



REPUBLIC OF KENYA



KENYA LAW
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**Wahu v South Sioux Farms Ltd & another (Cause 2594 of 2016)
[2025] KEELRC 350 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 350 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2594 OF 2016
S RADIDO, J
FEBRUARY 13, 2025**

BETWEEN

PAUL GICHUHI WAHU CLAIMANT

AND

SOUTH SIOUX FARMS LTD 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

RULING

1. The Court delivered a judgment on 20 September 2023 for Paul Gichuhi Wahu (the Claimant) against South Sioux Farms Ltd (1st Respondent) and the Director, Public Prosecutions (2nd Respondent) in the following terms:
 - (a) For malicious prosecution, judgment entered against the Respondents jointly and severally for the sum of Kshs 2,500,000/- for malicious prosecution and aggravated damages.
 - (b) As against the 1st Respondent – a sum equivalent to 12 months’ salary as compensation to the Claimant for unlawful and unfair dismissal.
 - (c) Costs of the suit as against both the 1st and 2nd Respondents.
 - (d) Interest on the sums in a) and b) above from the date of judgment till payment in full.
2. The judgment has led to a series of applications by the 1st Respondent and these were determined in due course.
3. One of the applications sought a stay of execution, setting aside of the judgment and grant of leave to defend.



4. The Court heard the Motion and, in a Ruling, delivered on 4 March 2024, dismissed it on the grounds of res judicata and being unmerited, a decision having been made on a similar application on 26 September 2023.
5. On 12 August 2024, the 1st Respondent filed a Motion seeking a stay of execution pending the hearing and determination of an Appeal before the Court of Appeal.
6. The Court granted an interim stay of execution on 13 August 2024, on condition that the 1st Respondent deposited the decretal sum in Court before 16 August 2024.
7. On 15 August 2024, the 1st Respondent filed another Motion seeking review of the orders of 13 August 2024.
8. The parties appeared in Court on 22 October 2024, and the Court directed the 1st Respondent to provide a bank guarantee before 29 October 2024. The guarantee was provided on 24 October 2024.
9. However, on 2 October 2024, the 2nd Respondent filed a Motion the subject of this Ruling.

The 2nd Respondent's Motion

10. The 2nd Respondent sought the following orders in the Motion under consideration:
 - i. ...
 - ii. That this Honourable Court be pleased to issue an order staying execution of the judgment of Hon Mr Justice Nzioki wa Makau delivered at Nairobi on 20th September 2023 and all consequential orders flowing therefrom pending the hearing and determination of this application inter partes.
 - iii. That the Honourable Court be pleased to set aside the judgment of Hon Mr Justice Nzioki wa Makau delivered at Nairobi on 20th September 2023 and all consequential orders flowing therefrom as well as the Claimant's Bill of Costs dated 24th June 2024.
 - iv. That time be enlarged for the 2nd Respondent to file its witness statements and be given an opportunity to defend its interest in the matter.
 - v. That the costs of this application be provided
11. The primary grounds in support of the Motion were that a hearing notice was not served through the correct email because the email used to serve cl@ag.go.ke was not active at the time of service as the department had not moved from Sheria House to CBK Pensions Towers; the designated email for the civil litigation department in the website was communications@ag.go.ke; the 2nd Respondent discovered judgment had been delivered on 16 September 2024 while in the process of filing an application to dismiss the Cause for want of prosecution; the 2nd Respondent was denied a right to a fair hearing; leave was not sought to enter judgment against the Government in terms of Order 10 Rule 8 of the Civil Procedure Rules and section 25(1) of the [Government Proceedings Act](#); the Bill of Costs was not served and that the Motion had been brought without inordinate delay.
12. The Claimant filed a replying affidavit opposing the Motion on 18 October 2024.
13. In the affidavit the Claimant deponed that service had been effected through the 2nd Respondent's official emails ag@go.ke, info@ag.go.ke and cl@ag.go.ke, which were all available on its website and none of the emails had bounced back; the Court was satisfied with service of hearing notice before allowing the hearing to proceed; the 2nd Respondent had failed to participate in pre-trial processes



despite physical service; the failure by the Respondent to participate rendered needless the need to seek leave to enter judgment against the Government; the 2nd Respondent had gone to slumber and the judgment on record was a regular judgment.

14. The 2nd Respondent filed its submissions on 29 October 2024.
15. In the submissions, the 2nd Respondent cited Order 5 Rule 22B of the Civil Procedure Rules (Amended) 2020 on Electronic Mail Service that requires service to be made through a defendant's last confirmed and used email address.
16. The Court's attention was also drawn to *Sifuna & Sifuna Advocates v Patrick Simiyu Khaemba* (2021) eKLR and *Patel v EA Cargo Handling Services Ltd* (1974) EA 75.
17. The Claimant filed his submissions on 5 November 2024. He reiterated that proper service was made upon the 2nd Respondent and that the judgment was regular. The Claimant further asserted that the 2nd Respondent had not filed a witness statement to show an indication that it would call a witness.
18. The Court has given due consideration to the Motion, affidavits and submissions.
19. The Employment and Labour Relations Court (Procedure) Rules, 2016 required a Respondent to file and serve witness statements with the Response.
20. The 2nd Respondent did not file any witness statement with its Response. It did not seek the leave of the Court at any particular time to file witness statement(s).
21. The filing of witness statements would have demonstrated an intention on the part of the 2nd Respondent that it was ready to lead evidence during the hearing.
22. The 2nd Respondent did not comply with the Rules meant to ensure equality of arms. It cannot now claim that its right to a fair hearing was breached.
23. At the time the parties were filing and exchanging pleadings, the Civil Procedure (Amendment) Rules 2020 were not in place.
24. However, the Rules became effective in 2020.
25. Even after the coming into effect of the Electronic Service Rules, the 2nd Respondent did not notify the Court and parties of its full addresses.
26. The Claimant resorted to the 2nd Respondent's website and extracted an email address which it used to serve the 2nd Respondent with a hearing notice.
27. The 2nd Respondent has not denied that the email address the Claimant used to effect service belonged to it. It asserted that the email cl@ag.go.ke used by the Claimant to serve the hearing notice was not in use at the material time and that it was to be activated once the department moved from Sheria House to CBK Pensions Towers.
28. The Court has also pored through the record which indicates that the 2nd Respondent was physically served with the Claimant's submissions on 14 July 2023.
29. This state of fact begs the question of whether indeed the 2nd Respondent was not aware of the stage the proceedings had reached. This is instructive because the 2nd Respondent contended that it only discovered that the hearing had proceeded and judgment delivered on or around 16 September 2023 (judgment had been delivered on 20 September 2023).



30. The service of the Claimant's submissions on 14 July 2023 should have raised the antenna of the 2nd Respondent. That would have been the opportune time for the 2nd Respondent to move the Court for appropriate directions and relief.
31. Severally, the 2nd Respondent was served with mention notices to attend Court for pre-trial directions. It failed to attend the sessions.
32. In the circumstances, the Court holds that the service effected on the 2nd Respondent was valid service and that the 2nd Respondent has not made a case for an exercise of the Court's discretion in its favour.

Orders

33. In light of the above, the Motion dated 2 October 2024 is found without merit and it is dismissed with costs to the Claimant.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Irungu Mwangi Nganga TT & Co Advocates

For 1st Respondent Paul Mwangi & Co. Advocates

For 2nd Respondent Office of the Honourable Attorney General

Court Assistant Wangu

