



Telkom Kenya Limited v Municipal Council of Mombasa (Civil Case 248 of 2008) [2023] KEELC 18215 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEELC 18215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL CASE 248 OF 2008**

**LL NAIKUNI, J
MAY 25, 2023**

BETWEEN

TELKOM KENYA LIMITED PLAINTIFF

AND

MUNICIPAL COUNCIL OF MOMBASA RESPONDENT

RULING

I. Introduction.

1. What is before this Honorable Court for its determination is a Notice of Motion application dated 30th May, 2022 by the Plaintiff/Applicant – Telekom Kenya Limited. It was brought under a certificate of urgency under the premises of the provision of Sections 1A, 1B, 3A, 25 and 34(1) of the Civil Procedure Act, Cap. 21, Order 13 Rule 2, Order 21 Rule 7(1), Order 51 Rule 1 of the Civil Procedure Rules 2010.
2. Upon effecting service on 19th August, 2022, the Respondent herein, “the Municipal Council of Mombasa” (now defunct) filed a 9 Paragraphed Replying Affidavit opposing the said application herein.

II. The Plaintiff/Applicant’s case

3. The Plaintiff/Applicant sought for the following orders:-
 - a) Spent.
 - b) That the consent Order dated 28th June, 2017 filed in Court on 30th June, 2017 and adopted as an Order of the Court be adopted as the Decree of the Court.
 - c) That the costs of this Application be borne by the Defendants.



4. The application is based on the grounds, testimonial facts and the averments made out under the 11th Paragraphed Supporting Affidavit sworn by Wangechi Gichuki and dated 30th May, 2022 together with the four (4) annexures marked as “WG – 1 to 4” annexed thereto. She averred that:-
- (a) She was an employee of the Plaintiff/Applicant and currently designated as the Director of Legal Affairs and had instructions of the Plaintiff/Applicant’s Board of Directors to swear this affidavit. She was fully conversant with the facts of this case.
 - (b) She was aware that the Suit herein was heard by Honourable Lady Justice Anne Omollo. Further, that she became aware that before the Honourable Judge could deliver her Judgment the parties herein compromised the dispute and arrested the Judgment through a Consent Order dated 28th June, 2017 and filed in Court on 30th June, 2017 and which was adopted by the Court. She tendered it as evidence and marked as Exhibit “WG-1” being a true copy of the said consent Order.
 - (c) Upon the adoption of the said consent Order, the Defendant/Respondent’s successor, the County Government of Mombasa was required and /or obligated by the Order to amend the rates record for the Plaintiff/Applicant’s parcel of Land known as Title Number Mombasa/ Block XXI/430 to reverse the Claim for a sum of Kenya Shillings Fourty Million Fifty Thousand Eight Hundred and Ninety One and one cent (Kshs. 40, 050,891.01) and the accrued interest thereof.
 - (d) Indeed, vide a letter dated 7th March, 2018 add/Respondent addressed to the Plaintiff/Applicant’s Advocates, the Defendant’s advocates forwarded a letter dated 26th February, 2018 under which the Defendant/Respondent’s advised its relevant department to honour the Consent Order which she tendered true copies of the said letters and marked them as “Exhibit WG – 2”.
 - (e) To date, despite their persistent requests, the Defendant/Respondent’s successor had declined to honor the Court Order to reverse the interest Claim and /or issue the Plaintiff/Applicant with a clearance Certificate and it continues to demand payment of the same amount and accrued interest subject of the current Order which she tendered in evidence marked as “Exhibit WG – 3” true copies of the Demand letter.
 - (f) The Plaintiff/Applicant had been consistently and faithfully paying the annual rates as evidenced by the documents which/herby tender in evidence marked as “Exhibit WG - 4”.
 - (g) It was evident that the Defendant/Respondent's successor was hell bent in disobeying the Court Order to the detriment of the Plaintiff/Applicant who was now unable to effectively deal with its property and was highly prejudiced by the prevailing situation.
 - (h) It was therefore in the interest of justice that this Honourable Court further adopts the Consent Order as the Decree of this Court so that the Plaintiff/Applicant could commence execution proceedings against the Defendant/Respondent in the event of default.

