



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ISIOLO

ELC CASE NUMBER 12 OF 2021(FORMERLY MERU ELC 45 OF 2018)

ABDI ABKULLA TARI.....PLAINTIFF/RESPONDENT

VERSUS

IEBC ISIOLO NORTH CONSTITUENCY

OFFICE CO-ORDINATOR.....1ST DEFENDANT/APPLICANT

IEBC ISIOLO COUNTY CO-ORDINATOR.....2ND DEFENDANT/APPLICANT

THE CHAIRMAN, IEBC.....3RD DEFENDANT/APPLICANT

RULING

1. This application is dated 4th April, 2022 and seeks the following orders:

1. **THAT** the honorable court be pleased to review, vary and/or set aside the proceedings had and taken on 21.03.2022 when the Plaintiff's case was heard and closed.
2. **THAT** the defendant's application dated 17/03/2022 be set down for hearing and determination on merits and/or that the directions be issued with respect to the said application.
3. **THAT** further and in the alternative and without prejudice to the foregoing, the plaintiff's case be re-opened, the plaintiff and his witness be recalled for cross-examination.
4. **THAT** the costs of this application be in the cause.

2. The application is supported by the affidavit of Advocate **Charles Benedict Mwangela sworn on 4th April, 2022** and has the following grounds:-

- a. On **07.03.2022** the honorable court granted the defendants the last adjournment but the counsel holding brief on that day gave redacted information to the defendant's principal advocate.
- b. On **21.03.2022**, the honorable court proceeded with hearing and closure of the Plaintiff's case and directed that the matter proceeds for defence hearing on **13.06.2022**, despite the pendency of the defendants' application dated 17.03.2022, filed and served on 18.03.2022 which fact of filing and service of application may not have been properly brought on the honourable court's attention. Ruling delivered on 21.03.2022 rejecting the adjournment request partly reads that counsel holding brief for the defendants told the court that "...Mr. Mwangela was seeking adjournment because he intended to file a counterclaim", which is patently incorrect.
- c. Overlooking of the said defendant's application whereupon the plaintiff's case was heard and closed constitutes an error apparent on the face of the record and sufficient reason necessitating review, variation and/or setting aside of the proceedings had and taken **21.03.2022**.
- d. Counsel holding brief for the defendant's advocate on 21.03.2022 was compelled to conduct a hearing without her file thereby impending and completely curtailing the defendants' right to cross-examine the plaintiff/respondent and his witness.

e. Overlooking of the application seeking amendments and introduction of a counterclaim has greatly prejudiced the defendant's primary claim and prayers in the suit.

f. The application has been preferred without undue delay, within fourteen (14) days of the orders/proceedings sought to be varied and/or set aside and more than two (2) months date given for defence hearing on 13.06.2022.

3. Having perused the application, I issue the following orders:

a) The Applicant to serve the application upon all other parties within 14 days of today.

b) All parties to come to court for directions on 9th May, 2022.

c) Cost shall be in the cause.

Delivered in Nairobi this 11th day of April, 2022 in the absence of the parties.

HON. JUSTICE P. M. NJORGE

E & L COURT ISIOLO