



Lelei & 5 others v African Banking Corporation Ltd & another (Commercial Case E013 of 2023) [2024] KEHC 13653 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
COMMERCIAL CASE E013 OF 2023
E OMINDE, J
OCTOBER 30, 2024**

BETWEEN

**HENRY LELEI 1ST APPLICANT
JAVAN TARNO 2ND APPLICANT
JACKLINE NTUTU 3RD APPLICANT
SITE AND SERVICE ENGINEERING COMPANY LTD 4TH APPLICANT
PYRAMID CONSTRUCTION LTD 5TH APPLICANT
LETAR PRINTERS K LTD 6TH APPLICANT**

AND

**AFRICAN BANKING CORPORATION LTD 1ST RESPONDENT
SADDABRI AUCTIONEERS 2ND RESPONDENT**

RULING

1. By way of Complaint dated 23/08/2023, the applicants instituted a suit against the defendants seeking various declaratory orders and injunctions. The cause of action arises from two loan facilities that were advanced to the 1st, 2nd and 4th Plaintiffs totalling Kshs. 78,000,000/-. The main issue in the claim is that the applicants are challenging the exercise of the statutory power of sale by the Defendants.
2. The application pending before this court is the Notice of motion dated 23/08/2023 seeking the following orders;
 - i. Spent
 - ii. Spent



- iii. That a permanent injunction do issue restraining the Defendants/Respondents, their agents, servants and/or employees from advertising, offering for sale by way of public auction or private treaty and/ or transferring, disposing off and/ or in any manner dealing with all that Parcel of Land known as Parcels of Land known as LR. Mombasa/MS Block 1/253, LR No. Nandi/Cheptarit/109, Elgeyo Border Block 1 (Beliomo)/272, LR No. MN/11/6165 Original Grant Number CR. 45544 pending the hearing and determination of the main suit.
 - iv. That costs be provided for.
3. The Application is premised on the grounds on the face of it and the contents of the supporting affidavit sworn by the 1st Applicant, Henry Lelei.

Applicants' Supporting Affidavit

4. The applicant deponed that the 2nd and 4th applicants mortgaged the land parcels known as LR. Mombasa/MS BLOCK 1/253, LR No. Nandi/Cheptarit/109, Elgeyo Border Block 1 (Beliomo)/272, LR No. MN/11/6165 Original Grant Number CR. 45544 for a loan of Kshs. 40,000,000/- advanced to the 5th Plaintiff/Applicant and an overdraft of Kshs. 10,000,000/- advanced to the 6th Plaintiff/Applicant by the 1st respondent. Further, that the aforesaid loan has been paid to the tune of Kshs. 40,000,000/- leaving a balance of Kshs. 38,000,000/- plus interest and costs.
5. He stated that the 1st defendant has instructed the 2nd defendant who has served them with redemption notices and notifications of sale of the aforesaid parcels of land by public auction. Further, that the Defendants/Respondents have never served them with the statutory notices as required by the law. He averred that the defendants have inflated the loan arrears they claim is owed by the 5th and 6th applicants as they have indicated the amount owing as Kshs. 189,644,873.30/ which is impossible as the principal sum borrowed was Kshs. 78,000,000/- out of which Kshs. 40,000,000/- was paid.
6. According to the deponent, the Respondents have clogged the 90 days statutory notice by serving them with the 40 days redemption notice together with the notification of sale. He maintained that the amount claimed by the defendants expressly breaches section 44(a) of the *Banking Act* (In Duplum rule). Further, that the intended sale by way of public auction is in breach of the Auctioneers Rules 1997 as no advert was placed despite the date of sale being notified to the applicants vide the notifications served.
7. He stated that the charged properties contain matrimonial homes and the sale of the same will deprive them of shelter and render them destitute and homeless. Additionally, that they stand to suffer great loss and damage if the home is sold. He urged that they have demonstrated that they have a prima facie case, and that the respondents will not be prejudiced in any way if the orders sought are granted.

