



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 34 OF 1998

EUNICE MUGURE MUCHORI.....1ST PLAINTIFF

IBRAHIM BAIYA MUCHORI.....2ND PLAINTIFF

JIM B. MUCHORI.....3RD PLAINTIFF

VERSUS

PETER MACHARIA KARIUKI.....DEFENDANT

RULING

The Application

1. By a Notice of Motion dated 24/8/2020/2020 and filed in court on 25/8/2020 brought under **Article 47, 50 and 159** of the **Constitution of Kenya**, the defendant seeks the following orders:

- (1) That this application be certified as urgent and service thereof be dispensed with in the first instance
- (2) That the honourable Mr. Justice Mwangi Njoroge be pleased to recuse himself from this suit.
- (3) That all proceedings, undertaken and all the orders issued by the Honourable Mr. Justice Mwangi Njoroge in this suit be set aside.
- (4) That the court file in respect of the suit be placed before the Honourable Chief Justice for urgent directions as to further proceedings.
- (5) That pending the hearing and determination of this application, there be arrest of judgment scheduled to be delivered on 17th August, 2020.
- (6) That other or further directions as the honourable court shall deem fit to issue in the circumstances.
- (7) That the costs of this application in any event be provided for.

2. The application is supported by the affidavit of the defendant sworn on 4/8/2020.

The Response

3. The plaintiffs through their counsel filed a sworn replying affidavit dated 23/9/2020.

Submissions of the Parties

4. I have read those submissions and considered them in the determination of the instant application.

Determination

5. A perusal of the ruling delivered by this court on **30/6/2020** shows that this court stated as follows therein:

“For the purpose of enforcing proper case management in this matter, it is hereby ordered that no interlocutory application shall be filed henceforth without the leave of court in this matter.”

6. That order was not made idly by this court. It arose from an observation by the court that the defendant was apparently intent on further delaying the hearing of this old case, which is indeed the oldest case in this court station.

7. Contrary to that order the defendant nevertheless brought the instant application without seeking prior leave of court. A perusal of the instant application shows that as drafted, no order seeking leave is included. Despite the fact that the application seeks orders of recusal, failure to seek leave is a preliminary issue which this court can not gloss over.

8. Had the defendant sought prior leave, it would have been quite a venture for this court to canvass the instant application on its merits and, if sufficient reason were found, recuse itself; however, it is expressly barred from doing so by the defendant's breach of that order.

9. Consequently this court is of the view that the application before court, having been filed without the requisite leave, is incompetent. The application dated **24/8/2020** is hereby struck out with costs to the plaintiffs. Consequently this court's directions made on **30/7/2020** remain in effect save that the timeline for compliance therewith shall commence from the date of this ruling. Judgment in this matter will be delivered by way of electronic mail on **24/11/2020**.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 17th day of November, 2020.

MWANGI NJOROGE

JUDGE, ELC, KITALE.