

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 120 OF 2013

APOLO AMBUTSI SHIKANGA.....PLAINTIFF/RESPONDENT

VERSUS

JOMO GODWIN KORORIA.....DEFENDANT/APPLICANT

RULING

1. An application was brought on behalf of the defendant seeking enlargement of time for filing of defence in this case by 14 days. The application is supported by the affidavit of Aggrey Lucas Kidiavai an advocate of the High Court of Kenya.
2. The defendant had entered appearance in person on 28/10/2013. The case was listed for formal proof on 17/9/2014 as the defendant had not filed a defence. On the day of hearing, the defendant instructed the Firm of Kidiavai & Co. Advocates who filed notice of appointment and applied for adjournment. The case was adjourned to 11/12/2014. When the matter came up for hearing on 11/12/2014, the defendant applied for adjournment on the ground that he had not filed a defence. The adjournment was granted and the defendant was given 14 days within which to file defence. The plaintiff was given liberty to proceed with the case if defence would not have been filed. The defendant did not file the defence within the time given. The plaintiff fixed the case for formal proof.
3. The case was fixed for formal proof on 30/6/2015 but the defendant who had been served with a hearing notice filed an application seeking enlargement of time. It is contended on behalf of the defendant that Mr. Teti who was appearing for the defendant on 11/12/2014 left employment in the Firm of Kidiavai & Co. Advocates without informing the firm that a defence had not been filed as ordered by the court on 11/12/2014. It is contended that the firm of Kidiavai realized that a defence had not been filed in this matter when they were served with a hearing notice for formal proof scheduled for 30/6/2015. It is argued that the defendant has a good defence with triable issues and should be allowed to be heard.
4. The application is opposed by the plaintiff/respondent through replying affidavit sworn on 2/6/2015. The respondent contends that the defendant was personally in court when he was given 14 days to file defence and that his application has been brought merely for purposes of delaying the conclusion of this case. The respondent further contends that he is the registered owner of the suit land and that there is no person who could pass title to any other person and that it will be an exercise in futility for the court to allow the defendant to file defence.
5. This is an application seeking the court to exercise its discretion to extend time within which to file defence. It is important to note that the defendant was initially acting in person. When the matter was set down for formal proof, the defendant engaged the services of a lawyer who filed a notice of appointment. It would appear that the lawyer did not bother to check whether a defence had been filed otherwise he would not have taken a date for hearing when defence had not been filed. On 11/12/2014 when the case came up for hearing it turned out that no defence had been filed. The court gave the defendant 14 days within which to file defence. The parties were given time to complete the preliminaries before a date could be fixed. Mr. Kidiavai has deponed that Mr. Teti who was in court on 11/12/2014 left his firm without informing him that defence in this case had not been filed. This fact is not denied. This case has not taken off. It will be unfair to deny the defendant an opportunity to be heard on his defence, a draft of which has been annexed

to the application.

6. The defendant is not out to delay this case as claimed by the plaintiff. Failure to file defence has been sufficiently explained. I therefore allow the application and hereby enlarge the time for filing defence by 14 days from the date hereof. The defendant should file and serve a defence within the 14 days. Costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this **30th** day of **July, 2015**.

E. OBAGA

JUDGE

30/7/2015

In the presence of Mr. Bukah for Mr. Wanyama for Defendant.

Court Assistant – Winnie.

E. OBAGA

JUDGE

30/7/2015