The Respondent's Replying Affidavit

8. In response to the application, the Respondents filed a Replying Affidavit dated 20/02/2024 sworn by Louis Omukhulu, the 1st respondents' assistant legal manager. He urged that the application does not meet the legal threshold as set out in the case of Giella vs Cassman Brown. Further, that the same is intended to delay the exercise of the Banks' Statutory Power of Sale.
9. He confirmed that the applicants were advanced loans, wherein the 1st, 2nd and 4th Applicants charged the suit properties being Mombasa/MS Block 1/252 and Nandi/Cheptarit /109 both registered in the name of the 1st applicant, Sergoit /Elgeyo Border Block 1 (Beliomo)/272 registered in the name of the 4th Applicant and LR Number N/11/6165 Grant No. C.R. 4544 registered in the name of the 4th



- applicant. This was after the 5th and 6th Plaintiffs had applied for and benefitted from various credit facilities from the bank.
10. The deponent stated that the applicants have misled the court as to the status of the credit facilities taken from the bank. That they started enjoying credit facilities from 2015 and the Bank simply moved to exercise its rights in light of the defendants neglect to meet their obligations.
 11. He stated that the 5th and 6th respondents were granted credit facilities between the year 2015 to 2019, amounting to a total of Kshs. 99,911,987 through letters of offer dated 13/07/2015, 29/09/2015, 07/03/2016, 06/05/2016, 16/05/2016, 25/05/2017 and 29/03/2019. That these loan facilities were advanced to the 5th and 6th Applicants at their request and they voluntarily signed the letters of offer agreeing to repay the loans and comply with the terms and conditions therein. The Applicants executed deeds of guarantee and indemnity in their personal capacities in favour of the bank. He annexed all the letters of offer and the deeds to the affidavit.
 12. The deponent detailed the charges signed by the applicants as well as the fixed and floating debentures over the secured properties as follows; Charge dated 21st April, 2016 over property No. Nandi/Cheptarit/109. Charge dated 21st April, Block 1 (Belioimo)/272 2016 over property No. Sergoit/Elgeyo Border. Charge dated 17th May, 2016 over property No. Mombasa/MS Block 1/253. Charge dated 9th June, 2016 over the property L.R Number MN/11/6165 Grant No. C.R 45544. Debenture dated 4th July, 2016 between the Bank and the 5th Plaintiff/Applicant. Debenture dated 4th July, 2016 between the Bank and the 6th Plaintiff/Applicant. Deed of Assignment over Receivables dated 22nd April, 2016 between the Bank and the 5th Plaintiff/Applicant.
 13. He stated that it was an express term of the letters of offer that each credit facility was payable on demand and further, that the default rate stated in each of the letters was applicable in the event of failing to pay the agreed instalments. Further, that the 5th and 6th Plaintiffs have been in continuous default and this prompted the bank to issue several demand letters requesting payment of the facilities. He attached statements of account demonstrating the sums due to the bank.
 14. He further stated that the bank sent the applicants 30-day demand letters demanding they regularise their accounts which stood at Kshs. 46,267,173/- as at 1st July 2017 owed by the 6th Applicants and Kshs. 23,464,186.16 as at 1st July 2017 owed by the 5th Applicants which elicited no response from the 5th and 6th Applicants.
 15. Upon expiry of the 30 days demand, the bank issued the requisite 90 days statutory notice to the applicants via registered mail intimating its intention to realise the suit properties which elicited no response from the applicants. That due to the consistent default, the bank issued a 40 days' notice to sell the suit properties and the outstanding debt at that tie stood at Kshs. 49,207,434.03/ and Kshs. 23,223,083.16/. He annexed copies of the notices to the affidavit.
 16. Further, that in compliance with the law, the properties were physically visited by M/S valuers limited on 10th, 11th and 12th July 2023 for purposes of valuing the same for auction.
 17. He stated that it is not true that the applicant is not indebted to the bank to the sum of Kshs. 189,644,873.30/- and further, pointed out that the applicants have admitted to paying out Kshs. 30,000,000/ of the alleged principal sum of Kshs. 78,000,000/-. That based on this admission, the court should dismiss the application on the grounds that the court requires the applicant deposit the principal sum borrowed as a precondition for granting the injunction.
 18. The deponent maintained that the default rates charged were legal and additionally, that the applicants have not shown, on a prima facie basis that the interest, costs, charges and expenses have been raised in



an arbitrary and dishonest manner. Further, that the 5th and 6th applicants have severally requested for their account statements which have been promptly availed in soft and hard copy.

19. The deponent urged that the statutory notices, redemption notices and notices to sell have been proper and valid in law. That they were procedurally served on the chargors, guarantors and borrowers as well as other parties as required by the law. He stated that the applicants have not demonstrated the irreparable harm they will suffer or that if they have, that the respondent being a reputable bank cannot pay the damages if any.
20. He maintained that the balance of convenience favours the bank as the monies owed are depositors funds entrusted to the bank and which the bank has a duty to safeguard the monies the plaintiffs have confirmed owing. He urged the court to dismiss the application.

