



**Mwavumbo Group Ranch v Kenya Electricity Transmission Company Limited (KETRACO) (Environment & Land Miscellaneous Case 2 of 2022) [2023] KEELC 18844 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18844 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND MISCELLANEOUS CASE 2 OF 2022**

**LL NAIKUNI, J**

**JUNE 22, 2023**

**BETWEEN**

**MWAVUMBO GROUP RANCH ..... APPLICANT**

**AND**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED  
(KETRACO) ..... RESPONDENT**

**RULING**

**I. Introduction**

1. The Respondent herein, the Kenya Electricity Transmission Company Limited (Ketraco) moved this Honorable Court through two (2) Notices of Preliminary Objection dated February 4, 2022 and February 28, 2022 respectively. On March 3, 2022, the Honorable Court did direct that based on the legal ratio founded under the locus classicus case of '*Mukisa Biscuits Manufacturing Limited – Versus – West End Distributors Limited (1969) EA 689*, that the Courts as a matter of precedence dealt with the Preliminary objection dated February 28, 2022 as the one for the February 4, 2022 had already been compromised.
2. Be that as it may, the Court wishes to venture briefly on the background of this matter for ease of appreciation of the facts and the issues surrounding this matter. On January 19, 2022, the Applicant herein, 'Mwavumbo Group Ranch, commenced this suit by way of a Notice of Motion application dated January 17, 2022 in form of Miscellaneous application seeking compensation at the current market value from the Respondent who in exercise of a right of way and/or Wayleave by causing the Mombasa – Nairobi 400KV transmission line traversing all that parcel of land known as Land reference Numbers KWALE/MWAVUMBO/1 (hereinafter referred to as 'The Suit Property'). The application was premised under the provisions of Articles 40,47 & 159 of the *Constitution* of Kenya, 2010; Sections



1A,1B and 3A of the *Civil Procedure Act*, Cap. 21, Order 40 Rules 1, 2, 3 & 4 and Order 51 Rule 1 of the *Civil Procedure Rules (2010)* seeking the following orders reproduced herein verbatim: -

- a. That the Applicant be compensated by the Respondent for the part of the land registration number Kwale/Mwavumbo/1 traversed by the Respondent who constructed Mombasa – Nairobi 400kv Transmission Line.
  - b. That the Applicant be compensated at the current fair market value.
  - c. That the Court do make any such further orders as may be necessary for the expedient compensation by the Applicants.
  - d. That costs of the Application be provided for.
3. The application was supported by a sixteen (16) Paragraphed Supporting Affidavit sworn by Edward Tunnu dated on January 17, 2022. The Respondent in opposing the Applicant's application filed the above stated Notices of Preliminary objection.

#### **ii. The Preliminary Objection dated February 28, 2022 by the Respondent.**

4. The objections were as stated herein below.
  - a. That the Applicant's application was ill-conceived, defective, and incompetent.
  - b. They claimed that the suit should be dismissed as the issues raised should be addressed through a plaint accompanied by relevant documents.
  - c. That the application was overtaken by events, made in bad faith, and amounted to an abuse of court process.
  - d. That the Applicant's initial application was non-compliant with Section 19 of the *Civil Procedure Act* as read together with Order 3 Rule 1 and Order 4 Rule 3 and Order 2 Rule 6 of Civil Procedure Rules (2010).
  - e. That the Court lacked jurisdiction to entertain the application as held in the case of '*Macfoy -Versus - United Africa Co Ltd [1961] 3 ALL.ER* that it should be struck out.
  - f. That the suit was not properly described, and the suit property was not adequately identified.

#### **iii. Submissions**

5. On March 3, 2022, while all the parties were present in Court, they were directed to have the Preliminary Objection dated February 28, 2022 by the Respondent be disposed off by way of written submissions. Pursuant to that the parties complied and the Honorable Court reserved a date to deliver the Ruling on notice accordingly.

