



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**  
**ELC CASE NO. 21 OF 2013**  
**(FORMERLY BUNGOMA CMCC No. 123 of 2001)**

**MOSES BANDA WAFULA..... PLAINTIFF**

**VERSUS**

**JIMMY SHIUNDU CHITERE.....DEFENDANT**

**R U L I N G**

What is coming up before me is the application dated 18<sup>th</sup> November 2019. In the application, the plaintiff/Applicant seeks the following two (2) remedies: -

**1. Spent**

**2. Order dated 17<sup>th</sup> September 2018 dismissing this suit be set aside and the suit be reinstated to hearing.**

The application is opposed. When the application was placed before me on 21<sup>st</sup> October 2020, it was agreed that it be canvassed by way of written submissions. Those submissions were subsequently filed both by **MR KHAKULA** instructed by the firm of **J. S. KHAKULA & COMPANY ADVOCATES** for the plaintiff/Applicant and by **MR KWEYU** instructed by the firm of **E. O. KWEYU & COMPANY ADVOCATES** for the defendant/Respondent.

Having perused this file, I notice that there are no pleadings herein. It would appear that **BUNGOMA SPM CIVIL CASE FILE No 123 of 2001** was transferred to this Court by an order issued by **HON M. O. WAMBANI – SENIOR PRINCIPAL MAGISTRATE** on 23<sup>rd</sup> November 2012. That file was subsequently placed inside this file. The order issued on 23<sup>rd</sup> November 2012 was out of jurisdiction. I notice that the parties herein had on 30<sup>th</sup> November 2016 entered a consent referring the dispute relating to land parcel **NO KIMILILI/ KIMILILI/924** for determination by the **KIMILILI SUB – COUNTY COMMISSIONER**. In the absence of pleadings, there could not have been any dispute to refer to the commissioner on 30<sup>th</sup> November 2016 nor any suit to dismiss on 17<sup>th</sup> September 2018. Those orders were issued in error and are hereby vacated.

In the absence of pleadings, the application dated 18<sup>th</sup> November 2019 has no foundation. It is struck out.

What probably caused this confusion was the placing in this file of **BUNGOMA SPMC CIVIL CASE FILE No 123 of 2001** pursuant to the orders of 23<sup>rd</sup> November 2012 by **HON M. O. WAMBANI – SENIOR PRINCIPAL MAGISTRATE**.

I therefore make the following orders: -

**1. The consent order recorded by the parties herein on 30<sup>th</sup> November 2016 and the order issued on 17<sup>th</sup> September 2018 are hereby vacated and set aside as there was no suit to refer to arbitration by the commissioner nor to dismiss.**

**2. BUNGOMA SPMCC No 123 of 2001 was improperly transferred to this Court vide an order dated 23<sup>rd</sup> November 2012. The file be returned to that Court for mention on 11<sup>th</sup> February 2021 for purposes of taking directions as to hearing.**

**3. The application dated 18<sup>th</sup> November 2019 as well as the Bill of Costs filed by the defendant on 3<sup>rd</sup> May 2019 have no foundation and are hereby struck out.**

**4. This file be marked closed.**

**Boaz N. Olao.**

**J U D G E**

**11<sup>th</sup> February 2021.**

**Ruling dated, signed and delivered at BUNGOMA this 11<sup>th</sup> day of February 2021** by way of electronic mail in keeping with the **COVID – 19** pandemic guidelines.

**Boaz N. Olao.**

**J U D G E**

**11<sup>th</sup> February 2021.**