



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
IN THE ENVIRONMENTAL AND LAND COURT AT MERU

LAND CASE NO 255 OF 2015

JOSPHAT KIRIGIA M'ITURA.....PLAINTIFF

VERSUS

MOHAMED ABDI MUTHEE.....DEFENDANT

R U L I N G

[1] In his application dated 17th November, 2014, the Defendant Mohammed Muthee, seeks the following orders:-

- (1) That this application be certified urgent.***
- (2) That this Honourable Court be pleased to set aside the proceedings and Order/Ruling of 05/03/2014 give the applicant chance to be heard.***
- (3) That the applicant be allowed to file his defence out of time.***
- (4) That costs of this application be in cause.***

[2] This application is supported by the Affidavit of the Defendant and has the following grounds:-

- (a) The defendant had never been served with application dated 24th September, 2013.***
- (b) That the Defendant learn of this current suit through a friend.***
- (c) That in order to accord the Honourable Court an opportunity to properly and effectually adjudicate on the dispute before it, it is absolutely necessary to give the defence a chance to be heard.***
- (d) That the plaintiff will not suffer any prejudice.***

[3] The parties filed Written Submissions.

[4] The Defendant applicant says that he was not served with the documents which culminated in this Courts ruling on 5th March, 2015 which allowed the Plaintiff's application dated 24th September, 2013. That application sought orders:-

(a) THAT the Honourable Court be pleased to certify this application as urgent and dispense with its service in the first instance.

(b) THAT the honourable Court be pleased to issue an order of inhibition to inhibit any dealing with parcel 1043/ANTUBETWE/KIONGO ADJ.SECTION until this application is heard interpartes.

(c) THAT that the Honourable Court be pleased to restrain the Defendant from interfering with the peaceful occupation of parcel No. 1043/ANTUBETWE/KIONGO ADJ. SECTION.

(d) THAT the Honourable Court be pleased to confirm prayer B and C above until this suit is heard and determined.

(e) THAT the Defendant do bear the costs of this application.

[5] I found in the ruling dated 05/03/2014 that the Defendant had been properly served but had failed to come to Court.

[6] The Defendant claims that he only came to learn about the proceedings through a friend who was in Court during the hearing date. I opine that the presence of the Defendant's friend in Court on the date the challenged application had been slated for hearing is veritably fortuitous.

[7] The Plaintiff opposes the application and says that there is an Affidavit of service showing that the Plaintiff had been served with all the pleadings apposite to the Plaintiff's application dated 24/09/2013. The Plaintiff's Advocate opines that the Defendant was only woken from his slumber by the Orders of the Court granted through the Court's Ruling dated 05/03/2014. He submits that equity aids the vigilant and not the indolent. He also says that the Defendant is dishonest by deponing that he was in possession of the suit land when knowing that it was the Plaintiff who was in occupation. He requested the Court to visit the locus in quo to confirm that the Defendant did not have a house on the suit land.

[8] On 05/09/2016, the Defendant did indeed tell the Court that he did not have a house on the suitland and that he did not live on the Suitland. It is pellucid that he had sworn falsely and had sought to mislead the Court.

[9] I find that the Defendant has not satisfied this Court that it should set aside the proceedings and its ruling of 5/3/2014. I find that the Defendant had been properly served. Also in view of the fact that one of the orders granted on 5/3/2014 was an order for inhibition, I find that the subject matter in the main suit is properly protected.

[10] This application is dismissed.

[11] Costs shall be in the cause.

DELIVERED IN OPEN COURT AT MERU THIS 14TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-

CC: Daniel/Lilian

Ken Muriuki h/b Kaimenyi for Plaintiff/Respondent

Mohamed Abdi Muthee-Defendant

P.M. NJOROGE

JUDGE