

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**ELRC APPEAL NO. E102 OF 2023**  
**WRIGHT PRESS LIMITED .....**

**APPELLANT**

**-VERSUS-**

**KORNEL OMONDI OMOLO.....**  
**.....RESPONDENT**

*(An appeal from the Judgment and decree of the Honourable Irene  
Ruguru (SPM) delivered on the 14<sup>th</sup> April, 2023 in CMEL 2235 of  
2019)*

**JUDGMENT**

1. Through the Memorandum of Appeal dated 14<sup>th</sup> June, 2023 the appellant appeals against the Ruling of Honourable Irene Ruguru (SPM) delivered on the 14th April, 2023 in CMEL 2235 of 2019. The Appeal was based on the grounds that:

- i. The learned magistrate erred in law when she failed to find that the respondent was not aware of the suit's proceedings and therefore failed to enter appearance and defend the suit.*
- ii. In any event the learned magistrate erred in law when she failed to find and hold that the process server was*

***not cross-examined by the respondent to prove proper service***

***iii. The learned magistrate erred in law when she failed to find and hold that the respondent was not aware of the proceedings hence the matter proceeded ex parte.***

***iv. The Learned Magistrate erred in law and as a result arrived at a wrong decision and in all circumstances failed to do justice to the appellant***

***v. The failing to consider the evidence produced by the Appellant.***

***vi. The ruling of the honourable court has occasioned a failure and or resulted in gross miscarriage of justice.***

vii. The Appellant prayed that the Appeal be allowed with costs and the judgment in favour of the respondent against the appellant be set aside and the appeal be allowed with costs to the appellant. and decree of the Hon. Becky Cheloti and all consequential orders ensuing thereafter be set aside.

2. The Appeal was disposed of by written submissions.

### **DETERMINATION**

3. The Court has reviewed and considered submissions by counsel for both parties but of paramount importance, the Court has read through the ruling of Honourable Irene Ruguru (SPM) delivered on the 14th April, 2023 and notes the observation by the learned Magistrate that the issues raised the Motion dated 19<sup>th</sup> December, 2022 were the same issues canvassed before Honourable Makau and considered in her ruling delivered on 11<sup>th</sup> October, 2022. That Court therefore became of the view that nothing was raised in the application to warrant the Court varying or setting aside the ruling aforementioned.
4. The court has further carefully read the ruling of Honourable Makau and quite agree with the learned Magistrate that whereas the applicant (the appellant herein) sought before that Court leave to file a defence out time, it had not sort the setting aside of the judgment in the matter. There was therefore in place a valid judgment which had to be set aside before the appellant court be granted leave to file a response out of time.
5. The appeal before me is against the ruling of Honourable Irene Ruguru (SPM) delivered on the 14th April, 2023 where she

refused to set aside the judgment delivered on 11<sup>th</sup> March, 2022 by observing that the issues raised in the application had been canvassed before Honourable Makau and she declined to grant the same. The appellant never appealed against the ruling of Honourable Makau but deemed it fit to appeal against the ruling of Honourable Ruguru. Quite strange.

6. In conclusion the court agrees with the observation by honourable Ruguru that the appellant is bent on delaying or frustrating the respondent from enjoying the fruits of his judgment.

**7. The appeal is therefore found without merit and is hereby dismissed with costs.**

**8. It is so ordered.**

**Dated at Nairobi this 19<sup>th</sup> day of December 2025**

**Delivered virtually this 19<sup>th</sup> day of December**

**2025**

**Abuodha Nelson Jorum**

**Presiding Judge-Appeals Division**