



**Kenya Naional Private Security Workers Union v Patriotic Group of Companies
(Cause E006 of 2023) [2025] KEELRC 933 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 933 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E006 OF 2023
ON MAKAU, J
MARCH 26, 2025**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
PATRIOTIC GROUP OF COMPANIES RESPONDENT**

RULING

1. On 12th April 2024, I delivered judgment herein in which I awarded the claimant a total of Kshs.368,468 plus costs. The taxing officer of the court assessed the costs at Kshs.76,150.
2. By a Notice of Motion dated 23rd October 2024, the respondent (Applicant) sought the following orders: -
 - a. That the execution of the Decree herein and specifically the auction vide a Proclamation notice dated 7th October, 2024 be stayed pending the hearing and determination of this application.
 - b. That Judgment granted to the Claimant/1st Respondent be set aside.
 - c. That the Applicant be granted unconditional leave to defend this suit.
 - d. That the costs of this application be provided for.
3. The application is premised on the grounds set out on the body of the motion and is supported by the Affidavit sworn by the respondent's Business Development Manager Mr.Caleb Okello. In brief, the applicant's case is that it was not served with pleadings and summons to enter appearance nor was it ever notified of the proceedings in court whenever the matter was fixed for hearing.
4. It is further applicant's case that it became aware of the suit and the judgment on 9th September 2024 when it was served with a letter dated 6th September 2024 enclosing copy of the judgment, Ruling on



bill of costs, decree and certificate of costs. Thereafter, auctioneers proclaimed its assets in execution of the exparte judgment.

5. The applicant averred that it was condemned unheard and unless the application is allowed, it will suffer prejudice since execution will proceed against it. It further averred that the application was made without unreasonable delay, and that it is in the interest of justice that the application be allowed.
6. The claimant opposed the application *vide* a Replying Affidavit sworn on 30th October 2024 by its Advocate Beatrice Ndunge Wanyama. In brief, its case is that the applicant was served with Memorandum of claim, witness statements, documents and summons to enter appearance via its email info@patrioticgroup.com which it had used before to serve demand letters. Service was also effected via WhatsApp through phone Numbers 0795783596 and receipt was indicated by two blue ticks.
7. The applicant was further served with mention notice during the pendency of the suit but still failed to enter appearance. On 26th April 2024, it was further served with Notice of Entry of Judgment but still did nothing.
8. On 9th September, 2024 he was physically served with a letter enclosing the judgment, decree and certificate of costs and again it took no action until execution was done by proclamation of its assets. The claimant urged that the application is just an attempt to deny a successful party from enjoying fruits of its litigation.
9. The application was canvassed by written submissions which I have fully considered alongside the contentions made in the affidavits. The issues for determination are: -
 - a. Whether or not the impugned judgment was irregular.
 - b. Whether applicant has shown sufficient cause for setting aside the impugned judgment.

Regular or Irregular Judgment

10. It is trite law that a regular judgment is one where a defendant was properly served with pleadings and summons but failed to enter appearance. In such cases, the court has wide discretion to set aside the judgment upon terms that are just. (see *Langer v Mutanu & another* (2023) KEHC 25372 (KLR)).
11. On the other hand, an irregular judgment is one where there was procedural defect, like where the defendant was not served with court process and such irregular judgment must be set aside whether the defendant has a defence or not. All that the defendant needs to satisfy the court is that the judgment was irregular (See *Yoashin Engineering Corporation v Aria Architects Ltd* (2023) KECA 872 (KLR)).
12. In the instant case, the applicant contends that it was not served while the claimant maintains that it severally served the applicant with pleadings, summons, mention notice and notice of entry of judgment but it slept on its right.
13. I have perused the Affidavit of service sworn on 12th April 2023 which indicates that the applicant was served with summons and Memorandum of claim on 29th March 2023 via its official email address info@patrioticgroup.com and WhatsApp number 0795-783-596 which was received by Mr.Koech, a supervisor. The service was done by Mr.Josphat Mati, an official of the claimant union who alleged that he also called Mr.Koech to explain the service, but he gave the phone to the Operations Manager, Mr.Ngetich but he rudely hanged the phone.



14. The question that arises is whether there was a proper service of summons upon the applicant. The applicable rules of procedure to this case are the ELRC Procedure Rules 2016 which were in force in March 2023 when the alleged service was done.
15. Service upon a corporate body was provided under Rule 12(1) which required that service be done: -
 - a. On the secretary, director or any other principal officer of the corporate body;
 - b. If the above cannot be traced, leave the pleadings at the registered office, or send the same by registered courier service to the registered office, or leave at a place where the corporate body carries out business or sending the pleadings by registered post to the last known postal address.
16. The said rules did not provide for electronic service of summons to enter appearance. Subrule (2), however allowed a party to use any other method of service, provided he obtained leave from the court. In this case, the claimant never served the applicant using the methods set out under Rule 12(1), aforesaid, but via electronic method which fall under subrule (2). No leave of the court was sought before serving the pleadings and summons electronically. Consequently, I find and hold that the claimant did not effect proper service on the applicant and the impugned judgment was irregular.

Sufficient Grounds for Setting Aside

17. Having found that the judgment was irregular due to want of proper service of pleadings and summons to enter appearance, nothing more is required to be demonstrated for the court to set aside the judgment. Once the court satisfies itself, like in this case, that the impugned judgment is irregular, an order for setting aside must issue as a matter of course. Consequently, I allow the notice of motion dated 23rd October 2024 upon the following terms: -
 - a. The judgment delivered on 12th April 2024 is hereby set aside.
 - b. The Respondent/Applicant has 21 days from today to file and serve its pleadings.
 - c. The Respondent/Applicant to pay the claimant throw away costs of Kshs.15,000 within 21 days of this ruling and in default the claimant will be at liberty to execute for the same against the Respondent/Applicant.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF MARCH, 2025.

ONESMUS N MAKAU

JUDGE

ORDER

THIS JUDGMENT HAS BEEN DELIVERED TO THE PARTIES VIA TEAMS VIDEO CONFERENCING WITH THEIR CONSENT, HAVING WAIVED COMPLIANCE WITH RULE 28 (3) OF THE ELRC PROCEDURE RULES WHICH REQUIRES THAT ALL JUDGMENTS AND RULINGS SHALL BE DATED, SIGNED AND DELIVERED IN THE OPEN COURT.

ONESMUS N MAKAU

JUDGE

