



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

**CAUSE NO. 19 OF 2017**

**(Originally Nakuru Cause No. 193 Of 2016)**

**THOMAS KIMUTAI BIWOTT**

**CLAIMANT**

**V**

**KENYA POWER & LIGHTING CO. LTD**

**RESPONDENT**

**RULING**

1. The Cause herein proceeded as an undefended Cause because the Respondent did not enter Appearance or file a Response.
2. Formal proof thus proceeded on 24 July 2017, and in a judgment delivered on 28 July 2017, the Court found and held that the dismissal of the Claimant was unfair and awarded him a total of Kshs 1,223,881/56.
3. The Claimant proceeded to execute and the process prompted the Respondent to move the Court on 18 October 2017 seeking
  - a) ...
  - b) THAT this Honourable Court be pleased to set aside and/or review the judgment of this Honourable Court dated 7<sup>th</sup> September, 2017.
  - c) THAT the Defendant be granted unconditional leave to defend this claim.
  - d) THAT the draft Memorandum of Response attached hereto be deemed be properly filed upon payment of the requisite filing fees.
  - e) ...
  - f) ...
  - g) Costs of this application be provided for.
4. On 19 October 2017, the Court, *ex parte*, granted proposed orders a), e) and f) on condition that the decretal sum would be deposited in Court before 3 November 2017, and *inter partes* hearing was scheduled for 3 November 2017 (condition was complied with).

5. However, the application could not proceed on 3 November 2017 because the file was not transmitted back to Eldoret, and it was eventually heard on 7 November 2017 in Nakuru and ruling scheduled to today in Eldoret.
6. The Court has given due consideration to the material placed before it including the submissions.
7. The main reasons advanced by the Respondent in seeking setting aside/review of judgment and grant of leave to defend are that Notice of Summons and the Memorandum of Claim were not served strictly as contemplated by Order 5 Rule 3 of the Civil Procedure Rules (this Court has its own Rules (*Employment and Labour Relations Court (Procedure) Rules, 2016* ) which govern service of process and the reference to the Civil Procedure Rules, though worded similarly, was misplaced), and that 10 day of *Notice of Entry* of judgment was not given.
8. It is not disputed that Notice of Summons and the Memorandum of Claim were served upon and acknowledged by the Respondent's Human Resource and Administration Officer, North Rift on 9 June 2017.
9. The Respondent's contention is that service had to be effected upon a Secretary, Director or Principal Officer.
10. The Rules of this Court, and indeed the Civil Procedure Rules do not define who a *principal officer* is.
11. The Court ought therefore to turn at the first instance to the primary statute dealing with juristic persons, the Companies Act, 2015, and then other reputable law books.
12. That primary statute does not define *principal officer* but defines officer as "means"
  - (a) any director, manager or secretary of the company or body; and
  - (b) any other person who is, because of a provision of this Act, to be treated as an officer of the company or body for the purposes of the provision;
13. Black's Law Dictionary, ninth edition on its part does not define *principal officer* but defines *officer* as  

A person who holds an office of trust, authority, or command..... In corporate law, the term refers esp. to a person elected or appointed by the board of directors to manage the daily operations of a corporation....
14. Arising from the two sources, it is my view that in determining whether a person who was served with court process meets the criteria, the Court should look at the functions assigned to him (her).
15. Although the functions of the *Human Resource & Administration Officer* who was served was not disclosed, it may not be gainsaid that the Respondent had placed upon him and his office functions to do with the daily human resource functions which inevitably include(d) discipline.
16. Further in the Court's view, a *Human Resource Officer* would qualify as a manager for purposes of employment disputes.
17. And for the Respondent herein, an entity having regional offices all over the country, a *Human Resource & Administration Officer* in a region would meet the statutory *manager* categorisation in the Companies Act.
18. The Court therefore holds that the service which was effected upon the Respondent met the letter and spirit of Rule 12 the Employment and Labour Relations Court (Procedure) Rules 2016.
19. Having come to the conclusion that the service was proper, the Court's attention now turns to the

irregularities attendant to the execution and their legal impact.

20. The Claimant did not deny that the 10 Day *Notice of Entry* of Judgment was not given to the Respondent.

21. However, the Respondent also did not deny that apart from the Notice of Summons, a hearing notice was served and acknowledged on 25 January 2017; the amended Memorandum of Claim was served and acknowledged on 30 March 2017; a mention notice was served and received on 7 December 2016 and another one on 14 July 2017.

22. In the view of the Court, the irregularity of not serving a *Notice of Entry* of judgment upon the Respondent cannot excuse the failure to follow up the progress of the Cause in light of the several notices which were served upon it.

23. The Court has also looked at the proposed Response.

24. It does not raise triable issues but merely consists of bare denials and the putting of the Claimant to proof.

25. The Employment Act, 2007 has placed certain burdens upon employers and it is expected that a *Response* would be structured/contextualised in such a way to discharge those obligations, and in this respect sections 41, 43 and 45 of the Act are material.

26. From the foregoing, the Court finds no merit in the application dated 17 October 2017 and orders that it be dismissed with costs to the Claimant.

**Delivered, dated and signed in Eldoret on this 24<sup>th</sup> day of November 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Kibii instructed by Limo R.K & Co. Advocates

For Respondent Mr. Awuonda instructed by Wamaasa, Masese, Nyamwange & Co. Advocates

Court Assistant Nixon