



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 128 OF 2012

JACOB MBWIRIA.....PLAINTIFF

VERSUS

MISHECK KANAKE REUBEN.....DEFENDANT

RULING

1. This ruling is in respect of the application dated 17.10.2017 whereby plaintiff /applicant is seeking orders to have judgment entered against the Hon. Attorney General who is the third party herein in default of entering an appearance and that costs of this application be provided for.

2. The grounds in support of this application are that on 30th July 2015, the court granted leave to the defendant to issue a third party notice to the Hon. Attorney General on behalf of the district Land Adjudication and settlement Officer, Igembe District to be enjoined as a party to this suit.

3. In his ruling dated 30th July 2015, the judge directed the defendant to serve the third party notice upon the Attorney General on behalf of the land Adjudication and settlement officer, Igembe District within 14 days. The Attorney General was to respond and put in apposite papers within 30 days after service of the Third Party Notice. Pursuant to the said orders of the court, on 6th August 2015 the third party was served with a copy of the court's ruling dated 30th July 2015 and the third party notice dated 30th July 2015 together with copies of the plaint and the statement of defence and counter claim.

4. The third party has however totally failed, refused, ignored and/or neglected to enter appearance in the suit and/or file its response to the defendant's claim against the third party despite several requests for indulgence extended by the court thus delaying the prosecution of the suit.

5. I have considered all the arguments raised herein. In particular, I have taken into account that the dispute at hand appears to be in the arena of adjudication process. This is clear from the pleadings. The applicable laws in the adjudication processes is primarily the **Land Consolidation Act** (cap 283) and the land adjudication act (cap 284). It is also noted that the DLASO is usually the custodian of the records in respect of adjudication. Shutting out the District Land Adjudication Officer at this stage can only worsen an already murky situation.

6. The preamble to the Land consolidation Act reads as follows;

“An Act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of, land in the special areas; for the

Registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas; and for purposes connected therewith and incidental thereto”, while the preamble of the land adjudication Act reads as follows:

“An Act of Parliament to provide for the ascertainment and recording of rights and interests in community land, and for purposes connected therewith and purposes incidental thereto”.

7. These two acts have detailed mechanisms of resolving disputes. The process of ascertainment of rights is concluded when Adjudication register is transmitted to the chief land registrar for issuance of title deeds. In the present case, it doesn't appear as if the process is complete.

8. The powers and functions of the DLASO and other quasi-Judicial bodies set up to oversee the completion of the adjudication process should not be overlooked by shutting them out before the trial.

9. Against this background it is far much better to set the suit down for hearing and all parties to be notified. That way all parties including

the attorney General will have an opportunity of shedding light in this intricate matter.

10. For the above reasons, I decline to allow the application of 17.10.2017. The same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Defendant present

HON. LUCY. N. MBUGUA

ELC JUDGE