



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Case 47 of 2008

GEDION K. MEENYE PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL DEFENDANT

RULING

The plaintiff sued the Attorney General in this matter claiming that the Chief Land Registrar had without any lawful authority caused the Meru Central District Land Registrar to register a restriction against property Meru Municipality/Block 1/213 alleging it to be public utility land and a reserved government compound.

The Attorney General filed a memorandum of appearance on 16th February 2008. Since no defence was filed, the plaintiff by chamber summons dated 19th June 2008 sought leave of the court to apply for interlocutory judgment on liability against the Attorney General. That application was brought under Order 1X A Rule 7 of the Civil Procedure Rules. That application came up for hearing before the Hon. Mr. Justice William Ouko on 18th February 2009.

The court on that date ordered that the matter be adjourned and the Attorney General was granted leave to file a defence within 21 days from that date. The application was next listed for hearing on 24th June 2009. On that date, the defence was filed by the Attorney General. The plaintiff however proceeded to argue the chamber summons.

The affidavit in support of that application sworn by the plaintiff stated that the defendant had failed to file a defence as required per law. The plaintiff's counsel in submissions stated that even though the defendant had filed the defence, the same was filed out of time in respect of the leave granted on 18th February 2009. Further, plaintiff's counsel argued that the Attorney General had delayed in filing its defence for 2 years since his office was served.

The learned Senior State Counsel, Mr. Maroro, opposed the application and stated that a defence had been filed before the entry of judgment. In his argument, the Attorney General is entitled to file a defence any time before final judgment is entered. He stated that this matter was filed in the year 2008 and there had not been inordinate delay occasioned.

Once a defendant is served with the summons and plaint, he is required under Procedure Rules to file a memorandum of appearance. Thereafter, he is required to file a defence within 14 days of filing the

appearance.

The laid down periods of filing documents apply equally to the Attorney General as it does to any other litigant. The measure of protection that the Attorney General enjoys is that *ex parte* judgment cannot be entered without the leave of the court. Order IX Rule 1 provides that a defendant may appear at any time before final judgment and may file a defence at any time before interlocutory judgment. In this case, interlocutory judgment had not been entered when the defence was filed. It is correct to state that by the time the plaintiff's application came up for hearing, indeed, the very same morning, a defence was filed. As stated earlier, the plaintiff seeks the removal of the restriction placed on the suit property. Looking at the defence on record, the defendant has pleaded that the suit property was illegally allocated to the plaintiff. That the Government of Kenya has never surrendered the title of that land to the Meru County Council for reallocation. It is pleaded that such reallocation was illegal and fraudulent.

Bearing in mind the issues that are raised in the pleadings, which relates to very sensitive matters in our country at present, that is land, I am of the view that the interest of justice in this case would be best served by the court dealing the defence on record as having being filed in time.

It is essential that a case such as this one do proceed to full hearing to ensure that justice is done not only to the plaintiff but also to the Government of Kenya. The orders of this court therefore are:-

1. *That the defence filed in this matter on 24th June 2009 be and is hereby deemed to have been filed with the leave of this court.*
2. *The chamber summons dated 19th June 2008 is hereby dismissed and the costs thereof shall be in the cause.*

Dated and delivered at Meru this 16th day of July 2009.

MARY KASANGO

JUDGE