III. The Defendant/Respondent’s Case

5. The Defendant/Respondent herein opposed the application by way of a 9th Paragraphed Replying Affidavit sworn by JIMMY WALIAULA, the County Attorney of the County Government of Mombasa filed 19th August, 2022. He deponed that: -



- (a) The Plaintiff/Applicant had applied to this Honourable Court seeking orders that the Consent Order dated 28th June, 2017 filed in Court on 30th June, 2017 and adopted as an Order of the Court be adopted as the Decree of the Court.
- (b) The Respondent herein was defunct and the Court could not issue orders against a non-existent entity.
- (c) The application herein had been brought in bad faith. The Consent Order was dated 28th June, 2017 and the Plaintiff/Applicant herein had waited for over five (5) years to make this application hence was undeserving of the orders sought.
- (d) The Defendant/Respondent had neither refused nor neglected to honour the terms of the consent order. That the said consent was entered into between the now defunct Defendant and the Plaintiff/Applicant. That the successor of the Defendant/Respondent should not be compelled to honour an agreement it was not privy to.
- (e) The Defendant/Respondent's successor had not demanded from the Plaintiff/Applicant the sum of Kenya Shillings Fourty Million Fifty Thousand Eight Ninety One Hundred (Kshs. 40,050,891.01) nor commenced recovery proceedings for the said sum and the Plaintiff has not provided any proof of the said demand.
- (f) The Plaintiff/Applicant had in its application admitted that vide a letter dated 7th March, 2018, the Defendant/Respondent's advocate advised the relevant department to honour the Consent Order. This showed that the Defendant had always been willing to carry out the terms of the Consent Order.
- (g) It was therefore in the interest of justice that the Application herein be dismissed.

VI. Submissions

6. On 1st November, 2022 while all the parties were present in Court, they were directed to have the Notice of application dated 30th May, 2022 be disposed of by way of written submissions and the Plaintiff complied and a ruling date was reserved on Notice by Court accordingly.

A. The written submissions by the Plaintiff/Applicant's

7. On 12th October, 2022, the Learned Counsels for the Plaintiff/Applicant through the Law firm of Messrs. Kale Maina & Bundotich Advocates filed their written submissions dated 28th September, 2022. Mr. Bundotich Advocate submitted that the Plaintiff/Applicant instituted a suit against the Defendant/ Respondent herein to restrain the Defendant from purportedly advertising for sale and or selling the Plaintiff's premises on land known as Land Reference Number Mombasa/Block XXI/430 to recover alleged outstanding rates. Parties arrested the Judgement by a Consent Order dated 28th June, 2022 which was filed in court on 30th June, 2017 whose terms was to waive accrued and accruing rates and interest. The Plaintiff had since complied with the Consent Order by paying rates while the Defendant was in contravention of its terms as its successors continue to demand the rates arrears and had failed to issue the Plaintiff with a Rates Clearance Certificate.
8. The Learned Counsel submitted that vide a Notice of Motion application dated 30th May, 2022, the Plaintiff/Applicant sought the following orders from the court:
 - (a) Spent;



