



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 90 OF 2016**

**BENSON MAINA MWANGI.....CLAIMANT**

**VERSUS**

**BABS SECURITY SERVICES LIMITED.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Thursday, 19<sup>th</sup> October, 2017)**

**RULING**

The notice of motion was filed on 28.02.2017 through Macharia Gakaria & Associates. The application is made under Order 10 Rule 11, Order 22 Rule 22 of the Civil Procedure Rules and section 3A of the Civil Procedure Act and all enabling provisions of law. The substantive prayers are for the judgment entered on 08.12.2011 to be set aside; the respondent be given unconditional leave to file a defence; the process server herein be cross-examined; and costs of the application be provided for.

The application is based upon the affidavit of Samuel Mureithi and the following grounds:

- Ex-parte judgment was entered on 25.11.2016 against the respondent whereby rules of natural justice were thereby breached as the applicant had not been served and has to date not been served with summons to enter appearance and the statement of claim.
- It is just and fair that the judgment is set aside and the respondent given unconditional leave to defend the suit as the applicant has a serious defence raising serious triable issues.
- The application had been made without undue delay.

The claimant opposed the application by filing on 20.01.2017 the replying affidavit of J.N. Kirubi Advocate. It was stated that the application was an afterthought and an abuse of court process as the memorandum of claim and summons was filed and served as per the return of service on record. Despite service, the applicant had failed to enter appearance, file a response, attend mentions or attend at the hearing as per affidavits of service on record.

Rule 12 (2) of the Employment and Labour Relations Court Act, 2016 provide that where service upon a corporation's principal officer or secretary or director is not possible, the service shall be effected by leaving the pleadings at a conspicuous place at the registered office of the corporate body. In this case, the summons were served at the respondent's office and the secretary who received the summons signed and stamped on the copy returned to the court and attached on the affidavit of service.

Thus, the court returns that the service was adequately effected. The application will therefore fail as there is no doubts that summons were served. The court further finds that service of all subsequent processes was adequate but the respondent deliberately opted not to take steps to oppose the suit upon such grounds that have remained at large.

In conclusion, the application dated 27.02.2017 and filed on 28.02.2017 is hereby dismissed with costs.

**Signed, dated and delivered** in court at Nyeri this **Thursday, 19<sup>th</sup> October, 2017.**

**BYRAM ONGAYA**

**JUDGE**