



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 36 OF 2014

EBEI KORODI CLOPRITA..... PLAINTIFF

VERSUS

MARGARET NALIKA 1ST DEFENDANT

BONFACE MATERE..... 2ND DEFENDANT

BABU NDUNGU 3RD DEFENDANT

R U L I N G

1. The applicant filed a Notice of Motion **23/2/2016** seeking to set aside an eviction order issued against her on **21/1/2016**. Though the application is expressed to be brought under **Section 6 and 12 of the Landlord & Tenant (Shops, Hotels and Catering Establishments) Act Cap 301**, there is no relationship of landlord and tenant between the applicant and the respondent. The applicant is appearing in person and she does not seem to understand the law under which she should have moved the court. However be that as it may, failure to cite the proper provisions under which an application is brought is not fatal to the application.
2. The applicant's contention is understood, though not explicitly communicated. The applicant is simply contending that she was not served with a hearing notice. The hearing of this case proceeded ex-parte. A judgment in favour of the plaintiff was delivered on **29/7/2015**. The respondent has obtained an eviction order against the respondent. It is this eviction order which she seeks to set aside.
3. The applicant's application is opposed by the respondent through replying affidavit sworn on 4/4/2016. The respondent contends that the applicant was duly served with a hearing notice and that it will be a waste of judicial time to allow the application as the applicant has not prayed for setting aside the proceedings, judgment and decree. That the applicant is out to deny him the fruits of his judgment.
4. I have gone through the applicant's application, the response thereto by the respondent as well as the pleadings in this case. Though the applicant has not expressly stated that she is applying for setting aside the proceedings herein, it is clear from the supporting affidavit that she wants to be given a chance to be heard. This cannot happen unless proceedings are set aside. The only issue for determination in this matter is whether the applicant was served with a hearing notice.
5. The applicant had entered appearance and filed defence to the respondent's claim on 17/3/2014. In all her pleadings, she has thumb-printed on the same. A look at the hearing notice which is purported to have been served upon her shows that she signed at the back of the hearing notice. It

is doubtful that a person who does not know how to sign and only appends her thumb-print can be said to have signed a document as the process server purports. Even when the applicant took a date for her application at the registry on 25/2/2016, she appended her thumb-print. I therefore find that the applicant was not served with a hearing notice as claimed by the process server.

6. A look at the defence filed and the documents filed in this file show that she has a good defence with triable issues. I therefore find that this is a proper case where the applicant has to be afforded opportunity to be heard. This can only be possible by setting aside the ex-parte judgment with all the consequential orders thereon. I therefore proceed to set aside the ex-parte judgment of **29/7/2015** with all the consequential orders thereon.

It is so ordered.

Dated, signed and delivered at Kitale on this **7th** day of **June, 2016**.

E. OBAGA

JUDGE

In the presence of Mr. Ingosi for Plaintiff and Mr. Murgor for Mr. Waweru for the 1st Defendant/Applicant.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

7/6/2016