**Shilala v Co-operative Bank of Kenya & 2 others (Civil Case 7 of 2019) [2022] KEHC 16945 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16945 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**CIVIL CASE 7 OF 2019**

**WM MUSYOKA, J**

**DECEMBER 23, 2022**

**BETWEEN**

**JAMES KHIRANGA SHILALA ..... PLAINTIFF**

**AND**

**CO-OPERATIVE BANK OF KENYA ..... 1ST DEFENDANT**

**DANCAN KINYANJUI WANJUU T/A DOLPHIN AUCTIONEERS .... 2ND DEFENDANT**

**WAKARIMA INVESTMENT COMPANY LIMITED ..... 3RD DEFENDANT**

**RULING**

1. There are 2 applications for simultaneous determination, dated November 4, 2020 and November 12, 2021.

2. That dated November 4, 2020 is brought at the instance of the 3rd defendant, and it seeks dismissal of the suit for want of prosecution, and the setting down of the counterclaim for hearing. The case by the 3rd defendant is that the suit was filed in 2005, vide a plaint dated May 4, 2005, lodged in court on even date. The 3rd defendant entered appearance on May 13, 2005, and filed a statement of defence on July 28, 2005, which was subsequently amended and served on April 19, 2016. It is averred that since its filing the plaintiff has not made any effort to have the suit prosecuted. It is further averred that the plaintiff was not interested in the matter, and its pendency was prejudicial and unjust to the defendants. The 3rd defendant laments that they have not been able to enjoy the property since buying it.

3. The response to the application dated November 4, 2020, is by Naphtali Mwuembe Shilala, one of the plaintiffs, vide an affidavit sworn on dated January 26, 2022. He avers that he was served with it on January 21, 2022. He appears to blame the delay on his former Advocates, Buluma & Company, and accuses the 3rd defendant of bad faith. He asserts that the delay by their Advocates was not inordinate nor intentional. He blames the 3rd defendant for contributing to the delay by a non-compliance in

2015. He says that the 3rd defendant did not have clean hands. He states that since they have instructed another Advocate, they are now ready to proceed with the matter.

4. The application, dated November 12, 2021, was at the instance of 7 individuals, who would like to be "enjoined" to the suit as 4th defendant/interested parties. I shall refer, hereafter, to the 7 individuals as the applicants. They would also like to file their defence and counterclaim within 15 days. The applicants, in the said application , are Paul Wafula Panyako, Muchaei Nyongesa Barasa, Abwavo O. Samuel, Rose Muhonja, Agneda Miloya Ngsale, Juma Molwa Simon and Elega Wasiatsa Kusinjiru. They aver that they purchased the subject land, Kakamega/Kongoni/246, in an undisclosed year, from the plaintiffs, which the 3rd defendant subsequently obtained a title deed "through auction," and who they say are now seeking to evict them, which action would expose them to irreparable loss and damage. They aver that they have been on the land for over 17 years, and had developed the same.

5. The 3rd defendant has responded to the application dated November 12, 2021 by an affidavit sworn on January 19, 2022, and filed herein on even date. It is averred that the application is frivolous and ought to be dismissed summarily. It is pointed out that the plaintiff estate had obtained a loan from the 1st defendant, which was secured with the subject property. The plaintiff defaulted in its obligations , and the 1st defendant opted to exercise its right to sell the subject property to recover the borrowed sum. The sale was conducted by the 2nd defendant, and the property was bought by the 3rd defendant. It is averred that the proposed joinder would have no bearing on the questions in dispute, the charge was created prior to the sale and the consents of the 1st defendant was not obtained before the alleged sale to the applicants was conducted, the alleged sale to the applicants was not acknowledged by the deceased when the instant suit was filed in 2005, the applicants had not provided proof of the alleged sale, the sale to the 3rd defendant became effective at the fall of the hammer at the public auction, and the applicants have not demonstrated how the ends of justice would be served by "enjoining" them. It is asserted that the joinder of the applicants would serve no purpose, and would prejudice the 3rd defendant.

6. Directions were given on January 27, 2022, for disposal of the application by way of oral submissions on April 28, 2022.

