Doshi v Central Bank of Kenya (Civil Suit 27 of 2023)
[2023] KEHC 24096 (KLR) (24 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24096 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL SUIT 27 OF 2023

DKN MAGARE, J

OCTOBER 24, 2023

BETWEEN

ASHOK LABSHANKER DOSHI ..... PLAINTIFF

AND

CENTRAL BANK OF KENYA ..... DEFENDANT

RULING

1. The Plaintiff herein filed an Application dated 30th June 2023 under urgency seeking the relief that the Judge handling this matter, Honourable Mr. Justice Kizito Magare do recuse himself from further handling and or hearing this matter forthwith and the same be placed before the Resident Judge for Directions.

2. The Application was supported by the Affidavit of Ashok Labshanker Doshi and was principally based on the following Grounds:

    a. The Honourable Judge has formed an opinion on this suit that the suit is improperly before Court as the Plaintiff should have approached Court vide Judicial Review Application within 6 months.

    b. The Judge openly questioned the Plaintiff suo moto without being moved by a party, on why the suit was filed on 28th March 2023 yet the Liquidator was appointed on 8th December 2021.

    c. The Judge has therefore formed an opinion that the suit is improperly before the Court without a finality mind and it is fair that the suit be determined by an independent and objective Judge.

3. The Defendant filed its Replying Affidavit sworn on 10th July 2023 opposing the Application substantially on the grounds that:

a. The Plaintiff had not demonstrated the existence of the circumstances that give rise to a reasonable apprehension that the judge would not be impartial.

b. The Honourable Judge graciously extended interim Order on 4th May 2023 and 16th May 2023 in favour of the Applicant.

c. The Honourable Judge has not exhibited any bias.

d. After being dissatisfied with the Court's Ruling on 31st May 2023, the Plaintiff lodged a Notice of Appeal to the Court of Appeal and so the Application is frivolous and an abuse of the Court process.

4. The Plaintiff filed written submissions dated 21st July 2023 in support of the Application. In the submissions, Counsel raised one issue, as to whether the Judge should recuse himself from further handling this suit.

5. It was submitted that the Judge ought not to have pronounced himself on the merits of the case at the interlocutory stage while dealing with an interim Application and by so doing, counsel contented that the Judge formed an opinion that the suit was improperly before the Court.

6. Counsel, further submitted that the Defendant had raised no preliminary Objection but the Honourable Judge proceed with a biased mind that the suit was improperly before the Court and was incurably defective and the Plaintiff was guilty of laches.

7. The Defendant filed its written submissions dated 21st July 2023 opposing the Application.

8. In his submissions, Counsel relied on the dictum in the case of National Water Conservation and Pipeline Corporation V. Runji & Partners Consulting Engineers and Planners Limited (2021) eKLR where the Court stated as follows: -

> 30. I cannot think of a more eloquent exposition of the law on recusal of judicial officers than the succinct exposition proffered by the Constitutional Court of South Africa in President of the Republic of South Africa and Others v South African Rugby Football Union and Others[11] which indisputably articulated the proper approach as follows: -
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> "... The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of the litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial."
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> 31. Because of the relevancy of the above elucidation to the issues at hand, some of the salient facets of the judgment merit some emphasis in the present

context. In articulating the test in the terms quoted above, the court observed that two considerations are built into the test itself. First, in considering the application for recusal, the court as a starting point presumes that judicial officers are impartial in adjudicating disputes. This in-built aspect entails two further consequences. One, it is the applicant for recusal who bears the onus of rebutting the presumption of judicial impartiality. Two, the presumption is not easily dislodged. It requires "cogent" or "convincing" evidence to be rebutted

