



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC MISC. APPL. NO. 11 OF 2020

HENRY SHIKUKU BARASA

JOASH CHIMUNGE WASWA

JOHN NYONGESA NGEYWA

(Suing as the duly authorized representatives of

MATISI OUTREACH CHURCH.....APPLICANT

VERSUS

REUBEN FWAMBA MBITA.....RESPONDENT

RULING..

1. The applicant filed Notice of Motion dated 24/7/2020 on 30/7/2020 brought under **Order 45 rule 1(1), 2; Order 51(1)** of the **Civil Procedure Rules 2010, Sections 3A and 80** of the **Civil Procedure Act**. The court having dealt with prayers **Nos. 1-4** of the above application on a preliminary basis, the only prayers that remain to be determined are prayers **Nos. 5, 6, 7, 8 and 9**. The same are framed as follows:

5. That this honourable court be pleased to reinstate our application dated 13th February, 2020 pending the hearing and determination of this application.

6. That this honourable court be pleased to find that the submissions dated 19th July, 2020 and filed on 22nd July, 2020 be deemed to be properly filed and served on record.

7. That this honourable court be pleased to issue directions on the hearing of our application dated 13th February, 2020.

8. That the court do make such order or further orders as it may deem fair and just in the interest of justice.

9. That costs of this application be borne by the respondent.

2. The grounds upon which this application is brought are that this court issued a Ruling on the 21/7/2020 which dismissed the applicants' application dated 13/2/2020 for want of prosecution and that they complied with the court order dated 4/6/2020 and filed the submissions in record time as ordered.

3. The application is supported by sworn affidavit **Jane Nyabiage Odiya**, Counsel for the applicants dated 24/7/2020. She depones that the submissions in respect of the application dated 13th February 2020 were lodged by way of electronic mail on the 22nd June 2020. Attached to the supporting affidavit are copies of documents to prove her averments. They include copies of electronic mail communications between her office and the registry conducted between 22nd June 2020 and 23rd June 2020.

4. Having perused the application and the annexures thereto, I am persuaded that the applicant's submissions were timeously filed and that the inadvertence lay on the part of the court registry in that the submissions were not brought to the attention of the court by the time of preparing the ruling.

5. Consequently, I find that the application dated **24/7/2020** is merited and I grant the same in terms of Prayers Nos. **5, 6** and **7** thereof. The order of this court made on **21/7/2020** dismissing the application dated **13th February 2020** is hereby vacated.

6. The application dated **13th February 2020** shall be disposed of by way of the written submissions filed by the parties. A copy of the applicant's submissions in **Kitale Misc No. 3 of 2020** shall be placed in that file and the same shall be brought up for the preparation of a ruling. Ruling on the said application will be delivered on **5/11/2020**. Each party shall bear its own costs of the instant application.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on 13th day of October, 2020.

MWANGI NJORGE

JUDGE