



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 673 OF 2012**

**BETWEEN**

**VICTOR OMONDI ..... CLAIMANT**

**VERSUS**

**HOUSE OF GENERAL MERCHANT LIMITED.....  
RESPONDENT**

***Before Rika J***

**CC. Mr. Kidemi**

***Mr. Kandere instructed by S.K.Opiyo and Company Advocates for the Claimant***

***Mr. Omondi instructed by Shah & Shah Advocates for the Respondent***

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**RULING**

The Court delivered an *ex parte* Award in favour of the Claimant on 13<sup>th</sup> February 2013. The Respondent, on learning of execution proceedings commenced against it by the Claimant, filed an application dated 27<sup>th</sup> May 2013, seeking stay of execution, setting aside of the *ex parte* Award, and grant of leave to respond to the Claim.

Supported by the affidavit of Dhiru Shah, Director of the Respondent, sworn on 27<sup>th</sup> May 2013, the application is mainly based on the ground that summons to enter appearance, mention and hearing notices, and the notice of the entry of the Award, were not served on the Respondent.

The Court has reviewed the affidavits sworn by Mr. Aggrey Ochome the Process Server and Mr. Kandere Opiyo learned Counsel for the Claimant.

There is nothing in these affidavits to suggest the Process-Server and Counsel did not swear truthfully. The misdescription of a Director, Manager or other Officer of the company cannot be evidence of non-service. Employees cannot be expected to know all the details and designation of their Employers' Officers. There was no effort made by the Respondent to question the deponents orally on their affidavits. The Court has observed that even at the stage where the dispute was the subject of non-adjudicatory dispute resolution mechanisms at the Ministry of Labour, the Respondent chose to give that process a wide berth. This is a trade dispute, in which the Industrial Court is entitled to look at the

conduct of the parties at the conciliation. The Respondent did not submit to conciliation. The trend continued on adjudication.

There are no grounds shown, why the Court should interfere with the Award on record.

*IT IS ORDERED:-*

- a. ***The application filed by the Respondent dated 27<sup>th</sup> May 2013 is dismissed.***
- b. ***The Claimant may proceed with execution.***

Dated and delivered at Nairobi this 20<sup>th</sup> day of December 2013

James Rika

Judge