



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT BUSIA  
CIVIL SUIT NO. 24 OF 2003**

**BENSON NYANGAKA MAKUTWA ..... PLAINTIFF**

**VS**

**1. CHAIRMAN NAMBALE LAND**

**DISPUTES TRIBUNAL**

**2. AGNES KHISA ) ..... DEFENDANTS**

**J U D G M E N T**

In a plaint dated 30th June 2003, the plaintiff sought to have the Nambale Land Disputes Tribunal's decision dated 10th August 1999 and the subsequent Judgment of the Senior Resident Magistrate, Busia declared null and void. The plaintiff also prayed for costs.

This suit was listed for hearing before this court as a formal proof. Interlocutory Judgment was entered pursuant to the request made under the provisions of Order IXA rules 3, 4, 5 and 6 of the Civil Procedure rules on the 11th day of September 2003. The basis of the request was the affidavit of service of Peter Oduori Nanjala sworn on the day of 11th September 2003.

The matter proceeded for hearing on the basis that the interlocutory Judgment was properly obtained or made. The plaintiff testified alone without calling an independent witness.

Before considering the plaintiff's evidence on formal proof I have to satisfy myself that the ex parte Judgment was validly obtained. I have perused the affidavit of service sworn by Peter Oduori Nanjala. The affidavit discloses that Mrs. Alice A. Kamba, a clerk to the D.O. I Nambale who is alleged to be the clerk to the Nambale Land Disputes Tribunal was served and received service on behalf of the chairman Nambale Land Disputes's Tribunal, the 1st defendant.

The same affidavit also discloses that summons were served upon a Mr. Yohana who is alleged to be the 2nd defendant's husband.

This affidavit is the basis used by the plaintiff to secure interlocutory Judgment from the Deputy Registrar of this court.

It is clear from the aforesaid affidavit of service that the defendants were not personally served as required by law. I am not satisfied that there was proper service, consequently the ex parte Judgment was wrongly entered. I am entitled to set aside ex parte Judgment ex-debito Justitiae when it is apparent that the Judgment was obtained irregularly. In view of the glaring error, I am not going to consider the evidence already tendered. For the interest of justice to flourish the ex parte Judgment entered on 11.9.2003 is set aside. The subsequent ex parte proceedings taken on 31.5.2004 are also set aside and the plaintiff directed to properly effect service upon the defendant according to law.

**DATED AND DELIVERED THIS 9th DAY OF July 2004.**

**J.K. SERGON**

**JUDGE**