



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

E&L CASE NO. 131 OF 2017

LAWRENCE KOSKEI LOIBORKERA.....PLAINTIFF

VERSUS

DAUDI ABDULLAHI KUTU.....DEFENDANT

RULING

1. This matter proceeded ex parte on 1.11.2017 as defendant did not file any memorandum of appearance or statement of defence.
2. While the matter was pending for submissions, defendant through his advocate filed an application on 27.11.2017 seeking for the setting aside of the interlocutory judgment and the ex parte proceedings and that he be allowed to defend the suit.
3. Applicant avers that summons were served upon his home when he was away herding his cattle in the grazing area away from home. He avers that he will be greatly prejudiced if he is not allowed to defend the suit.
4. The application is opposed through the replying affidavit of the plaintiff.
5. The application was neither argued orally or by way of submissions. The court was simply requested to give a date for ruling.
6. I have perused the record and I find that applicant is not candid about the facts on issue of “service”. If he did not get to see the summons to enter appearance and plead on time, then what about the proceedings of 1.11.2017.
7. A return of service on record (dated 24.10.2017) indicates that applicant, was served with the hearing notice on 12.10.2017 at his shop where he was with his wife. He even signed at the back of the hearing notice. He has not commented on this piece of information.
8. I am inclined to believe that defendant was duly served with all the suit papers and the hearing notice.
9. Nevertheless, I have taken into account that this case is rather fresh and the delay in bringing forth the application has not been inordinate.
10. Further, it is always fair and just to ascertain that parties to a dispute get an opportunity to be heard before the court. Article 50 (1) of the constitution stipulates that:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

11. In the circumstances I allow the application on the following terms:

(i) The proceedings of 1.11.2017 are hereby set aside.

(ii) Applicant is hereby granted leave to file his defence, documents and statements of witnesses within 14 days from date of delivery of this ruling failure to which the application will stand as dismissed.

(iii) Applicant is condemned to pay costs of the present application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7th MARCH, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Kitheka for plaintiff/respondents

Lekana for defendant

Applicant absent

HON. LUCY. N. MBUGUA

ELC JUDGE