

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

ENVIRONMENT & LAND CASE NO.332 OF 2013

SIMIYU MUSANGA NDOMBI.....PLAINTIFF

VERSUS

MARCELLA NABUKUTO PATROBA.....DEFENDANT

RULING

[1].The applicant prays that this Court do grant a stay of execution of the decree made on 12/11/2004 and that the Court do set aside the order the judgment entered against her and all consequential orders made herein.

He sets various grounds to support her claim. Of all those grounds the only ground worth considering is ground (g).

[2].This ground deals with the allegation that he was not served with the suit papers. He seems to argue that, that lack of service made a judgment be entered against him.

The respondent has denied this claim and has averred that indeed the applicant was indeed served.

[3].To that end, the respondent has sworn an affidavit sworn on 23rd December 2014. In that affidavit the respondent has said that the applicant was served.

This Court Omollo J in her judgment dated 17/7/2014 stated;

“The defendant failed to enter appearance even after being served with summons and notice of hearing. This Court then proceeded by way of formal proof after establishing from the record that the defendant was duly served”

[4].There is no appeal from this finding of fact from the Court. This case proceeded after service was established by the Court.

The applicant having been served and she refused to come to Court her application must fail.

I dismiss it with costs to the respondent.

DATED at BUNGOMA this 23rd day of July,2015

S. MUKUNYA

JUDGE