

REPUBLIC OF KENYA

IN The ENVIRONMENT AND LAND COURT AT MIGORI

ELCC APPEAL NO. 70 OF 2017

REUBEN OYAMO ONDIEK

AGGREY OMONDI ONDIEK.....PLAINTIFF/APPLICANT

VERSUS

JOASH ODHIAMBO ORANGI.....DEFENDANT/RESPONDENT

RULING

1. A Notice of Motion dated 1 /2/2017 brought under Section 1A,1B & 3A Civil Procedure Act together with Order 51 and Order 40 of the Civil Procedure Rules 2010 seeks conservatory orders against the Defendant/Respondent JOASH **ODHIAMBO ORANGI** by the Plaintiffs, **REUBEN OYAMO ONDIEK AND AGGREY OMONDI ONDIEK**. It is for inter parties hearing today.
2. The Plaintiff/Applicant is represented by Mwita Kerario counsel instructed by Kerario Marwa and Company Advocates. The Defendant/Respondent counsel is represented by Sam Onyango and Company Advocates.
3. The Plaintiff/Applicants counsel has applied to have the Notice of Motion application withdrawn with no orders as to costs. The application is consistent with the holding in **Councils of Governors Vs. Senate & Anor (2014) KLR -SCK** on liberty of a party to withdraw a matter in line with **ARTICLE 159(2) (C) CONSTITUTION OF KENYA 2010**. His counsel has indicated that they will give a shot at Alternative Dispute Resolution mechanism in this matter.
4. The Defendant/Respondents counsel has no objection to the application. He is also for Alternative Dispute Resolution regarding the dispute.
5. I consider the prayers by the Plaintiff/Applicants counsel vis a vis the response by the Defendant/Respondent counsel. I find the prayer merited and I allow it.
6. Costs are within the discretion of the court and follow the event see Proviso to **Section 27 Civil Procedure Act Cap 21 Laws of Kenya and Rai -Vs. Rai (2014) KLR -SCK**. I make no order to costs in the application of withdrawal of the Notice of motion.
7. I direct that existing status quo on **L.R. NO. SUNA EAST WASWETA 1/20368(3)** be observed and maintained until the suit is heard and determined.
8. The parties are urged to embrace Alternative Dispute Resolution and will be at liberty to move the court appropriately.

GEORGE M. A. ONGONDO

JUDGE

DELIVERED, SIGNED and DATED in open court at MIGORI this 15TH day of March, 2017.

in the presence of :-

Mr. Mwita Kerario counsel for the Plaintiff/Applicant

Mr. Sam Onyango counsel for the Defendant/Respondent