



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU

ELC CASE NO. 103 OF 2012

JOYCE WANJIRU NYANJUI

SARAH WAMBUI NYANJUI

(Suing on their behalf and as the legal representatives of ARTHUR
NYANJUI GICHUHI).....PLAINTIFFS/APPLICANTS

VERSUS

JOSEPH CHEGE GITAU.....DEFENDANT/RESPONDENT

RULING

The Application.

1. By the Chamber Summons dated **26/8/2021** and filed in court on **27/08/2021** brought under **Part 1 Rule 1 & 2** of the **High Court Practice and Procedure Rules** the plaintiffs sought for the following orders:

- 1. That the applicant be granted leave to file reference proceedings during the court's vacation period.**
- 2. That due to the urgency of this matter, the honourable court be pleased to grant leave for the reference to be heard during the vacation period.**
- 3. That costs of this application to abide the outcome of the entire reference proceedings.**

2. The application is supported by the sworn affidavit of **Koome Gitonga**, Advocate, sworn on **26/08/2021**. The grounds on the face of the application and the supporting affidavit are that the court is on vacation; that unless the application is heard during that period the applicant stands to suffer and that the respondent will not be prejudiced in any way if the orders sought are granted.

The response

3. The respondent filed his grounds of opposition dated **27/09/2021** on the same date.

Submissions

4. The defendant/respondent filed his submissions on **13/10/2021** while the plaintiffs/applicants filed their submissions on **18/10/2021**. I have considered those submissions.

Determination

Upon considering the prayers sought in the application, it is my opinion that they are overtaken by events as they are limited to when the court was on vacation. There are no other prayers in the application capable of being granted now. The application is certainly not for extension of time. It may appear to be mere technicality but in the eyes of this court, perchance there are any shortcomings as to timeliness of filing the reference which is also dated **26/8/2021** they are not capable of being addressed by way of the Chamber Summons that seeks only the indulgence of the court to have matter be heard during the vacation. Parties must seek the proper remedy in applications when they come before court. It is clear from the submissions of the respondent that he objects to the application principally on the basis that the application

seeks leave to file a reference out of time; I have found that it is not an application for extension of time.

6. It is therefore this court's opinion that it cannot go beyond the stated parameters of the Chamber Summons application dated **26/8/2021**; This court can not therefore address the main reference application in substance especially owing to the fact that and it is hereby dismissed with no orders as to costs.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 28TH DAY OF OCTOBER, 2021

MWANGI NJOROGE

JUDGE, ELC, NAKURU