



**Totari v Diani Beach School Limited (Cause 898 of 2017)
[2023] KEELRC 350 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 350 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 898 OF 2017
AK NZEI, J
FEBRUARY 9, 2023**

BETWEEN

CAROLYNE TOTARI CLAIMANT

AND

DIANI BEACH SCHOOL LIMITED RESPONDENT

RULING

1. This is a 2017 suit, instituted by the Claimant on December 1, 2017. Summons are shown to have been issued by the Court's Deputy Registrar on December 4, 2017. There is an affidavit of service on record indicating that the summons together with suit documents were served on the Respondent on the aforesaid date, December 4, 2017. The matter is shown to have been mentioned in Court on July 23, 2018 when the Claimant was ordered to serve a mention notice on the Respondent. The matter was mentioned in Court again on October 29, 2018 when none of the parties attended Court.
2. On September 12, 2019, the Claimant filed a Notice of Motion dated September 10, 2019 seeking leave to effect service of a hearing notice and all subsequent pleadings and Court documents on the Respondent herein by way of registered post to the Respondent's last known postal address, at PO Box 566 – 80401 Diani. The application has been lying unprosecuted since September 2019, and is the application before me.
3. The application is supported by an affidavit sworn by Bwire Akano Advocate on September 10, 2019. It is deponed in the said affidavit that the Claimant's Process Server has been unable to locate the Respondent for purposes of effecting service of a mention notice and/or Court process, hence the need for substituted service.



4. The Respondent is described in the Claimant's Memorandum of Claim as a limited liability company duly registered in Kenya, with its principal offices in Diani within the Republic of Kenya. Rule 12 of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) provides as follows:-

- “(1) service on a corporate body may be effected:-
- a. On the secretary, director or any other principal officer of the corporate body.
 - b. Where the process server is unable to find any of the officers of the corporate body mentioned in paragraph (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; or
 - 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.

(2) Notwithstanding anything contained in this Rule, a party may, with the leave of the Court, effect service of process by any other method.”

5. The mode of service that the Claimant is seeking the Court's leave to use, that is by registered post to the Respondent's last known postal address, has all along been available to the Claimant as it is provided for in this Court's Rules as already stated in this Ruling. Service ought to have been effected over three years ago and the suit herein possibly heard and concluded.

6. The Claimant/applicant does not need the Court's leave to effect service of Court process by registered post to the Respondent's last known postal address as sought. Let him proceed and effect service in accordance with Rule 12(1) of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#).

7. The Notice of Motion dated September 10, 2019 is hereby marked as spend.

8. The suit shall be mentioned in Court on March 9, 2023 for appropriate directions.

9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9TH FEBRUARY 2023

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI



JUDGE

Appearance:

.....for Applicant

..... for Respondent

