



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 80 OF 2017

WANYONYI CHEKELIE.....PLAINTIFF

VERSUS

JOHN MASAI.....DEFENDANT

RULING

1. The application dated **14/8/2019** and filed in court on the same date has been brought by the defendant who seeks the following orders:

- 1. That the ex-parte judgment entered herein together with all the consequential orders be set aside.**
- 2. That the defendant/applicant be granted leave to file his defence within such time as to be prescribed by the court.**
- 3. spent**
- 4. Costs be provided for.**

2. The application is brought under the provisions of **Sections 1A and 1B of the Civil Procedure Act and Order 10 Rule 11 of the Civil Procedure Rules 2010.**

3. The application is premised on the grounds stated on its face and on the annexed affidavit of the defendant. Essentially the grounds relied upon by the applicant are *inter alia* that the defendant and the plaintiff were engaged in and out of court settlement after service of the summons to enter appearance and that the defendant has a good defence to this suit.

4. Other grounds in support of the application are contained in the affidavit annexed to the said application sworn by the defendant, who avers *inter alia* that even before the filing of the suit the plaintiff had filed a complaint with the village elders of the alleged trespass and the elders had encouraged an out of court settlement; that after the service of summons on the defendant the plaintiff was summoned by the elders and it was recommended that survey should be carried out to determine if there was any trespass.

5. The plaintiff filed a replying affidavit filed on **11/10/2019**. He depones that the application seeks to vary/set aside the judgment of the court delivered **8/7/2019**; that the defendant has confirmed that he was served with summons to enter appearance and the court was satisfied at the hearing that the defendant had been served; that the defendant wilfully neglected to enter any appearance or file defence; that the parties have never been engaged in an out of court settlement after the filing of the suit; that negotiations took place prior to the suit in **2016**; that no good grounds sufficient to warrant the setting aside of the judgment have been advanced; that the defendant is only intent on delaying this matter; that the defendant was served with hearing notices despite failure to enter appearance and that the defendant is guilty of indolence and does not deserve equity.

6. On **14/10/2019** this court ordered the parties to file submissions on the application; the applicant was to file his submissions within 14 days and serve; the respondent was to reply to those submissions within 14 days of service. By **14/11/2019** while the matter came up for mention to confirm filing of submissions the defendant/applicant had not filed any submissions. He was granted 7 more days to file his submissions. However by the date of writing this ruling the defendant had not filed his submissions.

7. In view of that non-compliance with the court order regarding submissions, and there being no other manner provided for the disposal of the instant application, I find that the defendant has failed to prosecute his application and I hereby dismiss it with costs for want of prosecution.

Dated, signed and delivered at Kitale on this 3rd day of March, 2020.

MWANGI NJOROGI

JUDGE

3/3/2020

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Karani for plaintiff/respondent

Ms. Temba for defendant/applicant

COURT

Ruling read in open court.

MWANGI NJOROGI

JUDGE

3/3/2020