



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**

**CAUSE NUMBER 166 OF 2015**

**BETWEEN**

**MWENGA MUTIL.....CLAIMANT**

**VERSUS**

**JOSHUA KARUNGE T/A MWAMBAO CAFE.....RESPONDENT**

**RULING**

1. Judgment was delivered in favour of the Claimant, for the sum of Kshs. 148,144.35 comprising terminal dues and compensation for unfair termination, on 5<sup>th</sup> May 2017. The Claimant was also granted costs and interest.

2. Judgment was given in default of Response to the Claim.

3. The Respondent filed an Application on 4<sup>th</sup> October 2017, seeking to have Judgment set aside, and the Respondent allowed to respond to the Claim.

4. The Application is based on the Affidavit of the Respondent, sworn on 4<sup>th</sup> October 2017. He states he was never served with the Notice of Summons, Statement of Claim, and Mention Notices.

**The Court Finds:-**

5. The Claimant issued a letter of demand before instigation of the Claim, through Kituo Cha Sheria, dated 2<sup>nd</sup> February 2015.

6. Reply was made through B.W. Kenzi & Company Advocates, on 10<sup>th</sup> February 2015.

7. The Statement of Claim filed on 27<sup>th</sup> March 2015 indicated it was to be served upon B.W. Kenzi & Company Advocates.

8. There is no evidence that the Statement of Claim and other Court processes, reached B.W. Kenzi & Company Advocates.

9. Service appears to have been directed at an undisclosed Manager of the Respondent at a place called Mwembe Tayari. There is no acknowledgment of receipt by the undisclosed Manager.

10. Service was not proper. It did not meet the requirements of Rule 11 of the Employment and Labour Relations Court (Procedure) rules 2016.

11. Judgment obtained by the Claimant is founded on defective service, and cannot be sustained.

IT IS ORDERED:-

***a) The Application by the Respondent filed on 4<sup>th</sup> October 2017 is allowed.***

***b) No order on the costs.***

**Dated and delivered at Mombasa this 30<sup>th</sup> day of October 2018.**

James Rika

Judge