



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

E.L.C SUIT NO.67 OF 2018

JACKSON MUTUA KIVILA.....PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF MAKUENI.....DEFENDANT

R U L I N G

1. What is before this court for ruling is the Defendant's/Applicant's notice of motion application expressed to be brought under Sections 3A and 63 of the Civil Procedure Act, Cap.21 of the Laws of Kenya, Order 10 Rule 11, Order 51 Rules 1 and 15 of the Civil Procedure Rules, Article 159 of the Constitution of Kenya, 2010 and all enabling provisions of the law for orders that: -

- 1. THAT this Honourable Court may be pleased to stay the interlocutory Judgment entered in favour of the Plaintiff on the 21st May, 2016 pending the hearing and determination of this application.**
- 2. THAT this Honourable Court be pleased to Set aside the Interlocutory and Ex-parte Judgment entered without leave of Court on the 21st May, 2015.**
- 3. THAT this Honourable Court be pleased to grant leave to the Defendant/Applicant's as prayed in the dated 27th February, 2015 to file its Defence out of time**
- 4. THAT this Honourable Court be pleased to give any other or further orders as it may deem fit and just in the circumstances.**
- 5. THAT the costs of this application be in the cause.**

2. The application is predicated on the grounds on its face and is supported by the supporting affidavit of Joshua Willy Wambua, the County Secretary of the Defendant herein, sworn at Nairobi on the 05th September, 2016.

3. The application is dated 05th September, 2016 and was filed in court on the 19th September, 2016. The application remains unopposed by the Plaintiff/Respondent despite the court's directive of 26th June, 2018 that he responds to it. Only the Defendant/Applicant has filed its submissions in support of the application as was directed by the court on the material day i.e. 26th June, 2018.

4. I have read the submissions that were filed by the Defendant's/Applicant's Counsel in support of the aforementioned application. Of importance to note is that even though the Defendants/Applicants seeks for amongst others an order of stay of interlocutory judgement entered in favour of the Plaintiff/Respondent on 21st May, 2015 without leave of the court and also leave to file defence out of time, my brother, Angote, J in his ruling delivered in Machakos on the 13th day of April, 2018 did allow the Defendant/Applicant to file its defence out of time. In my view, therefore, this application by the Defendant/Applicant is superfluous. By implication, the exparte judgement said to have been entered against the Defendant/Applicant without leave of the court is deemed to have been set aside. I have however perused the court record and I see no evidence of such exparte judgement having been entered. Be that as it may and for whatever it may be worth, I will allow the application as prayed. For avoidance of doubt, the defendant has 15 days from today to file and serve its defence.

Signed, dated and delivered at Makueni this 08th day of July, 2019.

MBOGO C. G.,

JUDGE.

In the presence of: -

Mr. Ombati holding brief for Mr. Nyamu for the Defendant/Applicant

Mr. Hassan holding brief for Mrs. Nzei for the Plaintiff/Respondent

Ms. Nzioka – Court Assistant

MBOGO C. G. (JUDGE),

08/07/2019.