



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 58 OF 2013

JOSEPH KANG'ETHE KILONZO.....PLAINTIFF

VERSUS

MACHAKOS DISTRICT ADJUDICATION AND

SETTLEMENT OFFICER.....1ST DEFENDANT

HON. ATTORNEY GENERAL.....2ND DEFENDANT

JOHN KING'OO MULI.....3RD DEFENDANT

GIDEON NDETO MULI.....4TH DEFENDANT

KITONYI MULI.....5TH DEFENDANT

ROBERT NDIMA MULI.....6TH DEFENDANT

RULING

1. In the Notice of Motion dated 28th March, 2018, the Plaintiff is seeking for the following orders:

a. That Honourable Court be pleased to set aside the orders made on 1st March, 2018 and reinstate the Plaintiff/Applicant's suit.

b. That costs of the Application be in cause.

2. The Application is based on the grounds that the Plaintiff was not served with a Hearing Notice; that the Plaintiff was not aware that there was a Land Court in Machakos and that the dispute herein involves a land matter which is an emotive issue.

3. The 3rd Defendant filed an undated and uncommissioned "Replying Affidavit". Having not commissioned the Replying Affidavit, I find that the said "Affidavit" is a nullity and is hereby struck out.

4. This suit was commenced by way of a Plaint dated 12th August, 2013. The Plaint was drawn and filed by the firm of J.M. Muinde & Company Advocates. After the Summons to Enter Appearance were served on all the Defendants, the 1st and 2nd Defendants, through the Attorney General, filed their Witness Statements and Documents on 17th October, 2017. The 3rd, 4th and 6th Defendants filed their joint Defence in person on 23rd November, 2018.

5. The record shows that the 4th Defendant fixed the suit for hearing on 1st March, 2018. On the said date, it is only the 4th and 5th Defendants who were in court. The 4th Defendant informed the court that after fixing the matter for hearing, he caused the Plaintiff's advocate to be served with a hearing notice. However, due to the absence of the Plaintiff and his advocate in court, the court dismissed the matter for want of prosecution. The Plaintiff has argued that neither himself nor his advocate were served with a hearing notice of 1st March, 2018.

6. I have perused the record and noted that the Attorney General, whose official stamp appears on the face of the hearing notice, was served with the hearing notice of 1st March, 2018. Dickson Wambua, a process-server, prepared an Affidavit which was filed in this court on 23rd February, 2018. In the said Affidavit of Service, the process-server deponed that he served the firm of J.M. Muinde with a hearing notice of 1st March, 2018 and dated 21st February, 2018. The said hearing notice is said to have been served on the firm of J.M. Muinde Advocates,

Machakos on 21st February, 2018, who refused to acknowledge service.

7. The copy of the hearing notice annexed on the process-server's Affidavit does not have the official stamp of the law firm of J.M. Muinde Advocates. In his Affidavit, the process-server does not indicate the physical address of the law firm of J.M. Muinde and the person who received the copy of the hearing notice.

8. To the extent that the Affidavit does not describe in detail where the firm of J.M. Muinde is situated, and the person who was served with the hearing notice, I find that the purported service of the hearing notice on the law firm of J.M. Muinde was not done properly, or at all.

9. For those reasons, I allow the Plaintiff's Application dated 28th March, 2018 but with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21ST DAY OF JUNE, 2019.

O.A. ANGOTE

JUDGE