

IN THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 660 OF 2012

HARRIS MAINA GICHUHI & ANOTHER.....PLAINTIFFS

=VERSUS=

FRANCIS K MUIGAI & ANOTHER.....DEFENDANTS

RULING

1. The plaintiffs/applicants filed a notice of motion dated 15th April 2014 in which they seek entry of summary judgement against the defendants. The application is expressed to be brought under the provisions of Order 36 Rule 1 (1) (b) and Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

2. The applicants contend that they filed this suit in court together with the notice of motion. They obtained temporary orders of injunction against the first defendant/respondent ex-parte. The applicants later came and were granted leave to serve summons through substituted service. They proceeded to serve summon by advertisement in the press. They have now come to court seeking entry of summary judgement as prayed in the Plaintiff.

3. I have gone through the application, the supporting affidavit as well as the annexures to the application. I have also gone through the submissions filed by the applicants. One of the prayers in the plaint is special damages of Kshs.500,000/=. The damages arose out of a house belonging to the applicants which was demolished by the first defendant/respondent. Other than the orders obtained from Court there is only a copy of certificate annexed to the application as proof of ownership of the suit property. This application cannot be allowed as prayed. There is no evidence as to whether the second defendant was ever served. Service by advertisement was only in respect of the first defendant. The best way the applicants should have followed was to fix their case for formal proof and not coming to court for summary judgement. I therefore find no merit in this application which is dismissed with no order as to costs.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 4th day of **October, 2018**

E.O.OBAGA

JUDGE

In the presence of:

In the absence of parties who were aware of the date and time for delivery of ruling.

Court Assistant : Hilda

E.O. OBAGA

JUDGE