



**Kenya Plantation & Agricultural Workers Union v Solio Ranch Limited
(Cause E030 of 2024) [2025] KEELRC 1850 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1850 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E030 OF 2024
AN MWAURE, J
JUNE 24, 2025**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION . APPLICANT
AND
SOLIO RANCH LIMITED RESPONDENT**

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 15th May 2025 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. Spent
 3. Pending the hearing and determination of this application herein, leave be granted to the Respondent/Applicant to cross-examine the Claimant's process server, Hebron Odhiambo Omollo, who allegedly effected service of the Mention and Hearing Notices on 25th October 2024, 18th November 2024, 17th January 2025, and 10th February 2025.
 4. This Honourable Court be pleased to set aside the ex-parte proceedings undertaken in the matter and all subsequent orders, and the Respondent/Applicant herein be granted leave to defend the claim herein by the matter starting de novo.
 5. Leave be granted to the Respondent/Applicant to file its defence out of time, together with all other necessary documents in compliance with pre-trial requirements
 6. Costs of this application will be in the cause
2. The application is expressed to be brought under Articles 23(1) and 50(1) of *the Constitution* 2010, Section 12(3)(viii) of the *Employment and Labour Relations Court Act*.



Respondent/Applicant's case

3. The application is supported by the affidavit sworn by Kevin Carr-Hartlet, the Respondent's General Manager, dated on the same date as the application.
4. The Respondent/Applicant avers that it learned from its advocates, Kaplan & Stratton Advocates, that the court was scheduled to deliver judgment on 30th May 2025, despite not having participated in the proceedings.
5. The Respondent/Applicant avers that the court's case-tracking system revealed that formal proof hearing had taken place on 25th February 2025, leading to the judgment date.
6. The Respondent/Applicant avers that it only became aware of the suit in April 2025 when its advocates accidentally discovered it in the court's cause list.
7. The Respondent/Applicant avers that upon learning of the suit, it instructed its advocates to take up the matter, and review the court file's position, issuing a Notice of Appointment dated 30th April 2025.
8. The Respondent/Applicant avers that it discovered the court documents were allegedly served on a supposed employee named "Mr. Ali" by the Claimant/Respondent's process server.
9. However, the Respondent/Applicant avers that no such individual worked at the company at that time, leading to doubts about the validity of the service and whether it complied with legal requirements.
10. The Respondent/Applicant avers that it challenges the validity of the service of court documents, arguing that they were allegedly served on a non-existent employee, "Mr. Ali." Additionally, discrepancies in the dates of the hearing notice raise doubts about proper notification.
11. The Respondent/Applicant avers that it seeks to cross-examine the Claimant/Respondent's process server to verify the accuracy of these claims.
12. Despite failing to enter an appearance within the required time-frame, the Respondent/Applicant avers that it has a strong defence and should be granted the opportunity to present its case before the court issues a judgment.
13. The Respondent/Applicant avers that the proceeding with the case without its participation would undermine its right to a fair trial and deprive the court of essential arguments for a just judgment.
14. The Respondent/Applicant avers that though the claim was filed in May 2024, the dispute dates back to May 2022, making expedited determination unnecessary.
15. The Respondent/Applicant avers that this Honourable Court should be guided with the utmost principle of dispensing justice to the parties and by setting aside the ex-parte proceedings and the granting of leave to file its defence as the Claimant/Respondent will not suffer any prejudice if this Honourable Court grants the said orders.
16. The Respondent/Applicant avers that the application was filed without undue delay, with any time lapse attributed to efforts in retrieving relevant case information.
17. The Respondent/Applicant has urged this Honourable Court to be persuaded by its application by allowing it as prayed.



