



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 42 OF 2018**

**KENNON MWITI MBAE (suing as the legal representative of the estate of  
SILAS JUDAH MBAE DECEASED).....PLAINTIFF/RESPONDENT**

**VERSUS**

**ZAVERIO KIAMBA MWAMBA.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, IMENTI**

**NORTH DISTRICT.....2<sup>ND</sup> DEFENDANT**

**THE SURVEYOR, IMENTI NORTH DISTRICT.....3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**Z.NYAMU ARIMI.....5<sup>TH</sup> DEFENDANT**

**FESTUS RIUNGU RIMBERIA.....INTENDED INTERESTED PARTY**

**RULING**

1. On 18.7.2019, Mr. Thangicia, counsel for the plaintiffs urged the court to give directions regarding the request for judgment made against 1<sup>st</sup> defendant. The said request was filed in this court on 18.7.2019. A perusal of the file indicates that service of the suit papers was effected upon 1<sup>st</sup> defendant way back on 2.11.2018 as per the affidavit of service filed in court on 8.11.2018.

2. Order 10 rule 6 of the Civil Procedure Rules provides that:

*“Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be”.*

While order 10 rule 4 provides that;

*“Where the plaint makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants for any sum not exceeding the liquidated demand”.*

3. The plaintiff herein has not made a claim for a liquidated demand, nor is the claim one for pecuniary damages. It is trite that the rules of procedure do not provide for entry of interlocutory judgment in land matters.

4. In the case of **Beatrice Wanjiru Kamuri vs John Kibira Muiruri (2016) eKLR, Munyao J**, stated that:

*“It will be seen from the above that the claim in our case, being a claim for land does not qualify for entry of interlocutory judgment, and as I have mentioned earlier, that was the reason why no interlocutory judgment was entered for the plaintiff when she applied for the same”.*

Also see **Peter Karanja Kamani vs Isaac Mwangi Kimani (2018) ekLR.**

6. Guided by the above holding, I decline to endorse the entry of judgment in default of appearance by 1<sup>st</sup> defendant. The plaintiff is required to formally prove his case in terms of the provisions of section 107 of the Evidence Act.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 27<sup>TH</sup> NOVEMBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Mutuma holding brief for Thangicia for plaintiffs  
Kiety for AG

Kiplagat for 2<sup>nd</sup> interested party

M/s Murithi holding brief for Kimathi K for 1<sup>st</sup> interested party

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**