



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 303 OF 2013**

ROSEMARY WANJIRA GATHIGIRA ..... PLAINTIFF

VERSUS

- |                             |   |            |
|-----------------------------|---|------------|
| 1. CLEMENT MUNYIRI GACHANJA | ) |            |
| 2. JOSEPH MWANGI MANGEKA    | ) |            |
| 3. GERALD NGANGA KIMANI     | ) | DEFENDANTS |
| 4. JEREMIAH JOSEPH KIMANI   | ) |            |
| 5. JOSEPH ERASMUS KIMANI    | ) |            |

**RULING**

This is in respect to the plaintiff/applicant’s Notice of Motion dated 3<sup>rd</sup> March 2014 seeking the following orders:-

1. *That a default judgment be entered against the 2<sup>nd</sup> defendant who has failed to appear or file any defence*
2. *That the 1<sup>st</sup> defendant’s statement of defence dated 13<sup>th</sup> June 2013 be struck out as it is otherwise an abuse of the Court process*
3. *That judgment be entered for the plaintiff as prayed in the plaint dated 8<sup>th</sup> March 2013 as per the admissions contained in the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants’ statement of defence dated 11<sup>th</sup> July 2013.*
4. *That costs of the application and the suit be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.*

The application was grounded on the grounds set out therein and supported by the applicant’s affidavit dated 3<sup>rd</sup> March 2014.

When the said application came up for hearing before me today, Mr. Muchira appeared for the plaintiff/applicant while Mr. Kimathi appeared for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants. Mr. Kimani for 1<sup>st</sup> defendant did not appear though served. The 2<sup>nd</sup> defendant has not entered any appearance or filed a defence. As the said application was not opposed, Mr. Muchira urged me to grant the orders therein.

Mr. Kimathi did not oppose the application saying his clients were victims of fraud.

I have considered the application. It is not opposed.

I therefore allow the same and grant the orders sought by the plaintiff/applicant in her Notice of Motion dated 3<sup>rd</sup> March 2014. The costs of the application and the suit shall be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**2<sup>ND</sup> JULY 2014**

Ruling delivered in open Court this 2<sup>nd</sup> day of July 2014 soon after the hearing.

Mr. Muchira for plaintiff/applicant present

Mr. Kimani for 1<sup>st</sup> defendant absent (served)

Mr. Kimathi for 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants present

2<sup>nd</sup> defendant absent.

**B.N. OLAO**

**JUDGE**

**2<sup>ND</sup> JULY 2014**