

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 107 B OF 2006

CORAM: D. S. MAJANJA J.

BETWEEN

JOHN MEME.....APPELLANT

AND

PAGLOUS MWENDA.....RESPONDENT

(Being an appeal from the Ruling and Order of Hon. D. Morara, RM dated 20th September 2006 at the Principal Magistrates Court at Maua in Civil Case No. 60 of 2006)

JUDGMENT

This is an appeal from an order by the trial magistrate expunging the statement of defence from the record on the ground that it was not dated after the matter was raised as an objection. Thereafter judgment was entered as prayed in the plaint. The plaintiff sought specific performance and that the defendant be ordered to collect the balance of the purchase price of Kshs. 70,000/= from the plaintiff.

I am satisfied that the trial magistrate erred in striking out defence by failing to consider the overriding objective to do justice. The plaintiff did not suffer any prejudice and at worst this was in the nature of a technicality that **Article 159** of the Constitution frowns upon. The trial magistrate also erred by entering a final judgment when the claim was one subject to formal proof.

I allow the appeal, set aside the judgment and direct the appellants to file a defence duly dated within 14 days. There shall be no orders as to costs.

DATED and DELIVERED at KISUMU this 31st day of May 2018.

D.S. MAJANJA

JUDGE

Mr Gitonga instructed by Haron Gitonga and Company Advocates for the appellant.

Mbaabu M'Inoti & Company Advocates for the respondent.