Applicants' Further Affidavit

21. In response to the respondents' Replying Affidavit, the 1st respondent filed an affidavit dated 18/09/2024 sworn by Henry Lelei. He deponed that the 1st defendant deponed that the applicants took several loans and annexed several offer letters which all quote the same suit properties and different figures but has only annexed two charge documents for only two of the properties.
22. He urged that it is not possible for the 5th and 6th defendants to have taken several loans on the same properties charged and guaranteed on the aforesaid properties without any further charges on the aforesaid properties, fresh deeds of guarantees and debentures hence the information supplied is not only erroneous but factually and legally misleading.
23. He stated that the 1st defendant has deponed that the applicants took a loan of Kshs.99,000.000/= while it is their position that the loans advanced to the 5th and 6th Plaintiff's amount to Kshs. 78,000,000/= and that Kshs. 40,000,000/= which have already being paid but credit for the same has not been given.
24. That from the foregoing, it is clear there's need to carry out an audit to establish how much was loaned, against which security, the charge document involved and how much has been paid and what is owing.
25. The deponent stated that the amount claimed by the 1st defendant being Kshs. 189,000,000/= has not taken into consideration the amounts already paid. He reiterated that it is also clear that the statutory notices and notifications of sale annexed by the 1st defendant are not accompanied by any certificates of postage or any affidavit of service from the 2nd defendant indicating they were served on the parties before the commencement of the recovery procedures.
26. The deponent averred that the notifications of sale as served upon them indicate the aforesaid suit properties were to be sold by public auction on the 28th day of August, 2023 yet to date no advertisement was ever placed in the newspapers, leaving them to believe that there is foul play by the defendants.
27. That additionally, the applicants have never been supplied with the loan account statement to establish the authenticity of the amount claimed. That the 1st defendant has annexed several loan account statements in their response which makes it difficult to ascertain any real figure without any audit/ accounts being taken.
28. He maintained that the Respondents will not be prejudiced in any way if the orders sought herein are granted.



Hearing of the Application

29. The parties prosecuted the application by way of written submissions. The applicants filed submissions dated 18/09/2024 through the firm of Messrs Mwaka & Company Advocates whereas the Respondents filed submissions dated 20/02/2024 through the firm of L.G Menezes & Company Advocates.

Applicants' submissions

30. Learned counsel for the Applicant submitted that the Applicants were served with the 45 days redemption notices together with the Notifications of sale containing the date of sale clogging their redemption right. Further, that up to the date of sale, no advert had been placed in a newspaper with national circulation.
31. He urged that the 1st defendants have annexed notices that they claim were dispatched to the plaintiffs but no certificates of postage, or proof of email or an affidavit of service demonstrating service of the said Notices upon the plaintiffs were availed which is fatal as it dents claims of having followed the due process.
32. Counsel urged that the law envisages a situation where the 1st defendant ought to have dispatched statutory notices under section 90(1) and 56 (2) of the *Land Act* 2012 and Notice to sell charged land under sections 90 (3) and 96 (1) separately so as not to clog the plaintiff's right to rectify the default, if any, or redeem their properties. Additionally, that it is evident that the defendants, in the exercise of their power of sale breached the provisions of the law and procedure and therefore the whole process stands impeached.
33. Counsel submitted that in deciding whether to grant the injunctive orders sought, the court ought to be guided by the question, to wit; Whether the Applicant has satisfied the conditions upon which an interlocutory injunction can be granted. He urged that Order 40, Rule 1 of the Civil Procedure Rules, 2010 is the enabling law setting out the circumstances in which a temporary injunction may be granted by a court of law.
34. Further, that the conditions for grant of interlocutory injunctions are well settled in the judicial precedents. The test was considered in the American case of Cynamid Co. Ltd v Ethicom Ltd. A AER 504 where the court noted three greatly important elements to be considered namely; -there must be a serious fair issue to be tried; damages are not an adequate remedy and; where the balance of convenience lies in granting or refusing the application.
35. Counsel referred the court to the case of celebrated case of Giella v Cassman Brown & Company Limited (1973) E A 358 where the court expressed itself on the conditions that an Applicant must satisfy for grant of an interlocutory injunction.
36. On whether the Applicant has established a prima facie case with a probability of success, counsel submitted that a prima facie case in a civil application was defined in Mrao Limited vs First American Bank of Kenya & 2 Others [2003] KLR 125 as that which "includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later." He urged that the Applicants have demonstrated that the defendants did not adhere to the recovery process as required to by the law by not serving the requisite notices and further by clogging their redemption rights.