7. Ms. Moraa, for the 1st and 3rd defendants, largely reiterated the averments made in the affidavit in support of the application dated November 4, 2020. She submitted that there was lack of interest by the plaintiffs in prosecuting the matter, for since its filing in 2005, no witness has ever testified, and no plausible reason or excuse has been given. She submitted that the plaintiffs were blaming their Advocates for the delay in prosecution, but points out that the said Advocates pulled out of the matter for lack of contact with the plaintiffs. She further submitted that the plaintiffs were also blaming the 3rd defendant for non-compliance with Order 11 of the *Civil Procedure Rules*, yet such non-compliance could not possibly hinder prosecution. In any event, she submitted, the parties had complied by 2017, and in 2018 the court established that they had complied. She submitted that since buying the land in 2005, the 3rd defendant has been unbale to use it on account of the pendency of the matter..

8. Ms Mahuni, for the plaintiffs, conceded that the suit was filed in 2005, but asserted that delay in prosecuting it was caused by numerous interlocutory applications that were filed in it. She further submitted that there were also several related suits filed. She also submitted that the delay was not inordinate. She urged that dismissal would lead to needless litigation. She cited Article 50 of the *Constitution*, to argue that the plaintiffs ought to be heard, and dismissing the suit would deny them justice. She further submitted that the mistake of the former Advocates ought not be visited on the plaintiffs. She submitted that the plaintiffs could not prosecute the suit when they were being represented by an Advocate. She urged that the application dated November 4, 2020 be dismissed, for the plaintiffs to deal with the matter expeditiously.

9. In rejoinder, Ms Moraa submitted that it had not been demonstrated that the other cases, said to have delayed the prosecution of the instant suit, existed, and that orders had been made in those suits to stay proceedings in the instant suit. She submitted that all the interlocutory applications in this cause had been disposed by 2017. She submitted that the right to be heard applied both ways, to all the parties or sides to the dispute. She submitted that the suit was initiated by the plaintiffs, it was their duty to pursue it.

10. On the application dated November 12, 2021, one of the applicants, Mr Paul Wafula, was present, and urged the same. He said that they wanted to be joined to the case.

11. Ms. Moraa responded on behalf of the 1st and 3rd defendants. She argued that the applicants were claiming a purchaser's interest, but had not demonstrated any interest, as their application did not have any annexures. She further submitted that they intended to file a counterclaim, which indicated that theirs was a claim for land, yet the High Court had no jurisdiction on the same, and the parties were better off before the Environment and Land Court. She submitted that the dispute before the court was commercial, not on the land. She further submitted that even if there were land sales, backed by sale agreements, then the same were time-barred,. She further submitted that the deceased had not acknowledged the applicants nor the sales in his suit. She further submitted that there was no consent to demonstrate that such sales were allowed. She asserted that the applicants were non-suited.

12. Ms. Mahuni, for the plaintiffs, submitted that the plaintiffs did not oppose the application, adding that the applicants had been joined in Kakamega ELC No 122 of 2019, which was due for hearing.

13. In rejoinder, Mr Wafula stated that the applicants had not attached annexures as they had not been added yet to the suit. He asserted that they were in occupation by adverse possession.

14. I will start with the application dated November 4, 2020. The matter is fairly straightforward. The 3rd defendant argues that there has been indolence on the part of the plaintiffs in prosecuting their suit, which they initiated in 2005. The submission is that that delay is inordinate. The plaintiffs admit that there was delay, but blame it on their previous Advocates, and say argue it is not inordinate. The other reason or excuse by the plaintiffs for the delay is non-compliance by the 3rd defendant with the *Civil Procedure Rules, 2010*. They attach a copy of a letter they wrote to the Advocates for the 1st defendant, Messrs. Ochieng Onyango Kibet & Ohaga, dated June 2, 2016, yet the Advocate for the 3rd defendant is Mr Tom Mutei, who appears to have been on record for the 3rd defendant since 2006 or thereabouts.

