



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO 125 OF 2009

JOHN KAIMENYIMWORIAPLAINTIFF

VERSUS

JUSTUS KATHURIMADEFENDANT

WILSON KATHURIMA.....INTENDED DEFENDANT

RULING

This application is dated 18/10/2010 and seeks orders:

1. ***THAT this application be certified urgent and be heard on priority basis on account of its urgency.***
2. ***THAT this Honourable Court be pleased to enjoin one WILSON KATHURIMA as a Co-defendant to this suit.***
3. ***THAT this Honourable Court be pleased to set aside the ex-parte judgement entered on 22nd October 2009 together with all consequential orders made pursuant thereto.***
4. ***THAT the cost of this application be borne by the plaintiff.***

The application is buttressed by the affidavit of **WILSON KATHURIMA**, the applicant and has the following grounds:-

- a. ***THAT the applicant has a good defence to the plaintiff's claim.***
- b. ***THAT failure to file the Memorandum of Appearance and defence in the Court file relating to the suit herein was not occasioned by any fault/error or negligence on the part of the applicant, as he was not party.***
- c. ***THAT it is only fair just and equitable that this application be allowed in the interest of justice.***

The applicant filed his Submissions on 08/04/2014. There is evidence that the Plaintiff was properly served. 5 years after the application was filed and over 1 year and 6 months since the applicant filed his Written Submission, the Plaintiff has not responded by way of his Written Submissions to the issues raised by the application.

In the circumstances, I find that the application is meritorious. Prayer 3 is granted. Costs shall be in the cause.

It is so ordered.

Delivered in open Court at Meru this 2nd day of November, 2015 in the presence of:-

CC:Daniel/Lilian

Carlpeters Mbaabu h/b Mwanzia for Applicant

Dickson Kimathi h/b Mwarania for Plaintiff

P. M. NJORGE

JUDGE