



**Just Chicken Limited v Patel (Suing on behalf of Estate of Joyce Roni Waiganjo) & another
(Environment & Land Case 60 of 2019) [2023] KEELC 16239 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 60 OF 2019**

**JO MBOYA, J
MARCH 16, 2023**

BETWEEN

JUST CHICKEN LIMITED PLAINTIFF

AND

**KIRAN MANUBHAI PATEL (SUING ON BEHALF OF ESTATE OF JOYCE RONI
WAIGANJO) 1ST RESPONDENT**

**ANN KIBUTU (EXECUTOR OF THE ESTATE OF JOYCE RONI
WAIGANJO) 2ND RESPONDENT**

RULING

Introduction And Background

1. The instant suit was filed and or commenced *vide* plaint dated the February 21, 2019 and in respect of which the plaintiff/applicant herein sought for various reliefs, touching on and/or concerning LR No 13797/1, (hereinafter referred to as the suit property).
2. Following the lodgment of the instant suit and upon service of the summons to enter appearance, the defendants herein duly entered appearance and thereafter filed a Statement of defense.
3. Subsequently, the instant suit was heard and disposed of vide ruling of the honourable court rendered on the July 20, 2020 and in respect of which, the honourable court found and held, *inter-alia*, that the suit was barred by the doctrine of *Res-judicata*. Consequently, the honourable court proceeded to and struck out the entire suit with costs to the defendants.
4. Suffice it to point out that thereafter the defendants herein crafted and filed party and party bill of costs and which bill of costs was duly taxed and certified by the Deputy Registrar of the Environment and Land Court by the April 8, 2021.



5. Furthermore, after the taxation of the bill of costs, the defendants herein commenced the process of execution as against the plaintiff judgment debtor culminating into a consent being entered into and adopted by the honourable court on the August 3, 2022.
6. For good measure, the consent, (details in terms of the preceding paragraph) related to settlement/ liquidation of the decretal sum *vide* instalments.
7. Nevertheless, despite the entry into and execution of the named consent, the Plaintiff Judgment debtor failed to comply with the terms of the consent and as a result of the failure, the defendants decree holders were constraint to and indeed took out an application for the lifting/ piercing of the corporate veil of the Plaintiff Judgment Debtor.
8. For coherence, the Application for lifting of the veil was heard and disposed of by the Honourable Court on the 26th January 2023 and in respect of which, the Honourable court proceeded to and pierced and lifted the veil.
9. On the other hand, the defendants decree holder thereafter took out a Notice to show cause against the named director, for purposes of execution. However, despite being served with the requisite Notice to show cause, the named director failed to attend court and or show cause or at all.
10. Consequently and as a result of the foregoing, the Honourable Deputy Registrar proceeded to and issued warrants of arrest as against the named director, that is, Nancy Kavinya Kioko.
11. Be that as it may, the plaintiff/applicant herein has since filed an application dated the 24th February 2023, and in respect of which same has sought for the following orders;
 - i. (Spent).
 - ii. That this Honourable court be pleased to grant stay the warrants of Arrest issued on the 23rd February 2023 against Nancy Kioko pending the hearing and determination of this application inter-partes.
 - iii. That this Honourable court be pleased to lift/set aside the warrants of Arrest issued on the 23rd February 2023 against Nancy Kioko pending the hearing and determination of this application dated the 6th February 2023.
 - iv. Costs of this Application be in the cause.
12. Upon being served with the instant application, the defendants decree holders responded to the application vide Replying affidavit sworn on the 6th March 2023 and in respect of which same contended, inter-alia, that the current application constitutes and amounts to an abuse of the due process of the court.
13. Be that as it may, the current application came up for hearing on the 14th March 2023, whereupon the advocates for the respective Parties agreed to canvass and dispose of the application by way of oral submissions. For clarity, the advocates thereafter ventilated their submissions and same are contained on the record of the court.



