



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ISIOLO**

**ISIOLO ELC CASE NO. 002 OF 2022 FORMERLY MERU ELC 25 OF 2013**

**FATUMA MOHAMMED ALI.....PLAINTIFF/APPLICANT**

**VERSUS**

**BORU DIKA.....1<sup>ST</sup> DEFENDANT**

**HENRY KIMATHI.....2<sup>ND</sup> DEFENDANT**

**FESTUS NYAGA KABERIA.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application is dated 14<sup>th</sup> March, 2022.

2. The application seeks the following orders:

**1. THAT** the application herein be certified urgent and be heard ex-parte in the first instance.

**2. THAT** this honorable court be pleased to arrest and/or stay the proceedings in this matter pending the hearing and determination of this application;

**3. THAT** this honorable court be pleased to review and/or vary and set aside its orders issued on 3<sup>rd</sup> March, 2022 transferring the case to Isiolo and order that the same be heard in Meru and/or place before Hon. Justice Mbugua for hearing and determination;

**4. THAT** the costs of this application be provided for and;

**5. THAT** this honorable court be pleased to issue such further orders as shall be necessary for the ends of justice to be met;

3. The application is supported by the affidavit of **Fatuma Mohammed Ali**, the applicant and sworn on 14<sup>th</sup> March, 2022 and has the following grounds:-

**1. THAT** the honorable court made orders on 3<sup>rd</sup> March, 2022 directing that the suit herein be transferred to Isiolo to be heard before Hon. Justice Njoroge;

**2. THAT** the said Justice Njoroge did not hear the suit on its merit as he only heard the proceedings with regard to the application for injunction dated 15<sup>th</sup> January, 2013;

**3. THAT** the suit was heard by Justice Mbugua who took the evidence of all the witnesses who have testified in this suit;

**4. THAT** the plaintiff /applicant is quite apprehensive of her security due to the perennial conflicts between the plaintiff's tribe and that of the defendant and which is bound to be highlighted due to the political atmosphere prevailing in the country;

**5. THAT** land being an emotive issue which evokes open hostilities, it will be inimical to justice and fair play to have the plaintiff litigate in Isiolo;

**6. THAT** the defendants have on previous occasions shown their dispensation to disobeying the court orders and acting in such a way as to border on threatening the plaintiff and hence the plaintiff is not comfortable to have the matter transferred to Isiolo;

**7. THAT** the litigation is expensive and a further delay of this matter will subject the applicant to the inconveniences of incurring costs of prosecuting this suit;

**8. THAT** there is only one witness remaining to testify and all the proceedings with regard to this case have been typed;

**9. THAT** the suit was instituted way back in 2013 and has been herd substantially as there is only one witness remaining to testify and all parties can close their cases;

**10. THAT** transferring the suit will further delay the conclusion of this case noting that the applicant approached this honorable court in 2013 seeking justice;

**11. THAT** justice delayed is justice denied and transferring this case to Isiolo will further delay the conclusion of this matter which is against the guiding principles of this court under *Article 159 of the Constitution* which requires that justice shall not be delayed;

**12. THAT** this honorable court is under a statutory obligation to give effect to the overriding objective under *Section 1A Act of the Civil Procedure Act* by ensuring the efficient disposal and timely disposal of proceedings at a cost affordable by the parties and particularly the applicant;

**13. THAT** it is the interest of justice that the orders transferring suit be reviewed and set aside to facilitate the expeditious disposal of this case;

**14. THAT** unless this application is allowed, the applicant shall suffer irreparable loss and damage;

**15. THAT** this application has been brought without undue delay and ought to be granted in the interest of equity and justice;

4. The application cites a Meru number suggesting that it should have been filed at Meru, nevertheless, the following orders are issued:

a. The applicant to serve the application upon the defendant within 14 days of today.

b. Parties will take directions at Isiolo on 9<sup>th</sup> May, 2022.

**DELIVERED IN NAIROBI IN THE ABSENCE OF THE PARTIES, THIS 11<sup>TH</sup> DAY OF APRIL, 2022**

**HON. JUSTICE P. M. NJORGE**

**E & L COURT JUDGE**

**ISIOLO LAW COURTS.**