



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 27 OF 2021**

**FLORENCE NAFULA AYODI.....1<sup>ST</sup> PLAINTIFF**

**MIRIAM JUMBA MUSAMIA.....2<sup>ND</sup> PLAINTIFF**

**CATHERINE NABWALA.....3<sup>RD</sup> PLAINTIFF**

**MARY NASIMIYU.....4<sup>TH</sup> PLAINTIFF**

**ELIZABETH MUTENYO MUSAMIA.....5<sup>TH</sup> PLAINTIFF**

**JONATHAN AYODI LIGURE.....6<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JOHN TABALYA MUKITE .....1<sup>ST</sup> DEFENDANT**

**ELIUD SYANGU MUKITE.....2<sup>ND</sup> DEFENDANT**

**RULING**

**The Application**

1. The background to the instant application is that the plaintiffs filed a notice of motion dated **14/4/2021** seeking an order of injunction against the defendants. On **20/4/2021** this court ordered that the defendants be served with that application and that they do file and serve their response within **7 days** of service in readiness for the hearing of the application *inter partes* on **5/5/2021**. On **5/5/2021** the defendants appeared in person and stated that they had been served the previous day. However Mr Onyancha for the plaintiffs pointed out that there was a replying affidavit on the record and this court ordered parties to file submissions within a given time frame. Interim orders were issued on the same date. A mention was scheduled for **27/5/2021** for the issuance of a ruling date. The defendants however filed an application dated **12/5/2021** on **13/5/2021** seeking a review of the orders made by this court on **5/5/2021**. On **17/5/2021** this court scheduled the application for hearing on **27/5/2021**. On **27/5/2021** the defendants never appeared and Mr. Onyancha appeared for the plaintiffs and the application dated **12/5/2021** was dismissed for want of prosecution while the application dated **16/4/2021** was scheduled for a ruling on **22/6/2021**. Those orders formed the basis of the instant application.

2. The instant Notice of Motion is dated **7/6/2021** and was filed in court on **8/6/2021**. It is brought under **Article 159 (2)** of the **Constitution**, **Section 3A** of the **Civil Procedure Act** and **Order 51** of the **Civil Procedure Rules 2010**, the defendants sought the following orders:

(a) ...spent

(b) ...spent

(c) That the Honourable Court be pleased to review the orders made on **27/3/2021** and grant the applicants leave to file a further affidavit and written submissions against the application dated **16/4/2021**.

(d) That each party to bear the costs of this application.

3. The application is supported by the affidavit sworn on **7/6/2021** by the **1<sup>st</sup>** defendant on his own behalf and on behalf of the **2<sup>nd</sup>** defendant.

The grounds on the face of the application are that the applicants were in person and did not have any legal know how to handle the matter; that the time within which to file the submissions lapsed before they could do so; that the applicants have since hired an advocate who has filed the instant application; that the respondents would not suffer any prejudice if the orders sought were granted.

### **The Response**

4. The 1<sup>st</sup> defendant filed a replying affidavit sworn on **11/6/2021** her own behalf and on behalf of the other co-plaintiffs. The plaintiffs reiterate the history of the matter and further state that there is no explanation as to why the defendants failed to attend court on **27/5/2021** or file submissions as ordered; that the instant application introduces extraneous issues not contained in the defence; that it will be prejudicial to the plaintiffs to have new affidavits introduced while they have already filed their submissions; that the applicants are not seeking review of the dismissal orders of **27/5/2021** or reinstatement of their review application; that the defendants instead seek leave to file submissions on the application dated **16/4/2021** and that the defendants' application lacks merit.

### **Submissions**

5. On **8/6/2021** the court directed the application be disposed of by way of written submissions which both parties filed.

### **Determination**

6. I have perused the application, the supporting affidavit, the replying affidavit and the submissions filed. The ruling date of **22/6/2021** having passed, the main issue that remains for determination in the instant application is whether this court should review the orders it made on **27/5/2021** and grant the defendants leave to file a further affidavit and submissions against the application dated **16/4/2021**.

7. I have considered the ground that the defendants were previously acting in person and had no know how to deal effectively with the matter a weighty ground. I have also considered the fact that they are entitled to effective legal representation and that they have now hired an advocate to handle this litigation on their behalf. The purpose of hiring an advocate is to obtain proper legal advice and it would defeat that very purpose if this court denied the applicants the orders that they seek in the instant application. This court is of the view that the other issues of substance raised in protest by the plaintiffs in reply to the instant application are quite misplaced in the instant application that deals with procedural issues and they can be raised during the hearing of the application dated **16/4/2021**.

8. Consequently I find that the defendants' application dated **7/6/2021** has merit and the same is hereby allowed as prayed in **prayer no (c)** thereof. The defendants shall file their intended further affidavit within **7 days** of this order in default of which the leave granted herein shall automatically lapse. However, if the further affidavit is filed and served as ordered, the plaintiffs shall have leave to file a supplementary affidavit within **7 days** of service. Thereafter the defendants shall file their submissions within **3 days** of service of the plaintiff's supplementary affidavit if any and the plaintiffs shall have leave to reply to those submissions within **3 days** of service.

9. The application shall be mentioned on **29/9/2021** for directions by the court.

It is so ordered.

**Dated, signed and delivered at Kitale via electronic mail on this 6<sup>th</sup> day of August, 2021.**

**MWANGI NJOROGE**

**JUDGE, ELC, KITALE.**