32. Second, the other in-built aspect of the test is that "absolute neutrality" is something of a chimera in the judicial context.[12] This is because judges are human. They are unavoidably the product of their own life experiences, and the perspective thus derived inevitably and distinctively informs each judge's performance of his or her judicial duties. But colorless neutrality stands in contrast to judicial impartiality[13] - a distinction the above cited decision vividly illustrates. Impartiality is that quality of open-minded readiness to persuasion - without unfitting adherence to either party, or to the judge's own predilections, preconceptions and personal views - that is the keystone of a civilized system of adjudication. Impartiality requires in short "a mind open to persuasion by the evidence and the submissions of counsel"[14] and, in contrast to neutrality, this is an absolute requirement in every judicial proceeding. This is because: -

"A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before courts and other tribunals. . . Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes."[15]

The Constitutional Court of South Africa in the above cited case further alluded to the apparently double requirement of reasonableness that the application of the test imports. Not only must the person apprehending bias be a reasonable person, but the apprehension itself must in the circumstances be reasonable.[16] This two-fold facet finds replication in S v Roberts[17] where the court required both that the apprehension be that of the reasonable person in the position of the litigant and that it be based on reasonable grounds. The reasonable person should not entertain unreasonable or ill-informed apprehensions. The two-fold emphasis serves to underscore the weight of the burden resting on a person alleging judicial bias or its appearance. As Cory J stated: -

"Regardless of the precise words used to describe the test, the object of the different formulations is to emphasize that the threshold for a finding of real or perceived bias is high. It is a finding that must be carefully considered since it calls into question an element of judicial integrity."

Analysis

The Applicable Law

9. Judicial Service Commission made the Judicial Service (Code of Conduct and Ethics) Regulations 2020 pursuant to Section 47(2)(a) of the *Judicial Service Act*, Section 37 of the *Leadership and Integrity Act*, 2012 and section 5(1) of the *Public Officer Ethics Act*, 2003.

10. Under regulation 21(1), a judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge— that is: -

a. is a party to the proceedings;

b. was, or is a material witness in the matter in controversy;

c. has personal knowledge of disputed evidentiary facts concerning the proceedings;

d. has actual bias or prejudice concerning a party;

e. has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;

f. had previously acted as a counsel for a party in the same matter;

g. is precluded from hearing the matter on account of any other sufficient reason; or

h. or a member of the judge's family has economic or other interest in the outcome of the matter in question.

i. Regulation 21(2) requires that Recusal by a judge shall be based on specific grounds to be recorded in writing as part of the proceeding. This is supplemented by regulation 21 (3) which forbids a judge from recusing himself or herself if in the circumstances set out therein.

j. The effect of the said regulations is that the court must guard against it independence and not to recuse itself in circumstances that do not merit. However, in circumstances where there is merit either due to the surrounding facts or appearance of bias, a judge should recuse himself. If for example a family member is involved, the court should not wait for an application for recusal.

k. This even occurs in cases where, the judge's conscious points to discomfort due to relationship, either legal or clandestine. However, where there is no merit and the same is based on unfounded speculations, the court should and must not recuse itself.

l. Under Regulation Rule 7 of the Judicial Service (Code of Conduct and Ethics) Regulations 2020, a judge shall exercise judicial authority independently and shall: -

    a. uphold the independence and integrity of the judiciary and the authority of the courts;

    b. maintain an independence of mind in the performance of judicial duties;

    c. take all reasonable steps to ensure that no person, forum, or organ of state, interferes with the functioning of the courts;

    d. Exercise judicial function on the basis of the judge's own assessment of the facts of the case, in accordance with a conscientious understanding of the law, and without reference to any extraneous influences; and

    e. exercise judicial function without being influenced by personal feelings, prejudice, or bias.

m. Independent exercise of judicial authority is affected by bias or ill will against a party. It is also compromised if the court succumbs to machinations and intimidation by parties.

n. However, where a party wants to waste the court's time or otherwise firm shop, the court should be firm and clearly indicate to parties so. Unnecessary application for recusal is an

affront to the independence of the judiciary and decisional independency of the judges. On the other hand a biased court is anathema to the independence of the court and the image of the judiciary.

