

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 41 of 1988

ERASTUS NDUNGU CHARAGU 1ST PLAINTIFF

JOSEPH NGUGI CHARAGU 2ND PLAINTIFF

VERSUS

ELIJAH MARI MWAURA & 5 OTHERS DEFENDANTS

R U L I N G

This application has been triggered by my order of 14/6/2005, when I granted the plaintiff herein an order to compel the Deputy Registrar to execute transfer forms over SINYERERE/KIPSAINA BLOCK 3/SINYERERE/1 to 8, which order followed a decree of the court issued on 20/11/1992.

At the time when I granted the aforesaid order, it was clear that despite, no pleadings in objection to the application had been filed. The defendants were also not represented at the hearing.

I also dismissed the defendants' application of 14/2/2005, in which they sought an order for the stay of execution of the aforementioned decree of 20/11/1992 pending the hearing and determination of their application.

Being aggrieved by my decision, the defendants have now moved this court seeking the following orders:

1. That the ex-parte order made in the plaintiffs favour pertaining to the execution of the aforementioned transfer forms be set aside as it was made by mistake or erroneously.
2. That the order of 14/6/2005 dismissing the defendants' application of 14/2/2005 be set aside and that it be fixed for hearing.

I have looked at the supporting grounds and affidavits as well as the replying affidavit and the defence counsel disputes the fact that he was ever served with the relevant hearing notices. The Plaintiff hasn't controverted that issue very ably. The defence counsel is an officer of this court and I would give him the benefit of doubt.

I do in the circumstances, in the interest of justice exercise my discretionary powers and allow the defendants' application of 23/6/2005 in line with their prayer 2.

I do also set aside my order of 14/6/2005 and order the reinstatement of their application of 14/2/2005 which should be set down for hearing on a priority basis.

Costs shall however be in the cause.

Dated and delivered at Eldoret this 18th January 2006.

JEANNE GACHECHE

Judge

In the presence of:

Mrs. Fundi holding brief for Mr. Gaturu for the applicant

Respondent in person