



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NARIOBI

CIVIL SUIT NO. 452 OF 2011

BRENDA MICHIEKA PLAINTIFF

VERSUS

HELLEN MAKONE..... DEFENDANT

RULING

The notice of Motion is dated 25/1/2012 under Order 10 rule (ii) and Order 50 rule 6 Civil Procedure Code and section 3A Civil Procedure Act. The applicant seeks orders

1. To set aside interlocutory judgment obtained on 16/2/2011 along with consequential orders arising therefrom.
2. That defendant be granted leave to file and to serve her statement of defence.

The grounds that are offered are that

1. Defendant was not served with plaintiffs pleadings.
2. The defendant learnt of the proceedings from an E-mail sent to her by counsel for plaintiff on 16/1/2012 informing her that judgment has been obtained herein.
3. The defendant has a good valid defence.

The application is supported by affidavit of the defendant Hellen Makone who has disclosed that plaintiff is her younger sister. Defendant says she has never been served with any pleadings. She says she has a defence and should challenge plaintiff suit.

In her proposed defence she discloses that her sister resides in America but denies the agreement to purchase land on her behalf a ½ acre plot in Runda Estate for USD 5,700 as pleaded or at all. Further she admits that she did advise plaintiff to acquire some land in Runda through her then employer Standard Chartered Bank (K) Ltd the applicant denies what is alleged by plaintiff in paragraph 8. She denies allegations of fraud. She admits that in 1993 the cost of one dollar was 40/= and Shs.228.000 at that time could not even account of ½ acre plot in Runda.

The applicant does not expressly deny that she received USD 5,700 from the plaintiff but she admits that she has property in Runda “hard earned property”.

In his grounds of opposition the plaintiff states that judgment was regularly obtained summons was dated 24/10/2011 when the plaint was signed on 21/10/2011.

Affidavit of service filed on 8/12/2011 shows that on 4/11/2011 the process server Francis Makau Mbuvi served all documents upon the defendant at her residence Kilimani Courts along Marakwet Road at about 3.00 p.m. He served the defendant but she declined to sign at the back of the original indicating she would consult her advocates.

The defendant was known to the process server who had served her with a letter in the same matter after being pointed out by the plaintiff who was her sister.

This evidence has not been challenged. The process server was not called for cross examination. The other ground is that defendant has not shown why courts discretion should be exercised in her favour and also that the conditions for setting aside interlocutory judgment has not been satisfied.

Upon perusing the statement of defence it is clear that the defendant has not disclosed that she did receive USD 5,700 from the plaintiff she speaks of E-mail message which is not exhibited. She says she has never been served with any pleadings however she does not specifically mention plaint or summons to enter appearance. She has disclosed that she did discuss the issue of buying a property in Runda area.

On the whole it is clear that the proposed defence is a sham and is full of denials. There is not any triable issues raised. It is my view that the purpose of filing defence is to delay the suit. This is not in the interest of justice.

Therefore I find no merit in the application and I dismiss the same.

Costs to the Respondent.

Dated and delivered this 15th day of March, 2012.

**J. N. KHAMINWA
JUDGE**