11. In this matter, there is no allegation of actual or perceived bias arising from the relation between parties. It is based on the order of the court to proceed for hearing. This is what was referred to in the case of Kalpana Rawal as the case of appearance of bias based on the conduct of the judge.

12. The test used in cases for recusal of such a nature is what the house of Lords in R versus Gough (1993) AC 646 calls the of real danger test, though not of universal application, the test is whether, there is real danger that a fair trial was likely to be denied. To me such a test is too restrictive and may not be achieved by most parties applying for recusal.

13. I prefer the test of the real likelihood of bias. In this case, it is not necessary to proofs actual bias but whether, a fair minded and informed observer, having considered the facts, would concluded that there was a real possibility that the judge was biased. In paragraph 39 of the decision of Michael Obare Tago versus Fredrcik Ambrose Otieno (2020) eKLR, the court posited as follows: -

> " In the Attorney General of Kenya Versus Professor Anyang Nyong'o & 10 Others EACJ Application No. 5 Of 2007, the court stated: -
>
> "we think that the objective test of reasonable apprehension of bias is good law. The test is stated variously, but amount to this- do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair minded and informed member of the public that the judge did not (will not) apply his mind to the case impartially"

14. The test is not what the litigant fees. It is a member of the public, who is not only reasonable but also fair minded and informed about all the circumstances of the case.

15. Rachuonyo and Rachuonyo Advocates v National Bank of Kenya Limited [2021] eKLR, justice D.S. MAJANJA, held as follows: -

> " in Philip K. Tunoi & another v Judicial Service Commission & Another CA Civil Application NAI No. 6 of 2016 [2016] eKLR the Court of Appeal adopted the test for recusal propounded by the House of Lords in Porter v Magill [2002] 1 All ER 465, where it stated that, "The question is whether the fair minded and informed observer, having considered the facts, would conclude that was a real possibility that the tribunal was biased." The same position was taken by the Supreme Court (per Ibrahim J.) in Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 [2013] eKLR where he observed that, "The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable."

16. In this matter, a fair minded person knowing the circumstances of this case, will not have any doubt that the case will be heard fairly.

17. In the case of in Rachuonyo and Rachuonyo Advocates v National Bank of Kenya Limited [2021] eKLR (supra) the court proceeded as doth: -

> " on the test of a 'fair minded and informed observer' and the provisions of the Code of Conduct above, can it be said that taking into account all circumstances of this case, I am

likely to be biased against the Advocates and deny them a right to a fair trial? I think not. The Advocates have not laid any factual basis for a reasonable observer appraised of the facts to demonstrate a possibility of real bias."

18. In this particular case the advocates have not laid any basis both factual and legal for my recusal. There is no way of knowing what is in a mind of a person. Without tangible evidence leading to question the impartiality, then, I decline to recuse myself.

19. The allegations laid out have not reached an evidential threshold for recusal Justice sila Munyao in the case of Abigael Barmao v Mwangi Theuri [2013] Eklr stated as doth: -

> The remedy of injunction is founded in equity and one of the maxims of equity is that "delay defeats equity". I cannot state it better than to quote the text Hanbury and Maudsley, Modern Equity, 10th Edition at page 92 where it is stated as follows:-
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> "As we have seen, the plaintiff must come promptly in the case of an ex parte injunction, as any delay illustrates that his case is not urgent. Where the plaintiff has voluntarily delayed his motion for an interlocutory injunction, he is unlikely to establish that his case is such that it would be unreasonable to make him wait until trial..."

20. In Snell's Equity, 30th Edition at p 33 para 3-16 (quoting Lord Camden L.C in Smith v Clay (1767) 3 Bro. C.C. 639n. at 640n) it is asserted that a court of equity "has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing."

