

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC. CASE NO. 120 OF 2011.

MUNICIPAL COUNCIL OF BUNGOMA.....PLAINTIFF

VERSUS.

KENYA NATIONAL

TRADING CORPORATION & ANOTHER.....DEFENDANT

RULING.

[1]. The applicant filed this application under Order 10 rule 11 of the Civil Procedure Rules and Sec. 3A and 3B, Sec 1A of the Civil Procedure Act and article 159 and 48 of the Constitution of Kenya 2010. He prays that the Judgment entered herein on 7/11/2011 and all subsequential orders be set aside and that the defendant be given leave to defend the suit and the annexed defence be deemed as duly filed upon payment of requisite fees.

[2]. The applicant states that the Exparte Judgment obtained by the plaintiff against the defendant is irregular in that the defendant was not served with summons to enter appearance and with the pleadings in this matter and that the plaintiff concealed material facts from the court in that there was Bungoma High Court Civil Case No. 48 of 2007 filed by the defendant against the plaintiff herein over the same subject matter to wit Bungoma Municipality Plot 567 in which the defendant claimed to have acquired in 1981 and it prayed for a permanent injunction against the plaintiff herein from taking away the suit land. Further that there were consent orders in that suit to maintain status quo until the suit is heard and determined. It is contended by the applicant that in blatant disregard of the orders in Bungoma HCCC No. 48 of 2007, the plaintiff herein rushed to Bungoma High Court and filed Bungoma HCCC 48 of 2007 while Bungoma HCCC 48 of 2007 was subjudice. That those material facts were concealed from the Court. Finally that the respondent not having been served with the summons to enter appearance, it could not file its defence.

[3]. The respondent on realizing the entry of Judgment on 28/5/2012 one and a half years later filed this application to set aside the Judgment. The same was served on the respondents herein and a return of service filed in Court.

[4]. There is no opposition filed on the Notice of Motion. The counsel for the respondent prays that her notice of Motion dated 18th November, 2016 be allowed. The application is not opposed. I allow the same as prayed with costs to the applicants.

Judgment read In open Court.

Dated at Bungoma this 21st day of February, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistant

Mr. Tsimonjero for the Mr. Amani for the Defendant/Applicant

N/A for the Respondent