Submissions By The Parties

a. Applicant's Submissions

14. Learned counsel for the Applicant adopted the grounds at the foot of the application dated the 24th February 2023 as well as the contents of the supporting affidavit attached thereto and thereafter highlighted three salient issues for consideration by the court.
15. First and foremost, learned counsel for the Applicant submitted that the learned Deputy Registrar proceeded to and issued warrants of arrest against the Director of the plaintiff/applicant, namely, Nancy Kavinya Kioko, albeit without affording her an opportunity to be heard prior to and before the issuance of the named warrants of arrest.
16. In addition, learned counsel submitted that the issuance of the impugned warrants of arrest amounted to and constitutes condemning the named director without being afforded an opportunity to be heard.
17. Consequently and in the premises, learned counsel submitted that the right to be heard is a fundamental right, which cannot be abrogated, or limited, in any manner whatsoever.
18. Secondly, learned counsel submitted that at the point in time when the warrants of arrest were issued, the Applicant herein and her director, had disagreed with their erstwhile advocates and hence the said advocate could not have ventilated the interests of the Applicants.
19. In any event, learned counsel has added that owing to the breakdown in the professional relationship between the Applicant and their erstwhile advocate, the Applicant herein had approached the current advocate with a view to taking over the subject matter and representing the interests of the Plaintiff/Applicant thereafter.
20. Furthermore, learned counsel has contended that arising from the instructions by the Applicants herein, same proceeded to and filed an application dated the 6th February 2023, seeking leave to come on record in place of the Applicants erstwhile advocate.
21. Besides, Learned Counsel added that though the named application had been filed, same remained on the court record and was never disposed of until the 14th March 2023.
22. Thirdly, learned counsel submitted that the documents which was served upon the Applicant's director was a Notice to show cause why Eviction should not issue and hence same could not give birth and or culminate into the issuance of warrant of arrest or at all.
23. In the premises, learned counsel contended that the issuance of the warrant of arrests was therefore irregular and illegal. For clarity, counsel contended that no warrant of arrest could issue on the Notice to show cause why eviction should not issue.
24. In the premises, learned counsel has implored and impressed upon Honourable court to find and hold that the current application is meritorious and thus ought to be allowed.

b. Respondents' Submissions:

25. On behalf of the Respondents, learned counsel adopted and reiterated the contents of the Replying affidavit sworn on the 6th March 2023; and the List and Bundle of authorities of even date.
26. Furthermore, learned counsel for the Respondents has raised, highlighted and amplified three salient issues for consideration by the Honourable court.



27. Firstly, learned counsel submitted that the Respondents herein filed an application seeking to have the corporate veil of the plaintiff/applicant lifted and to facilitate execution against the one, Nancy Kavinya Kioko, a director of the Applicant company.
28. In addition, learned counsel submitted that the said application was duly served upon the Applicant and the named director and same was thereafter heard and disposed of by the Honourable court in terms of the orders made on the 26th January 2023.
29. For coherence, learned counsel submitted that the Honourable court proceeded to and lifted the corporate veil of the Applicant company and thereafter paved way for execution against Nancy Kavinya Kioko, a director of the Applicant company.
30. Secondly, learned counsel submitted that following the orders of lifting the corporate veil of the Applicant company, same took out a Notice to show cause for purposes of service against the named director, in accordance with the orders of the Honourable court.
31. Nevertheless, learned counsel has contended that the notice to show cause which was issued by the Deputy Registrar erroneously shows that same was for Eviction, instead of execution, the latter, which resonates with the Orders/ directions of the Honourable Court.
32. Be that as it may, learned counsel added that the error relating to eviction and not execution, was not fatal or at all. In any event, counsel has contended that it was still incumbent upon the named director to attend court and address the said issue before the deputy registrar.
33. Thirdly, learned counsel has submitted that the named director, Nancy Kavinya Kioko was duly and properly served with the impugned Notice to show cause. However, learned counsel has added that despite being duly served, same failed to appear before the Honourable court/ Deputy Registrar, and to participate in the resultant proceedings.
34. As a result of the foregoing, counsel added that the named director was therefore afforded the requisite opportunity to partake of and appropriate her right to be heard before the court.
35. Nevertheless, counsel contended that despite being afforded an opportunity to be heard, Nancy Kavinya Kioko, failed and/or neglected to appear before the court/ Deputy Registrar, and hence same cannot now be heard to state that she was condemn unheard.
36. Furthermore, learned counsel has contended that the Applicant herein had entered into a consent to liquidate the decretal sum vide consent, but same failed and neglected to comply with the terms of the consent.
37. In the premises, learned counsel has therefore submitted that the current application by and at the instance of the Applicant has been made in furtherance of a scheme by the Applicants to delay, obstruct or otherwise defeat the due process of execution.
38. In a nutshell, learned counsel has therefore implored the Honourable court to find and hold that the current application constitutes and amounts to an abuse of the due process of the court and hence same ought to be dismissed.