21. My view of this application is that the plaintiff has been guilty of laches. If a proper explanation had been provided as to why there has been a delay of more than 4 years, then probably I would have been moved to grant the injunction. But no explanation has been given, and I can only conclude that the plaintiff is guilty of delay. There is no doubt that 4 years before seeking relief is a period that is inordinately too long.

22. A court of equity cannot be cajoled, intimidated in ignoring pertinent provisions of equity. It is irrelevant, in my considered view, till the court of Appeal rules otherwise, whether or not the parties raised the issue. Once a remedy is based in equity, principles of equity set in. That is why the court can still dismiss an application for injunction which is unopposed.

23. Lord Denning, J. Master of Rolls in Central London Property Trust, Ltd. V. High Trees House, Ltd. King's Bench Division [1947] KB 130, [1956] 1 All ER 256, [1946] WN 175, Stated as doth: -

> "It is in that sense, and in that sense only, that such a promise gives rise to an estoppel. The cases are a natural result of the fusion of law and equity; for the cases of Hughes v. Metropolitan Ry. Co. (7) (1877) (2 App. Cas. 439), Birmingham & District Land Co. v. London & North Western Ry. Co. (8) (1888) (40 Ch.D. 268), and Salisbury v. Gilmore (9) ([1942] 1 All E.R. 457), show that a party will not be allowed in equity to go back on such a promise. The time has now come for the validity of such a promise to be recognized. The logical consequence, no doubt, is that a promise to accept a smaller sum in discharge of a larger sum, if acted on, is binding, notwithstanding the absence of consideration, and if the fusion of law and equity leads to that result, so much the better. At this time of day it is not helpful to try to draw a distinction between law and equity. They have been joined together now for over seventy years, and the problems have to be approached in a combined sense."

24. What the good lord was saying is that equity was being fused into the law. The parties and the courts before him did not address the issue, which was later developed into propriety estoppel. The same applies here. The court is not bound by parties submissions, it is the case before the court. In the case of Attorney General of Kenya Vs. Professor Anyang' Nyong'o & to 10 Others EACJ Application No. 5 of 2007 the Court Stated:

> " We think that the Objective test of "reasonable apprehension of bias" is good Law. The test is stated variously, but amounts to this -do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair minded and informed member of the public that the Judge did not (will not) apply his mind to the case impartially? Needless to say-
>
> "A litigant who seeks disqualification of a Judge comes to court because of his own perception that there is appearance of bias on the part of the Judge. The Court however, has to envisage what would be the perception of a member of the public who is not only reasonable, but also fair minded and informed about all the circumstances of the case."

25. Further, in the Supreme Court of Canada R Vs. S.C.R.D.) [1977]. 3SCR 484 cited by the Court of Appeal in the Kalpana Rawal Vs. J.S.C. (supra) it was held:

> "The apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. The test is what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude. This test contains a two-fold Objective element:- the person considering the alleged bias must be reasonable and the apprehension of bias itself must also be reasonable in the circumstances of the case. Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold.
>
> The reasonable person should also be taken to be aware of the social reality that forms the background to a particular case, such as societal awareness and acknowledgment of the prevalence of racism or gender bias in a particular community. The Jurisprudence indicates that a real likelihood or probability of bias must be demonstrated and that a mere suspicion is not enough. The existence of a reasonable apprehension of bias depends entirely on the facts. The threshold for such a finding is high and the onus of demonstrating bias lies with the person who is alleging its existence."

26. In Kaplana Rawal Vs. Judicial Service Commission and 2 Others [2016] eKLR:

> " An Application for recusal of a Judge is a necessary evil." On the one hand, it calls into question the fairness of a Judge who has sworn to do justice impartially, in accordance with *the Constitution* without any fear, favour, bias, affection, ill-will, prejudice, political, religious, or other influence, In such application, the impartiality of the Judge is called into question and his independence is impugned. On the other hand, the oath of office notwithstanding, the Judge is too human and above all *the Constitution* does guarantee all litigants the right to a fair hearing by an independent and impartial Judge."
>
> When reasonable basis for requesting a Judge to recuse himself or herself exists, the application has to be made, unpleasant as it may be. That is the lesser of two evils. The

alternative is to risk violating the cordial guarantee of *the Constitution*, namely, the right to fair trial, upon which the entire Judicial edifice is built. Allowing a Judge who is reasonably suspected of bias to sit in a matter would be in violation of the Constitutional guarantee of a trial by an independent and impartial Court.

