



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

E & L 98 OF 2012

GRACE KANANU
RIMITA.....PLAINTIFF

VERSUS

GREGORY MWENDA
M'IKWI.....1ST DEFENDANT

MICHAEL KAMAU
MBUGUA.....2ND DEFENDANT

R U L I N G

The application herein is dated 22nd March, 2013 and seeks orders:

1. **THAT** this application be heard on priority basis.
2. **THAT** the Interlocutory Judgment entered against the 2nd defendant herein be set aside and the 2nd defendant be granted leave to file his statement of Defence.
3. **THAT** the costs of this Application be provided for.

The application is supported by the affidavit of Michael Kamau Mbugua and is based, inter alia on the following grounds:-

- (a) **THAT** the 2nd defendant was never served with summons to enter appearance and requisite proceedings herein.
- (b) **THAT** the affidavit of the process server herein is a false Affidavit and the same is fatally defective.
- c. **THAT** the 2nd defendant/applicant was therefore condemned unheard contrary to the rules of natural justice.

The application was heard interpartes on 8.7.2013. the applicant submitted that he was not served properly and particularly stressed that a comment on the reverse of the Summons Titled. "Process Server's Remarks."

"Served upon Gregory Mwenda M'ikwi on 25.9.2013 at Makutano Market (Meru County). He accepted the service, took the documents and refused to sign."

Signature.

The submissions of parties amounted to the presentation of two diametrically opposed positions. The applicant insisted that the Interlocutory Judgment was irregular and should be set aside. The respondent insisted that the service upon the 2nd defendant was properly done.

Having looked at the submissions and averments of the parties, I note that the process server had indicated that he had served Michael Mwenda M'ikwi. The 2nd defendant is Michael Kamau Mbugua. The written remarks by the process server may have been made mistakenly but they are material. I, therefore, find that the remarks are serious enough to raise reasonable suspicion regarding whether the 2nd defendant was properly served or not. Having made this finding, I do not deem it necessary to delve into the other issues raised in the averments and during submissions.

In the circumstances, the Interlocutory Judgment entered against the 2nd defendant, the applicant herein, is set aside and the applicant is granted leave to file his Statement of Defence.

Costs will be in the cause.

Dated, Signed and delivered in Open Court at Meru this 19th day of September, 2013.

Cc. Mwonjaru/Daniel

Mwirigi present for plaintiff/respondent

Kieti h/b Kiambi for 2nd defendant/Applicant

P. M. NJOROGE

JUDGE