



**Wanyande v Ambiro (Environment & Land Case 224 of 2017)
[2023] KEELC 17047 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17047 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 224 OF 2017**

**LN MBUGUA, J
APRIL 20, 2023**

BETWEEN

JAMES ODUOR WANYANDE PLAINTIFF

AND

MAURICE ODUOR AMBIRO DEFENDANT

RULING

1. Before me is an application dated February 20, 2023, where the defendant is seeking orders that there be a stay of execution of the exparte judgment dated February 2, 2023, that the said judgment be set aside and that the defendant be given unconditional leave to defend the suit. The defendant contends that he was condemned unheard, yet he is the legally registered owner of the targeted land which is different from that of the plaintiff. He further avers that his previous advocate is deceased, thus it would be difficult to know why he never filed a defence.
2. The plaintiff has opposed the application vide his replying affidavit dated March 2, 2023 where he avers that the judgment given by the court was not exparte but a final one where the defendant was defended by two law firms namely; Awiti & Company, as well as Odero & Company. He further states that defendant was not complying with court orders and was given an opportunity to cross examine the plaintiff but opted to walk out. He also claims that the land in question lawfully belongs to the deceased Francis Wanyande.
3. I have considered all the issues raised herein as well as the submissions of the defendant. I find that the defendant had made an application dated August 5, 2022 seeking orders that his pleadings, documents and witnesses statements be deemed as properly filed. In a ruling delivered thereof by this court on December 7, 2022, the court disallowed the application giving reasons as to why the suit should proceed as an undefended claim. There is no appeal or review lodged in respect of the said ruling.



4. This court cannot purport to determine the reasons as to why the defendant should be allowed to defend the suit at this stage since doing so would amount to sitting on appeal in the court's own ruling. Further, the court has duly rendered its decision in the judgment, thus the court cannot analyse the question of ownership of the suit property in this application.
5. In the circumstances, I find that the application dated February 20, 2023 is not merited, the same is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Masinde for the Plaintiff

Ochada for the Defendant

Court assistant: Joan

