



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 402 OF 2014

BETWEEN

STEPHEN OCHIENG OGWENO CLAIMANT

VERSUS

JUSTICE OKECH ORINDA...RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Odhiambo Advocate instructed by Odhiambo S.E & Company Advocate for the Claimant

*Mr. Justice Okech Orinda the Respondent -
Absent*

RULING

1. The Claimant filed his initial Statement of Claim on 28th August, 2014, subsequently amended, in a Statement of Claim filed on 20th February 2015.
2. The Respondent filed a Statement of Response on the 27th October 2014.
3. The hearing was scheduled by the Claimant, in the absence of the Respondent, for 2nd March 2015.
4. The Respondent did not attend the Court on the hearing date. The Claimant filed an Affidavit of service indicating Hearing Notice was served upon the Respondent in Person on 23rd February 2015. The Claimant went on to give evidence, and has asked the Court to give an *ex parte* Award.

The Court Finds:-

5. A review of the record shows the Respondent filed his Statement of Response through the Law Firm Khatib & Company Advocates. It is not clear why the Claimant opted to serve the Hearing Notice on the Respondent in Person. There is nothing removing the Respondent's Advocates from the record.

6. Secondly, the hearing date was obtained on 29th October 2014. The Claimant took his liberty and filed the Amended Claim on 23rd February 2015. The Respondent was entitled to file a Response to the Amended Claim. By the time of the hearing, only 7 days had elapsed from the date the Amended Claim was filed.
7. The Court is not able to grant the Claimant his wish for an *ex parte* Award. Service, it appears, was improper. Adequate opportunity has not been granted to the Respondent to challenge this Claim.

IT IS ORDERED:-

[a] The ex parte hearing of 2nd March 2015 and consequential orders are set aside;

[b] The Claimant shall effect proper service upon the Respondent, and take such further steps in prosecution of the Claim;

[c] For now the Claim is Stood Over Generally.

Dated and delivered at Mombasa this 22nd day of May 2015.

James Rika

Judge