



REPUBLIC OF KENYA



**KENYA LAW**  
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**Akasha (Suing as administrator of the Estate of Karima Akasha Abdalla) v Abeid & another (Environment and Land Case Civil Suit 94 of 2021) [2023] KEELC 16797 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16797 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIRONMENT AND LAND CASE CIVIL SUIT 94 OF 2021**  
**LL NAIKUNI, J**  
**MARCH 28, 2023**

**BETWEEN**

**NURDIN ABDALL AKASHA (SUING AS ADMINISTRATOR OF THE ESTATE OF KARIMA AKASHA ABDALLA) ..... PLAINTIFF**

**AND**

**FAHAD HAJI MANSUR ABEID ..... 1<sup>ST</sup> DEFENDANT**

**SWABRI SALIM JAMAAN T/A MAKUPA SERVICE STATION .... 2<sup>ND</sup> DEFENDANT**

**RULING**

**I. Preliminaries**

1. Before this Honorable Court for its determination are two (2) matters both moved by Fahad Haji Mansur Abeid and Swabri Salim Jamaan t/a Makupa service station, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants. These are, firstly, the Notice of Motion application dated 13<sup>th</sup> April, 2022 filed. It was premised under the provision of Section 3A of the *Civil Procedure Act*, Cap 21 and Order 2 Rule 15 (1) of the *Civil Procedure Rules*, 2010, Secondly, there is a Preliminary objection dated even date. Both of them will be dealt with simultaneously.

**II. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants case**

2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants herein sought for the following orders:-
  - a) That the Plaintiff and pleadings filed herein by the Plaintiff be struck out with costs.
  - b) That Costs of the Application and main suit be awarded to the Defendants.



3. The application by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants was premised on the grounds, facts, testimony and the averments made in the eight (8) Paragraphed annexed Supporting Affidavit of Fahad Haji Mansur Abeid the 1<sup>st</sup> Defendant herein who averred that:
- a) He was the 1<sup>st</sup> Defendant herein and competent to swear the affidavit.
  - b) This was a claim based on a contract dated 4<sup>th</sup> August, 2014.
  - c) Based on advise provided by his Counsel on record, that Under the provision of the Limitation of Actions Act, Cap. 22 of the Laws of Kenya, the provision of Section 4 thereof the Plaintiff had a period of six (6) years from 4<sup>th</sup> August, 2014 to bring this suit. The last date of filing this suit was 4<sup>th</sup> August, 2020 (now past).
  - d) This suit by the Plaintiff was filed on the 21<sup>st</sup> May, 2021 which was nine (9) months out of time.
  - e) This case as filed cannot found a cause of action.
  - f) There was no exceptions provided for under the law that could give a lifetime to this case. They were candidates for striking out as they were null and void abinio.

### III. The Notice of Preliminary objection

4. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants raised a preliminary objection on the grounds:-
- a) That the case herein was caught up by limitation of time.
  - b) That the matter herein violated the provisions of Section 4 of the Limitation of Actions Act, Cap 22 Laws of Kenya.
  - c) That the entire suit was a non - starter, irregular, incompetent, illegal, null and void as purporting to base a claim that was contrary to the express and clear provisions of the law.
  - d) That this claim should be struck out with costs.

### IV. The Plaintiff's case

5. On 23<sup>rd</sup> September, 2022, the Plaintiff filed a 5 Paragraphed Replying Affidavit sworn by Nurdin Akasha Abdalla and dated the same day and together with annexures marked as "NAA – 1" attached thereof. It was on the following grounds: -
- i. The said application was an abuse of the Court process and should be dismissed with costs.
  - ii. Though the subject Sale Agreement was entered in the year 2014, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants herein made payments up to January 2021, when the suddenly stopped paying and communicating.
  - iii. He prayed for the application to be dismissed with costs.

### V. Supplementary Affidavit by the 1<sup>st</sup> Defendant/Applicant

6. With leave of Court, the 1<sup>st</sup> Defendant/Applicant filed a 5 Paragraphed Supplementary Affidavit dated 4<sup>th</sup> October, 2022 where he averred that:-
- a. None of the alleged payments on the Replying Affidavit dated 23<sup>rd</sup> September, 2022 related to him or his Co - Defendant.



- b. The unverified printed conversation shown in the affidavit dated 23<sup>rd</sup> September, 2022 had nothing to do with plot number Mombasa/Block XIII/65.

