



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Civil Case 90 of 2000

**FREDRICK KIBET CHESIRE
PLAINTIFF**

VERSUS

**RAYMOND W. BOMETT 1ST
DEFENDANT**

**MANAGING DIRECTOR AGRICULTURAL DEVELOPMENT CORPORATION 2ND
DEFENDANT**

**DIRECTOR LAND ADJUDICATION AND SETTLEMENT 3RD
DEFENDANT**

**THE COMMISSIONER OF LANDS 4TH
DEFENDANT**

R U L I N G

The application before me is brought under Order V rule 1 and 15 of the Civil Procedure Rules, in which the applicant who is the 1st defendant seek an order for the dismissal of the plaintiff’s suit on the grounds that he was never served with the Summons to Enter appearance, which had in any event, expired.

A brief history of the suit shows that the plaint was initially filed against Raymond Bomett as the only defendant on 20/4/2000. The plaint was amended on 20/4/2000 and the amended plaint was filed on 2/5/2000. It was further amended by consent and as a result of which three other defendants were joined to the suit on 30/11/2001.

Bomett who I shall now refer to as “the 1st defendant” filed his defence to the further amended plaint on 18/1/2002.

In my humble opinion, the sole purpose of the Summons to Enter appearance is to notify the defendant that a suit has been filed against him in a particular court, particulars of which are contained in the Plaint, which should be served together with the said Summons. The Summons to Enter Appearance also serve as a Notice to inform him of the mode of action to take and the time within which he should enter appearance and file his defence. It also informs him of the consequences for failure to comply.

I have taken the submissions of both counsel into account and in my humble opinion, whether the Summons to Enter appearance were served appears to me to be an issue which is being taken up rather

late on the day for not only has the defendant filed his defence, but the matter has been listed severally at which point he was ably represented. It has not escaped my attention that consent orders were also recorded at one or other point during the subsistence of this suit.

I find that having filed his defence and made appearances in court on several occasions, he doesn't appear to have been prejudiced in any way. Indeed, he submitted himself to the jurisdiction of the court and cannot now be heard to pray that the suit be dismissed for want of Summons to Enter Appearance.

I do in the circumstances dismiss the application with costs.

Dated and delivered at Eldoret this 27th day of March 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

No appearance for either party