



Kenya Union of Domestic Hotels Educational Institutions Hospitals and Allied Workers v Sucham Investment Limited t/a Amani Tiwi Beach Resort (Cause E032 of 2023) [2024] KEELRC 13506 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13506 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E032 OF 2023
M MBARŪ, J
DECEMBER 18, 2024

BETWEEN

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS
HOSPITALS AND ALLIED WORKERS CLAIMANT**

AND

**SUCHAM INVESTMENT LIMITED T/A AMANI TIWI BEACH
RESORT RESPONDENT**

RULING

1. The respondent, Sucham Investment Limited t/a Amani Tiwi Beach Resort, filed an application dated 1 August 2024 under sections 1A, 1B, 3A and 63(e) and Order 40 and 51 of the [Civil Procedure Act](#) and Rules and Section 16 of the Industrial Court Procedure Rules Act. The respondent is seeking orders that;

The court is pleased to set aside the judgment entered herein on 9 July 2024, proceed de novo in this matter, and grant the responder leave to defend the suit.

2. The application is supported by the affidavit of Charanjit Singh Hayer, the director, on the grounds that the matter proceeded ex parte without the respondent's participation. There was no service of summons to enter an appearance nor any pleadings related to this matter, and hence, the respondent was not aware of this case. The respondent was condemned unheard in breach of its constitutional rights to a fair hearing.
3. In his affidavit, Hayer avers that he learnt of this case when auctioneers moved in to attach its property upon instructions by the claimant. The moveable properties attached are likely to be sold if the orders sought are not granted, leading to irreparable loss and damage that cannot be compensated in damages.



4. He avers that the judgment entered herein against the respondent is for Ksh.66, 316,473 on a suit that was not defended. Summons were served to the respondent through email kiranhay957@gmail.com, but this address does not belong to the respondent or its directors. The correct address is kiran@hayergroup.com or gopi@hayergroup.com
5. Hayer avers that the respondent was not made aware of these proceedings. Had this information been properly brought to his attention as a director, he would have attended court to defend the suit and file a response. Unless the orders sought are issued, the respondent will be condemned unheard and suffer great prejudice.
6. In reply, the claimant filed the Replying Affidavit of Hezron Onwong'a, appointed by the Secretary-General to attend to these proceedings. It avers that the respondent was properly served with the summons but failed to enter an appearance or file a response. The facts deposed in the Affidavit of Arnold Momanyi are not contested, save for the respondent's urge to the court that the address used does not belong to the respondent or its directors. The application should be dismissed with costs.

Both parties relied on the affidavits filed.

Determination

7. Before addressing the instant application and the orders sought, the respondent, as the applicant, has based its application on the provisions of Section 16 of the Industrial Court Procedure Rules Act. There is no such law or rule.
8. There were the Industrial Court (Procedure) Rules, 2011, which were repealed through the Employment and Labour Relations Court (Procedure) Rules, 2016, and these have since been repealed through the Employment and Labour Relations Court (Procedure) Rules, 2024.
9. The respondent has applied non-existent rules. Even though such an application of non-existent rules is not fatal, a proper citation is imperative. The rules of procedure apply to orderly proceedings, and ultimately, the respondent who enjoys legal representation should use the most updated rules of procedure.
10. That addressed, the core of the application herein is the challenge that the respondent was not properly served with pleadings.
11. The court proceeded on the strength that there was proper service through Arnold Momanyi's Affidavit of Service dated 24 April 2023. He avers that on 12 May 2023, he obtained a court summons and visited the respondent's premises, where he found a lady and served her with the summons and claim herein. On the same day, he sent the pleadings through email information@amanitrt.com and hence served the respondents.
12. An analysis of the court records reveals that the court has issued various notices to the respondent through the email address info@amanitiwibeachresort.com
13. Upon applying this email, the respondent received court communications and attended court. However, the respondent in the Affidavit of Hayer has confirmed its email address is XXX
14. It is imperative that summons to enter appearance and pleadings are served to the correct party. Arnold Momanyi avers that he visited the respondent's premises and found a lady. There is no description of such persons and whether the referenced lady was at the respondent's offices as an officer authorized to receive the summons. He did not clarify whether the lady accepted or declined to receive the summons served.



Effectively, a vital link was lost in the service of summons.

15. Proper service to the official address of a respondent is mandatory. With service, the respondent can attend court to defend the claim against it. Such breaches of fundamental principles are protected under *the Constitution* and the law. The court's objective under Section 3 of the *Employment and Labour Relations Court Act* would be negated where the court denies a party justice. For proper application of the rule of law, it is necessary to hear the respondent on the merit.
16. The respondent's application, premised on non-existent rules of procedure, is meritorious in terms of the completeness of the process.
17. Accordingly, judgment herein is set aside, and the respondent is allowed 14 days from the date hereon to file and serve a response, upon which the claimant will be at liberty to file a reply within 14 days if necessary. Pleadings shall close within the next 30 days. Mention on 27 January 2025 for taking herein directions.

DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