## VI. Submissions

7. On 24<sup>th</sup> October, 2022 while all the parties were present in Court, they were directed to have both the Notice of Motion application and preliminary objection dated 13<sup>th</sup> June, 2022 be disposed of by way of written submissions. Pursuant to that, all the parties complied and indeed on 24<sup>th</sup> October, 2022 the learned Counsels were accorded an opportunity to briefly highlight their submissions. Both of them – Mr. Muchiri and Mr. Obara Advocates diligently, devotedly and dedicatedly executed their task. The Court profusely expresses its gratitude to them for a well done job. Thereafter, a ruling date was reserved on Notice by Court accordingly.

### A. The Written Submissions by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' /Applicants

8. On 18<sup>th</sup> October, 2022, the Learned Counsels for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants'/Applicants through the Law firm of Messrs. Prime Lawyers LLP Company Advocates filed their written submissions dated 12<sup>th</sup> October, 2022. Mr. Muchiri Advocate stated that the application before the Honourable court dated 13<sup>th</sup> April 2022 and filed in court on 14<sup>th</sup> April 2022 sought to strike out the Plaintiff and all the pleading filed by the Plaintiff on the legal grounds of limitation of time. The same was argued together with a preliminary objection dated 13<sup>th</sup> April, 2022 on the same issue of limitation of time.
9. The Learned Counsel submitted that the subject matter in this suit was a sale agreement which was duly entered by the parties herein on 4<sup>th</sup> August 2014. On 21<sup>st</sup> May 2021, the Plaintiff filed the current suit seeking to enforce the agreement and damages. According to the Learned Counsel, by dint of the provision of Section 4 of the Limitation of Actions Act, Cap. 22 of the Laws of Kenya, this suit was time barred. The Plaintiff had a period of six (6) years from 4<sup>th</sup> August 2014 to have instituted this suit before Court. From the dictum of law, the last date of filing this suit was 4<sup>th</sup> August 2020 which by now was past. According to the learned Counsel, this case was filed on the 21<sup>st</sup> May, 2021 which was nine (9) months out of time.
10. The Learned Counsel submitted that the provision of Section 4 states that:-

- “(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued-
- (a) actions founded on contract;
  - (b) actions to enforce a recognizance;
  - (c) actions to enforce an award;
  - (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
  - (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”



11. To buttress his point, the Learned Counsel cited the case of: “*Iga v Makerere University* [1972] EA it was held:

“A Plaint which is barred by limitation is a plaint barred by law. A reading of the provisions of Section 3 and 4 of the Limitations Act Cap 70 together with Order 7 Rule 6 of the Civil Procedure Rule of Uganda which has same provisions with Limitations Act of Kenya seems clear that unless the applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the court cannot grant the remedy or relief.”

12. The Learned Counsel argued that the suit was filed on the 21<sup>st</sup> May, 2021 which was nine (9) months out of time. Therefore, there was no cause of action. He was of the view that the Plaintiff had not established “a prima facie case of trespass with overwhelming chance of success against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants herein.

13. The Learned Counsel asserted that in his reply, the Plaintiff in Paragraph 4 of his Replying Affidavit dated 23<sup>rd</sup> September 2022 stated that the Defendants/Applicants made payments up to January 2021 and had attached an Mpesa statement. This statement never had the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants indicated anywhere. Those statements were never produced in evidence despite the fact that the Plaintiff had testified and closed his case. The other unverified communication did not relate even remotely with the subject matter herein. The same could be summarized as someone asking help from another and nothing more. This was a very desperate action geared towards giving life to a dead course.

14. To support his point, the Learned Counsel cited the case of: “*Gathoni – Versus - Kenya Co-Operative Creameries Limited* [1982] KLR 104, Potter, JA at Page 107 expressed himself thus:

“The law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

15. In conclusion, the Learned Counsel urged the Honorable Court to consider the submissions made herein and proceed to strike out the Plaint and all pleadings filed on the grounds that no cause of action could arise thereof. On the attempt by the Plaintiff to allege that there was acknowledgment by the Defendants/Applicants without any proof, the Court had already pronounced itself on that issue. An acknowledgment after expiry of the limitation period could not revive the action. In any case there was no acknowledgment in this case. Besides, none of the formalities of acknowledgment under the provision of Section 24 of Cap. 22 had been met. On this argument, they referred the Honorable Court to the case of: “*Shire v Thabiti Finance Co. Limited* [2002] 1 EA 279(CAK).

