



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISC CIVIL APPLICATION NO 48 OF 2015**

**CHARITY NYARUAI NYAMU.....APPLICANT**

**VERSUS**

**ABDIRAHIM HAJI AHMED .....RESPONDENT**

**R U L I N G**

This application is dated 2<sup>nd</sup> day of July, 2015. It states that it is predicated upon Order 51 Rule 1 and 3 of the Civil procedure Rules and Section 6, 17 and 18 of the Civil Procedure Act and all the enabling provisions. It seeks order that:-

- 1. *This application be certified as urgent.***
- 2. *That service of this application be dispensed with in the 1<sup>st</sup> instance.***
- 3. *That this application be heard exparte in the 1<sup>st</sup> instance.***
- 4. *That there be stay of proceedings in Isiolo Senior Principal Magistrate's case No 33 of 2011 pending the hearing and determination of this application.***
- 5. *That there be stay of the proceedings in ISIOLO SPMCC NO. 33 of 2011 until the hearing and determination of Meru High Court Constitutional Petition No. 33 of 2011.***
- 6. *That in the alternative, Isiolo SPMCC No. 33 of 2011 be transferred to Meru High Court and be consolidated with High Court Constitutional Petition No. 6 of 2011.***
- 7. *That cost incidental to this application be provided for by the respondent.***

The application is buttressed by the affidavit of **Charity Nyaruai Nyamu** and has the following grounds:-

- a. *That the suit property herein is plot No. MB 478 within Mwangaza Area of Isiolo.***
- b. *That the respondent is alleged to have balloted this plot and he was given by the now defunct County Council of Isiolo.***
- c. *That the whole process of the alleged balloting is contested by the residents of Mwangaza Area of Isiolo in Constitutional Petition No. 6 of 2011 where the applicant is one of the Petitioners.***
- d. *That the respondent has sued the applicant in Isiolo SPMCC No 33 of 2011 on the basis of that illegal balloting which residents are challenging as a community in Petition No. 6 of 2011.***
- e. *That the applicant will be greatly prejudiced if there is contradictory decision in Isiolo SPMCC No. 33 of 2011 and in Petition No. 6 of 2011 at Meru High Court.***

This matter came up for directions to confirm filing and exchange of Submissions on 9/11/2015. The

applicant has filed Submissions but the Respondent has not done so. I do confirm that the respondent's Advocate had been properly served and therefore aware of this date. As he has not filed his Submissions, I am unable to fix a date for the Ruling.

Mr. Ondieki has asked the Court to allow this application as the respondent is merely delaying the matter. I find Mr. Ondieki's oral application meritorious. In the Circumstances, **the application is allowed in terms of prayer 5 only. Costs shall be in the cause.**

**Delivered in Open Court at Meru this 9<sup>th</sup> day of November, 2015 in the presence of:-**

CC: Lilian /Daniel

Ondieki for the Applicant.

**P. M. NJOROGE**

**JUDGE**



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