- (b) That the Consent Order dated 28th June, 2017 filed in Court on 30th June, 2017 and adopted as an Order of the Court be adopted as a Decree of the Court.
- (c) That the costs of this application be borne by the Defendants.
9. The Learned Counsel submitted that the application was supported by the affidavit sworn by Wangechi Gichukion 30th May, 2022 and the annexures thereto. The Defendant/Respondent has filed a Replying Affidavit dated 19th August, 2022. The submissions herein are in support of the application.
10. According to the Learned Counsel, the following were the issues for the court's determination:
- (a) Whether the Defendant was a non-existent entity?
- (b) Whether Defendant/Respondent's successor continued to demand payment of rates which should have been reversed from its records?
- (c) Whether the consent order dated 28th June, 2017 filed in Court on 30th June, 2017 and adopted as an Order of the Court be adopted as a Decree of the Court?
- (d) Whether the application herein had been brought in bad faith?
- (e) Who ought to bear the costs of the application?
11. On the issue of whether the Defendant was a non-existent entity, the Learned Counsel submitted that in regards to the contention by the Respondent that the Respondent was defunct and the court cannot issue orders against a non-existent entity, that the County Government of Mombasa was its successor. The Court could consequently issue orders against the County Government of Mombasa. Right from the onset, the Consent Order dated 28th June, 2017 specifically states that it applied to 'its successors in title' by providing, in Paragraph 2 as follows:
- ‘The Defendant by itself, its successor in title, (Our emphasis added) its servants or its agents hereby agree.....’
12. The Learned Counsel submitted that the Plaintiff/Applicant and the Defendant/Respondent herein, and its successor are bound by the terms of the Consent Order. A consent order had a contractual effect and could only be set aside on grounds which justify setting aside a contract or certain conditions remained to be fulfilled which were not carried out, as stated by the court in the case of: “Kenya Commercial Bank Limited – v Benjoh Amalgamated Limited & Another [1998] eKLR. The Defendant/Respondent herein and its successor were therefore bound by the terms of the Consent agreement, which clearly states that it is to apply to its successors too, being the County Government of Mombasa. The claim that the Defendant's successors were not party to the Consent Agreement is thus unsubstantiated.
13. The Learned Counsel averred that moreover, the provision of Section 143(8) of the Local Government Act, Cap. 264 now repealed, looked beyond the life of a local authority to provide that all contracts lawfully entered by a local authority under that section shall be valid and binding on the local authority and its successors...” Justice Majanja seemingly held a similar view in the case of: “Republic v Town Clerk Webuye County Council and Another [2014] eKLR by stating that:
- “the County is the legally established body unit contemplated under the law that takes the place of local authorities unless there is a contrary enactment.”



14. The Learned Counsel further argued that *the Constitution* of Kenya, 2010 under the provision of Section 33 of the of the Sixth Schedule provides for the succession of institutions, offices, assets and liabilities as follows:-

“An office or institution established under *the Constitution* is the legal successor of the corresponding office or institution.

15. To buttress its argument further, the Learned Counsel relied on the case of:- “Kenya Local Government Workers Union v Nakuru County Council on Behalf of Naivasha Municipal Council [2015] eKLR the Court cited the case of: “J.A. M. Umenda & another – v Municipal Council of Kisii & 6 others, Environment & Land Court of Kenya at Kisii Judicial Review Application No.3 of 2013 [2013] eKLR where Okong’o J. stated:

“Section 33 of the sixth schedule to *the Constitution* 2010 provides that an office or institution established under *the Constitution* of Kenya,2010 is a legal successor of the corresponding office or institution or under a former Constitution or under a former Act of Parliament in force immediately before the effective date of *the Constitution* of Kenya, 2010 whether known by the same name or a new name County Government under the new Constitution took over the powers and functions of the local authorities as they were recognized and defined under the old Constitution and the local Government Act pursuant to the provisions of the said Section 33 of the sixth schedule to *the Constitution* of Kenya 2010,County Governments are therefore the natural and presumptive legal successors of the defunct local authority.”

16. The Learned Counsel contended that while approving pronouncement of Justice Okong’o that the Municipal Council of Mombasa, being a local authority/institution under the previous law, Mombasa County Government is its natural and presumptive legal successors. In the case of:- “Kenya Local Government Workers Union v Nakuru County Council on Behalf of Naivasha Municipal Council [2015] eKLR the Court, in Paragraph 30, had the following to say regarding the successors of Naivasha Municipal Council:

:I am in total agreement with the views expressed by the two learned Judges above and hold that Nakuru County Government is the natural and presumptive legal successor of the defunct Naivasha Municipal Council. The Nakuru County Government is therefore legally bound by the Judgment of Hon. Paul K. Kosgei J. delivered on 31st August, 2007 in favour of the Claimant/Applicant against Naivasha Municipal Council.

17. The Learned Counsel submitted that taking into consideration the consent order, Section 33 of the Sixth Schedule of *the Constitution* 2010, Section 143(8) of the Local Government Act and various decisions of the courts, particularly, the court in Kenya Local Government Workers Union case above, the Counsel submitted that the County Government of Mombasa is the successor of the Municipal Council of Mombasa. The Municipal Council of Mombasa is therefore not a non-existent entity as it was succeeded by County Government of Mombasa. The Defendant/Respondent’s claim that that orders cannot be issued against a non-existent is thus void of merit.
18. On the issue of whether the Defendant/Respondent’s successor continues to demand payment of rates which should have been reversed from its records the Learned Counsel submitted that the Consent Agreement dated 28th June, 2017 and adopted as an order of the court obligated the Defendant's successor, the County Government of Mombasa to amend rates record of the Plaintiff’s parcel of Land known as Title Number Mombasa/Block XXI/430 to reverse the claim for a sum of Kenya Shillings



