



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT HOMABAY**

**ELC APPEAL NO. 31 OF 2021**

**BENARD OTIENO OBUNGA.....PLAINTIFF**

**VERSUS**

**LAWRENCE OGUDA OBUNGA.....DEFENDANT**

**(Being an appeal from the ruling and orders of Chief Magistrate Court at Homa Bay Law Courts**

**(Hon. R.B.N Maloba) delivered on the 25<sup>th</sup> day of September, 2018 in Land Case No. 6 of 2016).**

**RULING**

1. The instant ruling is rendered in the interest of Justice in lieu of judgment scheduled for delivery this 24<sup>th</sup> January 2022. The attendant reasons are stated below.

2. There are new developments at this stage of the appeal. Indeed, Mr. Nyauke, learned counsel for the Appellant, Mr. Benard O. Obunga has prayed thus: “I have instructions that parties have settled the appeal out of court. May we get further mention date to file the Consent thereof”.

3. Mr. Oumo holding brief for Mr. Owade learned counsel for the respondent, Lawrence O. Obunga has no objection to the prayers as captured in paragraph 2 herein above.

4. **Article 159(2)(b) of the Constitution of Kenya, 2010** provides:

“Justice shall not be delayed,;”

5. The parties through their respective counsel, have agreed and sought time to file a consent relating to settlement of this appeal out of court. In **Butt versus Rent Restriction Tribunal (1979) eKLR**, the Court of Appeal observed that:

“The litigants and their professional advisors are the best judges of their affairs.”

6. In exercising judicial authority, this court is guided by the principles including the promotion of Alternative forms of dispute resolution (ADR) as stipulated under **Article 159(2) (c) of the Constitution of Kenya, 2010**; See also **section 20 of the Environment and Land Court Act, 2015 (2011)**.

7. For the above reasons, the application by the applicants counsel is merited. The same is hereby allowed accordingly.

8. This appeal is therefore, fixed for 2<sup>nd</sup> February 2022 to confirm the application of ADR as Judgment is held in abeyance herein.

**DATED AND DELIVERED AT HOMA BAY THIS 24<sup>TH</sup> JANUARY, 2022**

**G M A ONG’ONDO**

**JUDGE**

In the presence of:

i. Mr. Nyauke learned counsel for the Appellant.

ii. Mr. J. Oumo holding brief for Mr. Owade learned counsel for the Respondent.

iii. Okello, court assistant.

**G M A ONG'ONDO**

**JUDGE**