

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 12 OF 2012

EUNICE WANJIRU CHEGEPLAINTIFF

VERSUS

HANNAH WANJIKU CHEGEDEFENDANT

RULING

On 9th September 2013 in the presence of Mr. Kiriba advocate for the defendant/respondent herein, this Court did make orders one of which was that Mr. Kiriba do serve Mr. Njoroge advocate for the plaintiff/applicant herein with the defence and counter claim within 7 days of that ruling being delivered. Mr. Kiriba was also to personally meet the costs of Ksh. 2,000/=.

I am informed that to-date, Mr. Kiriba has not complied with those orders.

There is now before me an application dated 27th November 2013 seeking that the defence herein be struck out and interlocutory judgment be entered as prayed in the plaint. That application was served upon Mr. Kiriba on the same day i.e. 27th November 2013 but when the same came up for hearing on 29th January 2014, neither Mr. Kiriba nor his client were present in Court. The application is also not opposed.

Order 10 Rule 3 of the Civil Procedure Rules reads as follows:-

“Where a defendant fails to serve either the memorandum of appearance or defence within the prescribed time, the Court may on its own motion or on application by the plaintiff, strike out the memorandum of appearance or the defence as the case may be and make such orders as it deems fit in the circumstances”.

As indicated above, this application was not opposed and there was no appearance by either Mr. Kiriba or the defendant to explain why the orders issued on 9th September 2013 were not complied with. In the circumstances, this Court grants the orders sought in the Notice of Motion dated 27th November 2013 and costs thereof shall be borne by the defendant.

It is further noted from the pleadings herein that the property subject matter of this suit is situated in Murang'a and was sold at a consideration of Ksh. 100,000/=. The parties are also based in Murang'a and so too are the counsels. This matter is well within the jurisdiction of the Subordinate Court at Murang'a. It is therefore transferred to that Court where it will be mentioned on 3rd March 2014 to fix a date for formal proof.

B.N. OLAO

JUDGE

31ST JANUARY, 2014