#### **A. The Written Submissions by the Respondents**

6. On June 16, 2022, the learned Counsel for the Respondent herein, the Law firm of Messers. Davies O Obare Advocates filed their written submissions dated March 17, 2022. Mr Obare Advocate commenced his submission by providing a brief introduction to the matter herein. The Learned Counsel based his submission on two broad issues. These were firstly, the crux of their argument was whether the Applicant could institute a suit through a Notice of Motion application. He asserted that the crux of the matter was that the Applicant's application, dated the January 17, 2022 was



fundamentally flawed due to its failure to comply with the mandatory requirements outlined under the provision of Order 3, Rule 1; Order 4 Rule 3 and Order 2 Rule 6 of the Civil Procedure Rules 2010.

7. Furthermore, the Learned Counsel submitted that the Applicant filed their alleged suit by way of Notice of Motion application together with a Supporting Affidavit with annexures thereto sworn by Edward Tunnui all dated January 17, 2021. He noted that the application was not accompanied by a Plaint, Verifying Affidavit, witness statement and documents which formed the basis of institution of a suit contemplated under the provision of Order 3 Rule, 1 of the Civil Procedure, 2010. The Counsel argued that since the Notice of Motion was not a way to institute a suit against the Respondent, there was no suit before the Court to merit the grant of orders being sought by the Applicants. Additionally, the Learned Counsel averred that an order of compensation sought by the Applicant could not be granted at the interlocutory stage or through an application without the full trial and the parties being heard. He asserted that this defect was grave and could not be cured by invoking Article 159 (2)(d) of the Constitution 2010. The application had to be dismissed and a fresh suit filed.
8. To support their position, the Learned Counsel cited the case of 'Lydia Nyanchan Ottara – Versus - Alex MG [2018] eKLR', which established that a Plaint is the recognized and ordinary civil proceeding, and any departure from this norm is only permitted when other statutory provisions prescribe an alternative approach. The Court held:-

' I do find that a Notice of Motion was never the mode to institute the claim and that the same has not been properly brought. Being improperly so brought the Court must say that it is understanding of taking judicial time and other resources in being kept alive. It cannot be sustained but must be struck out'.

9. Further, the Court held that a cause of action must be brought by way of Plaint so that the details of the case were set out in compliance with the provisions of Order 3 Rule 1 of the Civil Procedure Rules, 2010 and Section 19 of the Civil procedure Act, cap 21. More so, the Learned Counsel held that since the subject property in question was immovable, he argued that the Applicant should have filed a Plaint as per the provisions of Order 4, Rule 3 of the Civil Procedure Rules 2010. He further sought reliance from the cases of: 'Joseph Kibowen Chemjor – Versus - William C Kisera [2013] eKLR and 'Rajab Kosgei Magut – Versus - Nuru Jepleting Choge [2020]', which emphasized that shortcuts to accessing justice should not be taken when there are established procedures to be followed.
10. Additionally, the Learned Counsel invoked Order 2, Rule 6 of the Civil Procedure Rules 2010, which stipulates that no party can introduce new allegations or claims inconsistent with their previous pleadings in the same suit. He argued that filing a suit that was not supported or prayed for in the Plaint was untenable. Reliance was placed in the case of 'Independent Electoral and Boundaries Commission & Another – Versus - Stephen Mutinda Mule & 3 others [2014] eKLR', which cited the decision of the Supreme Court of Nigeria in the case of:- 'Adeoun Oladeji (NIG) – Versus - Nigeria Breweries PLC 91/20002 to wit that:-

' It is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded parties are not allowed to depart from their pleadings'.



11. Lastly, the Learned Counsel submitted that the honorable court lacked jurisdiction to entertain the application, considering it a nullity ab initio, as held in the case of 'Macfoy – Versus - United Africa (Supra) where Court held:-

' If an Act is void, then it is in law a nullity and not a mere irregularity. It is not only bad incurably bad. There is no need for an order of the Court to set it up aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad,. You cannot put something on nothing and expect it to stay there. It will collapse.