Issues For Determination

39. Having reviewed and evaluated the application dated the 24th February 2023, together with the supporting affidavit thereto and upon taking into account the response vide Replying affidavit sworn



on the 6th March 2023 and upon considerations of the oral submissions tendered by the advocates for the respective Parties, the following issues do arise and are thus worthy of determination;

- i. Whether the Application dated the 24th February 2023 has been mounted by a stranger prior to and before obtaining the requisite Leave of the Honourable court.
- ii. In any event, whether the instant Application is competent in view of the orders sought on the face thereof.
- iii. Whether the Applicant or better still the Director of the Applicant, namely, Nancy Kavinya Kioko, was (sic) condemned unheard and in contravention of the Right to Fair Hearing.

Analysis And Determination

Issue Number 1

Whether the Application dated the 24th February 2023 has been mounted by a Stranger prior to and before obtaining the requisite Leave of the Honourable court

40. It is common ground that the suit herein had hitherto been heard and disposed of vide ruling rendered on the 20th July 2020, whereby the Honourable court struck out the suit, inter-alia on the basis of being res-judicata.
41. Consequently, there is no gainsaying that the suit that had hitherto been mounted and lodged by the Plaintiff, was indeed determined vide a decree arising from the ruling of the Honourable court.
42. Given that the suit herein had been determined vide and in terms of the decree emanating from the ruling rendered on the 20th July 2020, no change of advocate could be effected and/or undertaken albeit without leave of the court. See Order 9 Rule 9 of the Civil Procedure Rules, 2010.
43. To this end, it is appropriate to borrow and adopt the holding of the court in the case of Stephen Mwangi Kimote versus Murata Sacco Society [2018] eKLR, where the court stated and held as hereunder;
 11. As per order 9 rule 9 the correct procedure to be followed in case of a dismissed suit was to seek leave to come on record, then file and serve the notice of change of Advocates and then file the application to set aside the orders of the Court. In the present case the Applicant's Counsel filed a notice of change of Advocates dated 04.04.2018 without leave of the Court, together with an application dated 04.04.2018 to set aside the dismissal orders of the Court then later on 09.04.2018 Counsel for the Applicant filed an application to seek leave to come on record. This clearly offends the express provisions of order 9 rule 9. The application for leave to come on record having been filed much later than the one for seeking to set aside the orders cannot be heard together as per order 9 rule 10. The procedure set out above is mandatory and thus cannot be termed as a mere technicality.
44. In any event, learned counsel for the plaintiff/applicant herein was privy to and knowledgeable of the need/necessity to seek for and obtain the requisite leave, prior to and or before coming on record.



45. To this end, it is not lost on the Honourable court that the counsel for the plaintiff/applicant indeed filed an application dated the 6th February 2023, but to which counsel did not prosecute up to and including the 14th March 2023.
46. For clarity, the application for leave to come on record was only heard and disposed of on the 14th March 2023, shortly before the ventilation of the current application.
47. Additionally, it is worthy to point out that vide the application dated the 6th February 2023, the current advocates had sought for leave to come on record for the Plaintiffs, albeit in place of the previous/erstwhile advocates.
48. Following the hearing of the Application dated the 6th of February 2023, the Honourable court effectively granted leave to the current advocates to come on record. However, it is imperative to underscore that the leave granted on the 14th March 2023, could only operate retroactively and not otherwise.
49. Furthermore, it is worthy to underline that the leave granted on the 14th March 2023, to facilitate the change of advocate was forward looking and could not operate retrospectively, with a view to validating an act or pleadings which were filed prior to the leave being granted.
50. Consequently and in the premises, I beg to state that even though leave to come on record was granted to and in favor of the current advocate for the Applicant, the impugned leave cannot operate retrospectively and thereby legitimize/validate an application dated and filed on the 24th February 2023, long before the leave was procured and obtained.
51. In respect of the import, tenor and scope of the doctrine of retrospectivity, it is sufficient to adopt, restate and reiterate the holding of the Court of Appeal in the case of Golden Line International Limited versus Bluesea Shopping Mall Limited & 3 others [2016] eKLR, where the court stated and held as hereunder;

On the issue of retrospective application of the law, this issue was settled by the Supreme Court in the case of Samuel Kamau Macharia & Ano. vs. Kenya Commercial Bank Ltd & 2 Others, [2012] eKLR where it was held:

“As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication it appears that this was the intention of the legislature”.