15. The suit herein was filed by the plaintiffs. It is them who dragged the other parties to court. It was their duty, therefore, to drive the litigation, and not the other parties. Secondly, it was the plaintiffs who instructed their Advocates to file the suit. It was their duty, therefore, to ensure that their Advocates carried out their instructions. Although the plaintiffs, in the replying affidavit, imply that the delay was caused by their Advocates, they have not directly accused them of the delay, they have not detailed how the said Advocates caused delay, if at all. They have also not given the court a blow by blow account of what they, as plaintiffs, did to advance their case. The case was filed in 2005, the Rules that they accuse the 3rd defendant of not complying with came into force in 2010, and no explanation has been given for not fixing the matter for hearing prior to the said Rules coming into force in 2010. In any case, from my understanding of the record, the plaintiffs rushed to court in 2005, to obtain interim relief, but never served any summonses to enter appearance on the defendants, and the defendants were not bound to file any defence in default of the summonses. It was not until 2017, when the court directed them to file defences, that defences were filed.

16. The court confirmed that there was compliance on October 17, 2017, whereupon it fixed the matter for hearing on February 19, 2018. On February 19, 2018, the matter was transferred to Environment and

Land Court at Kakamega. The order for transfer of the matter was made in the presence of Mr Okara, Advocate for the plaintiffs, and Ms. Matoke, Advocate for the 3rd defendant. Upon the transfer, the matter was placed before NA Matheka J, of the Kakamega Environment and Land Court, on March 7, 2019, in the presence of the Advocates for the defendants and in the absence of the Advocates for the plaintiffs. Matheka J transferred the matter to the High Court, and allocated it a date for April 25, 2019. It was placed before me on April 25, 2019, but none of the parties were in attendance. I directed that it be mentioned before the Deputy Registrar on May 27, 2019. On May 27, 2019, a Mike, for the Advocates for the plaintiffs, attended the court before the Deputy Registrar, or at the registry, and was allocated a date, for mention for directions on October 24, 2019. It is not clear what happened on October 24, 2019, for the next time some action was taken in the matter was October 25, 2021, when an Otsieno, for the Advocate for the 3rd defendant, appeared or attended at the court registry, and obtained a date, being February 25, 2021, for the hearing of the application dated November 4, 2020. It would appear that after the transfer of the matter, by the order of February 19, 2018, the plaintiffs lost interest in the matter, and went to sleep, only to be awoken by the instant application.

17. Am alive to the argument that parties ought not be punished for the sins of their Advocates. My view is that Advocates on record are agents of the parties, and failure by them to advance a case amount to failure by the parties. Advocates act on instructions, and it is up to the parties to follow up their cases with the Advocates. parties should not place the matters with the Advocates, and leave it entirely to the Advocates. The cases do not belong to the Advocates. Parties still have a duty to follow up with the Advocates, to receive further advice and to give further instructions on the conduct of the matter. There is nothing Advocates can do when their clients lose interest in the matter, and abandon it with the Advocates. I reiterate that although the plaintiffs appear to blame their Advocates for the delay, they have not pinpointed any conduct on the part of their Advocate upon which I can conclude that the Advocates were to blame. They have also not detailed the steps that they themselves took to get the matter going, or to push their said Advocates into action. Parties ought not blame their Advocates for delays in prosecution of suits, when they themselves cannot account for what they have done to advance the matter.

18. Article 50 of the *Constitution* was cited, to support the submission that the plaintiffs were entitled to be heard on their suit. Of course, they are entitled to be heard. Once they filed the suit, the right to be heard accrued. However, for the court to hear the parties, they themselves must be disposed to being heard. The court cannot force them to be heard. It leaves it to them, at their convenience, to get dates for hearing, and to make adequate preparations. Where they fail to take the initiative, then the court may fix dates for mention for directions or even hearing. However, the court cannot force the parties to attend court or avail themselves for the hearing, and it cannot force parties, even if or when they attend court, to proceed with their cases if they are not ready, or prepared to, or willing to. They say that it is one thing to take a donkey to the river, but forcing or making it to drink the water is another. The plaintiffs have not demonstrated that the court failed to give them a chance to be heard, or that they fixed their matter for hearing, and they attended court ready and prepared to proceed, but the court failed to hear them or turned them away. It does not mean that, because of Article 50 of the *Constitution*, a party is entitled to file a suit in court, then do nothing for years, and when the other side takes a step to discontinue the suit , he cites Article 50 of the *Constitution*, to demand to be heard, when he has all along not taken any steps to get the matter going. Equity aids the vigilant and not the indolent, and Article 50 of the *Constitution* is not intended to give shelter to or provide refuge for the indolent, nor avail a safe haven for the lethargic. The plaintiffs have had a chance to be heard since 2005, or even since 2017, but they have not availed themselves of that opportunity, and the court has not contributed in any way to their predicament. It cannot be said that the court, or even the defendants, have denied them justice, when they have themselves not taken steps to get justice. The