12. In conclusion, therefore, the Learned Counsel noted that the Notice of Motion seeking an order of compensation was a nullity and urged the Honorable Court to have it struck out for being incurably defective with Costs.

### **B. The Written Submissions by the Applicants**

13. On June 16, 2022, the Learned Counsel for the Applicants herein, through the Law firm of Messrs. Gambo & Associates Advocates filed their written submissions dated May 2, 2022 in response to the Respondent's preliminary objection dated February 28, 2022 and the Respondent's written submission dated March 17, 2022.

14. Mr Gambo Advocate commenced by providing a brief facts of the case. In order to support his submissions, the Counsel raised five (5) issues to be considered by Court while making its determination in this matter. Firstly, he raised an issue as to whether the Applicant could commence a suit by way of Notice of Motion application.

To begin with he held that this Court in the interest of Justice and law in dispensation of Justice rely on the provision of Article 159 (2) (d) of the Constitution of Kenya, 2010 where it provided that:-

' In exercising judicial authority, the Courts and tribunals shall be guided by the principle that Justice shall be administered without undue regard to prosecute technicalities.'

15. On the argument that the Applicant only had to commence the suit through a Plaint, he sought refuge from the provision of Order 2 Rule 14 of the Civil Procedure Rules 2010, no technical objection could be raised against pleadings based on form. He contended that the suit should proceed to full trial, as the applicant is not barred from commencing the suit through a Notice of Motion. To buttress on this point, he relied on the case of 'County Assembly – Versus - Speaker, Nairobi Assembly & Another; Orange Democratic Party & 4 others (Interested Parties) [2019] eKLR, where the Court held:-

' The Court must in the circumstances of this case between whether to stop at the traffic red light of procedural technicalities, or walk down the path of substantive justice by interpreting the said English Rules of procedure through the lenses of Article 159 of Constitution and the law as requested by the applicant herein. It is trite that Courts exist to do justice and as such, I will take the latter option of substantive justice as opposed to procedural technicality since there is no demonstrable prejudice law, even where it is expressly imported, it ought to be applied with the necessary modification to suit the local circumstances including the known forms used in invoking the relevant jurisdiction of Court'

16. He further relied on the provision of Order 51, Rule 10 and Rule 10(2) of the Civil Procedure Rules, 2010.



17. On the issue of the suit's description, the Respondent argued that the suit was properly described in accordance with Order 4 Rule 3 of the Civil Procedure Rules 2010.
18. Secondly, as regards the issue of compensation for the space occupied by electricity power lines on the suit property, the Applicant referred to the provision of Article 40, which guarantees private citizens the right to property ownership and compensation for land acquired. They also cited Section 111(1) of the Land Act 2012, which provides for compensation. The Applicant asserted that the Respondent did not follow the correct procedure to obtain a wayleave and contravened the provision of Section 173 of the Energy Act. They relied on the case of 'Eunice Nirote Ringera – Versus - Kenya Power & Lighting Company [2020] eKLR, which established that consent from the landowner was necessary for the construction of wayleaves on private land.
19. Thirdly, the Learned Counsel posed the issue of whether the Court had jurisdiction over the matter, as it involved trespass on property in the Mwavumbo area for the purpose of establishing a wayleave without consent. They argued that the case falls within the scope of the Environment and Land Court, as specified in Section 13(1) and (2) of the relevant legislation.
20. Fourthly, the Learned Counsel in response to the contention that the suit was fatally defective argued that the fact that the application was titled 'miscellaneous' did not mean it should have been commenced in accordance with Order 3, Rule 1(1) of the Civil Procedure Rules, 2010. He stressed that a suit could be commenced by way of Miscellaneous application. He relied on the case of 'Joseph Gitau Githongo – Versus - District Land Registrar, Thika & 2 others [2018] eKLR, where the court held that the form is not as important as the substance. The Applicant emphasized that minor procedural technicalities were taken care of by Article 159 of the Constitution.
21. The Applicant further argued that their application fulfills the requirements of a plaint under Order 3 of the Civil Procedure Rules. They provided a supporting affidavit, verified the contents of the application, and included the name of the deponent. They also produced the necessary documents before the court. The fact that the Applicant filed a Notice of Motion instead of a Plaint was deemed irrelevant. On this point he cited the case of 'Microsoft Corporation – Versus - Mitsumi Computer Garage Ltd & Another [2001] eKLR. The Applicant suggested that if the court deemed it necessary, it could strike out the notice of motion and allow the applicant to comply with the civil procedure rules as alleged by the Respondent, rather than denying the applicant the right to be heard. They referred to the case of 'Hezekia Kipkorir Martim & 10 others – Versus - Philip Kipkoech Tenai & 2 others [2016], where the court followed the decision in the case of "Research International East Africa Limited.
22. Finally, the Learned Counsel contention was that the Preliminary Objection raised by the Respondent was unmeritorious. The authorities relied on by the Respondents were distinguishable. Hence, he urged that the Court to allow the application dated January 17, 2022 while it dismisses the objections dated February 28, 2022 by the Respondent with costs.

