



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CAUSE NO. 69 OF 2017

JOHN GITHI KIGUNDA.....PLAINTIFF

-VERSUS-

STEPHEN KISEMEI MARUSHI.....1ST DEFENDANT

AHMED IBRAHIM.....2ND DEFENDANT

MR. MALEI.....3RD DEFENDANT

BEATRICE CHEMELI.....4TH DEFENDANT

ROSE AKAME.....5TH DEFENDANT

RULING

This ruling is on the Notice of Motion dated 5th May, 2021 seeking the setting aside of the ex parte Judgment herein and all consequential orders. It also seeks to have the Defendants file their defence out of time.

The application which is brought under **Section 1A and 3A of the Civil Procedure Act, Orders 10 Rule 11, 51 Rule 1 of the Civil Procedure Rules** and other enabling provisions of law is supported by an affidavit sworn by Stephen Kisemei Marushi.

In the affidavit, the deponent says that he was never served with the Summons to Enter Appearance. The only process that he was served with is Chamber Summons Certificate of Urgency dated 20th January, 2011 in ELC Case No. 265 of 2010 at Machakos.

He prays that the suit be heard on merit.

The application is opposed by Jonathan Karuga Kigunda, the plaintiff, who says that the Defendants were served. Counsel for the parties were to file and serve written submissions within 28 days from 14th of October but by the time I am writing this ruling in late November, no such submissions have been filed.

Be that as it may, I find it fair and just to allow the application dated 5th May, 2021 for the following reasons;

Firstly, the discretion given to the Court under **Order 10 Rule 11 Civil Procedure Rules** is wide and unfettered even though it should be exercised judiciously. It is judicious to allow a party craving to be heard to participate in the suit.

Secondly, locking out a party from a land case is a draconian move which should only happen in extreme cases.

Thirdly, the Plaintiff has nothing to lose because he too will be given a fair hearing.

For the above reasons, I allow the application dated 5th May, 2021 in its entirety.

Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF DECEMBER, 2021

M.N. GICHERU

JUDGE