



Masinde v Golden Loaf Bakers Company Limited (Employment and Labour Relations Appeal 5 of 2019) [2023] KEELRC 955 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 955 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL 5 OF 2019**

NJ ABUODHA, J

APRIL 28, 2023

BETWEEN

ELVIS MASIBO MASINDE APPELLANT

AND

GOLDEN LOAF BAKERS COMPANY LIMITED RESPONDENT

RULING

1. The Chief Magistrate's Court in ELRC No 86 of 2018 heard this matter and at the conclusion thereof dismissed the same. The Claimant appealed to this Court and in its judgment delivered on October 25, 2021, the Court allowed the appeal and substituted the order of the Lower Court dismissing the claim with an order that judgment be entered against the respondent in a total sum of Kshs 141,856 together with costs.
2. The appellant consequently embarked on the process of executing the judgment of the Court prompting the present application.
3. In the application dated April 25, 2022, the applicant alleges in the affidavit in support of the application that it had never been served with the appeal documents and the claim except those served by the auctioneer. According to the respondent, the reason why the appeal and the claim were undefended was because the respondent was never served and further the respondent had a good defence to the claim and ought to have been heard.
4. The appellant opposed the application and stated among others that it was not true that the respondent was not served. According to the appellant, the respondent was duly served with the original claim and appeal and that the Lower Court was satisfied that there was proper service and proceeded to hear the matter ex-parte since the respondent never entered appearance in the matter.



5. In the supplementary affidavit, the respondent further stated that it did not have an employee by the name Rahab and had never had a guard by the name Philip Ogolla. The respondent further contended that service upon the guard could still not have constituted proper service.
6. The principle behind service of court papers is premised on the rule of natural justice that a person should not be condemned unheard.
7. The Court has perused the affidavit of service sworn on November 10, 2019 and it indeed states that the initial Court papers including summons were served on one Philip Ogolla who is stated to be a Security Guard. The process server never stated in the affidavit of service under what circumstances he served the Security Guard instead of an authorized official of the respondent.
8. The Court dealt with the ex-parte judgment of the Lower Court and the issue before the Court was whether the Lower Court was justified in dismissing the suit. The issue of service was not before the Court in any event the appellant could not and had no interest in bringing it up save in the manner he did that is to say the respondent was duly served but failed to enter appearance and file a response to the claim.
9. As observed earlier, the essence of insisting on service of Court process on any party is to ensure none is condemned unheard. Therefore, a judgment entered without hearing a party to suit can be set aside once the party affected sufficiently demonstrates that there was no proper service.
10. The Court in this particular matter is satisfied that there was no proper service on the respondent and therefore reviews its judgment on appeal delivered on October 25, 2021 and hereby substitute therewith an order of re-trial of ELRC No 86 of 2018 before another Magistrate.
11. The respondent is hereby directed to file and serve response to the claim and necessary documents and witness statements within 21 days of this ruling.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 28TH DAY OF APRIL, 2023.

Abuodha J. N.

Judge

In the presence of:-

.....for the Appellant

..... for the Respondent

