



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L CASE NO. 367 OF 2015**

**JOSEPH YATOR CHEPYEGON.....PLAINTIFF**

**VERSUS**

**THE COUNTY GOVERNMENT OF BARINGO.....1ST DEFENDANT**

**LOYSONS INVESTMENTS LIMITED.....2ND DEFENDANT**

**RULING**

The 1st defendant has come to court by Notice of Motion dated 24.5.2016 for orders that this honorable be pleased to review vary or set aside orders made on 20th May 2016. The application is based on grounds that there is an error apparent on the face of the record. That the Honourable court erroneously issued summons to Stella Kereto, Daudi Aengwo and Daniel Chepchieng to attend court for cross examination despite not being parties to this suit and neither have they deponed to any affidavits in these proceedings and that there is no legal basis for the plaintiff/respondent to cross examine third parties who have not tendered any evidence before the Honourable Court. That the persons named have not been cited by the plaintiff/respondent in his application for contempt dated 28th April, 2016. That the respondent is only out to embarrass the officials of the applicant.

The application is based on the supporting Affidavit of Patrick Kiprono Kibii who states that on 20th May 2016, this matter was scheduled for hearing for the plaintiff/respondent's application dated 28th April, 2016 and that counsel holding his brief, M/s Kiboi applied for summons for attendance for two process servers Jackson Cheburet and Patrick Ongeru for cross examination on their affidavits of service sworn on 19th October, 2015 and 11th December, 2015 upon duly issuing notice of cross examination of the aforementioned deponents since defendant/applicant denied service of summons, plaint and order. That counsel for the plaintiff/respondent misled this Honourable court that Stella Kereto, Daudi Aengwo and Daniel Chepchieng had sworn and filed affidavits before the Honourable court when the same is false and that the said persons Stella Kereto, Daudi Aengwo and Daniel Chepchieng are neither parties to this suit nor have they deponed to any affidavit to warrant their attendance before the Honourable Court. That there is no legal basis for issuance of the aforesaid summons for attendance.

I have considered the application and rival submissions of counsel and do find that on the 20.5.2016, this court issued an order that the sub County Administrator, Baringo North Daudi Aengwo and the County Secretary Stella Kereto and the area Chief Daniel Chepchieng to attend court in the hearing date for cross-examination. The court notes that the three persons are not cited for contempt and have not deponed any affidavit and therefore, there is no basis for their cross examination or attendance of court.

***Under Order 19 rule 2(1) of the Civil Procedure rules 2010*** this court is given a wide discretion to order attendance of a deponent for cross-examination on the application of either party. In my view, such an application must be made in good faith and not on the spar of the moment or just because the other side has successfully done so. In the dispute before this court, I am convinced the applicants, thus the 1st defendant have demonstrated that the persons sought to be cross-examined have not deposed any affidavits and therefore cannot be cross examined.

The upshot of the above is that the summons issued herein to Stella Kereto, Daudi Aengwo and Daniel Chepchieng were made in error and are hereby set aside. There will be no orders as to costs. Orders

accordingly.

**DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF MAY, 2016.**

**ANTONY OMBWAYO**

**JUDGE**