



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC CASE NO. 201 OF 2013**

LEONARD NJIRU NJOGU.....PLAINTIFF

VERSUS

OBED GACHOKI DIFATHA.....1<sup>ST</sup> DEFENDANT

SIMON MWANIKI GACHOKI.....2<sup>ND</sup> DEFENDANT

**ORDER**

This suit was originally filed at the High Court in Embu on 7<sup>th</sup> October 2011 before being transferred to this Court on 7<sup>th</sup> November 2012.

When it was mentioned before me on 26<sup>th</sup> October 2015, Mr. Kagio advocate for the plaintiff/applicant informed me that what was pending was the application dated 16<sup>th</sup> March 2012 and I directed that the defendants be served for hearing on 1<sup>st</sup> December 2015. The application itself seeks the dismissal of the defence for disclosing no proper defence in law and for being frivolous, scandalous and vexatious and an abuse of the Court process.

On 1<sup>st</sup> December 2015 Mr. Kagio advocate for the plaintiff/applicant informed me that he had served both defendants/respondents with the said application and urged me to rely on the plaintiff/applicant's supporting affidavit and further affidavit dated 3<sup>rd</sup> November 2015. I therefore fixed the ruling date for that application for 16<sup>th</sup> March 2016.

However, upon perusal of the Court file, I have found that there is no defence in the file. It may have fallen out of the file either in our registry or during the transfer of this file from Embu. In the absence of the defence, I am un-able to decide whether it is indeed frivolous, scandalous, vexatious or an abuse of the Court process as alleged.

I therefore direct that the Deputy Registrar writes to defendants/respondents to avail a copy of the defence for my further necessary action. Counsel for the plaintiff/applicant could also make a copy available to the Court.

This case will be mentioned on 4<sup>th</sup> April 2016 for further orders as to ruling date once the defence is availed.

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> MARCH, 2016**

Order read to Mr. Kagio Advocate for the Plaintiff/Applicant in open Court this 16<sup>th</sup> day of March 2016.

Further mention on 4<sup>th</sup> April 2016.

Mention notice to issue.

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> MARCH, 2016**