



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MIGORI

ELC CASE NO. 222 OF 2017

(Formerly ELC No. 367 of 2016)

PAMELA AKINYI BWANAAPPLICANT

VERSUS

DOMNICUS MAIL ADERA.....1ST DEFENDANT

SAMSON MANOWA MAIL.....2ND DEFENDANT

CALLMAS ADERA OTHO.....3RD DEFENDANT

JAPHETH ANGILA ATINGA.....4TH DEFENDANT

RULING

1. A Notice of Motion dated 12/4/2017 was filed by Mr. Mwita Kerario counsel for the plaintiff/respondent. There is no notice of change of the advocates on record Mwamu and co Advocates were and are on record for the plaintiff/applicants.
2. Ms. Adwar Advocate holding brief for Mwamu Advocate the plaintiff/applicant seeks to have the Notice of Motion expunged from the record for want of fundamental procedure.
3. There is no objection thereto by Ms. Ochwal counsel holding brief for Ojala counsel for the defendants.
4. I am conscious of **Article 159(2) (d) Constitution of Kenya 2010** on technical of procedure. Since there is a counsel on record for the plaintiff/applicant filing of Notice of change of advocate is a fundamental procedure to fair administration of justice and right to legal representation.
5. I accordingly find the Notice of Motion dated 12/4/17 out of place hereof. I dismiss it with no orders as to costs.
6. The parties represented by counsel have proposed to have a Notice of Motion dated 17/5/2016 canvassed by way of written submissions. I agree with both counsel. I direct that :-

a) The plaintiff/applicant counsel file and serve written submission within 30 days from the date of service of submissions.

b) The defendant/respondent counsel be and hereby allowed 30 days from the date of service of

submissions by the plaintiff/applicant counsel, to file and serve submissions, too, on them.

7. The plaintiff/applicants counsel Adwar opposes an application for adjournment with regard to Notice of Motion dated 13/5/2017. I find that **Article 159 (2) (b) constitution of Kenya,2010** very relevant. The prayer for adjournment by Ms. Ochwal counsel holding brief for Ojala for the Defendant/respondent is sound as sickness does not knock on the door of human beings nor does it give notice thereof. I accordingly reluctantly allow the prayer for an adjournment with no orders as to costs.

8. Mention on 28/2/2018 to confirm filing and service of submissions with regard to Notice of motion dated 17/5/17 and for directions.

9. Leave granted to the defendant/respondents counsel to file and serve response to the Notice of motion dated 13/5/17 within 30 days from the date hereof.

10. The plaintiff/applicant granted corresponding leave to file and serve reply if any to the response by the defendant/respondent counsel within 15 days from the date of service of the response.

11. Orders of status quo on the suit land made on 8/11/2016 extended accordingly.

G. M. A. ONGONDO

JUDGE

DELIVERED, SIGNED and DATED in open court at MIGORI this **6th** day of **December 2017**.

G. M. A. ONGONDO

JUDGE

In the presence of:

Mr. S. Odwar for Plaintiff/Applicant

Mr. Ochwal for Ojala for the Defendant/Respondents

Josephine Lori – Court Assistan

G. M. A. ONGONDO

JUDGE