



**Anangwe v Sigma Feeds Limited (Employment and Labour Relations Cause 1045 of 2018) [2023] KEELRC 456 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 456 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1045 OF 2018  
MN NDUMA, J  
FEBRUARY 23, 2023**

**BETWEEN**

**WILBERFORCE MUKUNA ANANGWE ..... DECREE HOLDER**

**AND**

**SIGMA FEEDS LIMITED ..... DEBTOR**

**RULING**

1. The applicant by a notice of motion dated July 15, 2022 seeks an order in the following terms:-
  1. Spent
  2. Spent
  3. Spent
  4. That upon the grant of prayer 2 and 3 above, leave be granted to the applicant to file its defence together with list of documents, list of witnesses and the witness statements upon service of the pleadings that the respondent relied on to obtain the un-procedural, premature and/or irregular default judgment.
  5. Spent
  6. That the honourable court be pleased to stay the execution of the warrants of attached and sale of the applicant's property pending the hearing and determination of this suit.
  7. That costs be in the cause.
2. The nub of the application is that the claimant is guilty of filing multiple suits in different courts.
3. That the suit was not served on the applicant. That applicant only learnt of the suit when it discovered that there was a default judgment against it. That the applicant be granted leave to file statement of



defence and defend this suit. That the claimant has failed to disclose that all his dues were paid by the applicant and that the applicant does not owe the claimant any terminal benefits. That the claimant stands to suffer no prejudice if the application is granted.

4. That the court be minded to uphold the right of the applicant to be heard before a punitive judgment is entered against it.

### **Replying affidavit**

5. The application is opposed vide a replying affidavit of Namada Simoni, advocate for the claimant who depones that he served a demand letter on the applicant on behalf of the claimant dated October 18, 2017. That the applicant ignored the demand notice and the suit was filed on June 22, 2018.

6 That service of the summons to enter appearance and memorandum of claim was effected on the applicant at their place of business located in Twala Kajiado East Constituency requiring them to enter appearance.

7. That affidavit of service sworn to by George Okwemba, a process server of the court on November 25, 2019 was duly filed before court on the same date November 25, 2019.

8. The affidavit of service is attached to the application.

9. That the applicant failed and/or refused to enter appearance and/or file a defence and the claimant wrote a letter to the deputy registrar requesting for a mention date to take directions by a letter dated January 13, 2019 and a further letter dated November 22, 2019 requesting for a mention date before a judge for pre-trial. The letters are attached to the affidavit. That the matter was given a mention date for February 18, 2020 and a mention notice was served on the respondent. The respondent did not attend court and the court noted that service was not satisfactory and claimant was asked to effect proper service.

10. That matter was again mentioned on May 6, 2021 when there was no appearance for the applicant. The court certified the matter ready to proceed as undefended suit on May 31, 2021 when the matter was again mentioned in the absence of the applicant.

11. On June 21, 2022, the applicant did not attend court and the case proceeded exparte. Final submissions were filed on July 27, 2021. Judgment was delivered on October 14, 2021.

12. The parties filed written submissions which the court has carefully considered together with deposition by the parties.

13. In the case of *Shadrack Arap Baiywo -vs- Bodi Bach KSM CA Civil Appeal No 122 of 1986[1987] eKLR*, the Court of Appeal quoting Chitaley and Annji Rao stated:-

' There is a presumption of service as stated in the process server's report, and the burden lies on the party questioning it, to show that the return is incorrect. But an affidavit of the process server is admissible in evidence and in the absence of contest it would normally be considered sufficient evidence of the regularity of the proceedings. But if the fact of service is denied, it is desirable that the process server should be put into the witness box and opportunity of cross examination given to those who deny the service.'

14. In the present case, the applicant who denies service of summons to enter appearance and statement of claim did not apply to have the process server cross examined. The court deems the evidence of the process server as sufficient evidence to prove service of the summons to enter appearance and statement of claim on the applicant.



15. The court finds therefore that the applicant was duly served with summons to enter appearance and statement of claim and failed to enter appearance nor file a defence to the suit.
16. The applicant has not in the application demonstrated that it has an arguable defence to the suit.
17. The applicant has not attached to the application a draft statement of defence to the claim to demonstrate viability of its defence against the claim.
18. The court is satisfied that the application lacks merit and it is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearances

M/s Mwendu for Applicant

Namada for Respondent

Ekale – Court Assistant