- Fouty Million Fifty Thousand Eight Ninety One Hundred and one cent (Kshs. 40,050,891.01) and accrued interest thereof. Vide a letter dated 26th February, 2018, forwarded to the Plaintiff's advocates through a letter 7th March, 2018, the Defendant advised its relevant department to honor the Consent Order by issuing Rates Clearance Certificate, but they failed to do so as evidenced by "Exhibit WG -2".
19. The Learned Counsel submitted that the County Government of Mombasa had declined to honor the terms of the Consent Order to reverse the terms the interest claims and/or issues the Plaintiff with a Clearance Certificate as it continues to demand payment of the same amount and accord interest as evidenced by Exhibit WG-3. The Defendant's successor, County Government of Mombasa, is adamant on disobeying court orders by continuing to demand rates from the Plaintiff despite the Consent Order. The Plaintiff has however been paying annual rates as evidenced by Exhibit WG-4.
 20. The claim by the Defendant that the Defendant/Respondent's successor had not demanded the sum of a sum of Kenya Shillings Fouty Million Fifty Thousand Eight Ninety One Hundred and one cent (Kshs. 40,050,891.01) was therefore intended to mislead the court as the Plaintiff had not been issued with Rates Clearance Certificate. They prayed that this Honourable court should order the Defendant's successor to give the Plaintiff Rates Clearance Certificate in compliance with the Consent Order.
 21. On the issue of whether the consent order dated 28th June, 2017 filed in court on 30th June, 2017 and adopted as an order of the court be adopted as a decree of the court, the Learned Counsel submitted that the Plaintiff/Applicant and Defendant/Respondent herein via a Consent Order dated 28th June, 2017 agreed as follows:
 - (a) The Defendant's claim against the Plaintiff for a sum Kenya Shillings Fouty Million Fifty Thousand Eight Ninety One Hundred and one cent (Kshs. 40,050,891.01) together with accruing and accumulating interest on account of rates, interest and penalties for the period between the year 1996 to 2017 levied on the Plaintiff's property known as Title number Mombasa/Block XX1/430 and or any of the Plaintiff's property situated within the Defendant's ratable area be and is hereby waived.
 - (b) The Defendant by itself, its successor in title, its servants or its agents hereby agree not to commence any recovery proceedings whatever against the Plaintiff for the recovery of the said a sum of Kenya Shillings Fouty Million Fifty Thousand Eight Ninety One Hundred and one cent (Kshs. 40,050,891.01) together with accrued and accruing interest and penalties and or to attach, advertise or sell, or transfer the Plaintiff's Property known as title Mombasa/Block XX1/430 or any of the Plaintiff's immobile property situated within the Defendant's ratable area.
 - (c) The Plaintiff shall continue to pay the annual rates charged on Title number Mombasa/Block XX1/430 as per the rates demand notes supplied to the Plaintiff on an annual basis.
 - (d) Each party to bear its own costs.
 - (e) The Consent Order herein shall abide and be adopted in the proceedings in Mombasa Chief Magistrate Court Civil Case No.622 of 2010,(Municipal Council of Mombasa vs. Telkom Kenya Limited).
 22. The Learned Counsel submitted that the Consent order was filed in Court on 30th June, 2017 and adopted as an order/judgement of the court. A consent order that had has been adopted as an order/judgement of the court, the same is binding between the parties. The Plaintiff/Applicant has verified to this court that:



- (a) The Consent Order dated 28th June, 2017 is applicable to both the Defendant/Respondent herein and its successor, County Government of Mombasa.
- (b) The Defendant/Respondent's successor has continued to demand accrued rates and interests from the Plaintiff/Applicant, which is against the Consent Order.
23. The Learned Counsel argued that in view of the foregoing, the Plaintiff/ Applicant prays that this Honourable Court should adopt the consent order dated 28th June, 2017 and filed in court on 30th June, 2017 as a decree of the court as it is in the interest of justice.
24. On the issue of whether the Application herein had been brought in bad faith, the Learned Counsel submitted that contrary to the Defendant's allegation that the Plaintiff had waited for 5 years to make this application, the Defendants had ample time, being the 5 years, to comply with the Court Order. They had since failed to do so hence this application seeking to have the same order adopted as a decree of this Honourable court to enable the Defendant execute against the Respondent herein. The Plaintiff had, since the time the Consent Agreement was adopted as an order of the court, complied with its terms and being consistently and faithfully paying annual rates as evidenced by "Exhibit WG – 4". The evidence that had been adduced in this Honourable court and their submissions indeed have demonstrated that this application is substantiated.
25. On who ought to bear the costs of the application, the Learned Counsel concluded that it is trite law that costs in a matter follow the event. This Court was empowered under the provision of section 27 of the *Civil Procedure Act* to, in exercise of its judicial discretion, award costs to a successful party in proceedings. The Plaintiff/Applicant having demonstrated to this Honorable Court sufficiently that this application had substance and the therefore the Consent order should be adopted as a decree of the court, they prayed that this application should be allowed with costs to the Applicant.

IV. Analysis and Determination

26. I have carefully read and put into account all the filed pleadings – the Notice of Motion application dated 30th May, 2022, written submissions, the authorities relied on and the relevant provisions of *the Constitution* of Kenya, 2020, the appropriate and enabling laws with regard to the applications filed in this Court.
27. In order to arrive at an informed decision, reasonable, Just and fair decision for its determination, the Honorable Court has framed the following three (3) issues. These are:-
- a) Whether the Notice of Motion application dated 30th May, 2022 by the Plaintiff/Applicant has any merit.
- b) Whether the parties are entitled to the relief sought?
- c) Who will bear the costs of the application?

IssueNo. a). Whether the Notice of Motion application dated 30th May, 2022 by the Plaintiff/ Applicant has any merit.

28. The substratum of this application is rather straight forward. The Plaintiff seeks to have the Consent order dated 28th June, 2017 filed in Court on 30th June, 2017 and adopted as an order of the Court be adopted as the Decree of the Court. The Defendant has opposed the application stating that the court cannot issue orders against a non - entity. On 28th June, 2017 a consent order between the Plaintiff and the Defendant was duly executed and now the Plaintiff wants the Court to adopt it as an order of the court which is the subject matter of the application. So the issue herein is the application merited?



29. In the Court of Appeal in the case of: “Brooke Bond Liebig Ltd v Mallya [1975] EA 266 at 269 Law Ag P said:

“A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”

30. In the case of: “Kenya Commercial Bank Ltd v Specialised Engineering Co. Ltd [1982] KLR 485, Harris J correctly held inter alia, that –

1. “A consent order entered into by Counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.
2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.

31. Additionally, in the case of: “Hirani v Kassam [1952] 19 EACA 131 the Court of Appeal held;

“It is now well settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in J. M. Mwakio v Kenya Commercial Bank Limited Civ Apps 28 of 1982 and 69 of 1983. In Purcell v F.C. Trigell Ltd [1970] 3 All ER 671, Winn LJ said at 676:-

“It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with the knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

32. To wrap up in the Case of “Flora N. Wasike v Destimo Wamboko [1982 – 1988] 1 KAR 625 Hancox JA held:-

“Prima facie, any order made in the presence and with the consent of the Counsel is binding on all parties to the proceedings or action and on those claiming under them....and cannot be varied or discharged unless obtained by fraud, or collusion or by an agreement contrary to the policy of the Court...or if the Consent was given without sufficient material facts or in general for a reason which would enable the Court to set aside an agreement”

33. Therefore, based on the surrounding facts and inferences of legal reasoning, it is my opinion that there existed a Consent that was entered between the parties and the same was adopted by Court. The only major issue is executing the Decree upon a legal entity that became a successor of the previous Defendant. For these reasons the application partly has merit.



Issue No. b). Whether the parties are entitled to the reliefs sought.