case herein belongs to the plaintiffs, not to the court, and it was up to the plaintiffs to drive it, which they have woefully failed to.

19. I was told about other related suits that contributed to the delay; and pending interlocutory applications in this matter, which also contributed to the same. These facts were presented at the Bar. None of them were deposed in the affidavits sworn in support of the application. No documents relating to those suits were placed before me, to provide basis for those submissions, and to give me some foundation to make orders based on them. It is not enough to submit on facts that have not been deposed in affidavits. Where parties desire to rely on certain facts, they must present them before the court through written form, by way of affidavits and annexures, and not through oral submissions at the Bar. I have no way of verifying whether those suits exist, and no attempt was made to demonstrate how interlocutory applications herein contributed to the delay.

20. It would appear to me that this is one of those cases where parties rush to court under certificate of urgency, to forestall some action adverse to them, and once they obtain orders favourable to them, they go to sleep, nay they go under and stall the proceedings, so that they can continue to enjoy the interim relief granted to them by the court. When the plaintiffs got *ex parte status quo* orders on May 4, 2005, on the certificate of urgency placed before the court on that date, which were subsequently extended ad infinitum, they had achieved their objective, and they lost the appetite to prosecute the matter thereafter.

21. Overall, I do not find any good reason why the plaintiffs failed to prosecute the suit from 2005 when they filed it, or from 2017, after the court confirmed that the matter was ripe for hearing. There was inordinate delay either way, which has not been explained at all. I find merit in the application dated November 4, 2020.

22. The application dated November 12, 2021 is for joinder. I note that the parties use "enjoin" rather than "join." The terms do not mean the same thing. "Enjoin" is to injunct by court order, or to urge a person or party to do something; while "join" means to add a party to a suit. The *Civil Procedure Act*, Cap. 21, Laws of Kenya, and the *Civil Procedure Rules* provide for "join" and not "enjoin." Anyhow, I shall presume that the parties are talking about "join" rather than "enjoin." See *Black's Law Dictionary*, 10th edition, 2014 and *Concise Oxford English Dictionary*, 12th edition, 2011.

23. The applicants seek to be joined or added as defendants/interested parties, yet "defendant" and "interested party" refer to different categories of parties. A "defendant" is a primary or principal party in a suit, while an "interested party" is a secondary or lesser or peripheral party. An interested party cannot file a defence or counterclaim. An interested party is introduced to a suit merely because the orders liking to be made at the end of the day may affect him adversely, or he may have some useful information to share with the court, and for that reason he is brought in to assist the court. He cannot seek orders in the matter, once joined, on anything. If it is desired that orders be made in favour of a party proposed to be joined or added, then such party should be joined as a substantive party, either as plaintiff or defendant, depending on the nature of their claims or interest. The applicants should, therefore, be clear in their minds on the category of parties that they would like to be joined as, for they cannot be joined as defendant and interested party at the same time, they cannot be both defendants and interested parties.

