



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 141 OF 2011

BERNARD MBUGUA WAIRIMU.....PLAINTIFF/APPLICANT

VERSUS

ESTHER NYATHIRA MUHIA.....DEFENDANT/RESPONDENT

RULING

Coming before me for determination is the Notice of Motion dated 3rd July 2013 in which the Defendant/Applicant seeks for the following orders:

1. Spent.
2. Spent.
3. That this honourable court be pleased to set aside and/or vary the judgment entered herein on 14th June 2013 in default of appearance and Defence.
4. That the Defendant be granted leave to file and serve her written Statement of Defence out of time for the matter to be heard and determined inter-partes on merit.
5. That costs of this Application be in the cause.

The Application is supported by the grounds appearing on the face of it together with the Supporting Affidavit of the Defendant, Esther Nyathira Muhia, sworn on 3rd July 2013 in which she averred that she was never served with Summons to Enter Appearance and the Pleint in this matter as alleged in the return of service sworn by James Kanyi Kagwima to enable her to enter appearance and file a Defence. She stated further that she came to know the existence of this suit after she was served with a copy of the Judgment dated 14th June 2013 by the Area Chief on 24th June 2013. She further averred that the Affidavit of Service sworn by James Kanyi Kagwima is false and misleading as she does not know him and has never seen him. She further indicated that she would not have ignored court process had she been served since the Suit Property is where she has resided since 2004 to date and that she has developed her own home and constructed rental shops and houses where she collects rent to earn a living. She further emphasized that her failure to enter appearance and file a Defence was not deliberate but was occasioned by lack of proper service on her. She further stated that she was surprised that the Plaintiff/Respondent had pursued **Succession Cause No. 515 of 2009** in the Thika Law Court without notifying her and others who had bought portions of the Suit Property to enable her to file her objection or protest. She further contended that the grant obtained by the Plaintiff/Respondent was done fraudulently and that she had since filed for revocation of grant in **Succession Cause No. 1560 of 2013** in the Family Division, Nairobi. She further stated that the Plaintiff never cited the said Salome Njoki Nyoro who sold the portion of land

