



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 95 OF 2008**

**MICHAEL KITIYO .....PLAINTIFF**

**VERSUS**

**LUCIA NJOKI ..... DEFENDANT**

**RULING**

1. The **Applicant Michael Kitiyo** is the registered owner of **LR No Kitale Municipality Block 3/975 and Kitale Municipality Block 3/976 (suitlands)**. The Applicant filed a Notice of Motion dated 10/2/2009 in which he seeks orders that the defence filed herein by the Defendant be struck out and that Summary Judgement be entered against the Defendant as prayed for in the Plaintiff.
2. The Defendant's Advocate was duly served with the Notice of Motion on 2/3/2009 but no grounds of opposition or replying affidavit was filed. This case remained dormant until January 2016 when the court issued Notice to parties to show cause why it should not be dismissed for want of prosecution. When the matter came up on 2/2/2016, the Plaintiff's advocate was able to explain the reason why the case had delayed. The court having been convinced with the reason for delay ordered that the current application be fixed for hearing and Hearing Notice be served.
3. Hearing Notice was served upon the Respondent in person as it was said that her Advocate George Wambura no longer practices as he has never taken out a practising certificate for sometime. The hearing of this application therefore proceeded ex-parte.
4. The Applicant contends that he is the registered owner of the suitlands. He annexed copies of Certificates of Lease and searches which show that he is the registered owner of the suitlands. He states in his affidavit that he operates a school on the suitlands and that the Respondent and her children are squatting on part of the suitlands. He contends that the Respondent has no interest on the suitlands and that her defence should be struck out and Judgement be entered against her as prayed for in the plaintiff.
5. I have given due consideration to the Applicant's application. Though the same was not opposed, I have looked at the defence on record. The defence raises certain issues which should be canvassed at the trial. The defence raises the issue of double allocation of the suitland. It also raises the issue of illegular acquisition of title.
6. Summary Judgement should only be given in the clearest of cases. It cannot be granted if there is a triable issue which is shown to exist. The affidavit of service shows that the Respondent received a Hearing Notice but indicated that she did not know how to read and that she was going to consult her lawyer. The lawyer she was referring to is the lawyer who received the application for summary Judgement but never filed any response. It is said that he no longer practices. The Respondent has triable issues only that she was let down by her lawyer.
7. This is a land matter and in as far as possible parties should be given an opportunity to be heard. I therefore find that the application for summary Judgement cannot be allowed in the circumstances. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 18th day of April 2016.

**E. OBAGA**

**JUDGE**

In the presence of M/s Mufutu for Mr Kiarie for Plaintiff.

Court Assistant: Isabellah

**E. OBAGA**

**JUDGE**

**18/4/16**