



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVI CASE NO 9 OF 2019

EDWIN GITARE.....PLAINTIFF

VERSUS

INVESCO ASSURANCE COMPANY LIMITED...DEFENDANT

R U L I N G

1. This matter came before court on 19th November 2020 when the plaintiff, **Edwin Gitare**, formally proved his case against the defendant **Invesco Assurance Company Limited**. A date for judgment was fixed and indeed today it was expected that, that judgment would be delivered. Alas I am unable to deliver that judgment today because the plaintiff proceeded to prove his case when there was no entry of interlocutory judgment, in his favour, by the court. I have also perused the court file and I have found that there is no evidence in the file that the plaintiff ever served the summons and plaint on the defendant as required under the **Civil Procedure Rules** (hereafter the Rules). The defendant in this case seems not to have been given an opportunity to defend this suit, since no service was effected on it of this suit.

2. To support the above finding I refer to order 5 Rule 1(3) of the Rules as follows:

(3) Every summons shall be accompanied by a copy of the plaint.

3. It is only after the defendant has been served with the summons and plaint and the defendant fails to file a memorandum of appearance within the required period, set out in the summons, and/or also fails to file a defence within the prescribed period that an interlocutory judgment can be entered as provided under Order 10 of the Rules. In this case the plaintiff's claim is for unliquidated claim. Indeed, the plaintiff's claim is for declaratory orders. Accordingly, the plaintiff could only formally prove his claim after Order 10 Rule 6 of the Rules is satisfied. That Rule provides:

Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be.

4. There being no interlocutory judgment entered for the plaintiff as set above and more importantly the plaintiff having not proved service of the summons and plaint on the defendant this court has no basis whatsoever of delivering judgment to the plaintiff's claim.

5. Accordingly, I make the following orders:

(a) The proceedings of 19th November 2020 when the plaintiff formally proved his case are hereby set aside and expunged.

(b) The case shall be mentioned on a date to be fixed at the reading of this Ruling when the plaintiff will be required to prove service of the summons and plaint as required under the Civil Procedure Rules, and shall be required to prove that his suit has not abated.

SIGNED AND DELIVERED VIRTUALLY THIS 18th DAY OF MARCH 2021.

MARY KASANGO

JUDGE

18th March 2021

Before Justice Mary Kasango

C/A - Kevin

Plaintiff – Edwin Gitare

For the Plaintiff – No appearance

For the Defendant – No appearance

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE