



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO
Civil Case 34 of 2008

JONATHAN KIPYEGON MAINA PLAINTIFF

VERSUS

JOHN A. MATINGWONY1ST DEFENDANT

MURSI A. JOSEPH 2ND DEFENDANT

DAUDI A. KITUR3RD DEFENDANT

DAVID CHERUIYOT4TH DEFENDANT

JOEL A. SURUM5TH DEFENDANT

RULING

Civil Practice and Procedure

I: Background

1. The Plaintiff sued five defendants herein, in this land matter, seeking orders to evict all the five persons from land parcel LAR Kericho/Kapsot/355.
2. The first defendant entered appearance in person and filed defence and a counter-claim. The 2nd, 3rd and 4th defendant failed to enter appearance and file defence. The plaintiff applied for interlocutory judgment and this was granted against the three defendants by the Deputy Registrar on 7th October, 2008.
3. The matter was to be set down for trial against the 1st defendant when the other three defendants entered appearance. Their advocate wrote to the Deputy Registrar to state that the judgment was irregular.

II: Ex Debito Justitia.

4. No interlocutory judgment should have been entered in land matters. This was irregular and the advocate sought the said judgments be set aside by this court.
5. I would agree with this. This is a land matter. It involves no monetary claim, nor a claim in tort. The proper procedure was for the Deputy Registrar to decline to make orders of the request sought and instead direct, under **Order IXA r 8** Civil Procedure Rules that the matter be set down for hearing under Order 1X b of the Civil Procedure Rules.
6. I accordingly set aside the interlocutory judgment made by the deputy registrar. There be costs in the cause.

DATED this 19th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

S. Sigira advocate instructed by the firm of M/S Siele Sigira. & Co. advocates for the 2nd, 3rd, 4th and 5th defendants - present

C.K. Korir advocate instructed by the firm of M/S C.K. Korir & Co. advocates for the Plaintiff