

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 11 OF 2017(JR)

MUSYOKA WAMBUA KASUPHA.....APPLICANT

VERSUS

THE MINISTER OF LANDS THROUGH THE MINISTER OF

INTERIOR AND COORDINATION OF NATIONAL.....RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 31st May, 2018 by the Interested Party, Johnson Kituu Kajambo. The application seeks two principal orders, namely, that there be stay/arrest of the ruling in the main motion herein and the proceedings be re-opened to allow the applicant file his response to the said motion.

2. The grounds upon which the application is premised are on the face of the application and in the facts set out in the affidavit of the applicant sworn on 31st May 2018. The applicant is the interested party herein and has deponed that he failed to file his response to the case because he was unwell, and the matter proceeded without his input.

3. The application is opposed. There is a replying affidavit sworn by Musyoka Wambua Kasupha, the ex-parte applicant on 19th September, 2018. There are also grounds of opposition dated 25th July, 2018. The respondent pleads that the application is incompetent and an abuse of the court process.

4. I have considered the application, the affidavits on record and the oral submissions by counsel. Where an ex-parte judgment is entered against a party who has failed to appear within the stipulated period, there are provisions in the relevant law providing for the filing of applications to set aside the interlocutory judgment and to expand time for filing response. This is the route the applicant ought to have taken in the matter. He did not avail himself of the opportunity.

5. As it is, the approach to this court by the applicant to stay delivery of judgment was unprocedural. He could have waited for the judgment to be determined and move thereafter to have it set aside and for leave to file his replies to the motion. No ruling or judgment had been rendered.

6. I am not satisfied that the orders sought in the application are for granting.

7. Accordingly, I find that the application is incompetent. Consequently I do hereby dismiss the application.

It is so ordered.

DATED, DELIVERED and SIGNED at MOMBASA this 18TH day of October, 2018

C. YANO

JUDGE