



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 86 OF 2017

WALTER SALONIK YENKO.....PLAINTIFF

(suing as the legal representatives of Mpaeka Ene Yenko-deceased)

-VERSUS-

PATITA OLE NTOKOIWUAN.....1ST DEFENDANT

LAND REGISTRAR, NAROK.....2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The Applicant had by a Notice of Motion dated 17th May, 2019 sought for orders pending the hearing and determination of this application restraining the Plaintiff/Respondent from charging, transferring and sub dividing or interfering with LR Narok/Cis Mara/Olposmoru/293, that the court do set aside all exparte proceedings and consequent judgement issued by court on 23rd January, 2019 and the suit be heard on merit. The Application was based on the grounds that the applicant was not served with hearing notice requiring his attendance in court for the hearing of the suit and that he be given a chance to reiterate his case.

In his Affidavit in support of the application he stated that he had filed all the necessary documents in support of his defence of the suit. However, the matter proceeded exparte on 12/11/18 and judgement delivered on 23/1/19 where the court relied on the return of service which was filed. The applicant deponed that he was never served with any notice requiring his attendance and that the process server's mere knowledge of previously serving him did not mean that he knew him and his place of residence.

Both the plaintiff and respondent did not file any reply to the notice of motion and even though this may seem unopposed application I must point out that this notice of motion is one in which the defendant was acting in person and from the record it is clear that both the defendants were constantly served with the hearing notice and affidavit of service filed by the Plaintiffs' advocate on the date the matter proceeded for hearing exparte. The court did satisfy itself that indeed there was proper service on the defendants and the 1st Defendant's failure to attend court is not explained and thus I will not interfere and set aside the proceedings of 12th November, 2018 and the subsequent judgement.

That being so I must also point out that the instant application was also filed by an advocate who was not properly on record. Judgement in the matter herein was delivered on 23rd January, 2019 when the firm of J. Maritim and company advocate were not on record for the 1st Defendant/Applicant. The said law firm was formerly appointed on 21st March, 2019 after the delivery of judgement and that being so it was procedural for the said law firm to seek for orders of the court to come on record for the 1st Defendant which was not and I also find that the said law firm not being properly on record all pleadings filed by the same are a nullity. the upshot of the above is that the Notice of Motion dated 17th May, 2019 lacks merit and I consequently dismiss the same.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 6TH day of MAY, 2020.

Mohammed Kullow

Judge

6/5/2020

In the presence of: -

CA:Chuma

Ms Karia for the Defendant

N/A for the Plaintiff

Mohammed Kullo

Judge

6/5/2020