

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 13 OF 2018

JAMES GICHURU MWANGI.....1ST PLAINTIFF

HENRY MBOGO MWANGI.....2ND PLAINTIFF

(Suing as the Legal Representative of the Estate of the late IBRAHIM MWANGI KAMAU)

VERSUS

PETER GICHURU MWANGI.....1ST DEFENDANT

NGUGI GITONGA.....2ND DEFENDANT

RULING

The application before court is dated 7.8.2018 and seeks for orders that the honourable court be pleased to set aside the judgment and/or decree dated 2.7.2018 and issued on 17.7.2018. It seeks orders that the applicant be able to defend the plaintiff's application dated 13.5.2018 on its merits. The application is based on grounds that the defendants' advocate never informed them of the existence of the application. The defendants' advocate failed to attend the hearing of the application and further failed to inform the applicant of the of the judgment. The defendants learnt of the striking out orders and judgment from the family of the 1st defendant hence instructed Mugeria, Lempaa & Kariuki Advocates to peruse the court file and discovered that application dated 13.5.2018 had been allowed on 2.7.2018 without being defended. The applicant blames their counsel on record at that time. The applicant believes that they have a very strong case.

In the replying affidavit, the respondents state that the defendants' advocate was duly served with the application dated pm 15.5.2018 on 28.5.2018 before hearing. The hearing date was taken by consent. The defendants were served but never filed a reply. The defendants were given an opportunity to be heard but never took advantage of the same.

According to the plaintiff, the defendants have no defence for the plaintiff's claim as they have admitted that the property belonged to the plaintiff's deceased father.

I have considered the application and the replying affidavit and do find that indeed, the defendants' advocate failed to inform the defendants of the application seeking to strike out the defence. I do agree with the defendants' submission that mistake of counsel ought not to be visited on the party. However, the respondents ought to be punished to pay costs of the application. Ultimately, I do set aside judgment entered on 2.07.2018 and do give the defendants 3 days to respond to application dated 13.5.2018. The defendants to pay costs of Kshs.20,000 before filing the replying affidavits. Orders accordingly.

Dated and delivered at Eldoret this 10th day of April, 2019.

A. OMBWAYO

JUDGE