## **B. The Written Submissions by the Plaintiff’s**

16. On 24<sup>th</sup> October, 2022, the Learned Counsel for the Plaintiff through the Law firm of Messrs. Obara & Obara Advocates filed their submissions dated 21<sup>st</sup> October, 2022. Mr. Obara Advocate submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants had filed a Notice of Motion application and a Preliminary Objection dated 13<sup>th</sup> April 2022. The Application and the objection were premised on the Court’s jurisdiction. He stated that the Defendants/Applicants’ argument was that the case was based on a



contract between the Plaintiff and the Defendants entered into on 4<sup>th</sup> August, 2014 and therefore the case was time barred by limitation. The main grounds were as stated below:-

- a) That the case herein was caught up by the limitation of time.
  - b) That the matter violated the provisions of Section 4 of the Limitation of Actions Act, Cap 22 Laws of Kenya.
  - c) That the entire suit was a non-starter, irregular, incompetent, illegal, null and void as purporting to base a claim that is contrary to the express and clear provisions of the law.
17. The Learned Counsel averred that both the Notice of Motion application and the Preliminary Objection were opposed by a Replying Affidavit and Grounds of Objection both dated 23<sup>rd</sup> September 2022. In the Replying Affidavit, the Plaintiff Respondent had attached two Mpesa statements showing payments to the Plaintiff of monies up to and including January 2021. Also attached thereof were Safaricom Short Message Services (SMS) Texts which were exchanged between the Plaintiff and the 1<sup>st</sup> Defendant. From the said messages, it was clear that there was a live discussion involving payments between them that had stretched on for about two (2) years. The reaction by the Defendants to the annexures was a mere denial by saying that the alleged payments did not relate to the Defendants. They had not said that they knew nothing about them.
18. The Learned Counsel submitted that it was obvious that the change of tact by the Defendants was to defeat the course of justice. On 17<sup>th</sup> May 2022, the matter was listed for hearing. The Plaintiff testified, produced exhibits and closed his case. The Defendants called one witness, incidentally a brother to the Plaintiff, who also testified. The Defendants then applied for adjournment which was granted and the matter fixed for hearing on 8<sup>th</sup> July 2022 when it failed to proceed due to the anticipated, visit by the Court to a parcel of land subject of proceedings before the court, though unrelated to this matter. The case was then fixed for hearing on 21<sup>st</sup> September 2022, when the Defendants informed Court of their intention to argue a Preliminary Objection.
19. The Learned Counsel informed Court that it should be noted that both the Notice of Motion application and Preliminary Objection were dated 13<sup>th</sup> April 2022. The matter proceeded for hearing in July 2022, three months after the above documents were filed. There has been no explanation why the Defendants opted to proceed with the hearing as earlier stated yet they had filed the same. It must just be seen that this charade is an afterthought. At the very list, they should have said it was oversight. They are dumb about. There was acquiescence on their part. They cannot turn round now. For this court to arrive at a decision, whether to uphold or dismiss the Preliminary Objection and the Notice of Motion Application dated 13<sup>th</sup> April 2022, it must ask itself and answer the following question. "When did the cause of action accrue?"
20. The Learned Counsel submitted that according to Black's Law Dictionary (10<sup>th</sup> Edition) the word "accrue" means "to come into existence as an enforceable claim or right". Your Honor, we do not disagree that the contract was entered on the 4<sup>th</sup> August, 2014. Payments were made up to and including February 2021. Conversations, albeit, by text messages were exchanged between the Plaintiff and the 2<sup>nd</sup> Defendant. It is only in February 2021, that the Defendants stopped making payments. The cause of action therefore accrued in 2021. In the case of "*South Nyanza Sugar Company Limited v Diskson Aoro Oowner MGR [2017]*" eKLR, it was held that an action arises as at the date of the breach and not at the end of the contract period.
21. The Learned Counsel submitted that the grounds of objection filed by the Plaintiff were purely on points of law. They were as clear as daylight but he would demonstrate the same during the highlighting. The sum total of the Plaintiff submissions was that the Preliminary Objection and



Application were bad in law. They should be struck out with costs to the Plaintiff and the matter be allowed to proceed for hearing. They could not be allowed to have their cake and eat it.

22. The Learned Counsel relied on the cases of *Stephen Onyango Achola and Another v Edward Hongo Sule and Another KSM CA Civil Appeal No. 209 of 2004 [2004]* eKLR. With the citations above, the Plaintiff entreats this Honorable Court to dismiss the Notice of Motion Application and the Preliminary Objection.