24. I shall presume that they seek to be joined as defendants, for they would like to file a defence and a counterclaim, something which interested parties have no capacity to do. Whether they can be so added as defendants will depend on the nature of the claim that the plaintiffs have placed on record. The case by the plaintiffs is that the sale by the 1st and 2nd defendants, of the subject property, to the 3rd defendant was not lawful, for the exercise of the power of sale, accruing to the 1st defendant was not

properly exercised. The 3 defendants are joined in the cause as they were party to the sale or auction, which the plaintiffs claim was not lawful. The 1st defendant was allegedly acting in exercise of a power of sale, arising from a charge/mortgage instrument executed by the plaintiffs or their predecessors in its favour. He instructed the 2nd defendant to carry out that sale, who, in turn, allegedly conducted a sale or auction, whereat the 3rd defendant bought the property. The applicants do not feature in that scenario, for they were not party to the charge/mortgage arrangement, to the alleged default, which triggered the sale or auction, and they do not claim to have had participated in the said auction or sale the subject of the suit. They were not privy to those events, and, therefore, there is no foundation for them to be joined in the suit, and I suppose that that was the reason why the plaintiffs did not join them in the first place. I do not see the value they would bring to the matter upon their being added as defendants. In any case, the applicants do not appear to have anything in common with the defendants, and appear to have a more common position with the plaintiffs. The plaintiffs claim nothing from them, which would necessitate them being made defendants, as they have nothing to defend as against the claim by the plaintiffs.

25. The applicants claim to have had bought the subject property from the plaintiffs or their predecessors prior to the auction the subject of these proceedings. It would appear that they propose to get into this suit to assert their rights or interests arising from the said sales to them, as against the rights that allegedly accrued to the 3rd defendant upon the sale the subject of this suit. That is a claim that they have against the 3rd defendant, and not against the plaintiffs, yet there was no privity of contract between them and the 3rd defendant, for they transacted not with the 3rd defendant but with the plaintiffs. What they would be asserting would be ownership or title to the said assets as against the 3rd defendant. Yet, I have no jurisdiction, sitting as a Judge of the High Court, to determine questions around title to property, in view of Articles 162(2) and 165(5) of the *Constitution*, sections 2 and 101 of the *Land Registration Act*, No 3 of 2012, and sections 2 and 150 of the *Land Act*, No 6 of 2012. Even if the applicants were to be joined in these proceedings in whatever capacity, this court, on account of the above provisions, would have no jurisdiction to determine the question that they would be posing, as to who between them and the 3rd defendant was entitled to the subject property. It would serve no purpose to join them to proceedings to deal with a question that the court has no jurisdiction to determine. The question before this court in this suit is about whether the 1st defendant was entitled to exercise the power of sale which paved way to the sale the subject of the dispute, and its not about who has title to the subject property as between the plaintiffs and the 3rd defendant.

26. Fundamentally, the applicants have not exhibited any papers to support their contention that they had bought the said property from the plaintiffs or their predecessor. Copies of the sales agreements, or acknowledgements of sale, or applications to the local Land Control Board, or consent of the local Land Control Board, or transfer documents executed by the plaintiffs or their predecessor, at least something to evidence that the plaintiffs or their predecessor had entered into the alleged sale transactions with the applicants to warrant their being made parties in the matter. Mr Wafula, one of the applicants, submitted that their case is not supported by any documents because they are yet to be joined to the suit. Even then, some proof that they had an interest in the property should have been exhibited. After all, section 3 of the *Law of Contract Act*, Cap 23, Laws of Kenya, requires that no suit should be brought on a contract for the disposition of an interest in land, unless the contract, upon which the suit is founded, is in writing, is signed by all the parties to it and the signature of each party signing has been attested by a witness who was present when the contract was signed by such party. Some foundational or background material should have been displayed. Without such elementary material, there would be no basis for me to, prima facie, hold that the applicants have any serious interest in the matter to warrant their joinder.

27. For avoidance of doubt, Articles 162(2) and 165(5) of the *Constitution*, sections 2 and 101 of the *Land Registration Act*, and sections 2 and 150 of the *Land Act*, state as follows:

> "162. System of courts
>
> (1) ...
>
> (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
>
> (a) ...
>
> (b) the environment and the use and occupation of, and title to, land."
>
> High Court
>
> (1) There is established the High Court, which—
>
> (2) ...
>
> (3) ...
>
> (4) ...
>
> (5) The High Court shall not have jurisdiction in respect of matters—
>
> (a) ...
>
> (b) falling within the jurisdiction of the courts contemplated in Article 162 (2)."
>
> 2. "Court" means the Environment and Land Court established by the *Environment and Land Court Act, 2011* No 19 of 2011, and other courts having jurisdiction on matters relating to land;"
>
> "101. Jurisdiction of court.
>
> The Environment and Land Court established by the *Environment and Land Court Act, 2011* No 19 of 2011 and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act."
>
> 2 ... "Court" means the Environment and Land Court established under the *Environment and Land Court Act, 2011* (No 19 of 2011);"
>
> "150. Jurisdiction of the Environment and Land Court
>
> The Environment and Land Court established in the *Environment and Land Court Act* and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act."

