

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 337 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

JONAH MUNYAO MUSIKU.....CLAIMANT

-Versus-

ATHI RIVER MINING LIMITED.....RESPONDENT

RULING

This case was coming up for judgment today. I have however opted to do a ruling after noting that the service of hearing notice was effected on an advocate who had ceased acting.

According to the record on the file, the claim was filed by MBALUKA & COMPANY ADVOCATES. The firm of MANTHI MASIKA & COMPANY ADVOCATES filed a notice of appointment and entered appearance for the respondent. They appear to have filed a defence but none is on record. There is however a reply to the respondent's defence filed by MBALUKA & COMPANY ADVOCATES on 24th November 2015.

On 7th January 2016, MOHAMMED MUIGAI ADVOCATES filed a notice of change of advocates. It is not clear if the notice of change was served upon MBALUKA & COMPANY ADVOCATES, the previous counsel for the claimant and MANTHI MASIKA & COMPANY ADVOCATES, who were on record for the respondent.

On 25th July 2015, WAMBUA MESEMBI & COMPANY ADVOCATES filed a notice of change of advocates. The notice indicates that it was to be served upon MBALUKA & COMPANY ADVOCATES and MANTHI MASIKA & COMPANY ADVOCATES.

The advocates on record for the claimant is therefore WAMBUA MUSEMBI ADVOCATES while counsel on record for the respondent is MOHAMMED MUIGAI ADVOCATES.

The hearing notice herein was served upon MANTHI MASIKA & COMPANY ADVOCATES instead of MOHAMMED MUIGAI ADVOCATES. There was therefore no proper service upon the respondent making the proceedings of 23rd November 2017 defective for want of proper service.

For these reasons, the proceedings are hereby vacated and the case will be fixed for hearing *de novo* on a date to be fixed in court at the time of ruling.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF APRIL 2018

MAUREEN ONYANGO

JUDGE