



JAMES KIBE NDEGWA T/A

NEW KAWERU GUEST HOUSE.....1<sup>ST</sup> PLAINTIFF

LIVINGSTONE MWANGI.....2<sup>ND</sup> PLAINTIFF

LAWRENCE CHEGE.....3<sup>RD</sup> PLAINTIFF

Versus

MAMUKA VALUERS MANAGEMENT LIMITED.....1<sup>ST</sup> DEFENDANT

MARY WAMBUI KAMAU.....2<sup>ND</sup> DEFENDANT

VIRGINIA NYAMBURA.....3<sup>RD</sup> DEFENDANT

GEORGE GICHERU NGATIRI.....4<sup>TH</sup> DEFENDANT

## **RULING**

This case was one of the cases allocated to me by the Hon. Chief Justice to write and deliver pending rulings/judgments because the learned judges who has been handling them had retired before they wrote and delivered the pending rulings/judgments.

Concerning this suit, I subsequently had it mentioned on 24<sup>th</sup> July 2009 in the presence of Counsel representing all the parties and it was agreed that what was requiring my attention and action was the writing and delivering of a ruling my learned brother, Kubo J, had promised to deliver on 31<sup>st</sup> July 2008 (recorded as "317.07") and subsequently postponed to 1<sup>st</sup> October 2008 but had never written and delivered by the time the learned Judge retired from the Judiciary this year.

I have had time to peruse the court record in the case file and confirm that the position is like I was told on 24<sup>th</sup> July 2009 that following a lengthy hearing of the 1<sup>st</sup> Plaintiff's own evidence in chief and cross examination, the said plaintiff, James Kibe Ndegwa, wanted to adduce fresh evidence during his re-examination. As a result, all Counsel, mainly the 1<sup>st</sup> Defendant's Counsel, orally raised objection which was fully argued before the learned trial judge who subsequently reserved the ruling as stated herein above.

I however realize that although on 24<sup>th</sup> July 2009 it looked as if it was proper for me to write and deliver the ruling and I promised to do that, on reflection after perusing the record, I must say it appears to me as it will not be proper for me to do so. This is because in the circumstances of this case, the person properly positioned to write and deliver such a ruling is the judge who will take over the trial of this suit following Judge Kubo's retirement. It is before that Judge that a decision will first have to be taken as to whether the proceed with trial of the main suit from where PW 1, James Kibe Ndegwa, had stopped or whether to start the trial de-novo.

Such a decision have been made, then it will be upon the liberty of that new trial judge, if then still necessary, to write and deliver the pending ruling aforementioned to be conveniently and properly available, together with his subsequent judgment in the suit, for the purpose of appeal therefrom in case an appeal will be necessary at the end. The new trial judge should not be prejudiced or be inconvenienced by the presence of my ruling on the issue, and so should be the Court of Appeal in case as appeal will go to that Court against the expected High Court judgment who I suppose will be in the Land and Environmental Division of this Court. I am only handling the matter on a transient measure as stated at the beginning of this ruling.

Having said the above, the case file in this suit be now returned to the Land and Environmental Division for further proceedings as before in that Division.

Delivered and dated this 16<sup>th</sup> day of October 2009

J.M. KHAMONI

JUDGE