

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1903 OF 2011

BETWEEN

JOHN MWANGI MUREITHI.....CLAIMANT

VERSUS

GOITOM ZERE..... RESPONDENT

RULING

The Court delivered an *ex parte* Award in favour of the Claimant on 3rd December 2012. It was after the Claimant sought to execute Award, that the Respondent filed an application under the Civil Procedure Act and Rules, seeking to set aside Award, and seeking leave to file Statement of Response.

The Respondent raises 3 grounds, and swore an affidavit on 13th May 2013, in support of his application. He states in main, that he was not served with the summons and hearing notice.

The Claimant filed a replying affidavit sworn on 6th June 2013.

The Advocates subsequently agreed to have the application disposed of by way of written submissions, which were confirmed to be on the record at the last mention on 9th July 2013.

Upon careful consideration of the application, respective affidavits and submissions filed by the parties, the *Court Finds and Orders:-*

1. The Application is technically defective as it is based on the Civil Procedure Act and Rules. Proceedings of the Industrial Court are specifically regulated under the Industrial Court (Procedure) Rules 2010. The Civil procedure Act and Rules apply only as contemplated by the Industrial Court (Procedure) Rules 2010, or by resort in cases where the Industrial Court (Procedure) Rules 2010 are silent, and as the trial Judge may deem appropriate.

2. There are reasons to believe however, that service of the summons and hearing notices upon the Respondent did not meet the standards of proper service envisaged by the Industrial Court (Procedure) Rules 2010. The Claimant states in his Replying Affidavit, paragraph 3 that, “*repeated service have been effected on the Applicant’s agents who deliberately and mala fides failed to enter appearance or file response*” The Respondent is an individual, and it is not clear who his agents were, why he has to be served through agents, or why he was not personally served. Secondly, the Respondent has shown reasonable and arguable grounds in response to the Claim. He merits to be heard.

3. In view of this and relying on the powers donated to the Court by the Section 12 of the Industrial Court Act and the provision of Rule 27(1) (g) of the Industrial Court (Procedure) Rules 2010, the *Court Orders:-*

(a) Award entered in favour of the Claimant on 3rd December 2012 is hereby set aside.

(b) The Respondent is granted leave to file and serve a Statement of Response within 14 days of the delivery of this ruling.

(c) *The parties to be heard fully before any other Hon. Judge other than the undersigned who gave the ex parte Award.*

(d) *Costs in the cause.*

Dated and delivered at Nairobi this 14th day of February 2014

James Rika

Judge