



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 146 OF 2013

SAMMY KIBET CHESONGOL.....PLAINTIFF

VERSUS

JACOB AGENGO ANZIGALE *alias*

MANASE AGENG'O ANZIGALE.....DEFENDANT

RULING

1. In the application dated 3/9/2018 the defendant seeks the seeking the following orders:-

(a) There be a stay of execution of the final judgment herein delivered on 21st November 2017 and all consequential orders pending the hearing and determination of this application inter partes;

(b) This honourable court be pleased to set aside the final judgment delivered on 21st November 2017 and all consequential orders and the defendant herein be granted leave to file his defence out of time.

(c) Costs of this application.

2. The application is premised on the grounds that the ex-parte judgment is irregular, that the application was lodged within reasonable time after notice of the suit; that failure of the defendant to enter appearance is not a deliberate effort to obstruct justice; that the defendant has a reasonable defence raising triable issues; that conditions set by the court can be abided by and that it is in the interest of justice that the judgment be set aside.

3. The application is supported by the sworn affidavit of the defendant dated 30/9/18. In that document it is deposed the defendant only came to know of these proceedings on 30/7/18 when he was served with a Notice to Show Cause. He denies that the signature at the back of the summons to enter appearance is his; that the affidavit of service in the record is undated and liable to be expunged; that he knows that the process server is deceased; that despite constant communication between the defendant and his daughter on the one hand and the plaintiff on the other the latter has never mentioned this suit; that there has never been a dispute on the purported cause of action or the validity of the agreement dated 27/2/2010.

4. The plaintiff filed his sworn replying affidavit on 22/10/18. He stated that no good reasons have been given for the proposed setting aside of the judgement; that the plaintiff was served; that the defendant was served with a notice of taxation on 6/4/18 and the allegation that he never knew of the suit till 30/7/18 is false; that the suit was filed almost two years after the payment of the full purchase price and the refusal to transfer the land to the plaintiff and that the applicant has no good defence; that the defendant has admitted payment of the purchase price and putting the plaintiff into possession and that the application is meant to deny the plaintiff the fruits of his judgment and that litigation must come to an end.

5. At a mention on 22/10/2018 this court ordered that the application be heard by way of written submissions and that the applicant do file and serve his written submissions within 7 days. That mention date had been taken by the parties by consent on 8/10/18 specifically for the purpose of giving directions as to hearing of the application. The directions having been given and the defendant having failed to comply therewith, the application dated 3rd September 2018 is hereby dismissed for want of prosecution.

6. The defendant shall meet the costs of the application.

Dated, signed and delivered at Kitale on this 15th day of November, 2018.

MWANGI NJOROGE

JUDGE

15/11/2018

Coram

Before - Hon. Mwangi Njoroge Judge

Court Assistant: Picoty

N/A for the parties

Mr. Teti holding brief for Waweru for respondent

N/A for applicant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

15/11/2018