52. Whereas the Honourable court of appeal was discussing and dealing with the applicability of the doctrine of retrospectivity as pertains to legislation, I beg to point out that the ratio decidendi, applies mutatis mutandis, to orders of the court, which can only apply going forward and no backwards.
53. Consequently and in the premises, the orders of the Honourable court granting leave and which were issued on the 14th March 2023, can certainly, not be utilized to validate the pleadings which were filed prior to said leave.
54. In the premises and on this account, there is no gainsaying that the impugned application, dated the 24th February 2023 and which had been filed by the current advocate, albeit prior to obtaining leave to come on record, was indeed filed by a stranger, albeit in contravention of Order 9 Rules 9 of the Civil Procedure Rules, 2010.



55. Furthermore, it is also important to state and underscore that even where leave has been sought for and obtained, the incoming advocate, (the current Advocate herein not excepted) is obliged and obligated to thereafter craft and generate a Notice of change of advocate before effectively coming on record.
56. In this respect, it is my humble view that the leave granted by the Honourable court does not per-se constitute and/or operate as a Notice of change of advocate in line with the provisions of Order 9 Rule 5 and 6 of the Civil Procedure Rules, 2010.
57. For ease of reference, the pertinent provisions of Order 9 Rules 5 and 6 are reproduced as hereunder;
5. Change of advocate [Order 9, rule 5.]
- A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.
6. Service of notice of change of advocate [Order 9, rule 6.]
- The party giving the notice shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former advocate a copy of the notice endorsed with a memorandum stating that the notice has been duly filed in the appropriate court (naming it).
58. From the foregoing provisions, what is apparent and evident is the fact that the requisite notice of change is necessary and imperative, prior to the taking of further steps by and on behalf of the incoming advocate in whose favor leave of the Honourable court has hitherto been granted in line with Order 9 Rule 9 of the Civil Procedure Rules, 2010.
59. Similarly and in view of the foregoing analysis, I am constrained to and do come to the conclusion that insofar as no notice of change had been filed by the incoming advocate, as at the 24th February 2023, the impugned application was premature and misconceived.
60. Furthermore and before departing from the issue herein, it is also appropriate to state that application dated the 6th February 2023 related to leave by the incoming advocate to come on record for the plaintiff/applicant. For clarity, the plaintiff/applicant in respect of the current matter is, namely; Just Chicken Limited.
61. Consequently, it must be understood that upon the said application, that is the application dated the 6th February 2023, being heard and allowed, the incoming advocate was only authorized to act for the plaintiff/applicant and not otherwise.
62. On the other hand, it is not lost on the Honourable court that there had been an application on behalf of the Respondent for the piercing/ lifting of the veil, with a view to facilitating execution against a named director.
63. Additionally, upon the veil of the plaintiff/applicant being pierced, execution was allowed to proceed against a named director, Nancy Kavinya Kioko, in her personal capacity.
64. In this regard, what becomes apparent is that Nancy Kavinya Kioko became a separate and independent person in the subject matter, for purposes of execution. Consequently, same had/has an individual



capacity to appoint and retain own counsel, even, if the Legal Counsel, is the same one, retained by the Plaintiff/ Applicant.

65. Nevertheless, I must point out that the named director, Nancy Kavinya Kioko, against whom execution is being undertaken personally (after piercing of the corporate veil), has not appointed any advocate.
66. Suffice it to state that if the current advocate for the plaintiff/applicant was keen and desirous to act for the named director, albeit in her personal capacity (which is distinct from the plaintiff/applicant), then same was obligated to file the requisite Notice of appointment of advocate.
67. Be that as it may, it is imperative to note that no such notice of appointment of advocate has been filed by and on behalf of the Nancy Kavinya Kioko, who has been constituted as a necessary party for purposes of execution by dint of the orders of the court made on the 26th January 2023.
68. Arising from the various perspectives, (whose details have been discussed in the preceding paragraphs), there is no gainsaying that the current application which seeks to impugn, vacate and lift the warrant of arrest, has been mounted and originated by an advocate without the requisite authority and/or mandate, whatsoever.
69. Similarly, it is also evident that the current application filed by and on behalf of M/s George Gilbert Advocate, allegedly, on behalf of the Plaintiff/ Applicant, has been filed in contravention of the provisions of Order 9 Rules 5, 6 and 9 of the Civil Procedure Rules 2010.

