



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Suit 9 of 2008

FRANCIS WANJALA THOMAS 1ST PLAINTIFF

FLORENCE NEKESA WAFULA 2ND PLAINTIFF

SOLOMON SHOSO AND 3RD PLAINTIFF

ELIZABETH KIGEN 4TH PLAINTIFF

=VERSUS=

ELDORET MUNICIPAL COUNCIL DEFENDANT

RULING

I have considered the application for adjournment of the hearing of the application and for leave to file a further affidavit on the part of the second Plaintiff/Applicant. Mr. Shanza for the Respondent has no objection to the adjournment except that he opposes any extension of interim Orders.

I have heard arguments as to the pros and cons of any extension of the Interim Orders.

With regard to extension, this Court usually grants extension if there is any adjournment at the inter parties hearing where there is an ex parte order in existence.

However, it has come to my attention that the only relief sought here are:

1. Material damage of Kshs 1,380,000/=
2. Costs of the suit.

The Plaintiffs contend that on 31/08/2007, the Defendant destroyed their properties as a result of which they have suffered loss and damages.

It is clear that the event allegedly having taken place on 31/08/2007 is now past and the Plaintiffs have even quantified the value of their lost properties or losses. They have filed for a liquidated claim in special damages in the sum of shs 1,380,000/=.

As a result there is no pending dispute before this court relating to any property or user thereof.

The parties are bound by their pleadings. This Court cannot act in vain neither can it speculate or hypothesize about future claims or intended amendments.

The ex parte order was obtained on the basis of the pleadings on record. With hindsight, it should not have been granted in the first place as there is nothing to preserve. This is a pecuniary claim and there is no prayer or relief about any property.

As a result, I do hereby discharge the ex-parte Interim Orders. In the light of the foregoing, I really see no purpose for any inter parties hearing.

The application is bound to fail for the very reasons given above. It will be a waste of precious judicial time to set the application down for hearing and to grant leave to file other affidavits.

In exercise of this Court's inherent jurisdiction and discretion, the application is dismissed. Costs shall be in the cause.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF

JULY, 2008

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M.K. IBRAHIM,

JUDGE.