



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 361 OF 2016
BETWEEN
CHARLES KUCHANJA MWABUJE.....CLAIMANT
VERSUS
VIPINGO RIDGE LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Omolo Onyango & Company Advocates for the Claimant

No appearance for the Respondent

RULING

1. This Claim was heard *ex parte*, on 16th October 2017, at Malindi.
2. The hearing date was taken in open Court at Mombasa, on 17th July 2017.
3. The date was taken by Counsel for the Claimant, in the absence of the Respondent.
4. The Order made on 17th July 2017, was that hearing would be on 16th October 2017, at Malindi.
5. After hearing on 16th October 2017, the Court reserved Judgment for 4th December 2017.
6. It has been noted that the Hearing Notice served upon the Respondent, as shown in the Affidavit of Service sworn by John Kombe on 16th October 2017, indicates the place of trial as Mombasa.
7. This defect was not brought to the attention of the Court at the hearing.
8. The failure by the Respondent to attend Court can be explained this way: the Hearing Notice gave the wrong place of trial.
9. It is pointless therefore, to prepare and deliver an *ex parte* Judgment which will be challenged on this strong ground of improper service of the Hearing Notice. The Claimant ought to have brought this defect

to the attention of the Court, rather than proceed with the hearing *ex parte*.

IT IS ORDERED:-

a) The Order made on 16th October 2017 is set aside.

b) Parties to obtain a fresh hearing date.

c) No Order on the costs.

Dated and delivered at Mombasa this 4th day of December 2017.

James Rika

Judge