



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MURANG'A**

**ELC NO. E010 OF 2021**

**RICHARD MAKARA GITAU.....PLAINTIFF/RESPONDENT**

**VS**

**SHADRACK MAINA MAHURO.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**ESTHER VICTORIA WANJIKU.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**NYASANI EVANSON NYAMARONGE.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**WAWIRA N MUGANIA.....4<sup>TH</sup> DEFENDANT/APPLICANT**

**RULING/DIRECTION**

1. The Defendants/Applicants filed the instant Notice of Motion dated 28/5/2021 seeking interalia Orders that;

a. Spent.

b. THAT this Honorable Court be pleased to set aside any consequential Orders issued or made in default of filing a Replying Affidavit by the Defendants/Applicants.

c. THAT this Honorable Court be pleased to issue an Order granting the Defendants/Applicants leave to admit out of time and /or deem the Replying Affidavit attached herein as filed.

d. THAT this Honorable Court be pleased to Order that the application Plaintiff/Respondent's application be heard interpartes on a date convenient for both parties herein while taking into account the averments contained in the attached/intended replying affidavits sworn by the Defendants/Applicants.

2. The application is supported grounds on the face of it and by the Affidavit of the learned counsel, Nyasani Evanson Nyamaronge, the Applicants' Advocate. He admits failing to file the annexed Replying Affidavit within time as directed by Court on 12/5/2021 due to unavoidable circumstances. Inter alia he averred that there were challenges in obtaining and consolidating instructions from all the Applicants. In particular, he cited the 2nd Defendant's daughter's illness that forced the family members to isolate for two weeks due to COVID.

3. The deponent also added that due to the busy nature of the 4th Defendant's public office as Deputy County Commissioner, it was difficult to obtain his instruction within time. He avowed that the application was filed timeously and no prejudice shall be occasioned upon the Plaintiff if it is allowed. That in the absence of the Applicants' responses, they will be faced with a drastic injunction without according them a fair hearing.

4. Noting that the application is not opposed, the Court is guided by the laid down the principles to be considered in application for extension of time in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others Application No. 16 of 2014 [2014] eKLR* namely; -

i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;

ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;

iii. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether there will be any prejudice suffered by the Respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

5. The Court finds the reasons advanced for the delay in filing the replying affidavit in time tenuous for want of evidence in support. That said, nothing has come to the Courts attention to show that the Applicants are intent to defeat the course of justice. In my view despite the delay, which is not inordinate, I believe justice can still be done to the parties and am guided by the dictates of Art 159 (2) (d) of the Constitution which mandates this Court to do substantial justice.

6. In allowing the application, the Court has considered the Respondents counsel's letter dated 21/6/21 that the Defendants' application dated 24/5/2021 (sic) be allowed to pave way for the timeous hearing of Plaintiff's application dated 13/4/2021.

7. For the above reasons, I therefore allow the application.

8. I direct the Applicants herein to file and serve their Replying Affidavit to the Notice of Motion dated 13/4/2021 within 14 days of the date of this Ruling/Directions.

9. Thereafter the Plaintiff to interalia expeditiously fix the dates for the hearing of the application dated the 13/4/2021 at the Registry.

10. Each party to bear the cost of this application.

11. It is so Ordered.

**DATED, SIGNED & DELIVERED AT MURANGA THIS 29<sup>TH</sup> DAY OF JULY 2021.**

**J G KEMEI**

**JUDGE**

Delivered online

1<sup>st</sup> – 4<sup>th</sup> Plaintiff/Respondent - Absent

1<sup>st</sup> – 4<sup>th</sup> Defendants/Applicants - Bore HB

Kuiyaki/Alex, Court Assistants