



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. 673 OF 2017

SALOME GATHONI MUIRUI.....PLAINTIFF

VERSUS

KAMAE RE-SETTLEMENT PROJECT.....1ST DEFENDANT

EZEKIEL RUHENI MAINA.....2ND DEFENDANT

RULING

1. The 2nd Defendant/Applicant filed a notice of motion dated 10th May 2021 in which he sought stay of execution of the judgement delivered by this court on 4th November 2019 and setting aside of the same together with any consequential orders. The Applicant also seeks leave of the court to file his defence.
2. The Applicant contends that he was not served with summons to enter appearance. He only came to know about the case when he was served with a copy of decree through WhatsApp on his phone No. 115xxxxxx on 29th April 2021.
3. The Plaintiff/Respondent opposed the Applicant's application based on a replying affidavit sworn on 18th May 2021. The Respondent contends that the Applicant was duly served but he ignored to file a defence.
4. The parties were directed to file written submissions. The Applicant filed his submissions dated 29th June 2021. The Respondent filed her submissions on 5th August 2021. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether there was service of summons upon the Applicant.
5. I have looked at the affidavit of service by the process server. The process server alleges to have served summons upon the Applicant through Assistant Chief Douglas Kimani. This is after the process server called the Applicant through his phone No. 0722xxxxxx . The Applicant then instructed the process server to leave the summons with the Assistant Chief.
6. In his application, the Applicant contends that he only became aware of the suit when he was served with a copy of decree through Whats App on his mobile No. 115xxxxx. This was not contested. The Respondent does not say why this time; service was made using a different phone. We all know that one can have more than two phone numbers but there are doubts whether the Applicant was served.
7. The Applicant is said to be occupying the suit property where he lives. There was nothing which would have prevented the process server from making other attempts to serve the Applicant personally before he could leave the summons with the Assistant Chief.
8. In the circumstances, I find that there was no proper service. I allow the Applicant's application with the result that the ex-parte judgement delivered on 14th November 2019 together with all consequential orders are set aside. The Applicant is given unconditional leave to file defence within fourteen (14) days from today. The Applicant shall have costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28TH DAY OF OCTOBER 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Munene for Plaintiff/Respondent

Mr Kuria for Applicant

Court Assistant: Mercy

E.O. OBAGA

JUDGE