



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 128 OF 2012

AHMED MOHAMMED KHALID PLAINTIFF

VERSUS

MARY NDUTA WAFULA1ST DEFENDANT

CAROLYNE AKINYI WAFULA 2ND DEFENDANT

MUNICIPAL COUNCIL OF BUNGOMA 3RD DEFENDANT

AND

COLLINS MUNYASIA WAFULA1ST INTERESTED PARTY

DERRICK MUGANDA WAFULA 2ND INTERESTED PARTY

VALTARE ANDATI WAFULA 3RD INTERESTED PARTY

RULING

On 29th June 2020, I directed that I would give directions on the Interested Parties' Notice of Motion dated 22nd June 2020 on 8th July 2020 by video link since I fall within the category of those Judicial Officers who are exempted from sitting in Open Court following the **COVID – 19** pandemic. The reason was because I intended to engage the parties to see if they could agree on the Interested Parties' Notice of Motion dated 22nd June 2020 and also find out if in fact this is a matter that could be transferred to the Chief magistrate's Court as per the observations in my ruling dated 27th May 2020.

However, by 8th July 2020, Bungoma Court was still experiencing challenges with regard to the interest and so the scheduled mention via video link could not proceed. This challenge has been brought to the attention of the Chief Registrar of the Judiciary but is yet to be addressed. I therefore directed that the Interested Parties' Notice of Motion dated 22nd June 2020 be canvassed by way of written submissions. The Interested Parties were to file and serve the application together with their written submissions within 5 days from 8th July 2020. The Respondents would then have 5 days from the date of service to file their responses and submissions and the ruling would be delivered on 24th July 2020 through electronic mail. However, by the time the file was forwarded to me on 20th July 2020 for purposes of drafting the ruling, there were no responses from the Respondents to the Notice of Motion dated 22nd June 2020 and only the Interested Parties had filed their submissions. The said application is therefore not opposed.

By their Notice of Motion dated 22nd June 2020, the Interested Parties seek more time within which to file and serve their pleadings in this suit. On 27th May 2020, I delivered a ruling granting them 14 days within which to do so. However, as is clear from the supporting affidavit of their Counsel **MS NANZUSHI** dated 22nd June 2020, she only became aware about that ruling on 18th June 2020 after the lapse of the 14 days. Counsel attributes this lapse to **"computer technology and the registry not communicating to"** her. It cannot be true that the registry did not communicate with her because part of the record herein is an email sent by the Deputy Registrar **HON E. MWENDA** to all the counsel herein on 27th May 2020 at 13:49 pm forwarding the ruling that was delivered on the same day. Therefore, our registry or indeed the Deputy Registrar of this Court cannot be blamed if **MS NANZUSHI** did not get the ruling delivered on 27th May 2020. The more plausible explanation for that can only be her failure to grasp **"computer technology"** which is a challenge to many others. My only advise is that with the **COVID – 19** pandemic now with us and as the Judiciary embarks on E – filing and other processes, we must all be ready to keep in tandem with technology.

Having said so, the Interested Parties' Notice of Motion dated 22nd June 2020 is not opposed. It is allowed as prayed. The Interested Parties' pleadings filed herein be deemed as duly filed and served subject to the payment of the requisite Court fees.

Secondly, in my ruling dated 27th May 2020, I had indicated that the subject matter of this suit is, in my view, within the pecuniary jurisdiction of the Subordinate Court and I intended to have it transferred. This was however subject to what counsel may say. That opportunity is now lost because the video link which would have enabled me to engage the parties is dysfunctional. I however direct that this matter be mentioned after the vacation on 12th October 2020 if the system will have been fixed for purposes of taking a hearing date and/or any other directions as may be necessary.

Boaz N. Olao.

J U D G E

24th July 2020.

Ruling dated, delivered and signed at **BUNGOMA** this 24th day of July 2020. To be delivered by electronic mail in keeping with the guidelines following the **COVID – 19** pandemic and with notice to the parties.

Boaz N. Olao.

J U D G E

24th July 2020.