



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**ELC 59 OF 2014**

**HUDSON OBAGA OKAO.....1<sup>ST</sup> PLAINTIFF**

**JASON MOCHAMA OKAO.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**SAMSON OBAGA OKAO.....1<sup>ST</sup> DEFENDANT**

**ARWINGS OBAGA.....2<sup>ND</sup> DEFENDANT**

**GEOFFREY OBAGA OKAO.....3<sup>RD</sup> DEFENDANT**

**DERICK OKAO OBAGA.....4<sup>TH</sup> DEFENDANT**

**ROY MACHUKI OBAGA.....5<sup>TH</sup> DEFENDANT**

**WALLANCE OBAGA OKAO.....6<sup>TH</sup> DEFENDANT**

**RULING**

**INTRODUCTION**

1. This Ruling is in respect of the oral application made by Mr. Momanyi, learned Counsel for the plaintiffs. He proposes that this matter be referred for mediation as the arbitrator who handled the matter earlier filed a report that was not capable of being implemented since it does not have any specific recommendations.

2. Mr. Bosire learned Counsel for the Defendants is opposed to the position taken by Mr. Momanyi. He argues that when the matter was last in court on 19.3.2018, the court directed that the Assistant County Commissioner ought to interrogate the report and come up with specific findings. He is of the view that Assistant County be given more time to come up with his findings based on what transpired during mediation rather than starting the process afresh.

3. I have read the report by the Assistant County Commissioner and even though I note that he listened to both sides the proceedings are poorly recorded and do not capture the real issues in controversy.

Coupled with that, there are no recommendations. Even if the report was to be taken back to him he could need to recall the parties to make their positions clear. It has been brought to the court's attention that the 1<sup>st</sup> defendant who was the main party to the proceedings has died and that the Assistant County Commissioner who handled the matter has since been transferred and it would be difficult to find him to implement the court order of 19.3.2018.

4. I agree with Mr. Momanyi that in view of the foregoing it would not make sense to have the report perfected so to speak. If both parties were so minded, the matter would have been referred to mediation.

However in view of the apparent opposition by Counsel for the Defendants and the demise of the 1<sup>st</sup> defendant, I direct that the suit be set down for hearing. This does not preclude the parties from pursuing an out of court settlement.

**Dated, signed and delivered at Kisii this 17<sup>th</sup> day of October 2019.**

**JANE M. ONYANGO**

**JUDGE**