



**Naliaka v Diamond Trust Bank Kenya Limited (Cause E059 of 2021)  
[2025] KEELRC 597 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 597 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E059 OF 2021  
J RIKA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**ROSE NALIKA ..... CLAIMANT**

**AND**

**DIAMOND TRUST BANK KENYA LIMITED ..... RESPONDENT**

**RULING**

1. This Claim was heard in the absence of the Respondent, on 25<sup>th</sup> April 2024 and 30<sup>th</sup> May 2024.
2. Judgment was made in favour of the Claimant on 11<sup>th</sup> July 2024, granting her a total sum of Kshs. 1,538,786, consisting compensation for unfair termination, and 1-month salary in lieu of notice.
3. The Respondent has filed an application, dated 17<sup>th</sup> September 2024, asking the Court to set aside the ex parte Judgment, and that the Claim is heard afresh, with the participation of both parties.
4. The application is supported by the affidavit of the Respondent's Advocate, Chacha Odera, sworn on 17<sup>th</sup> September 2024.
5. The main grounds in the application are that, service of the mention and hearing notices, was flawed; and that an undated affidavit of service filed by the Claimant, indicates a mention notice, not a hearing notice, was served upon the Respondent.
6. The Claimant is opposed to the application relying on her affidavit, sworn on 4<sup>th</sup> October 2024. She states that service of the mention and hearing notices upon the Respondent, was flawless. She somewhat incoherently, submits that the Respondent failed to provide updated contact information, which contributed to Respondent's non-attendance.
7. Parties confirmed filing and exchange of submission on 7<sup>th</sup> November 2024. Highlighting of submissions was scheduled for 28<sup>th</sup> November 2024. Ms. Kadima highlighted the submissions filed by



the Respondent. There was no appearance for the Claimant at the highlighting, on 28<sup>th</sup> November 2024.

**The Court Finds: -**

8. The Respondent's Advocates gave their e-mail addresses, in the Memorandum of Appearance dated 15<sup>th</sup> December 2021.
9. Three e-mail addresses are stated, the first one being legal@oraro.co.ke . The various affidavits of service filed by the Claimant's Advocate, Francis Makori Omenta, successively indicate that service was made upon the Respondent, at legal@oraroco.ke .
10. Obviously, the Claimant's Advocate used an incorrect e-mail address.
11. The notice dated 13<sup>th</sup> March 2024, which the Claimant's Advocate states, he forwarded to the Respondent's Advocates on 13<sup>th</sup> March 2024, used the incorrect e-mail address. Secondly, the undated affidavit of service, indicates that the Claim was coming up for mention on 25<sup>th</sup> April 2024, not for hearing. The notice itself is indicated to be a hearing notice.
12. The recipient, even if a correct address of service had been used, would not have received a proper notice, given the inconsistencies in the affidavit of service.
13. Rule 26 of the E&LRC (Procedure) Rules 2024, regulates service of summons by electronic mail. It requires that a summons sent by electronic mail service, shall be sent to the Respondent's last confirmed and used e-mail.
14. The Respondent's e-mail addresses were as shown in the Memorandum of Appearance. There was no other address given subsequent to the filing of the Memorandum of Appearance.
15. It is not clear to the Court what the Claimant meant, in her submission that, "the Respondent failed to provide updated contact information, which contributed to the non-attendance." She appears to concede in this oblique statement, that she used the incorrect address for service upon the Respondent, occasioning non-attendance on the part of the Respondent.

It is ordered: -

- a. The application dated September 17, 2024 filed by the Respondent, is allowed.
- b. Ex-Parte Judgment made on July 11, 2024 is set aside.
- c. The Claim shall be heard afresh, on a date to be fixed at the Registry.
- d. No order on the costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28<sup>TH</sup> FEBRUARY 2025.**

**JAMES RIKA**

**JUDGE**

