



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 329 OF 2017**

**ESTHER MBULA MWANGANGI.....PLAINTIFF**

**VERSES**

**NELSON MUTISYA MUUNDA.....1<sup>ST</sup> DEFENDANT**

**DANIEL ONGERI ONDERI.....2<sup>ND</sup> DEFENDANT**

**RUTH MORAA ONGERA.....3<sup>RD</sup> DEFENDANT**

**AND**

**NGURISH INVESTMENT LIMITED.....1<sup>ST</sup> INTERESTED PARTY**

**ICIPE STAFF HOUSING CO-OPERATIVE.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. In the Application dated 17<sup>th</sup> November, 2020, the Defendants have sought for the following orders:

***a) That this Honourable Court be pleased to review, set aside and or vary its orders made on 27<sup>th</sup> October, 2020 and re-instate the Defendants’ Application dated 12<sup>th</sup> August, 2020 for hearing and disposal.***

***b) That the costs of this Application be in the cause.***

2. The Application is supported by the Affidavit of the Defendants’ counsel who has deponed that the Defendants’ Application dated 12<sup>th</sup> August, 2020 was fixed for *inter-partes* hearing on 27<sup>th</sup> October, 2020; that on 27<sup>th</sup> October, 2020 he was let into the online court session long after the matter had been called out and orders made and that he had tried to join the session as from 8:45am but was kept at the lobby for so long that by the time he was let in, the matter had been called out.

3. Counsel deponed that he had sought assistance from the Court Assistant by the name Joseph Musyoki but was not successful; that it is the Deputy Registrar Hon. Brenda Bartoo who assisted him to join the Court session after many attempts and that as at the time the Application came up for hearing the same was unopposed.

4. According to counsel, this is a simple application seeking orders to have the suit transferred to the Lower Court at Mavoko for hearing and disposal as the value of the subject matter of the suit as per the pleadings is Kshs. 2,800,000, which is way below Kenya shillings twenty million and that the failure to attend Court in time was not intentional but rather a challenge with technology.

5. As at the time of writing this Ruling, the Plaintiff’s Replying Affidavit was not on record. Both parties filed submissions and authorities which I have considered. I have also considered the filed authorities.

6. The record shows that the Defendant filed an Application dated 12<sup>th</sup> August, 2020 in which he sought to have this suit transferred to Mavoko Law Courts. When the Application came up for inter-partes hearing (*virtual*) on 27<sup>th</sup> October, 2020, neither the Defendants nor their advocate were on the online platform.

7. Although the Plaintiff had not filed an Affidavit in response to the Application, the Plaintiff's counsel informed the court that this matter should not be transferred to the lower court as prayed in the Application dated 12<sup>th</sup> August, 2020. The court proceeded to dismiss the Application with no order as to costs.

8. The Defendant's advocate has deponed that he tried logging in the virtual platform as early as 8:45am but could not be allowed in. Counsel has deponed that he sought the assistance of not only the court clerk, but also the Deputy Registrar of this court.

9. Considering that the court session of 27<sup>th</sup> October, 2020 was online, and in view of the efforts that the Defendant's counsel made to be admitted in the online session, I grant to the Defendants an opportunity to argue the Application dated 12<sup>th</sup> August, 2020. Indeed, the Plaintiff having not filed a response as the time the Application dated 12<sup>th</sup> August, 2020 was dismissed, he shall not suffer any prejudice if the Application is heard and determined on merit.

10. For those reasons, I allow the Defendants' Application dated 12<sup>th</sup> August, 2020 as follows:

*a) The orders of this court made on 27<sup>th</sup> October, 2020 are hereby set aside and the Application dated 12<sup>th</sup> August, 2020 is hereby reinstated for hearing and disposal.*

*b) Each party to bear his/its own costs.*

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2021.**

**O. A. ANGOTE**

**JUDGE**