Claimant/Respondent's case

18. In opposition to the application, the Claimant/Respondent filed a replying affidavit sworn by Lawrence Ombira, the Claimant/Respondent's National Organising Secretary, dated 21st May 2025.
19. The Claimant/Respondent avers that the application is mala fide, incompetent, misconceived, bad in law, defective, meritless, and an abuse of the process of the Honourable Court, brought in bad faith.
20. The Claimant/Respondent avers that the application and supporting affidavit are false and deceitful, intended to mislead this Honourable Court and benefit the Respondent/Applicant at its expense.
21. The Claimant/Respondent avers that this instant suit was filed and service of summons together with the pleadings were duly effected upon the Respondent/Applicant, and an affidavit was sworn on 16th July, 2024, and filed in court.
22. The Claimant/Respondent avers that the Respondent/Applicant was properly served with mention and hearing notices on 12.11.2024, 04.12.2024, 04.02.2025, and 25.02.2025, with affidavits of service filed in court.
23. The Claimant/Respondent avers that this Honourable court was satisfied that service was duly effected for hearings on 04.02.2025 and 25.02.2025 respectively.
24. The Claimant/Respondent avers that the Respondent/Applicant's claim that it was not served is misleading, as the court records confirm the service.
25. Additionally, the Claimant/Respondent avers that the Respondent/Applicant has had multiple disputes with the Claimant/Respondent, using similar service methods. The denial of Mr. Ali's involvement ignores security officers Simon Wainaina and Protus Juma, who facilitated the service.
26. The Claimant/Respondent avers that the Respondent/Applicant has not provided a valid basis for setting aside proceedings or halting the judgment, making their application unmerited and an attempt to mislead the court.
27. The Claimant/Respondent has urged this Honourable court to dismiss the application with costs.
28. The application was canvassed by way of written submissions. At the time of writing this ruling, the Claimant/Respondent had not filed their written submissions.

Respondent/Applicant's written submissions

29. The Respondent/Applicant submitted that it is a duly registered corporate entity in Kenya. The Respondent/Applicant relied on Rule 28(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024, which provides as follows:

“Service on a corporate body may be effected—

- (a) on the secretary, director or any other authorized officer of the corporate body;
or
- (b) where the process server is unable to find any of the officers of the corporate body mentioned in subparagraph (a), by—
 - (i) leaving the pleadings at a conspicuous place at the registered office of the corporate body;



- (ii) sending the pleadings by registered courier service to the registered office of the corporate body;
- (iii) leaving the pleadings at a conspicuous place where the corporate body carries out business;
- (iv) sending the pleadings by registered post to the last known postal address of the corporate body if it does not have a registered office or postal address; or
- (v) sending the pleadings by electronic mail to the known email address of the corporate body.”

30. The Respondent/Applicant submitted that the service of Summons and hearing notices was not properly effected upon its principal officers. Instead, all pleadings were allegedly served upon an unidentified individual named “Mr. Ali,” who does not exist in its employment records.
31. The Respondent/Applicant also submitted that the affidavit of service sworn on 11th February 2025 states that service of the Hearing Notice was made on 10th February 2025; however, the notice itself was dated 6th January 2025 and referred to a hearing scheduled for 4th February 2025, thereby contradicting the alleged service for the hearing on 25th February 2025. The Respondent/Applicant further submitted that even if service had been carried out, proper notice was not given for the formal proof hearing that proceeded ex-parte.
32. The Respondent/Applicant submitted that Rule 28(1) of the Employment and Relations Court (Procedure) Rules, 2024 requires that service of summons on a company’s principal officers must be attempted first before alternative methods are used. The Respondent/Applicant relied on the Court of Appeal in *Babs Security Services Ltd V Mwarua Yawa Nzao & 19 Others* [2019] KECA 782 [KLR] reinforced this principle, stating that respondents must prove that service upon principal officers was impossible before resorting to other methods. This position was echoed in *Total Kenya Limited V Supa Haulier Limited* [2003] eKLR, where Ondeyo, J. emphasized that failed attempts must be explicitly detailed in an affidavit of service to justify alternative service methods.
33. The Respondent/Applicant challenges the validity of the service of summons and hearing notice, arguing that the Claimant/Respondent’s process server provided defective service. The Respondent/Applicant submitted that service is a factual issue and cannot be solely established through an affidavit without clear evidence, particularly regarding whether “Mr. Ali” is its employee.
34. The Respondent/Applicant relied on the case of *Mogara V Spur Security Services Limited* [2023] KEELRC 3199 (KLR), where the court ruled that improper service rendered a judgment irregular and set it aside, the respondent contends that the ex-parte proceedings should also be set aside due to prejudicial effects.
35. The Respondent submitted that its application is based on Articles 23(1), 50(1), and 25(c) of *the Constitution*, providing the right to a fair hearing as a non-derogable right. Although the Employment and Labour Relations Court (Procedure) Rules 2024 are silent on setting aside ex parte proceedings, the Respondent/Applicant submitted that the courts have relied on Order 12 Rule 7 of the Civil Procedure Rules, which allows a judgment or order to be set aside if a party was absent from the hearing. The Respondent argues that service of summons and hearing notices was defective, with the 25th February 2025 hearing notice incorrectly citing 4th February 2025 as the hearing date.



