

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO. 376 OF 1999

EUNICE KIRUNDA KINYUA (Suing as the Administratrix of the Estate of

(ESTATE OF JOSEPH KINOTA KIJANI).....PLAINTIFF

VERSUS

JOSEPHAT MWATHI KIBIRU (as guardian *ad litem* to **D K M...DEFENDANT**

DIRECTION ON NOTICE OF MOTION DATED 3RD OCTOBER 2018 BROUGHT BY THE PLAINTIFF

The Notice of Motion dated 3rd October 2018 challenges the Exparte hearing and ruling delivered by the Hon. J.M. Bwonwong'a J sitting at the Narok High Court during the High Court Vacation (August recess).

The hearing was held on the 13th September 2018 and Ruling delivered in the 18th September 2018.

The plaintiffs seek that the ruling be set aside or reviewed on grounds that they were not given an opportunity to be heard on the application, nor notice of the hearing at Narok, in place of Nakuru High Court where the suit is filed.

It is the applicant's contention that the applicants (respondents herein) mislead the court by non-disclosure of material facts occasioning miscarriage of justice to the applicants/plaintiffs.

Parties have filed submissions on the application. They too did not inform this court of these crucial facts that the exparte hearing and ruling were given by my brother Judge Hon. Bwonwong'a, a fellow judge of concurrent jurisdiction.

In the circumstances, as the said ruling is under attack and an order for review and/or setting aside is called for, it would not be inline with the court's concurrent jurisdiction of fellow judges to hear and determine the application when the judge who passed the said orders and ruling can easily be available.

In my opinion, to do so would in effect be sitting on appeal against a ruling of a judge of concurrent jurisdiction and against the law.

Advocates for both parties agree that the file be placed before the Hon. Justice Bwonwong'a J to deal with the Notice of Motion aforetasted.

I therefore direct the Deputy Registrar to forward this file to the High Court at Narok, to be **mentioned before the Judge, on the 29th May 2019** for further orders and/or directions.

Dated at Nakuru this 17th Day of May 2019.

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J.N. MULWA

JUDGE