



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CIVIL CASE NO. 10 OF 2005**

PETERSON MURAGE KINYUA.....APPLICANT

**VERSUS**

JANE WANGITHI MURAGE.....RESPONDENT

**RULING**

**Peterson Murage Kinyua**, hereinafter, referred to as the Applicant, took out the summons dated 17th March 2008, in which he sought for the following orders:

1. **That notice of this application upon the plaintiff be dispensed with and the application be heard ex-parte in the first instance by reasons of the urgency and the same be heard inter-parties on such date as this honourable court may direct.**
2. **That this honourable court be pleased to set aside the interlocutory judgment herein and all consequential orders thereto.**
3. **That there be a stay of the execution of the decree herein pending the hearing and determination of this application inter-parties.**
4. **That this honourable court be pleased to grant the defendant leave to file his defence in terms of the copy of defence annexed hereto and the suit be heard a fresh on merit.**
5. **That the costs of this application be provided for.**

The Applicant swore an affidavit he filed in support of the summons. **Jane Wangithi Murage**, hereinafter referred to as the Respondent filed grounds of opposition and a replying affidavit to oppose the Motion.

I have considered the grounds set out on the face of the summons and the facts deponed in the affidavits filed for and against the summons plus the grounds of opposition. I have also taken in account the rival submissions. It is the submission of the Applicant that he was not served with the summons to enter appearance. He further argued that he has a defence with trial issues. The defendant avers that he only came to know of the existence of this suit when he was served with a hearing notice for taxation of the Respondent's bill of costs. The Respondent averred in her replying affidavit that the Applicant was duly served and that the Applicant does not have a good defence. I have carefully examined the affidavit of service of Dickson M. Muchira and it is clear that the Respondent herein, accompanied the process server to the Defendant's Business Premises situated in Lilian Ishmael Mansion Building. The defendant did not attempt to counter the contents of the averments of the process server. It is said that the defendant accepted receipt of the summons but failed to sign to acknowledge receipt thereof. On my part, I am

satisfied that the defendant was properly served with the summons to enter appearance and he failed to enter appearance within the time set therein.

Having disposed of the issue relating to service, let me turn my attention the question as to whether the defendant has a good defence with triable issues. In the draft defence, the defendant averred that L.R.n.Inoi/Kariko.2267 was transferred to one John Karimi Ngirigacha whereas L.R.no.Inoi/Kariko/2268 was transferred to the Plaintiff. It is the Defendant's submission that the Plaintiff's family chase her away claiming that the Plaintiff fraudulently sold the land to her. The Plaintiff was later served with an order revoking her title deed. The Plaintiff was then prompted to file this suit praying for a refund plus interest. The Defendant's argument that he has a strong defence in my view cannot stand. The defendant admits in his defence that he received the purchase price form the Plaintiff. He does not deny that the title issued to the Plaintiff was revoked by the court hence the title in possession of the Plaintiff is a mere piece of paper.

In the end, I see no merit in the Motion. It is dismissed with costs to the Plaintiff.

**Dated, Signed and delivered in open court this 21st day of February, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of**

Miss. Muthike for Plaintiff

Mrs. Kahiga holding brief for Defendant