

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 1909 of 2000

KURANI MOIKAIPLAINTIFF

VERSUS

**MULINGE KILUNGU & 19 OTHERS
DEFENDANTS**

RULING

The Plaintiff filed suit herein on the 20th November, 2000 seeking *inter alia* the eviction of the Defendants from the suit premises and for *mesne profits*. The Defendants filed a defence on 9th of January, 2001 claiming that they are lawfully on the Land having purchased the same. They also counter-claimed seeking a permanent injunction and damages.

The matter was set for hearing twice on 25th January, 2002, 15th of July, 2002 and 2nd July, 2003 but the hearing never took off on both the two occasions.

The Defendant filed a Notice of Motion dated 20th November, 2007 that was heard by Kubo J. on 19th June, 2008 the subject matter of this ruling today. Ruling was to be delivered by J. Kubo on 9th of July, 2008 which was never to be. Kubo J has since retired. The file was assigned to me alongside other by Hon. The Chief Justice for further directions. Clearly what is pending currently is the ruling which I am obliged to deliver based on the submissions on record which I now hereby do.

The Notice of Motion is dated 20th November, 2007 brought under Order XVI Rule 5 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The same is supported by the affidavit of **Anne M. Kiusya** the Advocate on record for the Defendants and the grounds on the face of the application.

The Plaintiff filed a Replying Affidavit late this it was not admitted by the Judge.

The subject matter is land which is an immotive subject. The Plaintiff claims ownership whereas on their part the Defendants claim to have purchased the same. It is more than 9 years now since the suit was filed. There is indeed need to bring this Litigation to an end, the suit having been filed over 9 years ago as earlier stated, however, in my view this ought to be done upon parties getting each an opportunity to ventilate their case; the subject matter being land. From the court record, none of the parties have complied by either of the parties with pre-trial steps. There is no compliance by either of the parties with Order, X Rule 11 A nor have the issues been framed, meaning that the suit is indeed not ready for trial. Having stated as above I am also cognizant that the court ought not to assist an indolent party. Declining to grant the orders for now I make the following directions:-

1. ***That the parties herein do make discoveries in line with Order X Rule 11A within 30 days from to-day.***
2. ***That the parties do file agreed issues and/or separate issues within the said 30 days from to-day.***
3. ***That the Defendants' counsel do serve a copy of this order upon Plaintiffs' counsel forthwith.***

4. *That there be a mention to confirm compliance with the said order on the 9th of November, 2009.*

Dated and delivered at Nairobi this 6th October, 2009.

ALI- ARONI

JUDGE