Issue Number 2

In any event, whether the instant Application is competent in view of the orders (sic) sought on the face thereof.

70. Other than the perspectives, which have been highlighted and illuminated in terms of the preceding paragraphs, there is the issue pertaining to and concerning the reliefs sought at the foot of the current application.
71. Suffice it to point out that the current application is curiously worded, to the extent to prayer 2 thereof is intended to subsist and/or last pending the hearing and determination of the Application inter-partes. In this regard, the question that does arise is what happens next.
72. Clearly and to my mind, the order of stay of the warrants cannot apply in vacuum and ad infinitum.
73. Furthermore, the other limb of the application relates to the lifting and setting aside of the warrant of arrest against Nancy Kavinya Kioko, pending the hearing of the application dated the 6th February 2023.
74. Be that as it may, it is imperative to recall and reiterate that the application dated the 6th February 2023, was heard and disposed of on the 14th March 2023, shortly before the hearing in respect of the current application.
75. Given the wordings and the nature of reliefs being sought vide prayer 3 of the instant application, it therefore becomes crystal clear that immediately the application dated the 6th February 2023 was disposed of, the said order/prayer was rendered redundant otiose.
76. In my humble view, the entire application dated the 24th February 2023, becomes redundant, immediately the same was heard inter-parties; and the orders sought thereunder can no longer be issued going forward.



77. To my mind, the current application could not and cannot subsists beyond the timelines which are well stipulated on the face thereof. Consequently, I am of the humble view that the entire application was therefore misconceived.
78. Additionally and on the basis of the foregoing analysis, the Honourable court cannot be called upon to issues orders in vain and/or in futility. Consequently, and in this regard, I decline to grant any of the reliefs contained on the face of the instant application.

Issue Number 3

Whether the Applicant or better still the director of the Applicant, namely, Nancy Kavinya Kioko was condemned unheard and in contravention of the Right to Fair Hearing.

79. Learned counsel for the plaintiff/applicant submitted repeatedly that the plaintiff/applicant herein had been condemned unheard without being given an opportunity to be heard, prior to and or before the issuance of the warrant of arrest.
80. Furthermore, learned counsel also added that the right to fair hearing is Constitutionally guaranteed and same cannot be limited and/or otherwise restricted, in any way whatsoever. In this regard, learned counsel invited the court to the provision of Article 50(1) and (2) of *the Constitution*, 2010.
81. In any event, learned counsel further submitted that by the time the matter came up for notice to show cause, the Applicant had disagreed with the Applicant's counsel and hence the previous counsel could not defend the Applicant's rights and/or interests in the matter.
82. Premised on the foregoing, learned counsel has therefore contended and submitted that the Applicant herein has a right to representation by counsel of own choice and that such a right cannot be taken away from the Applicant.
83. To start with, I affirm the position taken by learned counsel for the Applicant. For coherence, the Applicant, like any other citizen/person has a right to fair hearing which involves a right to reasonable notice, opportunity to be heard and to representation by legal counsel of choice. See Article 50(1) of *the Constitution*.
84. Furthermore, the significance of the right to fair hearing, which embodies the rules of natural justice, was underscored and succinctly illuminated by the Court of Appeal in the case of County Assembly of Kisumu & 2 others versus Kisumu County Assembly Service Board & 6 others [2015] eKLR, where the court stated as hereunder;

1. Whereas the right to a fair hearing varies from one case to another depending on the subject of the matter in issue, its irreducible minimum is now well settled. In granting that right, the court or the administrative body or person concerned should not make it a charade by taking perfunctory actions for the sake of running through the motions to be seen to have complied with it. The person charged is entitled to what, in legal parlance is referred to as the right to "notice and hearing." That means he must be given written notice which must contain substantial information with sufficient details to enable him ascertain the nature of the allegations against him. The notice must also allow sufficient time to interrogate the allegations and seek legal counsel where necessary. In the epigram of the indomitable Lord Denning in *Kanda v. Government of Malaya* "If the right to be heard is to be a real right which is worthy anything, it must carry with it a right in the accused man to know the case which is made against



him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.”

2. What amounts to sufficient notice also varies from case to case. But as stated, the notice must contain substantial information with sufficient details to enable the person charged to ascertain the nature of the allegations made against him. The notice must also comply with any statutory requirements where the same are provided.

