



**Maganga v Jenebys Enterprises Limited (Cause E021 of 2024)  
[2025] KEELRC 2004 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2004 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E021 OF 2024**

**M MBARÚ, J  
JULY 8, 2025**

**BETWEEN**

**COSMAS MAGANGA ..... CLAIMANT**

**AND**

**JENEBY'S ENTERPRISES LIMITED ..... RESPONDENT**

**RULING**

1. The respondent, Jenebys Enterprises Limited, filed an application dated 11 April 2025, seeking orders for a stay of execution, that the interlocutory judgment entered on 25 April 2024 be set aside, that the respondent be granted unconditional leave to file a response, and that the matter be heard on the merits.
2. Salim Jeneby supports the application on the basis that the claimant obtained judgment herein irregularly. The Memorandum of Claim dated 18 March 2024 was never served upon the respondent. Upon reviewing the file, it is evident that the purported service of summons on 5 April 2023 was not carried out on the respondent's director.
3. Salim avers in the Supporting Affidavit that no director of the respondent was served with summons and that the Affidavit of Service dated 4 April 2024 is incorrect. The claimant obtained an interlocutory judgment against the respondent in an irregular manner. The respondent only became aware of the judgment when served with a proclamation notice by auctioneers, which led to this application.
4. The respondent has a strong reply to the claimant, and a draft response is attached. Unless the execution process is stayed, the respondent will be condemned unheard and will incur loss and damage from the interlocutory judgment herein.
5. In response, the claimant submitted his Replying Affidavit, asserting that upon filing his claim, the respondent was served through the physical presence of the company director. Peter Simiyu submitted an Affidavit of Service on 4 April 2024.



6. The claimant asserts that mention and hearing notices were served upon the respondent, and there are returns to this effect. Before the Warrants of Attachment were issued, the claimant served the respondent, who failed to address them.
7. The judgment herein is regular and valid, and the orders sought should not be issued. The respondent's application should be dismissed with costs.  
Both parties attended court for oral submissions.
8. The respondent, as the applicant, submitted that the judgment delivered on 25 July 2024 is irregular, as there was no service of summons or pleadings; consequently, the respondent was denied a fair hearing.
9. Where there is an interlocutory judgment, the court has the discretion, guided by the principles of a fair trial and for sufficient cause, to afford the respondent a fair opportunity for a hearing.
10. In this instance, the service of summons was flawed. The Affidavit for Service by Peter Simiyu, dated 4 April 2024, states that service occurred on 5 October 2024. It cannot have been sworn before service; therefore, this constitutes a fabrication, all to thwart justice and deny the respondent the right to be heard on merit. This provides sufficient grounds for the court to set aside the judgment and grant the respondent a fair opportunity to be heard.
11. In reply, the respondent submitted that the Affidavit of Service dated 4 April 2024 confirms the fact of service. The respondent's filing of this application was conditional upon the decretal sum being deposited in court, after which the matter could be heard.

### **Determination**

12. The primary contention raised by the respondent concerns the service of summons in this matter.
13. The claimant submitted the Affidavit of Service from Peter Simiyu, dated 4 April 2024, stating that he served the respondent on 5 April 2024 at the business premises of Shell Petrol Station—Makupa, where he encountered Said Jenebys, the respondent's proprietor.  
The Affidavit of Service was commissioned on 4 April 2024.
14. Service cannot have been effected on 5 April 2024 before the fact of service.
15. In this regard, the respondent is correct that returns were deliberately manipulated to create the impression that proper service had been provided, which was not the case.
16. Service of summons and pleadings is essential for informing the other party about court matters and allowing them to respond. The respondent could not attend and submit a response without knowledge of the proceedings herein.
17. As an indication of its intention to respond to these proceedings, the respondent has attached a draft Memorandum of Response to the affidavit of Said. This demonstrates a readiness to attend to and consider the matter on its merits.
18. The application by the respondent is with merit and is allowed in the following terms;
  - a. Based on the security deposit herein;
  - b. Judgment herein is set aside,
  - c. The respondent shall file and serve the response within 14 days,
  - d. Upon service, the claimant shall be at liberty to file a response within 14 days,



- e. Pleadings to close within the next 30 days,
- f. A hearing date shall be allocated.

**DELIVERED IN OPEN COURT AT MALINDI, THIS 8 JULY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Davis Wekesa

