



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 239 OF 2013

STEPHEN MBUGUA MWAGIRU.....PLAINTIFF

VERSUS

1. MUTHAIGA COUNTRY CLUB LIMITED.1ST DEFENDANT

2. MUTHAIGA COUNTRY CLUB HOLDINGS LIMITED..... 2ND DEFENDANT

3. COLLIN CHURCH. 3RD DEFENDANT

4. GRAHAM NICHOLLS.....4TH DEFENDANT

RULING

1. There arose a contention between the parties herein on 2nd December, 2015 as to whether or not an interlocutory judgment had been entered in this suit. The Plaintiff's advocates, who claim that an interlocutory judgment had been entered against the Defendants on 14th November, 2013 filed the motion dated 15th December, 2015. The said motion was expressed to be brought under Order 12, 51 rules 1-3 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act. The Plaintiff prays for an order that the hearing of this matter does proceed by way of formal proof.

2. The grounds upon which the motion is premised are that; the Defendants entered appearance but failed to file defences within the prescribed time; that upon request, judgment was entered for the Plaintiff on 14th November, 2013. That the defence that was served upon the Plaintiff's counsel was unsigned rendering it invalid and does not therefore serve any purpose. It was further contended that upon perusal of the court file, no defence was filed.

3. On the other hand, the Defendants maintain that there was no interlocutory judgment entered in this matter. The oppositions were made vide the replying affidavit of Collin Edward Church. It was stated that a perusal of the handwritten court proceedings reveal that the top part of the notes of 14th November, 2013 were signed by Hon. Waweru J but that the order of the same date bears no signature. That the Defendants' advocates wrote a letter on 13th June, 2014 to the Deputy Registrar enquiring whether the alleged interlocutory judgment was entered but the then Deputy Registrar for Civil Division A. K. Ndungu confirmed that none had been entered. It was further contended that at the time of hearing of the injunction application on 19th November, 2013 which had been filed by the Plaintiff, the Plaintiff's counsel did not mention about the purported request for judgment or seek directions on the purported default judgment. That when the matter came up for mention to confirm whether or not pre-trial procedures had been complied with, the Plaintiff's counsel did not mention the existence of the interlocutory judgment. Again when the parties attended the registry for purposes of fixing a hearing date

which was taken by consent, the existence of the said judgment was not mentioned.

4. I have considered the parties' depositions on the application. To my mind what falls for this court's determination is whether or not there exists an interlocutory judgment. I have taken the liberty to peruse the court record. There is no doubt that there is on record a request for judgment filed by the Plaintiff's advocate on 11th November, 2013. However, looking at the proceedings alleged to be the ones in which the interlocutory judgment was entered, it appears to have discrepancies in that there is no Coram and no signature of the Deputy Registrar. In my view, the said lapse invalidates the judgment if any. I am guided by the decision of Supreme Court in **Kenya Commercial Bank Limited Vs. Muiri Coffee Estate Limited & Another [2016] eKLR** where the importance of court record was discussed. The Court cited with the approval the Court of Appeal's (being the court appealed from) finding that:

"...the obligation to keep a record of its acts, proceedings and decisions would then appear to be of the very essence and character of a court record: a court of record necessarily requires some duly authorized person to record the proceedings' as was stated in Ex. PARTE CREGG,6 Fed, Cas. No. 3. 380 2 curt.98"

5. In the absence of the coram coupled with the lack of signature, the proceedings of 14th November, 2013 cannot be said to have been conducted by an authorized judicial officer. Further, it is worth noting that the Defendant exhibited a letter by the Deputy Registrar indicating that there existed no interlocutory judgment. The said fact was not denied by the Plaintiff.

6. Ultimately, I am satisfied that the application dated 15th December, 2015 has no merits and the same is dismissed with costs to the Respondent.

Dated, signed and delivered at Nairobi this 10th day of November, 2016.

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L NJUGUNA

JUDGE

In the presence of

..... ***for the Plaintiff.***

..... ***For the Defendants.***