



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 25 OF 2012

FATUMA ABDALLA AHMED.....PLAINTIFF/RESPONDENT

VERSUS

KAHIRO KIMANI.....DEFENDANT/APPLICANT

R U L I N G

Introduction:

1. This matter proceeded for hearing on 25th November 2014 in the absence of the Defendant. The Defendant has now filed an Application dated 28th November 2014 seeking for the following orders.
 - (a) **That the Honourable court be pleased to review, vary and/or set aside the orders of 25th November 2014.**
 - (b) **That costs of this Application be provided for.**
2. To support his Application, the Defendant has deponed that he has had a long standing ailment that has been recurring and was advised by his doctor in Nairobi to be on bed rest. Consequently, he could not attend court on 25th November 2014 because of the said ailment. The Defendant has further deponed that the Application to have this matter adjourned on the ground that he was unwell was disallowed by this court and yet he was indisposed.
3. In her response, the Plaintiff/Respondent has deponed that the Defendant was represented by an advocate on 25th November 2014 who applied for an adjournment which was rejected by the court; that when the matter which had been slated for hearing at 10:00 am, was called, neither the Defendant nor his advocate appeared and this matter proceeded and that this was not the first time the Defendant has failed to attend court.
4. The parties' advocates filed brief submissions which I have considered. I have also considered the filed authorities.
5. The Defendant is seeking to review and or set aside the orders of this court that were made on 25th November 2014 on the ground that he was indisposed when the matter came up for hearing.
6. The record shows that when this matter came up for hearing on 25th November 2014, the Defendant was represented by Mr. Gicharu Advocate. Mr. Gicharu was holding brief for Mr. Njenga, the Defendant's Advocate.
7. The Defendant's counsel informed the court on that day that the Defendant had been advised by his doctor to take a bed rest for three weeks. Counsel sought for an adjournment of the matter on

- that ground.
8. The Plaintiff's advocate opposed the Application for adjournment on the ground that the Defendant never attended court on 3rd November 2014 when the matter was slated for hearing.
 9. In my Ruling, I stated as follows:

“No good reason has been given as to why the Defendant's advocate cannot proceed with the Plaintiff's case if the Defendant is sick. The conditions that the Defendant is said to be suffering from cannot prevent him from attending court. The application for adjournment is disallowed.”

10. The court then slated the matter for hearing at 10:30 am. However, the Defendant's advocate was not in court at that hour and the court proceeded with the Plaintiff's case.
11. The same reason that the Defendant's advocate advanced to have the matter adjourned on 25th November 2014 is the one being advanced in the current Application.
12. I am not convinced that there is sufficient reason before me to warrant the review or setting aside of my orders of 25th November 2014. In any event, the Plaintiff's case proceeded and what is remaining is the delivery of Judgment. The Defendant may, if he wishes, file his submissions before the delivery of the Judgment.
13. In the circumstances, I dismiss the Application dated 28th November 2014 with costs.

Dated and delivered in Malindi this 5th day of **June**, 2015.

O. A. Angote

Judge