



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 11 OF 2014**

JOEL KIRAGU KARIGI .....1<sup>ST</sup> PLAINTIFF

BERNARD KARIMI GACHARIA.....2<sup>ND</sup> PLAINTIFF

JOSEPH NGACHA KARIGI.....3<sup>RD</sup> PLAINTIFF

VERSUS

ESTHER NJIRAINI .....1<sup>ST</sup> DEFENDANT

FELISTER WANJIKU .....2<sup>ND</sup> DEFENDANT

MURIA-IGIRI NDUIGA .....3<sup>RD</sup> DEFENDANT

MUNGUTI NJAU KARAGA.....4<sup>TH</sup> DEFENDANT

JOHN CHARIBU .....5<sup>TH</sup> DEFENDANT

JUDY KAGIO .....6<sup>TH</sup> DEFENDANT

LILIAN NYAGUTHII.....7<sup>TH</sup> DEFENDANT

MITHAMO GATERU .....8<sup>TH</sup> DEFENDANT

ANN WAMBUI .....9<sup>TH</sup> DEFENDANT

GICIMU KANJI .....;10<sup>TH</sup> DEFENDANT

**RULING**

The parties herein are acting in person and there is usually considerable difficulties in handling matters where parties have no legal representation. The Court must nonetheless try and serve justice to the parties notwithstanding such challenges.

On 27th October 2015, I delivered a judgment in favour of the plaintiffs and ordered that the defendants do remove the structures put on the road leading to the plaintiffs properties within (60) sixty days or else be evicted therefrom. That judgment was obtained ex-parte as the defendants though served by a process server by the name **FRANCIS KUNGA MUGI CPS No. 002024** neither entered appearance nor filed

any defence.

I now have two applications pending my determination. The first application is by the defendants dated 22nd December 2015 and it seeks the main prayer that this Court's judgment dated 27th October 2015 be set aside together with the Decree and consequential orders. That application is supported by the affidavit of **FELISTER WANJIKU** sworn on behalf of the other defendants and the gist of their complaint is that they were never served with the plaint and summons herein and that the judgment was obtained stealthily, irregular and unlawfully. Although the application purports to have been drawn by an advocate called Francis Kinyanjui, it is clear to me that this must be among the several con-men masquerading as advocates in this region.

Then there is the plaintiffs' Notice of Motion dated 31st March 2017 seeking to dismiss the defendants' application dated 22nd December 2015 for want of prosecution. It is their case that the defendants' application filed more than one year ago has not been prosecuted.

In response to that application, the defendants have filed a replying affidavit in which they state that they have been waiting to be informed about the out-come of that application by their advocate who has since relocated to another place and therefore they have now decided to act in person. They add further that the plaintiffs have not responded to that application and should therefore be construed as not opposing it.

It is clear to me that the person describing himself as Francis Kinyanjui advocate cannot be an advocate and must have misled the defendants. It is also clear that the plaintiffs have not filed any response to the defendants' application seeking to have the judgment dated 27th October 2015 set aside. As stated earlier, the parties are all in person and obviously have challenges in articulating their grievances. For now, I have before me a judgment obtained against the defendants allegedly after they failed to enter appearance having been served. In the interest of justice, I find it prudent to first determine if indeed the defendants were duly served as per the affidavit of service filed herein by **FRANCIS KUNGA MUGI** on 2nd October 2015. I would like to confirm that indeed there was such service before I make further orders with respect to the defendants' application dated 22nd December 2015 which must be canvassed first.

Accordingly, I make the following orders:

- 1. The process server namely FRANCIS KUNGA MUGI of P.O. BOX 28 KERUGOYA CPS No. 002024 be summoned to appear here on 13th July 2017 to confirm if indeed he served the defendants herein.***
- 2. Thereafter, this Court will consider the defendants' application dated 22nd December 2015 and make a ruling thereon.***

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> JUNE, 2017**

**Ruling delivered, dated and signed in open Court this 16<sup>th</sup> day of June 2017**

1<sup>st</sup> Plaintiff – present

2<sup>nd</sup> Plaintiff – present

3<sup>rd</sup> Plaintiff – deceased

2<sup>nd</sup> Defendant – present

5<sup>th</sup> Defendant – present

6<sup>th</sup> Defendant – present.

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> JUNE, 2017**