



**REPUBLIC OF KENYA**

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

**E.L.C. 252 OF 2011**

**PHYLLIS MUSOI LEPAPA .....PLAINTIFF/RESPONDENT**

**VERSUS**

**ABDIRHAMAN MUSA SAID.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**OLKEJUADO COUNTY COUNCIL .....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING:**

1. The Application before me is the one dated 23<sup>rd</sup> June, 2016 in which the 1<sup>st</sup> Defendant is seeking for the following orders:-

**1. That this Honourable Court be pleased to set aside the Order of the Court (Hon Justice B. Thurania Jaden) given on 29<sup>th</sup> September, 2014 and issued on 3<sup>rd</sup> December 2015, which restrains the Applicant herein from erecting or constructing any structure or depositing and offloading any construction materials or entering or remaining on its parcel of land Plot No.1313 alleged to be a Plot No.1279 until the suit herein is heard and determined.**

**2. That during the hearing of the Application herein, this Honourable Court be pleased to order the attendance for cross – examination of Michael Ndirangu, the deponent of the affidavits dated 28<sup>th</sup> September, 2011, 22<sup>nd</sup> May, 2012 and 30<sup>th</sup> July, 2013, on the contents thereof.**

**3. That the costs of this Application be awarded to the 1<sup>st</sup> Defendant/Applicant.**

2. The Application is based on the grounds that the Applicant has never been served with the Summons to enter Appearance, the Complaint and the Application dated 21<sup>st</sup> September, 2011; that the Applicant does not and has never resided in Ongata Rongai and that the Applicant has always resided in the Eastleigh area within Nairobi.

3. According to the Applicant, he only received the order of the Court on 29<sup>th</sup> September, 2014 when he started depositing construction materials on the suit property.

4. It is the Applicant's case that due to the dishonest conduct of the Respondent, he was out rightly and unfairly denied a chance to be heard on the Plaintiffs Application.

5. The Plaintiff did not file a Replying Affidavit or grounds of opposition. In the circumstances, the depositions by the 1<sup>st</sup> Defendant have not been rebutted.

6. Having not rebutted the 1<sup>st</sup> Defendants averments, it follows that indeed the 1<sup>st</sup> Defendant was not served with the Application dated 21<sup>st</sup> September, 2011.

7. It is trite that where a party is not served with a pleading which requires him to respond, any order or decree emanating from such a pleading should be set aside ex debito justitiae.

8. Having not denied the Applicant's depositions, I shall, which I hereby do allow the 1<sup>st</sup> Applicant's Application dated 23<sup>rd</sup> June, 2016 in terms of prayer numbers 1 and 3.

Dated, signed and delivered in MACHAKOS this 27<sup>TH</sup> day of **JANUARY 2017**.

**O. A. ANGOTE**

**JUDGE**