## VII. Analysis and Determination

23. I have carefully read and considered the pleadings herein and the relevant provisions made by the by the Learned Counsels. In order to arrive at an informed decision, the Honorable Court has five (5) framed the following issues for determination.
- a) Whether the Preliminary Objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants met the threshold of such objections based on Law and precedents.
  - b) Whether the Notice of Motion application dated 13<sup>th</sup> April, 2022 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein against the Plaintiff/Respondent herein had any merit.
  - c) Whether the suit is barred by the provisions the *Limitation of Actions Act*, Cap. 22 of the Laws of Kenya.
  - d) Whether the suit should be struck out under the provision of Order 2 Rules 15 of the *Civil Procedure Rules*, 2010?
  - e) Who will bear the costs of the objection and the application?

### Issue a). Whether the Preliminary Objection is properly before this court.

24. The meaning, nature and scope of the Preliminary objection has been founded well in the Court of Appeal the case of “*Mukisa Biscuit Manufacturing Co. Limited v West End Distributors Ltd [1969]* EA 696 laid down the principle as to what constitutes a preliminary objection. A preliminary objection to be valid must be on a point of law and must be founded on facts that are not in dispute. If evidence would require to be adduced to establish the facts, then a preliminary objection would not be sustainable. In the said case Law, JA stated as follows:-

“so far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”

25. It is instructive to note that a Preliminary Objection may be raised at any stage of the proceedings. In the present matter the Defendants have hinged their preliminary objection on the fact that the cause of action in the Plaintiff's case was time barred and that the suit was brought after the expiry or lapse of the period of limitation. The preliminary objection is on a point of law and the court is satisfied it has been properly and validly taken. The question whether or not the plaintiff's suit is barred by statute on account of limitation goes to the jurisdiction of the court to entertain the suit. If the suit is statute barred on account of limitation, then the court lacks the jurisdiction to entertain the same. If the court were to proceed to hear and adjudicate the suit when it lacked the jurisdiction, its decision would be null and would be voidable.



**Issue No. b). Whether the suit is barred by the provisions the Limitation of Actions Act.**

26. At the heart of the Preliminary Objection by the Defendant and the opposition thereto is contestation on the interpretation and application of the provision of Sections 4 of the *Limitation of Actions Act* (Cap 22 of the Laws of Kenya).
27. Section 4 of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya prescribes the limitation period for the institution of suits in regard to various causes of action. In regard to actions founded on contract the limitation period is six years whereas in regard to actions founded on tort the limitation period is three years.
28. Though the Objectors have averred that the suit is time barred as it is hinged on a contact dated 4<sup>th</sup> August, 2022, the Plaintiff/ Respondent avers that Payments were made up to and including February 2021. Conversations, albeit, by text messages were exchanged between the Plaintiff and the 2nd Defendant. It is only in February 2021, that the Defendants stopped making payments. The cause of action therefore accrued in 2021.
29. In the case of “*Edward Moonge Lengusuranga v James Lanaiyara & another [2019]* eKLR the Court held that:-
- “A cause of action, is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a plaintiff brings suit. According to Section 26 of the Limitation of Actions Act the cause of action accrues when the fraud is discovered. In the present scenario therefore I find that the alleged fraud was discovered on the 13<sup>th</sup> January 2015 and a period of three years ended on 13<sup>th</sup> January 2018. These proceedings were filed on the 20<sup>th</sup> August 2018 which period was beyond the 3 years from the date the fraud was discovered.”
30. This court is persuaded by the above case, it is clear that a cause of action is a set of facts to justify a right to sue. What then in this case are the sets of facts that the Plaintiff / Applicant used to justify its rights to sue? The court has carefully perused the Plaint herein and is satisfied that the suit is hinged on the actions of the Defendants frustrating the agreement concerning the suit property hence refusing to perform their contractual obligations. Section 4 (1) of the *Limitation of Actions Act* provides:
- “4 (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued:
- (a) actions founded on contract;
  - (b).....
  - (c).....
  - (d).....
  - (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”
31. The Court finds and hold that the cause of action being the breach of agreement which accrued in the year 2021. In my view, that is when the time began to run. It is evident that the six (6) years started on the year 2021 and ideally it will end in year 2027. Therefore, based on all these reasons, it the Court’s conclusion that the Plaintiff is within his rights to file this suit.



