



**Broadwell Limited v Daylight Self-Help Group (Environment & Land  
Case 998 of 2016) [2024] KEELC 6992 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6992 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 998 OF 2016  
LN MBUGUA, J  
OCTOBER 17, 2024**

**BETWEEN**

**BROADWELL LIMITED ..... PLAINTIFF**

**AND**

**DAYLIGHT SELF-HELP GROUP ..... DEFENDANT**

**RULING**

1. Before me is the Defendant's Notice of Motion application dated 24.1.2024 seeking an order of stay of execution of the judgment delivered on 18.2.2021 as well as an order setting aside the said judgment. The application is premised on the grounds on the face of the application and the supporting affidavit of Francis Wambua, an official of the defendant dated 24.1.2024. He contends that the *ex parte* judgment was obtained fraudulently as they were never served with summons to enter appearance. He avers that on 17.1.2024, a letter by Njenga advocates dated 24.10.2023 addressed to the defendants was dropped by a speeding motor vehicle, and attached to the letter was a copy of the judgment. In addition a story was published on the Daily Nation Newspaper of 18.1.2024 indicating that the plaintiff had obtained judgment in the matter. He contends that over three thousand families stay on the suit property.
2. The defendants have filed a further affidavit sworn on 6.5.2024 by Antony Barasa who introduces himself as a member of the defendant and he knows Wambua as their current secretary. He denies that he was the one who was served. He further avers that they have no pleadings in the matter so they cannot be accused of not having a defence.
3. In their submissions dated 24.2.2024, the defendants contend that there are no limits or restrictions on a judge's discretion to set aside *ex parte* judgment. To this end, reference was made to the case of *Shah v Mbogo*. (1967) EA They also rely on the case of *John Muthee Ngunjiri v Ali Ibrahim* [2021] eKLR to buttress the point that the *ex parte* judgment should be set aside as they were not served, adding that even if the *ex parte* judgment was regular, the same should be set aside as they have an arguable defence.



4. In opposition to the application, the plaintiff filed a replying affidavit of its director, one Vincent Sakwa sworn on 23.2.2024. It is contended that the defendants were duly served with summons to enter appearance and that even the court effected service. He further avers that Wambua has not availed any document to identify himself as the secretary of the group.
5. It is further argued that the defendant has not acted in haste as the judgment was delivered more than three years ago and that the defendants have no triable defence. In addition, the applicants have relied on the wrong provisions of law.
6. In their submissions, the plaintiffs urge the court to strike out the application as no appeal or review order has been sought, arguing that this court is functus officio in the matter. They further contend that no sufficient grounds have been proffered to warrant a stay of execution.
7. Some of the cases relied upon by the plaintiff are; *Nicholas Stephen Okaka & Another v Alfred Wesonga* [2022] eKLR and *Gilbert Ouma v Kenya Ferry Services Limited* [2021] eKLR.
8. The provisions of Order 10 rule 11 of the *Civil Procedure rules* gives courts the powers to set aside judgment. In *Frigonken Ltd v Value Pak Food Ltd*, HCCC no 424 of 2010, cited in *James Kanyiita Nderitu & Another v Marios Philotas Ghikas & another* [2016] eKLR the Court expressed itself thus:
 

“If there is no proper or any service of summons to enter appearance to the suit, the resulting default judgment is an irregular judgment liable to be set aside by the court ex debito justitiae. Such a judgment is not set aside in the exercise of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process.”
9. While in *Mobile Kitale Service Station v Mobil Oil Kenya Limited & Another* [2004] eKLR, Warsame J (As he then was) stated that;
 

“The question for determination is whether service of summons were effected to warrant the setting aside of the judgment. Summons is a judicial document calling a party to submit to the jurisdiction of the Court and if the party is not given that opportunity how else would he submit to the jurisdiction of the Court.”
10. A perusal of the records reveals the manner in which the summons to enter appearance were effected. In the affidavit of service filed in court on 14.12.2017, the process server, one Nicholas Ingida had even sought the assistance of the police to be escorted to the suit premises due to hostility of the occupants. The person who was eventually served is Antony Barasa, the secretary of the defendant. Antony Barasa has sworn an affidavit stating that he was only a member of the defendant and that the secretary was Wambua. However, the defendants have not availed any documents to confirm that position.
11. In yet another exercise to effect service (See the affidavit of service dated 4.5.2018) the police had to restrain Barasa to prevent him from attacking the same process server. Again there is no evidence availed by the defendants to indicate who their officials were at that particular time.
12. It is worthy to note that the alleged authority given to Barasa and Wambua is itself devoid of credibility. In an entity apparently consisting of over 3 thousand members, one authority only has 11 members whose identity is unknown, as they have signed without indicating their identity numbers. The second authority is even less flattering as it has 5 names of which only 4 have signed, again without their identity numbers. Just who are the two deponents?. That is a question yet to be answered.
13. The final issue relates to the question as to whether the defendants have a triable defence. They claim that they need to be served with the pleadings for them to frame their defence. However, they are aware



of the judgment relating to the suit property LR no 18282, of which the court in its judgment decreed that the land belongs to the plaintiff. At paragraph 17 of his supporting affidavit, Wambua simply states that it is in the interest of justice that the residents be given a chance to demonstrate their claim. The applicants have however not indicated the nature of their claim on that land to warrant a chance to proffer a defence.

14. All in all, I find that the application is not merited, the same is hereby dismissed with costs to the respondent /plaintiff.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>th</sup> DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Maina for Plaintiff

Court assistant: Joan/Vena

