



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 202 OF 2018**

**JOHN MUSYOKI MWANGANGI.....PLAINTIFF**

**VERSUS**

**PAMELA BWARI ONYAMBU.....1<sup>ST</sup> DEFENDANT**

**KIPRUTO KANDIE.....2<sup>ND</sup> DEFENDANT**

**DANIEL KIANDA MUTHUI.....3<sup>RD</sup> DEFENDANT**

**FLORENCE MAUNCHO.....4<sup>TH</sup> DEFENDANT**

**CHRISTINE MORARA MAISHA.....5<sup>TH</sup> DEFENDANT**

**TOBIAS OKOTH OTIENO.....6<sup>TH</sup> DEFENDANT**

**LINUS MORURI NYAMOKO.....7<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....8<sup>TH</sup> DEFENDANT**

**THE MAVOKO SUB-COUNTY REGISTRY.....9<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....10<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 25<sup>th</sup> February, 2019 (*sic*) and filed on 24<sup>th</sup> January, 2019, the 2<sup>nd</sup> - 7<sup>th</sup> Defendants are seeking for the following orders:

***a. That the Immigration Department of Kenya do hereby furnish to the court by way of an Affidavit and or certified confirmation the current travel and residency status in Kenya of John Musyoki Mwangangi ID. No. 7132758 and Passport No. A1130960 the Plaintiff herein.***

***b. That the costs of this Application abide the outcome of the suit.***

2. The Application is supported by the Affidavit of the 2<sup>nd</sup> Defendant who has deponed that he knows the Plaintiff; that at the time of filing the suit, the Plaintiff used to work for the Ministry of Lands, Survey Department, before moving out of the country; that the Plaintiff was not in the country at the time of filing the suit and that upon inquiry from the Immigration Department, he was informed that he needs a court order before he could be furnished with the information pertaining to the Plaintiff's whereabouts.

3. Although the Plaintiff was granted leave to file a Replying Affidavit within fourteen (14) days on 20<sup>th</sup> March, 2019, he had not filed any response as at 9.00a.m on 18<sup>th</sup> June, 2019. Indeed, when the Application was mentioned on 18<sup>th</sup> June, 2019, neither the Plaintiff nor his advocate were in court.

4. However, it would appear that the Plaintiff filed a Replying Affidavit sworn on 17<sup>th</sup> June, 2019 on 18<sup>th</sup> June, 2019. Having failed to comply with the directions of the court of 20<sup>th</sup> March, 2019, and having not served the Defendants' advocate with the Replying Affidavit that was filed on 18<sup>th</sup> June, 2019, I find that the Plaintiff's Replying Affidavit filed in court on 18<sup>th</sup> June, 2019 is not properly on record. The same is therefore expunged from the record.
5. Having expunged the Replying Affidavit sworn on 17<sup>th</sup> June, 2019 and filed on 18<sup>th</sup> June, 2019 from the record, the 2<sup>nd</sup> - 7<sup>th</sup> Defendants' Application dated 25<sup>th</sup> February, 2019 and filed on 24<sup>th</sup> January, 2019 remains unopposed.
6. The Defendants' Application shows that it was received in the registry on 24<sup>th</sup> January, 2019. However, the official receipt shows that the same was paid for on 25<sup>th</sup> January, 2019, a day thereafter.
7. It is trite that a pleading cannot be received by the registry before the requisite court fees has been paid. How then was the Application received by the registry on 24<sup>th</sup> January, 2019 before the requisite court fees was paid?
8. Furthermore, the Application is dated 25<sup>th</sup> February, 2019, one month after it had been received in the registry! The Affidavit in support of the Application is shown to have been sworn on 25<sup>th</sup> January, 2019, a month before the Application was dated.
9. The discrepancies on the actual date of the Application; the date when the Supporting Affidavit was sworn and the dates on when the Application was received in the registry and paid for were not explained at all by the Defendants' advocate.
10. Having failed to explain the numerous discrepancies on the face of the Application and the Affidavit, I find the Application dated 25<sup>th</sup> February, 2019 and filed on 24<sup>th</sup> January, 2019 to be incompetent. The Application is struck out with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.**

**O.A. ANGOTE**

**JUDGE**