



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Case 78 of 2007**

**HONOURABLE ANTHONY KIPKOSKE KIMETTO.....PLAINTIFF**

**VERSUS**

**DICKSON A. RONO.....1<sup>ST</sup> DEFENDANT**

**DAVID A. RONO.....2<sup>ND</sup> DEFENDANT**

**VERONICA SIGIRO.....3<sup>RD</sup> DEFENDANT**

**PAUL CHEBUSIT.....4<sup>TH</sup> DEFENDANT**

**PAUL A. SURU.....5<sup>TH</sup> DEFENDANT**

**PHILIP A. SIGILAI.....6<sup>TH</sup> DEFENDANT**

**DANIEL A. SIGILAI.....7<sup>TH</sup> DEFENDANT**

**DAVID A. SIGILAI.....8<sup>TH</sup> DEFENDANT**

**BENJAMIN A. SIGILAI.....9<sup>TH</sup> DEFENDANT**

**MRS OBOT NORA SERON.....10<sup>TH</sup> DEFENDANT**

**KIPTANGUS A. BUSIENEI.....11<sup>TH</sup> DEFENDANT**

**SAMUEL A. TOWET.....12<sup>TH</sup> DEFENDANT**

**WILSON A. TOWET.....13<sup>TH</sup> DEFENDANT**

**ROBERT KIPROTICH.....14<sup>TH</sup> DEFENDANT**

**THOMAS MAIWA.....15<sup>TH</sup> DEFENDANT**

**RULING**

By his notice of motion dated 13<sup>th</sup> July 2007, the plaintiff seeks under **Order 35 Rules 1(1)(b), 2 and 3 of**

the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act** and all enabling provisions of the law summary judgment as prayed in the plaint. **Order 35 Rule 1(1)(b)** of the **Civil Procedure Rules**, in as far as it is relevant to this matter, provides that “In all suits where a plaintiff seeks judgment for... the recovery of land, with or without a claim for mesne profits... where the defendant has entered appearance the plaintiff may apply for judgment... for recovery of the land.”

From both the application itself and the supporting affidavit, it is clear that the application is premised on the ground that the defendants though served have not entered appearance or filed a defence. In view of the above provision, the application is clearly incompetent and is for striking out.

On its merits the application also stood no chance of success as contrary to Mr. Mongeri’s contention the 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants entered appearance on 12<sup>th</sup> June 2007 and filed a defence on 27<sup>th</sup> June 2007. Those defendants claim in their defence that they bought portions of the suit piece of land from one Indeyo Ole Yiaile, the current registered owner. The plaintiff never referred to that defence at all. So it stands unchallenged. He also never exhibited a certificate of official search to show whether or not he is the current registered owner of the suit piece of land. The copy of the title he exhibited was issued on 16<sup>th</sup> December 1988. I am therefore unable to know whether or not the defendants’ contention that the current registered owner is Ndeyo Ole Yiaile is true.

For these reasons, though the application is not opposed, as I have said it is incompetent and I hereby strike it out with no order as to costs.

**DATED and delivered at Nakuru this 3<sup>rd</sup> day of October, 2008.**

**D. K. MARAGA**

**JUDGE**