



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 156 OF 2014**

**(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 3<sup>RD</sup> DECEMBER, 2014)**

**KENYA UNION OF COMMERCIAL, FOOD AND**

**ALLIED WORKERS ..... CLAIMANTS**

**-VERSUS-**

**MEK SACCO SOCIETY LTD .....RESPONDENTS**

**R U L I N G**

The application in court is one dated 11.8.2014. The applicant seeks orders that this court sets aside its ruling delivered on 30.7.2014. The application is brought through chamber summons dated 14.8.2014 brought under S. 3 (1)(2) of Judicature Act (Cap 8) Laws of Kenya, Sections 3, 3A, 1A, 1B of the Civil Procedure Act (Cap 21) Laws of Kenya and all other enabling provisions of law. The application is supported by the affidavit of Margaret Awuor Odhiambo deposed to on 14.8.2014.

The applicant contends that they were not served with the application or summons to enter appearance and therefore this court was misled by respondents when they filed an affidavit of service alleging service dated 23.7.2014. They aver that under Order 5 rule 3(a) the person to be served is a director or officer of the corporation yet none were served in this case. They also aver that the affidavit of service does not state what the bundle of documents that were served were nor who identified the person served. They cited **Transworld Radio Limited V Clive Wabule Wafukho** pg 5 and asked court to allow the application.

The respondents opposed this application. They contend that the applicants were served and that is why they came on record. They want the court to allow them to continue and execute their judgment.

I have considered the averments of both parties. I notice that the claimant first came to court on 3.7.2014 *ex parte* seeking orders under certificate of urgency. They were granted *ex parte* orders and ordered to serve the respondents and matter set for *inter partes* hearing on 24.7.2014.

On 24.7.2014, they appeared in court and the respondents were absent. They had filed an affidavit of service sworn by one Youniter O. Pacho who stated in her affidavit that she served secretary of MEK Sacco on 10th July 2014 with court order who acknowledged service by stamping the copy. The stamped copy was on the court file and behind were listed documents served.

The applicants have not denied that the stamp on the order does not belong to them. They have only contested the fact that the affidavit of service is not elaborate as to how the person served was identified nor whether he was a director of the applicants.

The issue of service upon the applicants is clear – that they were served and they have not denied that their office received the stamped copy of the order and documents. I therefore find that the application to set aside the ruling on account of not being served is not truthful. It lacks merit and the application is rejected.

**HELLEN S. WASILWA**

**JUDGE**

**3/12/2014**

**Appearances:-**

Nyawiri h/b Atela for claimants present

Nyawiri for respondents present

CC. Wamache