



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 35 OF 2008 (OS)**

**GRACE WAMBUI GACHAU.....PLAINTIFF**

**VERSUS**

**JOHN GACHAU MUCHIRI.....DEFENDANT**

**RULING**

1. The matter for determination is a Motion dated 30<sup>th</sup> September 2014. It seeks stay of execution of a judgment delivered on 26<sup>th</sup> September 2014 and the setting aside of the said judgment. It is at the instance of the defendant, but the affidavit in support is sworn by his advocate, who complains that the matter proceeded on a date in respect of which notice had been received in protest as he was due to be engaged on private matters on the date when the matter was scheduled for hearing.
2. The plaintiff swore an affidavit on 28<sup>th</sup> October 2014 in reply. She accuses the defendant of deliberately failing to attend court on due date so as to delay the hearing and finalization of the matter.
3. The defendant does not dispute that his advocate was served with a hearing notice. The notice was received under protest. Two reasons are given for the protest. One, there was no invitation to fix the date. Two, the advocate was due to attend some private business on the due date. The advocate chose not to inform the defendant that a date had been fixed for the hearing of the matter, and on the due the advocate himself chose not to brief another advocate to handle the matter on his behalf, to either proceed with it or to have it adjourned.
4. When matters are fixed for hearing parties should understand that they have a duty to attend court. The court should not be moved to have a matter listed for the sole purpose of it being taken out because some party has chosen to stay away. There is responsibility for both counsel and party to take matters seriously. In this case there was clear lack of seriousness in the way the matter was handled.
5. In view of the above, I am not persuaded that this is a proper case for grant of the orders sought. The orders sought are discretionary. I am not convinced that I should exercise discretion in favour of the applicant herein. The application dated 30<sup>th</sup> September 2014 is hereby dismissed. The respondent shall have the costs thereof.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**W. MUSYOKA**

**JUDGE**