

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MIGORI

ELC CASE NO. 346 OF 2017

LUCY GHATI.....PLAINTIFF/RESPONDENT

VERSUS

ALEX WAMBURA JOHN

CHARLES MATINDE NYAKOBA.....DEFENDANTS

RULING

1. On 13th January 2020, the Applicants, **ALEX WAMBURA JOHN** and **CHARLES MATINDE NYAKOBA** through M/s. Odingo and Company advocates filed a notice of motion dated 07/1/2020 seeking orders (a) to (g) set out on it's face. The motion is premised on the grounds set out on it's body, the affidavit in support and annexed documents.

2. In a 23-paragraphed replying affidavit, the respondent through M/s. Abisai and company Advocates opposed the motion. I note annexures "LG1" thereto.

3. The respondents counsel filed and served submissions as ordered by the court on 25/2/2020. The applicants neglected to do so in spite of the directions granted by court. Submissions of the respondent hereby noted.

4. Clearly, I find that the applicants have failed to argue the application as ordered herein. The applicants were accorded their right under **Article 50 (1) of the Constitution of Kenya, 2010**.

5. I view of foregone and bearing in mind **Article 159 (2) (b) of the Constitution (supra)**, the application has no merit. Thus I order that :-

i. The notice of motion dated 07/01/2020 be and is hereby dismissed with costs to the respondents by dint of the proviso to section 27 (1) Civil Procedure Act (Cap 21 Laws of Kenya), and the case of Rai and 3 others –vs- Rai and 4 others Petition No. 4 of 2012 (SCOK).

ii. Orders accordingly.

Delivered, Signed and Dated at Migori through email pursuant to, inter alia, Articles 7 (3) (b), 159 (2) (b) and (d) of the Constitution of Kenya, 2010, Section 3A of Civil Procedure Act chapter 21 Laws of Kenya and Sections 3 and 19 of the Environment and Land Court Act, 2015 (2011) due to Corona Virus pandemic, challenge this 10th day of JUNE 2020.

G.M.A. ONGONDO

JUDGE