



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 76 OF 2015

BENJAMIN MUTUKU MUTWAPLAINTIFF

VERSUS

BERNARD MAITHA NTHENGE1ST DEFENDANT

FRANCIS MUISYO MAITHA2ND DEFENDANT

RULING

1. In the Application dated 28th July, 2016, the 2nd Defendant is seeking for the following orders:

a. That this Honourable Court be pleased to grant the 2nd Defendant/Applicant leave to file Defence out of time.

b. That the draft statement of Defence annexed hereto be deemed as duly filed and served upon payment of the requisite fees.

c. That the costs of this Application be in the cause.

2. The Application is based on the grounds that the 2nd Defendant entered appearance on 8th April, 2015; that the 2nd Defendant's advocate inadvertently omitted to file the Defence in time and that the 2nd Defendant has a good Defence.

3. In response, the Plaintiff deponed that he does not understand why the 2nd Defendant, who is the son of the 1st Defendant, still insists he owns the suit land.

4. The advocates filed brief submissions and authorities which I have considered.

5. The record shows that after being served with Summons to Enter Appearance, the 2nd Defendant, through his advocate, entered appearance on 8th April, 2015.

6. However, it has been deponed that a Defence was not filed due to the Defendants' advocate's inadvertent mistake.

7. I have gone through the file and I have noted that since the matter was filed, the Plaintiff has never fixed it for pre-trial directions or for hearing.

8. Indeed, the matter has never proceeded for hearing. In the circumstances, I do not see the prejudice that

the Plaintiff will suffer if the 2nd Defendant is allowed to file the proposed Defence out of time.

9. Consequently, I allow the 2nd Defendant's Application dated 28th July, 2016 in the following terms:

a. The 2nd Defendant be and is hereby allowed to file and serve his Defence within fourteen (14) days from the date of this Ruling.

b. Each party to bear his own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE