



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC CASE NO. 673 OF 2017**

**SALOME GATHONI MUIRUI.....PLAINTIFF**

**VERSUS**

**KAMAE RE-SETTLEMENT PROJECT.....1<sup>ST</sup> DEFENDANT**

**EZEKIEL RUHENI MAINA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> Defendant/Applicant filed a notice of motion dated 10<sup>th</sup> May 2021 in which he sought stay of execution of the judgement delivered by this court on 4<sup>th</sup> November 2019 and setting aside of the same together with any consequential orders. The Applicant also seeks leave of the court to file his defence.

2. The Applicant contends that he was not served with summons to enter appearance. He only came to know about the case when he was served with a copy of decree through WhatsApp on his phone No. 115xxxxxx on 29<sup>th</sup> April 2021.

3. The Plaintiff/Respondent opposed the Applicant's application based on a replying affidavit sworn on 18<sup>th</sup> May 2021. The Respondent contends that the Applicant was duly served but he ignored to file a defence.

4. The parties were directed to file written submissions. The Applicant filed his submissions dated 29<sup>th</sup> June 2021. The Respondent filed her submissions on 5<sup>th</sup> August 2021. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether there was service of summons upon the Applicant.

5. I have looked at the affidavit of service by the process server. The process server alleges to have served summons upon the Applicant through Assistant Chief Douglas Kimani. This is after the process server called the Applicant through his phone No. 0722xxxxxx . The Applicant then instructed the process server to leave the summons with the Assistant Chief.

6. In his application, the Applicant contends that he only became aware of the suit when he was served with a copy of decree through Whats App on his mobile No. 115xxxxx. This was not contested. The Respondent does not say why this time; service was made using a different phone. We all know that one can have more than two phone numbers but there are doubts whether the Applicant was served.

7. The Applicant is said to be occupying the suit property where he lives. There was nothing which would have prevented the process server from making other attempts to serve the Applicant personally before he could leave the summons with the Assistant

Chief.

8. In the circumstances, I find that there was no proper service. I allow the Applicant's application with the result that the ex-parte judgement delivered on 14<sup>th</sup> November 2019 together with all consequential orders are set aside. The Applicant is given unconditional leave to file defence within fourteen (14) days from today. The Applicant shall have costs of this application.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28<sup>TH</sup> DAY OF OCTOBER 2021**

**E.O.OBAGA**

**JUDGE**

In the Virtual Presence of :-

Mr Munene for Plaintiff/Respondent

Mr Kuria for Applicant

Court Assistant: Mercy

**E.O. OBAGA**

**JUDGE**



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)