



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

ELC CASE NO. 30 OF 2017

SAMWEL KAMAU MWAURA & OTHERS1st PLAINTIFF/APPLICANT

PETER KAMAU WAGAIYU.....2nd PLAINTIFF/APPLICANT

MICHAEL WAWERU KIRUBI.....3rd PLAINTIFF/APPLICANT

MALEWA RANCHING CO. LTD.....4th PLAINTIFF/APPLICANT

-V E R S U S-

STANLEY NGANAGA KARIUKI.....1st DEFENDANT/RESPONDENT

PETER NJUGUNA NJOROGE.....2nd DEFENDANT/RESPONDENT

STEPHEN TIBI NJENGA.....3rd DEFENDANT/RESPONDENT

JOSEPH NYUTU NGANGA.....4th DEFENDANT/RESPONDENT

JOSEPH KAMAU KIMANI.....5th DEFENDANT/RESPONDENT

SAMWEL KIMANI KARIUKI.....6th DEFENDANT/RESPONDENT

RULING

1. On the 10th January 2017, Honorable Justice Mulwa sitting in the Nakuru High Court allowed prayer 2 in the Notice of Motion dated the 29th January 2016, interim, pending the filing of the Respondents responses to the said application within 7 days. The matter was then set for hearing interparties for the 24th January 2017 wherein by consent parties agreed to file their written submissions within 30 days. A mention date to confirm compliance was then fixed for the 23rd February 2017.
2. Subsequently vide a letter dated the 5th June 2017 this matter was transferred from the Nakuru High Court to Nyahururu High Court upon the establishment of the latter court and parties were notified to this effect.
3. The Applicant thus filed their submissions to the application dated the 29th January 2016, on the 18th February 2017 but instead of the Respondents filing their submissions, they filed an application dated the 23rd October 2017 under certificate of urgency on the 6th November 2017 which was placed before the High Court Judge on the same day and direction were taken for service to issue.
4. The matter was subsequently adjourned on the 20th November 2017, and 30th November 2017 when on the 20th February 2018, The High Court transferred the same to the Environment and Land Court citing that subject matter was land.
5. The file was placed before me on the same day wherein Counsel for the parties herein informed the court that the mater had been transferred to this court for directions and further that parties herein had filed their submissions to the Application dated the 23rd October 2017 and had prayed for a dated for ruling.
6. What the court was not informed, was that the plaintiff/Respondents herein had filed grounds of opposition dated the 29th November 2017 which sought to have the application dated the 23rd October 2017 struck out in its entirety

7. Prior to the filing of the said application, there had been a Notice to Show Cause issued by the court to the parties dated the 14th December 2016 for parties to appear in court on the 20th February 2017 to Show Cause why this matter should not be dismissed for want of prosecution. The said Notice was not prosecuted either but having gone through the court record, I find that this Notice to Show Cause was issued prematurely and I do herein proceed set it aside.

8. Having noted earlier that there was the main application dated 23rd October 2017 on the one hand and Preliminary Objections dated the 29th November 2017, that sought to have the application dated 23rd October 2017 struck out, the proper practice to move forward would be to determine the Preliminary Objection first. In effect therefore I do direct that the said Preliminary Objection dated the 29th November 2017 be heard in the first instance before the substantive application can be considered.

9. Parties to file and serve their written submissions to the said Preliminary objection within the next 21 days with the Plaintiff/Respondents filing and serving their written Submissions within 14 days from today and the Defendants/Applicants filing their response within 7 days upon receipt of service.

10. The matter shall be mentioned on the 17th July 2018.

Dated and delivered at Nyahururu this 26th day of April 2018.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE