



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**ELC NO. 121 OF 2012**

**SEVENTH DAY ADVENTIST CHURCH.....PLAINTIFF**

**EAST AFRICA LIMITED (KAMBIA)**

**VERSUS**

**MORRIS KOOME NGORE.....DEFENDANT**

**RULING**

The application herein by the defendant/applicant is dated 31st December, 2012 and seeks orders:

1. **THAT** the honourable Court be pleased to certify this application as urgent and hear it ex-parte in the first instance.
2. **THAT** the honourable Court be pleased to stay and/or vacate the orders issued by this Court on 12.10.2012 and confirmed on 26.11.2012 pending the hearing of this application or until further orders of the Court.
3. **THAT** the honourable Court be pleased to issue an order of injunction restraining the plaintiff/respondent's agents, assignees and/or servants from in any way whatsoever wasting and/or destroying the defendant/applicant's family dwellings, houses, miraa trees and/or any other developments situate within land parcel No. **3510/NAATHU ADJUDICATION SECTION** pending the hearing and determination of this application and/or until further orders of this Court.
4. **THAT** the honourable Court be pleased to set aside the interlocutory judgement entered herein and grant leave to the defendant/applicant to file his defence.
5. **THAT** the annexed draft defence be deemed as properly filed and served, and for the honourable Court to order issuance of summons to enter appearance against the 2nd and 3rd defendants in the counterclaim.
6. **THAT** the honourable Court be pleased to direct the inquiry as to the mental status of one **JUSTUS NGORE** be conducted; and for the Court to further direct at what stage of the proceedings herein such an inquiry shall be conducted.
7. **THAT** the honourable Court be pleased to issue an order staying the proceedings in Maua Chief

Magistrate's Court Criminal Case No. 2386 of 2012 (Republic-Vs-Morris Koome Ngore) pending the hearing and determination of this application or until further orders of this Court.

8. **THAT** Costs of this application be provided for.

The applicant has submitted that he and his family members live upon the suit land. He has referred to an annexed charge sheet and wants the Court to issue an order staying the Criminal Proceedings in Maua Chief Magistrate's court. He has also explained that he was late in filing his defence for good reasons. The reasons are not given in the submissions but the grounds in his application state that he was late in filing his defence and other suit papers because he was investigating and retrieving documents in support of his case. He has also claimed that his father is of unsound mind. He has categorically claimed that he has always been the registered owner of the suit land. I note that in his submissions the defendant did not mention why he thinks that this Court should stay or vacate the orders issued on 12.10.2012 and confirmed on 26.11.2012.

In his submissions the plaintiff has countered all the claims made by the defendant vide a replying affidavit which, in the view of its advocate, was self-explanatory. He has submitted on all the prayers.

Regarding prayer 2, the defendant, inter alia, submits that the applicant was indolent and had not replied to the plaintiff's application dated 8th October, 2012 despite having had ample time before the application was disposed of. It argued that the defendant should have moved the Court for review Under Order 45(1) of the Civil Procedure Rules or even appealed against the orders.

Concerning prayers 3 and 4 the advocate for the plaintiff explained the circumstances under which the Interlocutory Judgement was entered and stated that the fact that the defendant failed to file a defence a whole month after entering appearance was evidence of indolence on the part of the defendant. The advocate opined that the defendant's defence was a mere denial and a sham that does not raise a single triable issue. The plaintiff termed the prayer that the mental status of the plaintiff's father be inquired into as misplaced. This was prayer number 6. The plaintiff felt that prayer number 7 was also misplaced as it confused Civil and Criminal functions of Courts.

Having examined the submissions of the parties and their averments, I am inclined to find that the applicant has not persuaded me to grant orders 2, 3, 4, 5, 6 and 7 prayed for in the application dated 31st Day of December, 2012. This being a ruling on an interlocutory application, I have taken care not to pronounce findings on issues which will be determined at the conclusion of the main suit.

In the circumstances, I dismiss the defendant's/applicant's application dated 31st December, 2013. I award costs to the plaintiff.

**DELIVERED AND SIGNED IN OPEN COURT AT MERU THIS 6TH DAY OF JUNE, 2013 IN THE PRESENCE OF:**

**Cc.: Mwonjuru**

**A. Muthomi h/b Mbogo for Applicant's**

**Firm of Ndubi Ondubi for respondent - Absent**

**P. M. NJOROGE**

**JUDGE**