37. It is the applicants' case that it is evident that there exists a serious dispute on the amount that was loaned, already paid, and how much is owing. And further; whether the letters of offer crystallized into charges or further charges as the case maybe and whether the necessary authorizations were procured, which goes to the root of the whole contract and affects the major terms of the contract (conditions). That their case therefore satisfies the condition that a prima facie case has been established.
38. Counsel cited the case of Robert Mugo wa Karanja v Ecobank (Kenya) Limited & Another [2019] eKLR which cited with approval the decision in Kenleb Cons Ltd v New Gatitu Service Station Limited & Another [1990] eKLR as to what a party seeking an injunction must demonstrate
39. Counsel urged that from the defendants replying affidavit, it is clear the plaintiff failed to disclose that they did not dispatch the notices by availing the certificates of postage and further their loan account statements are not only contradictory but cannot be comprehended.
40. He submitted that in considering the Applicant's prospect of success at the trial level, the court should be alive to the caution that it can only consider the same to a very limited scope. Further, that a close look at the loan statement annexed by the 1st defendants reveals that the loan was serviced at different times but the same cannot account for the amount sought to be recovered, how the penalties and interests were levied and on account of what security and when the plaintiffs are alleged to have defaulted. The same can only be considered upon an explanation in the hearing of the suit, production of evidence and cross examination and hence the subject matter ought to be preserved for that to happen.
41. Counsel submitted that the next principle that a court of law ought to consider is whether a party seeking an injunction will suffer irreparable injury which cannot be compensated by way of damages if the same is not granted. He stated that the Applicants have demonstrated that their families reside in the said parcels and that the 1st defendant has also annexed evidence of debentures and floating charges over the assets of the 5th and 6th plaintiffs, which gives them an alternative recourse.
42. Additionally, he urged that the more important fact is that there's a dispute on the amount advanced, paid and owing and the fact that the court needs to interrogate the plaintiff's assertion that the amount claimed offends section 44 (A) of the *banking Act*.
43. Counsel cited the case of Nguruman Ltd Jan Bonde Nielsen & 2 Others, Civil Appeal No. 77 OF 2012 where the Court of Appeal expressed itself on irreparable injury He submitted that it is the Plaintiff's view that the value of the suit land, especially the fact that the loan amount disbursed, loan owing and amounts paid are not certain and are disputed, then selling the subject suit land at this stage when the said question is not determined, will be unfair as the compensation to be paid to the plaintiffs if they are successful would be impossible to tabulate.
44. Additionally, Counsel submitted, of utmost importance is the fact that the defendants have filed a counterclaim for the loan amount claimed and therefore no loss would be substantially suffered by them as they have suit against the plaintiffs.
45. With regard to balance of convenience, counsel cited the case of Paul Gitonga v Gathithi Tea Factory Ltd where the court dealt with the issue of balance of convenience, He submitted that the said question is easy to answer looking at what is at stake and considering the fact that the suit properties are still charged and continue to appreciate in value and further, that the fact that the law caps a debt in case of default and the realisation process being flawed tilts the balance of convenience in favour of the plaintiffs.



46. Counsel reiterated that the applicants have demonstrated that the defendants flouted the procedure as required by the law and that the applicants have a prima facie case with a balance of probabilities tilted in their favour. He urged the court to allow the application as prayed.

Respondents' submissions

47. Learned counsel for the respondent submitted that the applicants are required to show the conditions set out in the case of *Giella-vs- Cassman Brown* [1973] EA 358. Further, that the Court of Appeal restated those principles in *Nguruman Limited vs James Bonde Nielsen & 2 others* [CA No. 77 of 2012](#) (2014) eKLR as follows:

In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only to a prima facie level,
 - (b) demonstrate irreparable injury if a temporary injunction is not granted,
and
 - (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.
48. He urged that these are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. Further, that it is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. He referred the court to the case of *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.
49. Counsel submitted that if the applicant establishes a prima facie case, that alone is not sufficient basis to grant an interlocutory injunction. The court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. Additionally, that if a prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between.
50. Counsel urged that the Applicants have unequivocally admitted to being indebted to the 1st Respondent and therefore the other question is whether the 1st Respondent was entitled to issue Statutory Notices. On whether the Applicants have demonstrated that if injunction is not granted, then they will suffer irreparable injury that cannot be compensated in damages, the mere allegation that the suit properties are matrimonial properties does not afford the Applicants a shield to flee from their loan obligations.
51. On accrual of statutory power of sale, counsel urged that the court will find the evidence on the Replying Affidavit to the effect that after the Plaintiffs failed to service the loan as per the parties' agreement, they had been issued, through their respective postal addresses, P.O Box 74-00200 Nairobi, and P.O. Box 4487 - 00860 Nairobi, 30 days' Demand Notice on 11th and 12th July, 2017 demanding payment of a total sum of Kshs 49,267,173/= and Kshs. 23,464,186.16 as at 1st July, 2017 and that failure to respond to the said Notices, the Plaintiffs/Applicants had further been issued with a 90 days' Statutory Notice dated 25th August, 2017 for a sum of Kshs 24,527,756.16 and Kshs. 50,516,850.03 as at 15th August, 2017 addressed to both Plaintiffs/Applicants respectively.
52. Additionally, he submitted that on 29th November, 2017, the 40 days' Notices to sell were sent to the Applicants demanding a payment of a total sum of Kshs 23,223,083.16 and Kshs. 49,207,434.03 as at 25th November, 2017. Failure by the Plaintiffs/Applicants to respond to the said 40 days Notices



