



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC NO. 132 OF 2017

(Formerly Kisii Elc case no. 327 of 2015)

CHARLES ONYANGO MENYA.....PLAINTIFF

VERSUS

KENYA FOREST SERVICE.....DEFENDANT

RULING

1. A Notice of Motion dated 6/6/2017 is brought under Order 36 Rules 2,4 and 7 of the Civil Procedure Rules 2010 and Section 1A, 1B and 3A of the Civil Procedure Act Cap 21 laws of Kenya. It seeks orders;-

a. THAT this Honourable court be pleased to grant leave to the Defendant to file the defence to the plaint dated 2nd December 2015.

b. THAT the costs of this application.

2. The application is supported by attached documents “LYI” and an affidavit sworn by Laure Yego Advocate based on three (3) grounds namely:-

a. THAT the defendant entered an appearance on 18th January 2016 and later instructed firm of Nyamweya Mamboleo Advocate to enter an appearance on its behalf which was not done (Annexed hereto and marked as LY-1 is a copy of the memorandum of appearance dated 18th January 2017 and filed on 21st January 2017);

b. THAT the matter is coming up for mention on 17th July 017 to confirm compliance with Order 11 ; and

c. THAT the parties herein will not suffer any prejudice if this application is allowed.

3. The Applicant/Plaintiff is represented by P.Ochwangi instructed by Oguttu Mboya and Co. Advocates. The Respondents/Defendant are represented by Ms. Opiyo instructed by Omulele and Tollo Advocates.

4. I have studied the Notice of Motion and heard both counsel herein. They have agreed to compromise the Notice of Motion in the interest of justice as governed under **Article 159 (2) (a) (b) and (d) 2010**. I am also aware of **Order 7 Rule 1 Civil Procedure Rule, 2010** in respect of defence.

5. Therefore Notice of Motion is compromised in the terms that :-

a. The defendant granted 30 days from the date hereof to file and serve the defence on the plaintiff counsel.

b. The plaintiff s counsel to file and serve a reply, if any, within 30 days from the date thereof.

c. Mention for pre-trial directions on 27/9/2017.

DELIVERED, SIGNED and DATED in open court at MIGORI this **17th** day of July 2017.

G.M.A. ONGONDO

JUDGE

In the presence of :-

Mr. Onchwangi for the Plaintiff/Applicant

Ms. Opiyo for Defendant/Respondent

Tom – Court Assistant