36. The Respondent submitted that courts have established that proceedings conducted without proper service may be overturned, as noted in *Njuguna V Unilever Kenya Limited* [2023] KEELRC 527 (KLR). The discretion to set aside ex parte proceedings must be exercised judiciously, as emphasized in *Gichuhi V Tropical Brands (Africa) Ltd & Another* [2025] KEELRC 1210 (KLR), the court quoted the case of *Shah V Mbogo & Another* (1967) EA 116, which stated that discretion should prevent injustice rather than aid deliberate evasion of justice.
37. The Respondent submitted that it only became aware of the case through its advocates, having never received proper service. The court has inherent powers to grant relief where justice and equity demand, as reaffirmed in *Sheikh Mohamed Nunow V Ali Ibrahim Hassan* [2020] eKLR, citing the principle that courts must ensure their actions do not harm any party. Furthermore, the court in *Raj Bahadur Ras Raja V Seth Hiralal* highlighted that the duty to do justice is inherent in judicial bodies. The Respondent urges the court to set aside the ex-parte proceedings, arguing that denying it opportunity to be heard would be a miscarriage of justice.
38. The Respondent relied on the case of *Wachira Karani V Bildad Wachira* [2016] eKLR, where the court emphasized that the primary consideration in setting aside ex parte proceedings is substantial justice, rather than rigid legal technicalities. The court held that sufficient cause exists if the defendant honestly intended to appear at the hearing but was prevented by circumstances beyond their control. The court further held that denying a party the opportunity to be heard when they seek to participate would result in a miscarriage of justice, reinforcing the discretionary power of courts to set aside ex-parte judgments in the interest of fairness.
39. The Respondent submitted that it has an arguable defence to the claim and seeks the court's discretion to set aside the ex parte proceedings. The Respondent contends that the grievants were terminated with cause, as outlined in its draft Memorandum of Defence. In *Technical Equipment International Limited V National Water Conservation & Pipeline Corporation* [2012] eKLR, quoting *Tree Shade Motors Limited V D.T. Dobie & Another* [1995-1998] EA 317 (CAK), the court held that when a draft defence accompanies an application to set aside a default judgment, the court must assess if it presents a reasonable defence. If the defendant demonstrates a meritorious defence, the ex parte judgment can be set aside. Despite its failure to enter appearance within the prescribed time, the Respondent/Applicant submitted that it had constitutional right to be heard.
40. The Respondent/Applicant submitted that the Claimant has not demonstrated any prejudice that would result from granting the application. Upon learning of the proceedings, the Respondent promptly sought appropriate court orders without undue delay. The Respondent cited the Latin maxim *Nulli vendemus nulli negabimus aut differemus, rectum aut justitiam* (To no man will we sell, or deny, or delay, right or justice.), which emphasizes the duty to uphold justice.
41. The Respondent urged this Honourable Court to allow the application with costs.

Analysis and determination

42. The court has thoroughly gone through the application, the replying affidavit as well, and the submissions on record; the issue for determination is whether the application is merited.
43. Rule 28(1) of the Employment and Labour Relations Court (Procedure) Rules 2024, which has been reiterated in the earlier part of this ruling, proves that service on a corporate body may be effected by delivering pleadings to its secretary, director, or authorized officer. If these officers are unavailable, service can be completed by leaving the documents at a conspicuous place at the registered office or



business premises, sending them via registered courier or post to the last known address, or transmitting them through electronic mail to the corporate entity's known email address.

