

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MIS. APPLICATION NO: 158 OF 2014 (OS)

S G.....APPLICANT

VERSUS

T M.....RESPONDENT

RULING

1. The Motion dated 15th September 2014 seeks two principal orders – that the Nyeri Kadhi’s court be stopped from delivering a judgment in Kadhi’s Case No. 7 of 2014 and that the said case be transferred to Nairobi for hearing and disposal.
2. The grounds upon which the application is premised are on the face of the application and in the facts set out in the affidavit of the applicant sworn on 15th September 2014.
3. The applicant is the defendant in the case before the Kadhi’s court. He pleads that after he was served with summons to enter appearance, he went to Nyeri and sought to enter appearance and file defence, but he was turned away by the staff at the court registry. He was eventually allowed by the Kadhi to file his response, but by then the matter had already proceeded without his input.
4. The respondent has replied to the application dated 15th September 2014. She avers that the applicant failed to enter appearance and file defence within the time stipulated in law, and she requested for judgment, whereupon the court fixed the matter for formal proof. The court took her evidence and that of her witness, and thereafter fixed the matter for judgment. She pleads that the respondent had been properly served.
5. Where an interlocutory judgment is entered against a party who has failed to appear within the stipulated period, there are provisions in the relevant law providing for the filing of applications to set aside the interlocutory judgment and to expand time for filing defence. This is the route that the applicant ought to have taken in the matter. He did not avail himself of the opportunity.
6. The applicant complains that the Kadhi’s court handled him in a manner that was not procedural. It was open to him to move the High Court to quash the proceedings before the Kadhi’s court by commencing proceedings by way of judicial review.
7. As it is the approach to the High Court by the applicant to stay delivery of judgment was unprocedural. The applicant ought to have formally applied to the Kadhi’s court for accommodation. He could have waited for the judgment to be determined and move thereafter to have it set aside and for leave to file his replies to the claim against him.
8. On transfer of the suit, no basis or justification has been laid for such transfer.
9. I am not satisfied that the orders sought in the said application dated 15th September 2014 are for granting. Consequently, I do hereby dismiss the application with costs. The Kadhi’s court may proceed to deliver judgment in Nyeri Kadhi’s Court Case No.7 of 2014. The order made on 16th September 2014 staying the proceedings in Nyeri Kadhi’s Court Case No. 7 of the 2014 is hereby discharged. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE