



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 49 OF 2017**

**SITONIK LANGAT.....1<sup>ST</sup> PLAINTIFF**

**CHRISTOPHER KOSKEI KIPYEGON....2<sup>ND</sup> PLAINTIFF**

**-VERSUS-**

**RAEL BETT.....DEFENDANT**

**AND**

**CHEPKEMOI ENOLE TOMPO.....INTERESTED PARTY/APPLICANT**

**RULING**

The Applicant has by a Notice of Motion dated 17<sup>th</sup> December, 2017 sought for orders to set aside an ex parte judgement dated 12<sup>th</sup> February, 2009 and further order that the Applicant be allowed to file his defence. The Application was brought under order 51 Rule (1) order 1 Rule 1 of the Civil Procedure Act. The Applicant contends that the Plaintiff instituted a suit against a non-existent Defendant and obtained Judgment that was used to evict her from her land and further it shall be fair and just that the aforesaid judgment be set aside and fresh hearing ordered.

The Application was supported by the Affidavit of Chepkemoi Enole Tompo wherein she contends that she is the owner of the parcel of land known as Cis Mara/Ilmotiok/2443 having inherited the same from her late husband.

The Applicant in her supporting Affidavit stated that she was evicted from her aforesaid parcel of land pursuant to a judgment that was entered against the Defendant who according to her is fictitious. She is seeking to have the judgment set aside and be allowed to file a defence to the suit.

The Application was opposed by the Respondent who filed a Replying Affidavit where he contends that judgement in the matter was delivered in 2009 after the Defendant failed to defend the suit. The Respondent further states that his claim was in respect of parcel No. LR No. Cis Mara/Ilmotiok/3991 while the Applicant's claim is LR Cis Mara Ilmotiok/2443 and that the Applicant has failed to show proof that she is the registered owner of the suit land. The Respondent further states that the Applicant does not have locus standi to institute any claim in respect of the estate of her deceased husband as she has not obtained a letter of Administration.

I have read the Application before me and heard the submissions made by counsel and the issues for determination before me is whether the Applicant has capacity to commence the Application here and whether she has interest in the suit land and whether she demonstrated grounds for the court to exercise its discretion and set aside its judgment.

First and foremost judgment in the suit herein was entered in 2009. The Applicant had waited for a period of 9 years to come before court and pray for the court's intervention since execution of proceedings took place way back in 2013. From the conduct of the Applicant it is my finding that there was inordinate delay on the Applicant's part to seek for the court's intervention. Furthermore the Applicant has not even explained the cause of the delay and for this reason I hesitate to set aside the judgment.

Secondly the Applicant had by her own admission claimed that the suit land belonged to her deceased husband she has not attached to her application any proof by way of certificate of search or title to proof her claim and in any event she has not demonstrated that she has the requisite locus standi to seek for the court's intervention as no proof has been demonstrated that she has obtained grant of representation to the estate of her deceased husband.

In view of the foregoing I find that the Application is not merited to enable the court exercise its discretion and the same is dismissed.

Each party to bear its costs of application.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 17<sup>th</sup> day of July, 2018**

**Mohammed Noor Kullow**

**Judge**

**17/7/18**

In the presence of:-

N/A for parties and advocates

CA:Chuma

**Mohammed Noor Kullow**

**Judge**

**17/7/18**