



**REPUBLIC OF KENYA**

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

**ELC NO. 81 OF 2017**

**ERNEST KIPKEMBOI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**JACOB KIMUTAI KEBENEI.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**SHADRACK MELI.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

This ruling is in respect of an application dated 25<sup>th</sup> April 2019 brought by way Notice of Motion by the defendant/applicants seeking for setting aside orders of ex parte judgment entered in this matter. The applicants' claim that they were never served with the summons to enter appearance and that they have a good defence.

The plaintiff is the father of the defendant/applicants and at one point the court had directed that they try an out of court settlement but they were not able to agree. The plaintiff was paid Kshs. 21,725/ being thrown away costs but still wanted to proceed with the current application

I have looked at the application and the circumstances of this case and find that it would be in the interest of justice to set aside the ex parte judgment and allow the defendants to file their defence to state their case. The court has discretion to set aside ex parte judgments if it is established that there was no proper service and if the defendant has a defence with triable issues.

I therefore order that the ex parte judgment is hereby set aside and the defendants to file their defence, statements and documents within 14 days failure of which the order lapses. The plaintiff had already been paid thrown away costs.

**Dated and delivered at Eldoret on this 23<sup>rd</sup> day of October, 2019.**

***M. A. ODENY***

***JUDGE***

Ruling read in open Court in the presence of Miss Yebei holding brief for Mr. Sambu for Defendants/Applicants and in the presence of the Plaintiff/Respondent.

Court Assistant – Mr. Mwelem