28. The other issue that the applicants raise is that the 3rd defendant is about to evict them from the subject property. Indeed, what has motivated the filing of the instant application is that perceived threat of eviction, as comes out clearly from ground (1) on the face of the application and paragraph 2 of the joint affidavit. The process of evicting persons from land is very elaborate, and it is set out in sections 152A,

152B, 152E, 152F, 152G, 152H and 152I of the *Land Act*. It involves issuance of notices to persons who are to be evicted, engagement with the officials of the national government at the local level, and court action. The contemplated court action is not at the High Court, but at the Environment and Land Court, in view of sections 2 and 150 of the *Land Act*. The High Court, therefore, has no jurisdiction to determine questions around eviction of persons from land.

29. Sections 152A, 152B, 152E, 152F, 152G, 152H and 152I of the *Land Act* provide as follows:

> "152A. Prohibition of unlawful occupation of land.
>
> A person shall not unlawfully occupy private, community or public land.
>
> 152B. Evictions to be undertaken in accordance with the Act.
>
> An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.
>
> 152C.
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> ...
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> 152D.
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> ...
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> 152E. Eviction Notice to unlawful occupiers of private land.
>
> (1) (1) If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.
>
> (2) The notice under subsection (1) shall -
>
> (a) be in writing and in a national and official language;
>
> (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
>
> (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
>
> (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.
>
> 152F. Application to Court for relief.
>
> (1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.
>
> (2) The Court, after considering the matters set out in sections 152C, 152D and 152E may-
>
> (a) confirm the notice and order the person to vacate;

(b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;

(c) suspend the operation of the notice for any period which the court shall determine; or

(d) order for compensation.

152G. Mandatory procedures during eviction.

(1(1) Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures-

(a) be preceded by the proper identification of those taking part in the eviction or demolitions;

(b) be preceded by the presentation of the formal authorizations for the action;

(c) where groups of people are involved, government officials or their representatives to be present during an eviction;

(d) be carried out in a manner that respects the dignity, right to life and security of those affected;

(e) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;

(f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;

(g) include mechanisms to protect property and possessions left behind involuntarily from destruction;

(h) respect the principles of necessity and proportionality during the use of force; and

(i) give the affected persons the first priority to demolish and salvage their property.

The Cabinet Secretary shall prescribe regulations to give effect to this section.

152H. Disposal of property left after eviction.

The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land.

152I. Demolition of unauthorized structures.

Where the erection of any building or execution of any works has commenced or been completed on any land without authority, the competent officer shall order the person in

whose instance the erection or work began or was carried, to demolish the building or works, within such period as may be specified in the order."

30. Joinder of the applicants to the instant suit would serve no purpose, as the questions that they bring into the matter are beyond the scope of the jurisdiction of this court.

31. Overall, I find merit in the application dated November 4, 2022, but not in that dated November 12, 2021, for the reasons given above. Consequently, I allow the application dated November 4, 2020, and dismiss that dated November 12, 2021, with costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 23RD DAY OF DECEMBER 2022.**

**WM MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant.

Ms. Mahuni, Advocates for the plaintiffs.

Ms. Moraa, instructed by Ochieng Onyango Kibet & Ohaga, Advocates for the 1st and 2nd defendants, and Tom Mutei, Advocate for the 3rd defendant.

Paul Wafula Panyako, Michael Nyongesa Barasa, Abwavo O. Samuel, Rose Muhonja, Agneda Miloya Ngsale, Juma Milwa Simon and Elega Wasiatsa Kunjiru, the applicants in person.