



**REPUBLIC OF KENYA**

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

**ELC NO. 35 OF 2017**

**SNC.....PLAINTIFF**

**VERSUS**

**MKC.....DEFENDANT**

**RULING**

This ruling is in respect of an application dated 19<sup>th</sup> June 2018 brought by way of notice of motion by the defendant/applicant seeking for the following orders:

- a) Spent
- b) That the Honourable court be pleased to review, set aside, modify and or vary the order made on 14<sup>th</sup> January 2017 pending hearing and determination of this application inter partes .
- c) That the Honourable court be pleased to review, set aside, modify and or vary order made on the 14<sup>th</sup> February 2017 and all consequential orders following therefrom pending the hearing and determination of the main suit.
- d) That the defendant/applicant be allowed to file his defence out of prescribed time.
- e) That costs of this application be provided for.

The defendant's application is based on the grounds that they were never served with the pleadings and the application.

Counsel for the defendant applicant submitted that the jurisprudence in respect of disputed service is that the process server should always be called for the purposes of cross-examination by the party disputing service.

Counsel for the plaintiff opposed the application and submitted that the defendant was properly served as he was personally served.

**Analysis and determination**

I have considered the application and submissions of both Counsel and find that an order of maintenance of status quo would be necessary to preserve the substratum of the case pending the hearing and determination of this suit. The status quo is that the plaintiff to continue utilizing the suit property pending the hearing and determination of the suit.

The defendant is granted leave to file a defence within 7 days from the date of this ruling. I notice that this is a case involving a husband and wife, I suggest that they should try mediation to sort out their differences amicably since they are neither separated nor divorced.

**Dated and delivered at Eldoret this 13<sup>th</sup> day of December, 2018**

**M. A ODENY**

**JUDGE**

Ruling read in open court in the presence of Miss Kipsei and in the absence of the defendant's counsel.

Mr. Koech: Court Assistant.