upon the Respondent.**

**(ii) The Learned Magistrate erred in law and in fact by failing to take into account that the Claimant's advocates had served the Statement of Claim together with the Mention Notice for 22.09.2021 and filed a Certificate of Service evidencing the mode of service which was dated 10.9.2021.**

**(iii) The Learned Magistrate erred in law and fact when he dismissed the Claimant's suit in complete disregard of the Claimant's Advocates' efforts towards effecting service of the Statement of Claim together with the Mention Notice for 22.09.2021.**

4. The parties filed written submissions as follows:- the appellants in his amended submission indicated that the certificate of service sworn by Peter Ruigu and dated the 15/9/2021, indicated the fact that the respondent had in fact been served through his last known address which information had been glimpsed through the motor vehicle records.

5. That this particular method of service was right and proper service in accordance with the small claims Court rules as well as the civil procedure rules.

6. That the decision to effect the said service noting the timelines in the small claims Court was informed by Rule 35(4) of the Small Claims Court Rules that provides as follows;

**“Where it is not practicable to effect personal service of a document on a party in accordance with this rule, service may be effected by mail addressed to the party's last known postal address, and a certificate of posting in that regard shall be attached to the Certificate of Service.”**

7. The appellant submitted that on the 22/9/2021 when the matter came up for mention, the advocate on record informed the Court that service had been effected and an affidavit of service uploaded in the CTS.

8. The Honorable adjudicator indicated that the certificate of service had not printed and placed in the physical court file necessitating his placing of the file aside.

9. He later recalled the file and dismissed the suit reiterating that the certificate had not yet been printed and placed in the file.

10. The appellant argued that had the learned adjudicator taken time to access the CTS, he would have observed that the certificate had in fact been uploaded and filed.

- 11.** The Appellant did his part in uploading the affidavit of service on the CTS and was not responsible for the actions of the registry thereafter.
- 12.** The appellant submitted that although not subject to the current appeal the appellant perused the court file at the point of extracting the court order for this appeal and at that point noted that the court had later made an order in the absence of counsel granting the appellant leave to file a fresh suit in a month's time.
- 13.** This is the information the appellant came to know of as it was prosecuting the current appeal and at the time, the timelines set by the court were well past thus the continued prosecution of the Appeal.
- 14.** The appellant made an application for extension of time but the lower court never delivered a ruling which made the prosecution of this appeal necessary.
- 15. The sole issue for determination is whether the trial court was right in dismissing the Appellant's claim for want of prosecution.**
- 16.** The foundation of this decision rests on the proper interpretation and application of the Small Claims Court Act and the Rules made thereunder, which are designed to

facilitate expeditious and substantive justice without undue regard to technicalities.

17. The record reveals that the Appellant's advocates effected service of the Statement of Claim and the Mention Notice upon the Respondent by sending them to his last known postal address, a mode explicitly sanctioned by Rule 35(4) of the Small Claims Court Rules, 2014.
18. This rule provides that where personal service is not practicable, service may be effected by mail to a party's last known address, with a certificate of posting attached to the Certificate of Service.
19. A Certificate of Service sworn by one Peter Ruigu on 15th September 2021 was duly prepared and uploaded onto the Court's Case Tracking System (CTS).
20. The dismissal was predicated solely on the fact that a physical copy of this certificate had not been printed and placed in the court file by the time of the mention, a procedural lapse that should not have been visited upon the litigant.
21. The law in Kenya has evolved to prioritize substantive justice over procedural technicalities, particularly in the context of the Small Claims Court, whose mandate is to

provide a simple, inexpensive, and expeditious forum for the resolution of disputes.

22. The principle that rules of procedure are handmaidens and not mistresses of justice is now so well entrenched in our jurisprudence that it requires no restating.
23. The learned adjudicator's failure to verify the existence of the Certificate of Service on the CTS, a system designed for efficient case management, constituted a failure to employ the facilitative and non-technical approach demanded of the court.
24. The Appellant had discharged his duty by uploading the document into the system; the subsequent administrative step of printing and filing the hard copy was a registry function for which the Appellant could not be held responsible.
25. A party who has taken all necessary steps to file a document electronically should not be prejudiced by failures in the court's internal administrative processes.
26. Furthermore, the dismissal of a suit is a draconian measure that should be employed as a last resort.
27. In the instant case, the Appellant's advocate was present in court and informed the adjudicator that service had been effected and the Certificate uploaded.

28. A more judicious course of action would have been to grant a short adjournment to allow for the verification of the electronic record or the printing of the certificate, rather than resorting to the ultimate sanction of dismissal.
29. The objective of the Small Claims Court is to hear and determine claims on their merits, and the technicality that befell this case at its first mention runs counter to that very objective.
30. Consequently, for the reasons set forth above, the appeal is allowed. The ruling of the trial court delivered on 22nd September 2021 is set aside.
31. The Small Claims Court Case No. E154 of 2021 is hereby reinstated and shall be placed before any other adjudicator for mention and directions within thirty (30) days upon receipt of the file in the SCCC.
32. The costs of this appeal shall be in the cause.

**Dated, signed and delivered this 7<sup>th</sup> day of November 2025  
virtually via MT at Voi High Court.**

**ASENATH ONGERI  
JUDGE**

**In the presence of:-**

**Court Assistants: Millicent/Mabishi**

.....**for the Appellant**

.....**for the Respondent**

ORIGINAL