



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ENVIRONMENTAL & LAND CASE 558 OF 2009**

**MERCY WANGARI  
JAMES KIBE  
PETER MWAURA  
KAYOLE BIDII JUA KALI ASSOCIATION ..... PLAINTIFFS**

**VERSUS**

**HIRAM GITONGA MBOGO  
WALTER OKEO MBATA  
FRANCIS NGEMA WAITITU  
ANN WAITITU NGEMA  
JULIUS NJOGO NGARI  
FERDINED WAITITU  
MARTIN NJUGUNA MWANGI  
SALONE NASHILILE ..... DEFENDANTS**

**RULING**

The notice of motion dated 31<sup>st</sup> October, 2011 is taken out by the Defendants. They are seeking for orders that the orders made by **Muchelule, J** on 19<sup>th</sup> July, 2011, and delivered by **Koome, J** (as she then was) on 28<sup>th</sup> October, 2011, be reversed and set aside.

This application is supported by the grounds that there is an error apparent on the face of the record. The errors are further explained in the supporting affidavit sworn by Francis Gema Waititu on 31<sup>st</sup> October, 2011. According to the applicants, **Muchelule, J** wrote the ruling dated 4<sup>th</sup> July, 2011 in respect of the wrong application which had been determined. Indeed, the ruling of 19<sup>th</sup> July, 2011, is word for word similar to the one that was delivered on 26<sup>th</sup> July, 2010. That ruling was in respect to an application for injunction that had been determined.

Following the ruling of 26<sup>th</sup> July, 2010, the defendants filed a notice of motion dated 30<sup>th</sup> December, 2010, in which they sought for an order of stay of the orders of 26<sup>th</sup> July, 2010, and the setting aside or discharge of the order of 26<sup>th</sup> July, 2010.

Incidentally, the Judge made the same orders which in my view, is an error apparent on the face of the record. **Mr Gachomo**, learned counsel for the plaintiffs agreed that the Judge did not indicate which application was the subject of this was ruling.

Upon consideration of the matters stated in the application, the replying affidavit and submissions by both counsel, I am satisfied that there is an error apparent on the face of the ruling that was written by

**Muchelule, J** and signed on 19<sup>th</sup> July, 2011.

Accordingly, those orders made therein are set aside. The order that commends itself in the meantime is the one for maintenance of status over the property known as **LR No. A1-602, Kayole Services Scheme**, until the hearing and determination of the suit. Parties are directed to prepare the main suit for hearing by complying with the **Civil Procedure Rules** within 60 [sixty] days.

Costs of the application shall be in the cause.

**Ruling read and signed this 3<sup>rd</sup> day of February, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**  
**Note:**

*This application was heard and concluded on 15<sup>th</sup> November, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceed to write and append my signature thereto in my new capacity.*