



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 918 OF 2014**

**ALEX KIDAGI ..... CLAIMANT**

*VERSUS*

**JONATHAN PETROL STATION LIMITED ..... RESPONDENT**

Mr. Munoko for respondent/applicant

Mr. Ouma for claimant/respondent

**RULING**

1. The application seeks to set aside the judgment of Nduma J. delivered on 6<sup>th</sup> May 2016 on the basis that the statement of claim and summons were served by the claimant in person and is therefore not a proper person to serve court process.
2. That there was no proper service and therefore the judgment be set aside.
3. The respondent admits that the summons were served on a company employee at the work place.
4. There is no reason advanced why the respondent did not file a memorandum of defence upon receipt of service.
5. The application is opposed vide a replying affidavit of the claimant who confirms that he personally served the summons on one Mr. Isaac Nderitu an employee of the respondent who was known to him. That Mr. Nderitu called a director Mr. Sharon Nakweri on phone upon service, and the Director directed Mr. Nderitu not to acknowledge receipt of summons by signing.
6. The claimant submits that this is a deliberate attempt by the respondent to delay the cause of justice which the court should stop by dismissing the application with costs.

**Determination**

7. It is not in dispute that the respondent received the summons and memorandum of claim and chose not to respond to the same on the basis that it was served by the claimant in person and not by a qualified process server.
8. The respondent waited for the matter to proceed to hearing and brought this application at the point of the execution of decree more than two years upon receipt of the court process.

9. Rule 10 (7) of The Industrial Court (Procedure) Rules, 2010, applicable at the time provided;

*“10 (7) the claimant shall after filing a statement of claim or an appeal as the case may be, cause the statement of claim or appeal to be served on the respondent by a qualified process server.”*

10. Notwithstanding the aforesaid rule of procedure, a respondent who admits service of the statement of claim and summons and who has deliberately refused to file a statement of response to the claim cannot be heard to rely on the rule merely to defeat the cause of justice.

11. The respondent has not attempted to justify the failure to respond to the suit at all, except relying on what the court considers to be a technicality to delay or defeat the ends of justice.

12. In this matter this court is guided by the supreme law of the land, the constitution of Kenya 2010, Article 159 which provides;

*“(2) In exercising judicial authority the courts and tribunals shall be guided by the following principles”.*

*“(d) Justice shall be administered without undue regard to procedural technicalities.”*

13. In this case, the court finds that the fact that the respondent has admitted receipt of the statement of claim and summons and did not enter appearance or file any defence nor attend hearing of the suit and now more than two (2) years down the line seeks to have the judgment set aside, only on the basis that the summons were served by the claimant himself and not by a qualified process server to be a procedural technicality which the court is justified to disregard in favour of substantive justice.

14. The court therefore finds that the application lacks merit and same is dismissed with costs.

**Dated and delivered at Nairobi this 4<sup>th</sup> day of August, 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**