44. Rule 27(4) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides that an officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the delivery receipt confirming service
45. In *Babs Security Services Ltd V Mwarua Yawa Nzao and 19 Others* (supra), the Court of Appeal held that there was no evidence showing that the summons was served to the appellant's principal officers by a process server or the respondents. Consequently, serving the summons to the receptionist was against the prescribed procedure and therefore irregular.
46. In this instant case, Mr Hebron Odhiambo Omollo, the Claimant/Respondent's process server, was issued with Summons to enter appearance together with the pleadings to serve the Respondent/Applicant. He has vividly explained that upon arriving, the Respondent/Applicant's premises, he found the security officer, Mr. Simon Wainaina, the security officer, stationed at the Respondent/Applicant premises, who called someone in the office by the name Mr. Ali to collect the said Summons to enter appearance and pleadings. The Claimant/Respondent's process server goes ahead to explain that the said Mr. Ali declined to sign Summons to enter appearance but retained the documents.
47. Subsequently, the Claimant/Respondent's process server continued serving mention and hearing notices until the matter was slated for judgment and the Respondent/Applicant was informed through its advocates that the matter was due for judgment on 30th May 2025, warranting the application before this Honourable Court.
48. The court has only the words of the Process server Hebron Odhiambo Omollo who claims he served upon the Respondent/Applicant as the Claimant/Respondent's process server and he filed an Affidavit of Service in accordance to the law as set out in Rule 27(4) of the Employment and Labour Relations Court (Procedure) Rules 2024. At the same time, the said Claimant/Respondent's process server attached his license to confirm he is indeed an officer of the court. The Respondent/Applicant denied the service and denies the manager who the Claimant's/Respondent's Process server claims he served the pleadings all the time by the name Mr. Ali is not an employee of the Respondent.
49. The court noted the process server in all the affidavits claimed he served the papers on Mr. Ali. It is interesting the Applicant deny Mr. Ali is not their manager.
50. The court has no way of knowing if the Mr. Ali was an employee of the Respondent and whether he received the summons served over a long period of time. In all the affidavits dated 16th July 2024, 19th November, 2024, 25th October 2024, 17th January 2025 and 11th January 2025 all refer to that Mr. Ali.
51. In terms of cross-examining the Claimant/Respondent's process server, there will be no need for that, as it will be a waste of judicial time and process. The court is not pleased with this situation whether it is the Process server who tried to lie to court or is the Respondent/Applicant who is trying to mislead the court. The truth will still be revealed.
52. Meanwhile Article 50(2) of *the Constitution* provides the right to a fair hearing, and in *James Kanyiita Nderitu & Another V Marios Philotas Ghikas & Another* [2016] KECA 470 (KLR), the Court of Appeal cited the case of *Sangram Singh V Election Tribunal, Kotah*, AIR 1955 SC 664, at 711, where the Supreme Court of India underlines the importance of the right to be heard as follows:

“ [T]here must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their



lives and property should not continue in their absence and that they should not be precluded from participating in them.”

53. Further, the court went on to explain as follows:

The approach of the courts where an irregular default judgment has been entered is demonstrated in the following cases. In *Frigonken Ltd v. Value Pak Food Ltd*, HCCC NO. 424 of 2010, the High Court expressed itself thus:

“If there is no proper or any service of summons to enter appearance to the suit, the resulting default judgment is an irregular judgment liable to be set aside by the court *ex debito justitiae*. Such a judgment is not set a side in the exercise of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process.”

54. The court is in doubt whether the summons to enter appearance together with pleadings, mentions and hearing notices were effected upon the principals’ officers of the Respondent/Applicant company as they were received by the Manager who they are denying is their employee. The court will give the Respondent/Applicant the benefit of doubt.

55. In *CFC Stanbic Limited V John Maina Githaiga & Another* [2013] KECA 461 (KLR), the Court of Appeal referenced *Chemwolo & Another V Kubendi* (1986) KLR 492, emphasizing the court’s duty to ensure justice and held that while judicial discretion should not be unnecessarily restricted, a regular judgment will only be set aside if there are triable issues that present a *prima facie* defence warranting a full trial.

56. Having conceded the court will give the Respondent/Applicant the benefit of doubt and upon perusing the draft Memorandum of Defence dated 12th May, 2025, the issues raised are found to be triable issues which should be heard for this Honourable Court to give its full and final determination.

57. In view of the foregoing, this Honourable Court finds that the application is merited in terms of prayers 4 and 5 and gives the following conditions:

- a. The Respondent/Applicant is hereby given 14 days to file its Memorandum of Defence together with its list of witnesses, witnesses’ statements, list of documents, and documents to be relied upon during the trial.
- b. Failure to do so, this Honourable Court will proceed to deliver its judgment.

58. Costs of the application will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