... "An application for recusal of a Judge in which actual bias is established on the part of the Judge hardly poses any difficulties the Judge must, without more, recuse himself. Such is the situation where a Judge is a party to the suit or has a direct financial or proprietary Interest in the Outcome of the case. In that scenario bias is presumed to exist and the Judge is automatically disqualified. The challenge however arises where like in the present case, the application is founded on appearance of bias attributable to behavior or conduct of a Judge?

27. All the above decisions demonstrate how the courts of contemporary and higher Jurisdiction, home and abroad, have reasoned on this question of the recusal of a judicial officer from conducting judicial proceedings; on allegations of bias.

28. In the instant case, I note that the Applicant's apprehension of bias draws from the Ruling of this Court delivered on 31st May 2023 in which the Court declined to grant a temporary injunction on the Ground that the Applicant did not prove the conditions for the Grant of a temporary injunction as espoused in the locus classicus case of Giella versus Cassman Brown.

29. In his Application and submissions, the Applicant contended that in determining the interim Application dated 30th June 2023, this Court made determinations on the main suit that lead to a reasonable apprehension that the court had made an opinion that the main suit was improperly before the Court, was time barred and ought to have been introduced by way of a judicial review application.

30. I note that the Plaintiff has since lodged a Notice of Appeal to this Court intending to Appeal against the said Ruling and Order.

31. An application for recusal of a judicial officer on account of apprehensive or real biasedness calls into question an element of judicial integrity, has high threshold to prove and must be supported with cogent evidence as observed by the court in the case National Water Conservation and Pipeline Corporation (supra).

32. This Court notes that the proper channel and which the Applicant did was to appeal the Decision embodied in the Ruling dated as he did. The Court is entitled to analyze the factual basis of the legal threshold for the grant of an injunction as espoused in the case of Giella vrs Cassman Brown (1973) EA 358 in discerning the existence or otherwise of a prima facie case in the first limb and the deductions in the Ruling had no bearing on the objectivity of this Court which did not pronounce itself that the suit was time barred or ought to be dismissed because it was not instituted by way of Judicial Review.

33. Justice prof Dr Sifuna, in Tuff Bitumen Limited Versus SBM Bank (Kenya) Ltd and Another 2023 (unreported) stated as doth: -

> "...the bedrock of this determination rests on the that a recusal is necessitated where it is proved beyond peradventure, speculation, conjecture and sheer paranoia, that a judicial officer will not impartially handle a case before him as a result of actual bias or a reasonable apprehension thereof; and never on unfounded or unreasonable apprehension. Where an Application is based on apprehension rather than actual bias, the apprehension should be that of a reasonable person and must be assessed in the oght of the true facts as they emerge at the hearing of the Application; and the test t weight the apprehension should be objective one, and nt a subjective one based fir instance, on mere paranoia.

The Supreme Court of Uganda in Uganda Polybags Limited v Development Fiance Company Ltd & Others (1999) 2 EA 337 was of the view that litigants have no right to choose which judicial officer should hear and determine their cases, since all judicial officers take oath to administer justice to all manner of people impartially without fear, favour, affection or ill will and the oath must be respected the case applied in all cases of apparent bias was whether having regard to the relevant circumstances, .

