



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1427 of 2005

1. Land and Environmental Law Division
2. Subject of main suit: Land
 - a) City Council of Nairobi land allocation
 - b) LR Jamhuri Phase II plot No.418 (LR Block 63/345.
 - c) Plaintiff held letters of allotment 14.2.92
 - d) Visited property in 2005 (13 years later) and found house constructed
 - e) 1st defendant proprietor and registered owner
 - f) Fraud
 - g) Unable to trace 1st defendant. Applied for substitutive service P.O. Box 41568 Nairobi.
 - h) Injunction granted and registered against title (Aluoch J) (8.5.06).
 - i) Interlocutory Judgment entered against 1st defendant
 - j) Applicant 20.12.06 to set aside orders withdrawn having been served without annexure.
 - k) New application 20.3.07 subject of ruling.
3. Ruling – application 20.3.07 to set aside Interlocutory Judgment
 - a) Reasons – never received the summons
 - b) Address known and where she physically resides.
4. By respondent/plaintiff – In reply
 - Service was correct
5. Held:

a) Service may not have been effected and or received.

b) That Interlocutory Judgment be set aside

6. Advocates:-

Gikunda for Gikunda Miriti & Co. Advocates for the defendant/applicant

Simiyu for Iseme Kamau & Maema Advocates for the plaintiff/respondent

M.A. KOINANGE PLAINTIFF

VERSUS

JOYCE GACHUKU 1st DEFENDANT

CITY COUNCIL OF NAIROBI 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

RULING

I: Application to set aside Interlocutory

Judgment under order IXa r 10 Civil

Procedure Rules dated 20.3.07

A: Background

1. M.A. Koinange the plaintiff in this suit sued

Joyce Gachuku (1st defendant herein) the City Council of Nairobi (2nd defendant herein) and the Chief Land Registrar (the 3rd defendant herein) for fraud.

2. He alleges that he holds an allotment letter dated 14.2.92 and was allocated plot Jamhuri Phase II Plot No.418 – now LR Block 63/345. He visited the suit premises in 2005 (13 years later) and was very surprised to see a building thereon already constructed. He was unable to trace the 1st defendant who is said to be in possession. He filed suit and applied to serve her by way of substantive service. The court granted him this application (Aluoch J) and issued him an injunction (Aluoch J) to restrain the defendant from having any dealings with the land. The orders were made on 8.5.06.

3. The 1st defendant was said to be served through P.O. Box 41568 Nairobi. The 1st defendant denied being served. She discovered about the case when she went to pay her land rates. There she found injunctive orders registered against her titles. She proceeded to court and obtained further details. She also noted an Interlocutory Judgment had been entered against her for failing to enter appearance and file defence.

B) The application 20.3.07.

4. The said plaintiff obtained Interlocutory Judgment against the 1st defendant under IVIII and Order IXa Civil Procedure Rules through the Deputy Registrar.

5. The 1st defendant seeks orders that this be set aside and defence filed.

C) Finding

6. For one to seek orders of substitutive service a history of the said litigant/defendant cannot be traced must be demonstrated. Nonetheless the Deputy Registrar is the one to ascertain this before entertaining an application for Interlocutory Judgment.

7. The said reasons given by 1st defendant is that her abode is known. She could have been traced. She therefore did not receive the summons mailed to her.

8. I would accept this explanation. I accordingly set aside the Interlocutory Judgment entered against the 1st defendant on 17.7.06.

9. The 1st defendant to file a defence within 15 days of to-days date and service all parties concerned.

Dated this 27th day of July 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

Gikunda for Gikunda Miriti & Co. Advocates for the defendant/applicant

Simiyu for Iseme Kamau & Maema Advocates for the plaintiff/respondent