prompted the 1st Respondent to instruct Saddabri Auctioneers to issue a 45-days' Redemption Notice together with the Notification of Sale and schedule in respect of the suit parcels.

53. That these notices were served upon the 1st, 2nd and 3rd Applicants personally as well as through registered postage. The said Redemption Notices had stipulated that the Applicants owed the 1st Defendant/Respondent a total of 189,644,873.30 /= as at 28th March, 2023. Considering the lapse of time since the loan was advanced as well as the amount advanced, there is a likelihood that the outstanding amount could outstrip the value of the property thereby put the 1st Defendant's/ respondent's interests in jeopardy.
54. Counsel urged that the Plaintiffs/Applicants cannot have their cake and eat it through this application by keeping the subject properties and at the same time restraining the 1st Defendant/Respondent. He cited the case of Andrew Muriuki Wanjohi vs Equity Building Society Limited & 2 others (2006) eKLR in support of this submission
55. Counsel submitted that the Applicants have not come to court with clean hands and therefore are not entitled to the discretion of the Court. The balance of convenience also tilts in favour of the Bank as the Court cannot assist the Plaintiffs/Applicants to rewrite the contract between the parties.

Analysis & Determination

56. Given my summation of the evidence as above, it is my considered opinion that the following issues arise for determination;

Whether the orders for a permanent injunction should issue

57. Given the fact that the Applicants has sought for a permanent injunction in their pleadings but have based their submissions on the law on the grant of temporary injunctions, the issue of parties being bound by their pleadings arises as well.
58. The Court of Appeal in the case Independent Electoral and Boundaries Commission & Another –Vs- Stephen Mutinda Mule & 3 Others [2014] eKLR, considered with approval two foreign cases on the issue of parties being bound by their pleadings as follows-

“... the decision of the Malawi Supreme Court of Appeal in Malawi Railways Ltd –vs- Nyasulu [1998] MWSC 3, in which the learned Judges quoted with approval from an article by Sir Jack Jacob entitled “The present Importance of Pleadings.” The same was published in [1960] Current Legal problems, at P174 whereof the author had stated-

“ As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings ... for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings.



59. In the case of *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR, Justice A C Mrima stated as follows: -

“It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded.”

The Law on Permanent Injunctions

60. The authorities below are a relevant guide on what the law on permanent injunctions are;
61. In the case of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR the High Court, sitting on appeal held that:

“It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”

62. In the case of *Thomas Mwangi Kanyonge v Jonah Maina Gakibo* [2021] eKLR Justice Mwangi Njoroge expressed himself as follows;

The principal issue for determination is whether the order sought by the plaintiff in his application can issue. The application seeks an order of permanent injunction. I am not inclined to presume that this was a mistake on the part of the counsel drafting the application in this very contentious matter. In any event the respondent has on his part made the prayer for a permanent injunction a vital ground of his attack against the instant application. I agree with the holdings in the case law cited by the respondent. I find that the mere wording of prayer no 4 of the instant application disentitles the applicant from the order sought. A permanent injunction cannot issue at an interlocutory stage. A permanent injunction, as stated in the cited case law, can only issue at the conclusion of litigation.

63. In paragraph 2, it is clear that the Applicants are seeking an order of permanent injunction pending the hearing and determination of the main suit even as their submissions are based on the law on temporary injunctions. As has already been stated above, it is trite law that parties are bound by their pleadings. The Court cannot make assumptions on behalf of the parties therefore based on their submissions.
64. In this regard, I fully associate myself with the holdings of the justices in the above cited authorities of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR and *Thomas Mwangi Kanyonge v Jonah Maina Gakibo* [2021] eKLR on the circumstances under which an order of permanent injunction can and should issue. It is upon the conclusion of litigation.



65. Given the above therefore, it is my finding that the Applicants' application is misconceived and bad in law and the same is accordingly dismissed with costs to the respondents.

READ DATED AND SIGNED AT ELDORET ON 30TH OCTOBER 2024.

E. OMINDE

JUDGE

