

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 982 of 2002

WILLIAM K. MWANGANGI.....1ST PLAINTIFF

AMOS KINUTHIA NJUGUNA 2ND PLAINTIFF

ANDREW SAVI KYENGO 3RD PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI..... 1ST DEFENDANT

COUNCILLOR KAMAU KABIRU 2ND DEFENDANT

RULING

The Applicant seeks to set aside my orders of the 15.4.2005 on the grounds that the hearing notice was not properly served, as it was served on a clerk to Mr. Munyala Musundi had been interdicted on the 8.9.2004.

The Applicant says it has a good defence to the Application as it involved the allocation of plots to persons, which is the prerogative of the Defendant/Applicant.

Mr. Ngala opposed the application on the grounds it was brought under the wrong provision of the Civil Procedure Rules. The application should have been brought under O.50 rule 17 however under O.50 rule 12 this is not fatal and I allow the application to be dealt with under this rule.

He also relied on the Replying Affidavit and submits the Defendant is in breach of a Court Order.

Although it is stated the applicant was served on Mr. Mungalla's Clerk. I am not satisfied that this clerk, who is nameless had authority to accept the Hearing Notice. The Applicant appears to have a reasonable response to the Application of the 3.4.2003.

The court has a discretion to set aside an order where it is just. In this case I am of the view that the application of 3.4.2003 should be heard on its merits and therefore set aside my order with costs to the Respondent.

Dated and delivered at Nairobi this 14th day of July, 2005

P.J. RANSLEY

JUDGE