



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ELCJR No. E003 OF 2021**

**BENJAMIN GITERE KIMARI .....1<sup>ST</sup> APPLICANT**

**HANNAH NGINA KENNETH KIMARI .....2<sup>ND</sup> APPLICANT**

**(Administrators of the estate of the late Kenneth Kimari Kahura)**

**VERSUS**

**LAND REGISTRAR NAKURU LAND REGISTRY.....RESPONDENT**

**DIRECTIONS**

1. Through Chamber Summons dated 18<sup>th</sup> March 2021, the applicants herein sought leave to apply for an order of mandamus “to remove and/or lift the restriction pursuant to the provision of Section 78 (1) & (2) of the Land Registration Act 2012 to all that property known as Land Reference Nakuru Municipality Block 5//294”. I dealt with the application on 22<sup>nd</sup> March 2021 and granted leave as captured above. I additionally ordered that the substantive Notice of Motion be filed within 21 days from 22<sup>nd</sup> March 2021. I further scheduled the matter for mention for directions regarding disposal of the substantive Notice of Motion.

2. When the matter came up for the mention, counsel for the applicant informed the court that the applicants had filed the substantive Notice of Motion on 8<sup>th</sup> April 2021. On his part, learned litigation counsel appearing for the respondent indicated to the court that the respondent would only respond to the Notice of Motion through grounds of opposition. Parties also sought and were granted directions for filing and exchanging written submissions on the Notice of Motion. Since I noted that the Notice of Motion was not on the record, I made a further order that the applicants ensure that a copy is placed on record in readiness for the next mention of 20<sup>th</sup> September 2021 with a view to scheduling a date of judgment. As fate would have it, I proceeded on transfer to another station before the next date. Come 20<sup>th</sup> September 2021, the matter was placed before my brother Mwangi Njoroge J who promptly ordered that the file be sent to me to write judgment.

3. In the process of perusing the file to prepare judgment, I could not locate any substantive Notice of Motion in the file. I then made enquiries through the Deputy Registrar of the court and it transpired that the applicants did not file any Notice of Motion. As strange as it sounds, both sides had filed submissions on a non-existent Notice of Motion when the matter was placed before the court for mention on 20<sup>th</sup> September 2021. Since the matter is before me purely for preparation of judgment and I do not have any opportunity to mention the matter with a view to getting the parties’ respective positions on whether the applicants may be allowed to file the Notice of Motion at this stage, I have agonised over what to do.

4. I have ultimately come to the conclusion that I cannot proceed to write judgment. The matter was actually not ready for judgment in the absence of a substantive Notice of Motion. In the interest of justice, I consider that it is necessary that the parties be given a chance to address the court on the current scenario. The court will then determine whether to allow the filing of the Notice of Motion at this stage or what other step to take. All those proceedings and processes should take place before the court at Nakuru where the matter is pending. I will in the circumstances not write any judgment herein but will give directions instead.

5. In view of the foregoing, I give the following directions:

**a) This matter will be mentioned on the 25<sup>th</sup> May 2022 before the Environment and Land Court at Nakuru for further directions. The Deputy Registrar to notify parties.**

**b) Considering that the matter is currently not ready for judgment, all future proceedings including hearing and determination of the matter be undertaken before the Environment and Land Court at Nakuru.**

**Dated, signed and delivered at Kakamega this 27<sup>th</sup> day of April 2022.**

**D. O. OHUNGO**

**JUDGE**

Delivered through electronic mail in the presence of:

Court Assistant: E. Juma