



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL CASE NO. 97 OF 2009

ANN WANJIKU GACHIE.....1ST PLAINTIFF

PITY WANJIRU GACHIE.....2ND PLAINTIFF

VERSUS

MWAI WAMUGUNDA.....1ST DEFENDANT

MICHAEL MUTUGI GACHERU.....2ND DEFENDANT

RULING

This matter was scheduled for hearing the Formal Proof on 19/10/2011. Mr. Nganga who had come on record applied for an adjournment saying his client the 1st Defendant had never been aware of this case and was appearing in court for the first time. He therefore wanted time to put in the necessary application to enable him to well defend himself. This application was opposed by the Plaintiffs' counsel Mr. Muchira.

This Ruling could not be done on time because of the long sitting by the court.

I have had the opportunity of reading through the record herein.

Each defendant herein was served with a Complaint and Summons as is evidenced by the affidavits of service dated 9/7/2009 and 24/9/2009. They were separately served on 3/7/2009 and 14/7/2009 respectively.

- On 23rd July 2009 M/s Fatuma Wanjiku Advocates filed a Memorandum of Appearance for both Defendants.
- And on 27th July 2009 the said firm filed a joint Defence for the Defendants.
- On 12/10/2010 this court being satisfied that the Defendants had been served allowed the firm of Fatuma Wanjiku to cease acting for the Defendants.

- Meanwhile a Notice of Change of advocates was filed by Nyasani N. & Co. Advocates to act for the 2nd Defendant. That's the much about representation.

- Again in a Ruling dated 22/11/2010 this court struck out the Defendants' defence and interlocutory Judgment was entered in favour of the Plaintiffs hence the Formal Proof.

The reasons for striking out the Defence are well explained in the Ruling. I therefore have no reason to get into that arena again. The counsel for the 2nd Defendant was served with the hearing notice and so was the 1st Defendant. I doubt that the application by the 1st Defendant is made in good faith.

Since the matter could not be heard on 19th October 2011, I hereby direct the Registry to give a hearing date for Formal Proof in the month of November 2011.

DATED, DELIVERED AND SIGNED AT EMBU THIS 26TH DAY OF OCTOBER 2011.

**H. I. ONG'UDI
JUDGE**