

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 704 OF 2013

IDDI SHABAAN ONIALE.....PLAINTIFF

VERSUS

DAVID KIMANI CHEGE.....DEFENDANT

RULING

I heard the Plaintiff's Notice of Motion application dated 25th March, 2016 on 4th April, 2017 and deferred the ruling to 3rd November, 2017. The application was heard in the absence of the Defendant. The Plaintiff's advocate Mr. Abdulhakim informed the court that he had served the application upon the Defendant's advocates on record and that the said advocates had not opposed the application.

When perusing the file for the purposes of preparing the ruling, I noted that the advocates on record for the Defendant who filed a notice of appointment of advocates and a statement of defence on behalf of the Defendant is Wamuyu Omungala & Company Advocates. I have noted from the application dated 25th March, 2016 that the said application was served upon the firm of Wairegi Gatetua & Associates Advocates on 17th May, 2016. The affidavit of service sworn by Hendricus Odongo on 23rd March, 2017 on the basis of which I was persuaded to hear the said application in the absence of the Defendant also shows that a hearing notice for the said application was served upon the firm of Wairegi Gatetua & Associates on 23rd February, 2017. There is evidence on record that the Defendant changed his advocates from Wamuyu Omung'ala & Company Advocates to Wairegi Gatetua & Associates Advocates.

For the foregoing reasons, I have concluded that the Defendant was not served with the application dated 25th March, 2016 and as such the proceedings which took place before the court on 4th April, 2017 in the absence of the Defendant were irregular. In exercise of this courts inherent power under section 3A of the Civil Procedure Act, I hereby set aside the proceedings of 4th April, 2017 and direct that the application dated 25th March 2016 be served upon the Defendants' advocates on record for hearing afresh on a date to be fixed by the court.

Delivered and signed at Nairobi this 3rd November, 2017

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

No appearance for the Plaintiff

Ms. Waweru for the Defendant

Kajuju Court Assistant