



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 101 OF 2017**

**FORMERLY NAKURU ELC NO. 117 OF 2014**

**TERESIA WAMBUI.....PLAINTIFF**

**VERSUS**

**MARITIM OLE KUSAI.....1<sup>ST</sup> DEFENDANT**

**JACKSON LONGISA NGURUMWA.....2<sup>ND</sup> DEFENDANT**

**JULIUS TIAPATIT KOROS.....3<sup>RD</sup> DEFENDANT**

**RULING**

The Application herein is brought under Article 159 of the Constitution of Kenya 2010, Section 1A, 1B, 3A and section 63 of the Civil Procedure Act. The Applicant seeks orders that the court do reserve and/or withhold judgement in the matter that was to be delivered and an order for the hearing of the suit herein.

The Application is based on the grounds that the Defendants are not aware that the suit herein was transferred from Nakuru ELC to Narok ELC court upon the establishment of the latter court and further that they were not served with any Hearing Notice as alleged by the Plaintiff.

The Application was supported by the Affidavit of one Jackson Longisa Ngurumwa in which he deponed that he had instructed the firm of Githui and Company Advocates to act for him in the matter and to date a Preliminary Objection that they filed in respect of the suit herein dated 26<sup>th</sup> July, 2014 is yet to be heard and further that the suit was transferred from Nakuru to Narok ELC for hearing and determination.

He further stated that he was not served with summons or any Hearing Notice in respect of the suit herein and that he did not meet with John Mwangi Hinga the Process Server on the date he alleges to have served a Hearing Notice. He further stated that the First Defendant resides at Olkurto and not Olposimoru as alleged by the Process Server.

The Application was opposed by the Respondent who had filed a Replying Affidavit. The Respondent states that the Defendants are meant to delay the suit herein and that the Applicant together with their advocates have been attending court at all material times both in Nakuru

and Narok.

The Respondent further averred that the Applicants were properly served with a Hearing Notice.

I have read the Application before me and the submissions filed by counsel in the matter and the issue for determination before me is whether there was proper service on the Applicants prior to the hearing of the substantive suit and whether I should exercise my discretion.

The Applicant avers that he was not served with any Hearing Notice in respect of the matter. From the record it seems there is an affidavit of service on record by one John Mwangi Hinga whose deposition on service is disputed by the Applicant. The Respondent though insists that service was effected on the Applicant the process server himself has not shown any affidavit to negate the allegations against him. The Respondent has not even stated that she was in the company of the process server when the service was effected upon the Applicant.

From the foregoing and having looked at the Applicants defence I find that it shall serve the interest of Justice if the Applicants are accorded the chance to defend the suit herein and in view of the above I order that the suit herein be heard afresh and I consequently set aside the proceedings of 23<sup>rd</sup> October, 2017 and such other consequential orders that were made.

I will also exercise my discretion and award the Plaintiff/Respondent throw away costs of kshs.10, 000/-.

Orders accordingly.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **24<sup>th</sup>** day of **September, 2018**

**Mohammed Noor Kullow**  
**Judge**  
**24/9/18**

In the presence of:

Plaintiff

N/A for the Defendant

N/A for Counsel

CA:Chuma