

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1097 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST

DRUG AND ALCOHOL ABUSE (NACADA)-.....APPLICANT

VERSUS

JENNIFER NYAMBURA KIMANI.....RESPONDENT

RULING

The Applicant, The National Authority for the Campaign Against Drugs and Alcohol Abuse (NACADA) filed a Notice of Motion Application dated 1st April 2019 brought under Order 51 Rule 1 of the Civil Procedure Rules and Section 3 of the Civil Procedure Act against the Respondent, Jennifer Nyambura Kimani. It seeks to be heard for orders that this court be pleased to vary, review and/set aside the orders made on 14th January 2019 dismissing the Claimant's claim on account of failing to serve the Respondent by way of substituted service. Further, that the court sets down the matter for hearing on priority basis and for costs of this application to be provided for.

The Application is based on the grounds that:- The Claimant/ Applicant was directed to serve pleadings by way of substituted service pursuant to the court's orders given on 23rd July 2014 and extended on 22nd January 2015 for a period of 7 days by Nduma J. That on 26th January 2015, the Claimant served the Respondent by way of advertisement in the Standard Newspaper. That the Claimant/Applicant had taken steps to set down the matter for hearing in October 2018 when the affidavit of service was filed and the Claimant sought a hearing date. Unfortunately on 14th January 2019, the suit was dismissed by Onyango J. under an erroneous assumption that the Claimant/Applicant had failed to comply with the orders of the court issued on 22nd January 2015 and that the summons had expired on account of failure to serve. That the dismissal has greatly prejudiced the Applicant who has always been ready and willing to prosecute this suit to conclusion. That it is in the interest of justice that the orders sought are granted.

The Application is supported by the Affidavit dated 1st April 2019 sworn by the Applicant's advocate, Ezekiel Njagi Munyua who avers that on 26th January 2015, the Claimant through a licenced court process server instructed the Standard Newspaper at their offices to serve the Statement of Claim dated 30th June 2014 by way of advertisement. That subsequent to the service, the Claimant took steps to set down the matter for hearing especially on 12th October 2018 thus indicating that it desired to prosecute the case. That however, the suit was dismissed by Onyango J. on 14th January 2019 without giving notice to the Claimant/Applicant or their advocates or issuing a Notice to Show Cause and that this was despite having complied with the court order.

The matter came before court for hearing on 4th June 2019 but the Respondent did not appear. The Court directed that the application be argued by way of written submissions. The Respondent did not file her response to the application or submissions.

Analysis and Determination

The claim herein was dismissed on 14th January 2019 on grounds that the summons had lapsed following the failure of the claimant to serve the same upon the respondent by way of substituted service as directed by the court on 21st January 2015. The applicant has demonstrated that it actually served by way of substituted service and has attached a copy of page 36 of the Standard Newspaper of Monday 26th January 2015, which contains the notice of substituted service.

This having been the only reason for dismissal of the suit, the applicant has demonstrated that there are justifiable grounds for setting aside the orders dismissing the suit.

I thus grant prayer 1 of the application, set aside the orders of 14th January 2019 dismissing the suit and reinstate the same.

I however note that the applicant has not taken steps to fix the suit for hearing since it served the respondent on 26th January 2015, a period of almost 4 years. The application is thus reinstated on condition that the suit is set down for hearing within 60 days from date of ruling failing which it shall stand dismissed for want of prosecution.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF NOVEMBER 2019

MAUREEN ONYANGO

JUDGE