



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO.675 OF 2012

EDWARD WACHANGA MUTERO.....PLAINTIFF

VERSUS

- 1. SOLOMON MWANGI**
- 2. DAVID OSORO**
- 3. GILBERT OTIENO**
- 4. JAMES MWANGI**
- 5. MWANGI NTHYA**
- 6. MAINA DANIEL**
- 7. JAMES KIBUCHA MDIRANGU**
- 8. DANCAN WAVUA**
- 9. EUNICE MWIKALI**
- 10. JANE AKINYI ODERO.....DEFENDANTS**

RULING

- 1. This is the Notice of Motion dated 11th December 2020 brought under section 1A, 1B and 3A of the Civil Procedure Act, order 10 rule 11, order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.**
- 2. It seeks orders:-**
 - 1. Spent.**
 - 2. Spent.**
 - 3. That this honourable court be pleased to set aside the default judgment issued on 26th March 2013.**
 - 4. That this honourable court be pleased to grant the Defendants leave to file their Defence out of time.**
 - 5. That costs of this Application be provided for.**
- 3. The grounds are on the face of the application and are set out in paragraphs 1 to 21.**
- 4. The application is supported by the affidavit of Gilbert Otieno, the 3rd Defendant/Applicant sworn on the 11th December 2020.**

5. The application is opposed. There is a replying affidavit sworn by the Plaintiff/Respondent
6. On the 14th February 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.
7. I have considered the notice of motion and the affidavit in support. I have considered the replying affidavit, the written submissions filed on behalf of the parties and the authorities cited. The issue for determination is whether this application is merited.
8. I have gone through the affidavit of Gilbert Otieno the 3rd Defendant/Applicant sworn in support of the application. In paragraph 3 he deposes:-

“That I am one of the persons residing on the property known as LR NO 209/9431 Grant No IR 69919”

In paragraph 4 he deposes;

“That the defendants herein have been in occupation of the suit property being LR NO 209/9431 Grant NO IR 69919 from the year 2003 and have developed the property.”

In paragraph 6 he deposes;

“That the Defendants have ownership documents for the suit property”.

9. I have gone through the entire affidavit and I find that he has not annexed any ownership documents.
10. The court found in the Judgment dated 26th March 2013 that the Plaintiff is the registered proprietor of the suit property and that he is entitled to vacant possession. It was the Plaintiff's case that the Defendants have encroached on the suit property.
11. There is no material placed before this court to warrant it to set aside the default judgment.
12. I find no merit on this application and the same is dismissed with costs to the Plaintiff/Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2ND DAY OF DECEMBER 2021.

.....

L. KOMINGOI

JUDGE

IN THE PRESENCE OF:-

MR. MUTEMBEI FOR THE PLAINTIFF

NO APPEARANCE FOR THE DEFENDANTS

STEVE - COURT ASSISTANT