



**REPUBLIC OF KENYA**

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

**CASE NO.265 OF 2017**

**BEATRICE WAMBUI KIARIE.....1<sup>st</sup> PLAINTIFF/APPLICANT**

**MARGARET WANJIRU NZIOKA.....2<sup>nd</sup> PLAINTIFF/APPLICANT**

**RUTH KARITI KAHIA.....3<sup>rd</sup> PLAINTIFF/APPLICANT**

**-V E R S U S-**

**TABITHA WANJIKU NG'ANG'A.....1<sup>st</sup> DEFENDANT/RESPONDENT**

**REUBEN KAMAU MUIRURI.....2<sup>nd</sup> DEFENDANT/RESPONDENT**

**PHILIP WAWERU KURIA.....3<sup>rd</sup> DEFENDANT/RESPONDENT**

**JOHN MUCHUKU KURIA.....4<sup>th</sup> DEFENDANT/RESPONDENT**

**BEATRICE WAMBUI NG'ANG'A.....5<sup>th</sup> DEFENDANT/RESPONDENT**

**LUCY WABAI KURIA.....6<sup>th</sup> DEFENDANT/RESPONDENT**

**JOSEPHAT NDUNGU KURIA.....7<sup>th</sup> DEFENDANT/RESPONDENT**

**STEPHEN MWANG KURIA.....8<sup>th</sup> DEFENDANT/RESPONDENT**

**JENIFFER WAGIO NG'ANG'A (Sued as the administrator.**

**of Estate of DENIS NG'ANG'A KURIA.....9<sup>th</sup> DEFENDANT/RESPONDENT**

**ESTHER WATIRI GITAU (Sued as the administrator of the**

**Estate of JOSEPH GITAU KURIA).....10<sup>th</sup> DEFENDANT/RESPONDENT**

**RULING**

On the 24<sup>th</sup> April 2017 the above captioned matter came before me for mention to take directions wherein M/s Chelagat Advocate held brief for M/s Mukira Advocate for the Plaintiffs/Applicants while the Defendants/Respondents was represented by Mr. Karanja Advocate.

M/s Chelagat informed the court that parties had entered into a consent to wit:

1. Have the application dated the 2<sup>nd</sup> September 2016 marked as compromised.
2. That parties take dates to confirm compliance.

The position was confirmed by Mr. Karanja, counsel for the defendant and the court went ahead to adopt the said consent giving parties 30 days to comply with order 11 of the Civil Procedure Rules. The matter was set down for the 29<sup>th</sup> May 2017 for mention to confirm compliance.

On the said date, M/s Mukira Advocate appeared before me orally submitted that the order issued on the 24<sup>th</sup> April 2017 compromising their application dated the 2<sup>nd</sup> September 2016 was vague and ambiguous as it did not contain the terms of the compromise. She then asked the court to **set aside** the said orders.

I have considered the oral application made by counsel for the plaintiffs to set aside the orders issued on the 24<sup>th</sup> April 2017 and the opposing response from the Defendants' counsel therein.

In **Hirani v. Kassam (1952), 19EACA 131**, the court of Appeal quoted the following passage from Seton on Judgments and Orders, 7<sup>th</sup> edition, Vol.1 p.124 as follows:

***“Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them..... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court..... or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement.”***

Be as it may, at this juncture, I do not wish to go into depth of the oral application submitted.

I do hereby direct the Plaintiffs/Applicants to file and serve their formal application, to set aside the consent order made on the 24<sup>th</sup> April 2017, within the next 14 days,

***Dated and delivered at Nyahururu this 31<sup>st</sup> day of May 2017.***

**M.C. OUNDO**

**JUDGE OF ELC NYAHURURU**