



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L APPEAL NO. 4 OF 2015**

**SIRO LEO.....APPELLANT**

**VERSUS**

**JULIUS AMBOGA ASAVA.....1<sup>ST</sup> RESPONDENT**

**IRENE EDESA ASAVA [SUING AS THE ADMINISTRATORS OF THE ESTATE OF**

**JACKTON ASAVA AKIBAYA – DECEASED].....2<sup>ND</sup> RESPONDENT**

**RULING**

**[UNDATED AND UNSIGNED NOTICE OF MOTION ATTACHED TO THE CHAMBER SUMMONS UNDER CERTIFICATE OF URGENCY DATED THE 7<sup>TH</sup> SEPTEMBER, 2020]**

1. The Respondents undated and unsigned Notice of Motion brought under **Order 45 Rule 1 & 2 and Order 51 Rule 2 of the Civil Procedure Rules** and **Sections 1A, 1B, 3A, 63(e) and 80 of the Civil Procedure Act**, seeks for the firm of Mukabane & Kagunza Advocates to be granted leave to come on record for the Respondents after the judgment; review and setting aside of the judgment delivered on the 26<sup>th</sup> July 2018 and all consequential orders thereof, and issue of further directions pending the hearing and determination of this application and that costs be provided for. The application is based on the five (5) grounds on its face and supported by the affidavit of **Julius Amboga Asava**, the 1<sup>st</sup> Respondent, that is undated and uncommissioned.
2. The application is opposed by the Appellant through the replying affidavit sworn on the 30<sup>th</sup> October, 2020 respectively.
3. The learned Counsel for the Respondents and Appellant filed their written submission dated 13<sup>th</sup> November, 2020 and 10<sup>th</sup> November, 2020.
4. That the record confirms that after the application was filed on the 7<sup>th</sup> September, 2020 which was during the court's recess, it was presented before *Mutungi, J* of Environment & Land Court, Nakuru who was the duty Judge on the 8<sup>th</sup> September, 2020. That the order issued on that day shows clearly that the Notice of Motion was not admitted for hearing during the court vacation for reasons that it was undated and unsigned, and the supporting affidavit was also undated and uncommissioned. That the Court then made a finding that the Notice of Motion was therefore incompetent. That the Respondents have to-date not taken any steps to move the Court for appropriate orders to enable them place a competent notice of motion on record or to challenge the court order of 8<sup>th</sup> September, 2020 through an appeal. That the Respondents instead went ahead to prosecute their undated, unsigned and incompetent notice of motion.
5. That in view of the finding in 4 above, the Court finds there is no use of analyzing the grounds on the notice of motion, the affidavit evidence and the written submissions as there is no competent application before the Court. That **Article 159(2) (b) of the Constitution, 2020, Sections 1A, 1B and 3A of the Civil Procedure Act Chapter 21 of Laws of Kenya** among others, requires the Court to dispense justice expeditiously, efficiently, without delay and at an affordable cost. That having come to the finding that the notice of motion has already been found to be incompetent, the Court is of the view that it is just to have the same struck out with costs.
6. That flowing from the foregoing, the Respondents undated and unsigned notice of motion filed on the 7<sup>th</sup> September, 2020 is hereby struck out with costs. It is so ordered.

**DELIVERED VIRTUALLY AND DATED AT ELDORET THIS 17<sup>TH</sup> DAY OF MARCH, 2021.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Appellant: Absent.

Respondents: Absent.

Counsel: Mr. Kagunza for Appellant.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.