34. This sub heading is the cracks of the matter. From the record and the averments made out under the Replying Affidavit by the Defendant, the Defendant contended that it is defunct and the court cannot issue orders against a non-existent entity. The application herein has been brought in bad faith. The Consent Order is dated 28th June, 2017 and the Plaintiff/Applicant herein has waited for over 5 years to make this application hence is undeserving of the orders sought. The Defendant/Respondent has neither refused nor neglected to honor the terms of the consent order. That the said consent was entered into between the now defunct Defendant and the Plaintiff. That the successor of the Defendant/Respondent should not be compelled to honor an agreement it was not privy to. The Plaintiff on the other hand averred that the Defendant has however refused and/or neglected to honour the terms of the consent Order and its successor in title, the County Government of Mombasa continues to demand payment of rates subject to the consent Order and which rates the Defendant and its successor was requires to reverse from its records and that its successor in title has refused and / or rejected to amend its records as regards the Plaintiff's ratable imputes to reverse the interest claim.

35. There has been a regime change since the consent was entered into and the government model of the Defendant changed meaning that procedure of how to conduct legal matters may also have changed. I do agree with the Defendant it is quite unlikely that the Plaintiff took 5 years to bring the Consent forth which the successor of the Defendant is now defunct to. The suit could therefore not be compromised without the participation of the parties concerned. In the Supreme Court of India case of "Gurpreet Singh v Chatur Bhuj Goel [1988] AIR 400 the court held that:-

“Under Rule 3 as it now stands when a claim in a suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them.....”

36. The omission to obtain a written agreement from all the parties to the suit makes this matter suitable for setting aside the consent that did not meet the threshold of a contract. In the case of "Munyiri v Ndungya [1985] eKLR Platt Ag JA held as follows:-

“However, we may observe that as there appears to be a good deal of argument about contents of some consent judgment and orders, it would be wise to obtain the signatures of the advocates, or the parties if they are present. In this way, it will then be clear that the terms were known and agreed to, at the time the consent order or judgment was entered into, and may help to avoid later recanting by the parties themselves, which is also a well- recognized feature of life, despite instructions earlier given to their advocates...”

Nyarangi JA stated that:

The advocates should have in this case appended their signatures to the judgment or registered their disapproval of the judgment as soon it was delivered. The judge should, as a precaution have full made a and careful note of what each advocate said to him which culminated in the consent Judgment."

37. In the given circumstances, this Honorable Court in the spirit of Alternative Judicial System (AJS) and tandem of the provisions of Article 159 (2) (c) of *the Constitution* of Kenya, 2010 and Section 20 (1) & (2) of the Environment & land Court Act, No. 19 of 2011 wishes to accord the parties some times to explore an out of Court settlement through negotiation among themselves. In the event



they agree a consent may be recorded. In default, the Honorable Court will be compelled to render its Judgement on the matter accordingly.

Issue No. c). Who will bear the Costs

38. It is now well established that the issue of Costs is at the discretion of Courts.

Costs mean the award that a party is granted by Court at the conclusion of any legal action or proceedings in a litigation. The proviso of Section 27 (1) holds that Costs follow the events. By event, it means the result and/or outcome of the said legal action or proceedings.

39. In the instant case, taking that the matter is still proceeding on and parties have been advised to explore an out of Court negotiation in tandem with the AJS and Article 159 (2) (c) of *the Constitution* of Kenya, 2010, the issue of costs to be in the cause.

V. Conclusion & Disposition

40. Given the foregoing, and having caused such an indepth and elaborate analysis of the framed issues herein, the Honorable Court wishes to proceed and grant the following orders: -

- a. That the Notice of Motion application dated 30th May, 2022 be and is hereby partly allowed whereby the adoption of the consent Judgment be deferred on the grounds that the Defendant was in another regime when the said Consent was entered into to allow the parties to reach a consensus on the consent within the next 45 days from the date of this Ruling.
- b. That failure to do so, this matter to be listed for hearing and/or delivery of Judgement on priority basis as this a fairly old matter.
- c. That the matter to be mentioned on 29th June, 2023 to assess the progress made by parties and taking further direction moving forward.
- d. That Costs of the application to be in the cause.

It is so Ordered Accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAMS VIRTUALLY, SIGNED AND DATED AT MOMBASA THIS 25TH DAY OF MAY 2023.

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HON. JUSTICE L.L. NAIKUNI (JUDGE)
ENVIRONMENT AND LAND COURT AT
MOMBASA

Ruling delivered in the presence of:-

- a. M/s. Yumna – the Court Assistant**
- b. No appearance for the Plaintiff/Applicant.**
- c. M/s. Yusto Advocate holding brief for Mr. Kibara Advocates for the Defendant/Respondent.**