- Issue c). Whether the suit should be struck out
32. The jurisdiction to strike out pleadings is discretionary and must be exercised judicially. In the case of *Postal Corporation of Kenya – Versus - I.T Inamdar & 2 Others [2004]* 1 KLR 359, the court stated that the law is now well settled that if the defence filed by a defendant raises even one *bona fide* triable issue, then the defendant must be given leave to defend.
33. In the case of *Olympic Escort International Co. Ltd. & 2 Others v Parminder Singh Sandhu & Another [2009]* eKLR, the court opined that a triable issue is not necessarily one that the defendant would ultimately succeed on but it need only be *bona fide*.
34. Additionally, in the case of *Co - Operative Merchant Bank Limited v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)* the Court of Appeal stated:
- “Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action or which is otherwise an abuse of the process of the court.”
35. Further in the case of:- *Yaya Towers Limited v Trade Bank Limited (In Liquidation) (Civil Appeal No. 35 of 2000)* the same court expressed itself thus:
- “A Plaintiff (Defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the Defendant (Plaintiff) can demonstrate shortly and conclusively that the Plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved.”
36. Ideally, I have keenly perused the filed Plaintiff dated 15<sup>th</sup> May, 2021 under Paragraphs 4 and 5, the Plaintiff clearly states out the cause of action as:
- “4. By an agreement for sale made on 04<sup>th</sup> August, 2014, the Plaintiff agreed to sell and the Defendants agreed to purchase the suit land known as L.R. No. Mombasa/Block XIII/65 at Kshs. 50,000,000/- and paid a 5% deposit of the purchase price being Kshs. 2,500,000/-.
5. The Defendants on diverse dates up to and including 2018, made further payments and have to date paid a total of Kshs. 3,400,000/- leaving a balance of Kshs. 46,600,000/- which in spite of repeated demands and promises the Defendants have failed, refused or neglected to pay thus making this suit necessary.”
37. As far as I am concerned, I discern that the claim in this suit is clearly spelled out in those two paragraphs being that the Plaintiff is bringing a claim for breach of agreement against the Defendants. Applying the principles in the decisions cited above to the present circumstances and the application before this



court. Therefore, I arrive at the conclusion that the prayer made out by the Defendant has failed. Thus is by virtue of the fact that the claim against the Defendant is clearly spelt out.

Issued). Who will bear the Costs of the objection and the Notice of Motion application dated 13<sup>th</sup> April, 2022.

38. It is now well established that issues of Costs is at the discretion of the Court. Costs means the award that a party is granted at the conclusion of any legal action and/or proceeding in any litigation. The proviso of the provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that costs follows the event, By events, it means the results from the legal action or proceedings. (See the Court of Appeal cases of “*Rosemary Wambui Munene v Ibururu Dairy Co – operative Societies Limited [2014]* eKLR; *Cecilia Karuru Ngayu v Barclays Bank of Kenya Limited [2016]* eKLR and the Supreme Court case of “*Jasbir Rai Singh Rai v Tarchalon Singh*” [2014 eKLR].
39. In the instant case, the Defendant has failed to satisfy the Court that this suit has been overtaken by the limitation of time being six (6) years. Therefore, this application shall be deemed to lack merit. Further, the preliminary objection shall also be overruled with costs to the Plaintiff as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

### VIII. Conclusion & Disposition

40. In long analysis, the Honorable Court has carefully considered and weighed the framed issues herein and based on the preponderance of probability, I proceed to order the following:-
- a) That the Notice of Motion application dated 13<sup>th</sup> April, 2022 is found to lack merit and is hereby dismissed in its entirety.
  - b) That the Notice of Preliminary objection be and is hereby found to lack merit and hence is overruled in its entirety.
  - c) That for expediency sake, this suit should be set down for hearing and determination within the next One Hundred and Eighty (180) days from the date of delivery of this ruling commencing from 5<sup>th</sup> October, 2023. There should be a mention on 22<sup>nd</sup> May, 2023 for Pre – Trial Conference and other directions pursuant to the provision of Order 11 of the Civil Procedure Rules, 2010.
  - d) That the cost of this application is awarded to the Plaintiff/Respondent to be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.

It Is So Ordered Accordingly.

**RULING DELIEVERED VIDE MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 28<sup>TH</sup>DAY OF MARCH 2023.**

**HON. JUSTICE L. L. NAIKUNI, (JUDGE)**

**ENVIRONMENT AND LAND COURT AT**

**MOMBASA**

**In the presence of:**

- a. M/s. Yumna, the Court Assistant.**
- b. No appearance for the Plaintiff/Respondent.**
- c. No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.**

