

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 12 OF 2019 (OS)

ALEX M. KARANJA NJOROGE.....1st PLAINTIFF

EDWIN MUNYANGA MATHENGE.....2nd PLAINTIFF

NANCY NJERI MACHARIA.....3rd PLAINTIFF

-VERSUS-

LOISE WANGARI MAGONDU.....DEFENDANT

RULING

1. Pursuant to the substituted service upon the Defendant herein on the 2nd August 2019, on 31st October 2019 the Court, after having been moved by Counsel for the Applicant/Plaintiff through their application dated the 30th October 2019 to have ELC 12 of 2019 and ELC 30 of 2019 (Originating Summons) consolidated for reason that the parties and the subject suit were similar, did consolidate the said matters with directions that ELC No. 12 of 2019 be the lead file.

2. Subsequently, there was no response by the Defendant to the pleadings save for a note which was handed to the Plaintiff's Counsel from the firm of M/S Muteithia Kibira Advocates seeking to be served with the Pleadings and Summons.

3. It was thus the Plaintiff's submission that no appearance had been entered by the Defendant as the rudimentary nature of the note passed to them was not deemed as an appearance and as such they sought for issuance of the orders in their Originating Summons dated 10th May 2019. The Plaintiffs subsequently and filed their written submissions to the said Originating summons.

4. I have considered this matter with a lot of anxiety. I have also considered the contents of the note passed to the Plaintiff's Counsel by the firm of M/S Muteithia Kibira Advocates which note was an acknowledgement that the said firm had been appointed to act for the Defendant. I believe that in the best interest of justice and pursuant to the fact that *the right to legal representation of parties* by Counsel of their choice *is universally acknowledged as a fundamental right*, and further, that every person has the right to have any dispute that can be resolved by the application of law, decided in a fair and public hearing before a Court and further, pursuant to the provisions of Section 3A of the Civil Procedure Act I make the following orders;

- i. The undated written submissions herein filed on the 14th November 2019 shall remain in abeyance until the determination of the suit.
- ii. The Originating summons shall be served upon the firm of M/S Muteithia Kibira Advocates within the next 14 days which firm shall enter Appearance and file its response to the Originating Summons within 14 days upon service.
- iii. Originating Summons shall proceed for hearing by way of viva voice evidence.
- iv. Parties shall then comply with the provisions of Order 11 of the Civil Procedure Rules within 21 days.
- v. The Originating Summons shall thus proceed for hearing upon confirmation of compliance and taking of directions, on a date to be fixed by the Court.

Dated and delivered at Nyeri this 6th day of February 2020.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE