



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAIROBI

CAUSE NO.451 OF 2014

CALEB LIBWEGE EBOYI CLAIMANT

VERSUS

JOHN KASHANGAKI RESPONDENT

RULING

The matter herein is due for judgement following hearing of the claimant's case on 31st May, 2017.

In preparing the judgement, I have gone through the records and established that The claimant filed his Memorandum of Claim on 21st March, 2014 and the respondent entered appearance and filed a Statement of Response on 8th May, 2014.

When the matter came up for hearing on 31st May, 2017 the respondent was absent despite being served and Affidavit of Service filed by **Mary Gatavi Njue** setting out that the respondent's Advocates **W&M Advocates** were served on 17th November, 2016 with the Hearing Notice but declined to accept service on the grounds that they no longer represented the respondent.

I have gone through the record, and ascertained that the firm of **W&M Advocates** entered appearance for the respondent and remain on record as the legal representatives of the respondent in this matter. There is no change of advocates or notice by the respondent to act in person.

The Hearing Notices have been served and returns filed and the court heard the claimant on his evidence.

Going back to the pleadings and returns, in the defence and appearance of the respondent's Advocates I note the following:

Address of service shall be Care of:

W & M Advocates,

Haven Court,

Apartment A8,

Waiyaki Way,

P.O. Box 3849900623

Nairobi.

In the Affidavit of Service filed by the claimant and sworn by **Mary Gatavi Njue** on 10th May, 2017 the deponent avers that service was effected upon the respondent's advocates on 17th November, 2016 but declined to accept the same on the grounds that they no longer represented the respondent.

Upon scrutiny of the Affidavit of Service, service of the hearing notice was effected upon the firm of **M & W Advocates**. The place of service is noted as;

Miraj Tower 3,
1st floor
Westlands off Chiromo Road
Next to Villa Rosa,
Nairobi.

The Hearing Notice attached to the Affidavit of **Mary Gitavi Njue** is to the effect that service is to be effected upon;

W & M Advocates,
Haven Court, Apartment A8,
Waiyaki Way, Westlands.
P.O. Box 3849900623
Nairobi.

Similar returns are herein made by Process Server and person of George Omondi and Mary Gitavi Njue noting the Hearing Notices be serviced upon the respondent's advocates at;

Haven Court, Apartment A8,
Waiyaki Way, Westlands.

But the Process Servers returns notes they both were at;

Miraj Tower 3, 1st floor
Westlands off Chiromo Road
Next to Villa Rosa,

I find material lapses leading to the hearing of the claimant on the scheduled date on 31st May, 2017. The returns made on service upon the respondent following the claimant taking an *ex parte* hearing date are not procedural. Such erode the course of justice noting the non-attendance of the respondent or the advocates on record. Both remained absent from court on various dates when the matter came up in court. to proceed with judgement noting the above lapses would negate the essence of seat of justice.

Accordingly, proceedings held on 31st May, 2017 are hereby set aside. Serve the respondent accordingly at the address set out in the Memorandum of Appearance and Statement of Response. Take fresh hearing directions before the Duty Judge.

Dated at Nairobi this 18th day of May, 2018.

M. MBARU JUDGE

In the presence of:

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