



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 710 OF 2013**

**PETER NJUKI NGARIRA ..... PLAINTIFF**

**VERSUS**

**LUGARD MURIUKI NGEENI ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES MIGWI GITHINJI ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR KERUGOYA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

This is in respect to the plaintiff/applicant's Notice of Motion dated 12<sup>th</sup> November, 2013 brought pursuant to **Order 10 Rule 8 of the Civil Procedure Rules** seeking leave to apply for judgment against the 3<sup>rd</sup> defendant. The same is based on the grounds on the face of the Notice of Motion and supported by the affidavit of the plaintiff/applicant in which he has deponed that although this suit was filed on 13<sup>th</sup> September, 2013 and the 3<sup>rd</sup> defendant served with summons to enter appearance and all other documents on 20<sup>th</sup> September, 2013, he has not entered appearance nor filed any defence.

Though served with this application, the 3<sup>rd</sup> defendant who is the Land Registrar Kerugoya did not file any response to the same and the application is really un-opposed.

This application is brought under **Order 10 Rule 8 of the Civil Procedure Rules** which provides as follows:-

***“No judgment in default of appearance or pleading may be entered against the Government without the leave of the Court and any application for leave shall be served not less than seven days before the return day”***

When a party invokes the provisions of **Order 10 Rule 8 of the Civil Procedure Rules**, it follows that he must have sued the Government in which case the provisions of the **Government Proceedings Act (Chapter 40 laws of Kenya)** which, inter alia, govern civil proceedings by or against the Government come into play. **Sections 12 (i) and 13 of the Government Proceedings Act** provide as follows:-

***12 (i) “Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney General, as the case may be”.***

***13 “All documents required to be served on the Government for the purposes or in connection with any civil proceedings by or against the Government in accordance with the provisions of this Act shall be***

***served on the Attorney General”***

**Order 5 Rule 9 (1) and (2) of the Civil Procedure Rules** which provides for the mode of service upon the Government makes it clear that such service shall be upon the Attorney General. In this case, the 3<sup>rd</sup> defendant is a Government Department and under the law, the proper party to serve is the Attorney General. The Attorney General is not even a party in these proceedings. That is fatal to this application.

And even assuming that the Attorney General had been sued in these proceedings, the relief sought in the plaint include a permanent injunction, orders directed at the 3<sup>rd</sup> defendant to cancel title deeds issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants and to issue new title deeds as well as damages. Circumstances under which judgment in default of appearance under **Order 10 of the Civil Procedure Rules** may be entered include where the relief sought is liquidated, pecuniary damages and detention of goods. Clearly, looking at the reliefs sought in the plaint in this suit, they are not those envisaged under **Order 10 of the Civil Procedure Rules.**

In the circumstances, I find that the plaintiff/applicant’s Notice of Motion dated 12<sup>th</sup> November, 2013 is defective. The same is struck out with no order as to costs.

**B.N. OLAO**

**JUDGE**

**14<sup>TH</sup> NOVEMBER, 2014**

14/11/2014

Before

B.N. Olao – Judge

Mwangi – CC

No appearance for Plaintiff

Mr. Gachoka for Kahiga for 1<sup>st</sup> and 2<sup>nd</sup> Defendant – present

COURT: Ruling delivered in open Court this 14<sup>th</sup> November, 2014

Mr. Gachoka for Kahiga for 1<sup>st</sup> and 2<sup>nd</sup> Defendant present

No appearance for Plaintiff and 3<sup>rd</sup> Defendant.

**B.N. OLAO**

**JUDGE**

**14<sup>TH</sup> NOVEMBER, 2014**