

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 39 OF 2012 (OS)

LUCY WANGARI KARANJA.....PLAINTIFF

VERSUS

JOSEPH KARANJA THIONG'O.....DEFENDANT

RULING

1. The application I am called upon to determine is dated 26th May 2016. In it the respondent invites me to exercise discretion to set aside an order I had made on 12th May 2016, and to allow the respondent to tender evidence. In his affidavit in support of the application, he principally blames his lawyer for his predicament. What transpired on 12th May 2016 is that I directed that I would deliver judgment on the matter on 1st July 2016, but I allowed the respondent a chance to file his written submissions and to pass them to my court assistant.

2. The events that led up to those directions began on 24th September 2015. The applicant was that day represented by Mrs. Mbugua, while Mr. Kimasia held brief for Mr. Karanja for the respondent. The hearing of the Originating Summons dated 20th June 2012 began that day. The applicant was sworn and began to give her evidence in chief. The matter was adjourned at 1.10 pm for further hearing on 10th December 2015. Come 10th December 2015 the matter was listed before Muigai J. who ordered that the matter be mentioned on 21st January 2016 before me, seeing that it was a matter that was part-heard before me. On 21st January 2016 the matter was mentioned before me, I fixed it for hearing on 24th March 2016. Come 24th March 2016, Mr. Karanja did not attend court, but was represented by Mr. Drammeh, who sought adjournment of the matter on grounds that Mr. Karanja wanted to apply to cease acting. The reason given was that another advocate was to take over. I was not convinced that a good reason existed for adjourning the matter. I declined and allowed the applicant to continue with her case. The applicant completed her testimony and closed her case. I then directed that the matter be mentioned on 12th May 2016 to confirm filing of submissions by the applicant.

3. I have carefully perused the record and I am of the view that counsel appearing for the respondent did not take a very serious view of the matter. Once parties fix matters for hearing they ought to prepare themselves for hearing. A matter should not be fixed for hearing, and then on the hearing date seeks its adjournment on flimsy grounds. Parties should understand that the court's attitude to matters listed for hearing before it is to proceed and have the matter heard, barring a pretty good reason for its adjournment. I reiterate that the respondent's advocates have not been altogether serious in their approach to this matter. The impression I have of their conduct is that they desired to have it delayed as much as possible.

4. I am not too sure of the respondent's role in all this, in terms of whether he contributed in any way to the efforts to delay the matter. He appears to blame Mr. Karanja, his counsel, for his woes. He now appears to be saying his advocate is Mr. Kihara. Mr. Kihara is not altogether new in the matter. The record shows that on 15th October 2012, 22nd May 2014 and 17th July 2014 several advocates held his brief in the matter, ostensibly as the advocate appearing for the respondent, among them being Mr. Karanja. Mr. Kihara himself took a ruling that I delivered on 23rd January 2015.

5. The court has discretion in matters of setting aside of its orders. I do not wish to altogether blame the respondent for conduct of his counsel. I shall give him some benefit of doubt, but the said advocates were

nevertheless still his agents, and he should bear some responsibility. The orders that I shall make in the circumstances are that I shall allow the application dated 26th May 2016. The respondent shall be allowed to cross-examine the applicant, and thereafter to testify. I hereby award costs of the application to the applicant. The costs shall be throwaway, assessed at Kshs. 20, 000.00, to be paid before the next hearing. Matter shall be heard on a date to be fixed at the delivery of this ruling, or, in default at the registry.

DATED, SIGNED and DELIVERED at NAIROBI this 1ST DAY OF AUGUST, 2017.

W. MUSYOKA

JUDGE