85. Furthermore, the issue of right to fair hearing, due process of the law and the rule of natural justice, was re-visited by the Court of Appeal in the case of *Housing Finance Corporation versus Samuel Kiti Lewa & Others* (2015)eKLR, where the court of appeal stated and observed as hereunder;

“The importance of upholding the rules of natural justice, particularly the right of every person to be heard before an adverse decision is made against him cannot be gainsaid. It is one of the fundamental tenets of a justice system. In *Pashito Holdings Ltd. & Another v. Paul Nderitu Ndun’gu & Others* [1997] 1 KLR (E&L), this

Court stated thus:

“An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision...”

(See also *Onyango Oloo v. Attorney General* [1986-1989] EA 456).

86. Consequently, there is no gainsaying, that the Applicant herein and in particular, the Director, namely, Nancy Kavinya Kioko, was entitled to be heard on the Notice to show Cause.
87. Be that as it may, the question that needs to be addressed and be determined is whether Nancy Kavinya Kioko was duly served with the notice to show cause and therefore afforded with the requisite opportunity to be heard.
88. Other than the foregoing question, there is the incidental/ancillary issue as to whether the named director, appropriated the opportunity for purposes of being heard, prior to and before the issuance of the warrant of arrest.
89. In my humble view, where a party/litigant is granted the requisite opportunity for purposes of being heard, but same fails, neglects or better still, refuses to appropriate the opportunity, such a party cannot thereafter be heard to contend that same was condemned unheard.
90. Additionally, my understanding of the right to be heard denotes that the party be afforded the opportunity and the due notice to be heard. To the contrary, the right to be heard does not denote that a party must be forced to be heard, even where same appears, to be unwilling.
91. Suffice it to state and underscore that the director, Nancy Kavinya Kioko, was duly served with the notice to show cause and thus same was afforded the requisite opportunity to be heard and to say (sic) whatever same would have wanted to say.



92. Despite being afforded the opportunity to be heard, the named director failed to appropriate and utilize the opportunity and same can only blame herself and not otherwise. In this regard, the contention that the named director was condemned unheard amounts to a cry in the wilderness.
93. Finally, learned counsel for the plaintiff/applicant had also raised a contention that the notice to show cause was in respect of why eviction should not issue and hence same could not culminate into warrants of arrest.
94. Be that as it may, I beg to point out that the cold/ black letter of the orders which were issued by this Honourable court on the 26th January 2023, are so clear, explicit and devoid of ambiguity.
95. For coherence and good measure, this Honourable Court directed that the notice to show cause was in respect of why Execution should not issue.
96. Nevertheless, I have set sight on the eventual notice to show cause which was generated and sealed by the Deputy Registrar. Clearly, same does not accord with the black letter writing of the Honourable court in terms of the orders made on the 26th January 2023.
97. However, the inclusion of the word Eviction, in lieu of Execution, is a misnomer and clerical/ typographical error which is correctable vide Section 99 and 100 of the Civil Procedure Act. Consequently, the named error, cannot vitiate the process arising from and attendant to explicit court orders.
98. Notwithstanding the foregoing, the named Director, Nancy Kavinya Kioko, still had an opportunity to appear before the deputy registrar and to address her reservations on the date contained and reflected at the foot of the show cause. However, same failed to do so.
99. In my humble view, the typographical errors that have been over magnified by Learned counsel for the plaintiff/applicant, does not carry the Applicant's case any further.
100. In a nutshell, I am afraid, the named director, Nancy Kavinya Kioko, was afforded due opportunity and necessary facilities to appear before the Deputy Registrar and to ventilate her position, but same failed to appropriate the opportunity.
101. In the premises, the contention that the said director, was (sic) condemned unheard and in violation of her right to fair hearing pursuant to Article 50(1) of the Constitution, 2010, does not hold any water and amounts to (sic) red-herring.

Final Disposition

102. Having addressed and dealt with the highlighted issues, contained in the body of the Ruling, it must have become apparent and evident that the application dated the 24th February 2023, is not only premature and misconceived, but legally untenable.
103. Consequently and in the premises, I come to the conclusion that the application beforehand is not meritorious.
104. In this regard, same be and is hereby Dismissed with costs to the Respondents.
105. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MARCH 2023.

**OGUTTU MBOYA,
JUDGE**



In the Presence of:

Benson - Court Assistant.

Ms Okong'o h/b for Mr. George Gilbert for the plaintiff/applicant.

Mr. Mandala for the defendants/Respondent.