Here at home, our Court of Appeal in Uhuru Highway Development Ltd vrs Central Bank of Kenya & 2 Others Civil Appeal N0. 836 of 1996 stated as follows:

except where a person acting in a judicial capacity had a pecuniary interest in the outcome of the proceedings, when the court would assume bias and automatically disqualify him from adjudication the test applied in all cases of apparent bias was whether having regard to the relevant circumstances, there was real danger of bias on the relevant member if the tribunal in question in the sense that he might unfairly regard or unfairly regarded with favour or disfavor the case of a party to issue under consideration by him; the real test is in the nature of real danger as opposed to real likelihood to ensure that the court is thinking in terms of possibility rather than probability of bias. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duties to sit and do not, by acceding too readily to suggestions of appearance f bias encourage parties to believe that by seeking the disqualification of a Judge they will have their cases tried by someone thought to be more likely to decide the case in their favour. although most litigants would much prefer theta they be allowed to shop around for judges that would hear their cases, that is a luxury which is not yet available under our law to litigants".

34. The Court of Appeal in Uhuru Highway Development Ltd. vs. Central Bank of Kenya & 2 Others Civil Appeal No. 36 of 1996 held: -

> " Except where a person acting in a judicial capacity had a pecuniary interest in the outcome of the proceedings, when the Court would assume bias and automatically disqualify him from adjudication, the test applied in all cases of apparent bias was whether having regard to the relevant circumstances, there was a real danger of bias on the relevant member of the tribunal in question, in the sense that he might unfairly regard or unfairly regarded with favour or disfavour the case of a party to issue under consideration by him: the real test is in terms of real danger rather than real likelihood to ensure that the Court is thinking in terms of possibility rather than probability of bias... Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duties to sit and do not, by acceding too readily to the suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a Judge, they will have their cases tried by someone thought to be more likely to decide the case in their favour... Although most litigants would much prefer that they be allowed to shop around for judges that would hear their cases, that is a luxury which is not yet available under our law to litigants."

35. The court in the case Tuff Bitumen Limited Versus SBM Bank (supra), Justice Prof Sifuna stated as doth:

> "...by so doing, courts will deal with the improper habits of parties and their advocates filing recusal applications and later (failing or even electing not to prosecute them; simply abandoning them, or (c) withdrawing them. They do this after having embarrassed or humiliated the subject judicial officer and caused him mental anguish. proceeding to

determine those Applications despite such failure, abandonment tor withdrawal will most likely discourage the habit of the parties or their advocates making recusal Applications and later failing to prosecute them, abandoning them, choreographically and dramatically withdrawing them before they are heard. such mischief makers sometimes with draw their Applications on the eve of the hearing, while the Application is pending Ruling or on the day of the Ruling as attempted in this case."

36. The question then to ask is should I recuse myself from hearing the case herein. Unlike arbitration, adjudication through litigation is not forum based. The parties do not choose the forum. Put conversely, courts do not choose which cases to hear or not to hear. It is a fishing net. We hear all cases from all and sundry. Some parties sometimes have a false sense of self-importance and do not take kindly losses. They take recusal as a means of getting or hoping to get specific courts hear them. Unfortunately, both the parties and court have not such luxury.

37. In the end the application lacks merit. The court is convinced that it is still true to its oath of neutrality. The Plaintiff has to elect what to do with the case but it is important to prosecute the cases once filed. It cannot be that the courts are a repository of cases awaiting a favourable court.

38. The Application is dismissed for lack of merit. The Application was directed to the court. The Defendant found themselves in the mix. In the circumstances they can be assuaged costs. The Respondent shall have costs of Ksh 20,000/= for the said Application payable within 30 days.

Determination

39. The upshot of the foregoing is that the Court makes the following orders: -

    a. The application dated 30/6/2023 lacks merit and is dismissed with costs of Ksh. 20,000/= to the Defendant payable within 30 days, in default execution to issue.

    b. Direction for the aborted hearing, which collapsed when the application was filed on the eve of the hearing of the suit, shall be given forthwith.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 24TH DAY OF OCTOBER 2023. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Oluga for the Plaintiff

Chege for the Respondent

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KIZITO MAGARE J