



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 394 OF 2018**

**BETWEEN**

- 1. SALIF MICHAEL NDUNGULI**
- 2. JACOB KATUMO MUSYOKI**
- 3. NZOMO MULUVE FREDRICK**
- 4. PAULINE KHADIORI**
- 5. IBRAHIM ALUMERA AMIMO**
- 6. JOHN NYAGA IRERI**
- 7. KELVIN MURITHI NJERU**
- 8. KAVESA NARY MUTUA**
- 9. GLADYS AKINYI ODUOR**
- 10. MILANDI NJOGU**
- 11. ALICE ACHIENG' OCHIENG'**
- 12. DAVID THOYA NDURYA**
- 13. DENNICE ODWOR ODHIAMBO**

**VERSUS**

- 1. HUI COMMERCIAL ENTERPRISE [AFRICA]  
COMPANY LIMITED a.k.a. HUI COMMERCIAL  
EPZ LIMITED**
- 2. WRONY WANG**

**RULING**

1. Judgment was delivered in favour of the Claimants, on 26<sup>th</sup> September 2019.
2. The Respondent did not participate in the trial.

3. The Respondent filed an application on 25<sup>th</sup> October 2019, asking the Court to set aside default Judgment delivered on 26<sup>th</sup> September 2019, on the ground that the Respondent was not served with the summons and the pleadings.

4. Supported by the affidavit of Phillip Sadhi Mrima, sworn on 27<sup>th</sup> October 2019, the Respondent alleges it only became aware of the proceedings upon being notified of Judgment, on 1<sup>st</sup> October 2019.

5. The application is opposed. The Claimants rely on the affidavit of their Advocate Laura Mbithe, filed on 7<sup>th</sup> November 2019.

***The Court Finds:-***

6. Paragraph 4 of the Judgment observes that service of the initial summons and pleadings was effected upon the Respondents. There is an affidavit of service on record. There was no appearance or response filed. The matter was set down for hearing by way of formal proof. It was observed that though not obligated to serve notice of formal proof hearing under the E&LRC [Procedure] Rules 2016, the Claimants served the Respondents nonetheless. The Respondents did not attend Court, or file anything in response. They were served notice of entry of Judgment. They do not dispute this service. Yet the same process-server who served the initial summons- Andericus Otieno Odera served the notice of entry of Judgment. There is a long affidavit sworn by this officer on 7<sup>th</sup> November 2019, detailing service. The officer has not been summoned for cross-examination by the Respondents. The Court has no reason to doubt service.

7. Secondly there is no reasonable response to the Claim, disclosed in the draft statement attached to the application. The Respondents merely deny the Claim, stating there was no redundancy as claimed by the Claimants. They confirm the position by the Claimants that they were asked to leave because business was down. They state that the Claimants were to resume duty, but declined resumption when the Respondent opened its factory in September 2018. There is no document inviting the Claimants back to work, shown anywhere by the Respondents. It is noted that the Claim was filed on 12<sup>th</sup> June 2018.

8. Thirdly and lastly, Philip Sadhi Mrima, does not disclose what he is, to the Respondents. It is not sufficient to tell the Court that he is a representative of the Respondents. He must state what position he holds, and how that position, relates to the matters under enquiry. His affidavit cannot be relied upon by this Court.

***It is ordered:-***

***a. The application dated 27<sup>th</sup> October 2019 filed by the Respondents is rejected.***

***b. Costs to the Claimants.***

**Dated, signed and delivered under Rule 38 of the E&LRC [Procedure] Rules, 2016 and the Covid-19 Judiciary Guidelines this 29<sup>th</sup> day of June 2020**

**James Rika**

**Judge**