

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LANDS COURT

AT NAROK

ELC CASE NO. 165 OF 2017

FLORENCE W. KURIA.....1st PLAINTIFF / RESPONDENT

JOB ELIJAH KURIA.....2nd PLAINTIFF / RESPONDENT

VERSUS

JOEL KIPKOSGEI CHIRCHIR.....DEFENDANT / APPLICANT

RULING

The Defendants / Applicants had by a Notice of Motion dated 8th day of July, 2020 sought for the following orders:-

1) Spent;

2) That leave be granted to the firm of Mitey & Co Advocates to come on record in the place Lel and Associates Advocate;

3) That there be a temporary stay of execution of the judgment delivered on 26th day of September 2019 together with the consequential orders together with the judgment of the court.

The Application is based on the grounds that the firm of **Lel and Associates** who were on record for him failed to attend court and advise him on the proceedings and hence the suit proceeded ex parte. The Applicant further stated that his failure to attend court was not intentional but a mistake that was committed by his Advocate on record and that he had a good defence to the defendant claim.

The Application was opposed by the Plaintiff / Respondent by way of a Replying Affidavit. It is the Respondent contention that the Applicant herein was represented by the firm of **J. A. Simiyu Advocate** contrary to his claim that he was represented by the firm of **Lel & Associates Advocates** and that defendant during the trial the Defendant/Applicant Advocate participated in the hearing and even cross examined him but chose not to prosecute their case; the Respondent contend that the defence does not rise any triable issues and furthermore the decree that was issued by the court has already been acted upon.

I have considered the Application before me, the Respondents / Applicant in opposing thereto and the submissions filed by the parties, this is an Application that was filed upon judgment being entered on the conclusion of the hearing of the suit. It is the Applicants contention that the hearing of the matter proceeded in his absence due to the non- attendance of the court by the then counsel who was on record. However, from the grounds on which the Application is based nor the supporting affidavit in support thereto the Applicant has not given reasons why the said Advocate was not able to attend court. A party seeking to set aside a judgment and blaming them on the non-attendance of his Advocate must demonstrate what caused the said non- attendance, a Court cannot take such assertion on face value. In **Clemensia Nyanchoka Kinaro vs= Joyce Nyansiaboka Onchomba (2020) eKLR** the court held that:-

“Though Advocates mistakes should not be visited upon a party, the party who owns the case is the client and that there is a duty upon the said party to follow there cases and not to leave it to the Advocates.

Having considered the Application, I find that the Applicant have not raised any issue that will enable me interfere with the judgment of the court and consequently, I find that the Notice of Motion dated 8th July 2020 lacks merit and the same is dismissed. Save that I do grant leave to the firm of **Mitey, & Co Advocates** to come on record for the Applicants.

DELIVERED SIGNED AND DATED AT NAROK THIS 27TH day of OCTOBER 2021

MOHAMED N. KULLOW

JUDGE