#### **vi. Analysis and Determination**

23. After reviewing the Notice of Motion dated January 17, 2022, Notice of Preliminary Objection dated February 4, 2022, Preliminary Objection dated 28th February 2022, and the submissions presented by both parties, the Court finds that the following issues need to be determined: -
  - a. Whether the Preliminary objection dated February 28, 2022 raised by the Respondent meets the threshold founded in Law and precedents.
  - b. Whether the parties are entitled to the reliefs sought from the objection.



- c. Who will bear the costs of the objection.

**Issue No. a). Whether the Preliminary objection dated 28<sup>th</sup> February, 2022 raised by the Respondent meets the threshold founded in Law and precedents.**

24. Under this sub – heading, it is critical that the Honorable Court first and foremost deal with the issue of the preliminary objection raised by the Respondent herein prior to proceeding on further with all the other issues. Legally speaking, an objection has very serious consequences. Ideally, should the objection succeed, then the application and perhaps the suit by the Applicant then collapses. Thus, the issue to deal with is the issue of whether the Preliminary objection on point of law as stated out in the case of 'Mukisa Biscuits (Supra) where the court observed that: -
- ' A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.'
25. According to the Black Law Dictionary a preliminary objection is defined as being:
- ' In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.'
26. Additionally, I hereby wish to cite the case of '*Attorney General & another – Versus - Andrew Mwaura Gitbinji & another [2016] eKLR*:- as it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a preliminary objection 'inter alia:-
- i. A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
  - ii. A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
  - iii. The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
27. In the case of '*Nitin Properties Ltd – Versus - Singh Kalsi & another [1995]*, the Court of Appeal stated that a preliminary objection raises a pure point of law and assumes that all the facts pleaded by the other party are correct. It cannot be raised if any fact needs to be ascertained or if it involves the exercise of judicial discretion.
28. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter.
29. In the instant case, the Respondent has raised a preliminary objection solely on grounds that the suit instituted by the Applicant herein is incurably defective from the mode upon which it was filed being a Miscellaneous Notice of Motion Application. Thus, the same should be struck out with Costs. Although, the Respondent admits that the way it moved Court but strongly holds that it is a defect that was curable and the suit should not be struck out on procedural technicalities.



## **Issue No. b). Whether the parties herein are entitled to the relief sought**

30. Under this Sub heading, the Honorable Court will consider whether the parties herein are entitled to the reliefs sought. In the present case, the Respondent argues that the Applicant's application dated January 17, 2022 is invalid because it contravenes the provision of Section 19 of the [Civil Procedure Act](#), Cap 21; Order 3 Rule 1, Order 4 Rule 3 and Order 2 Rule 6 of the Civil Procedure Rules 2010. The objection raised by the Respondent qualifies as a point of law.
31. The Applicant opposes these objections by claiming that the suit properly is adequately identified in the Notice of motion and any defect in form can be remedied by Article 59 of the [Constitution](#).
32. According to the provisions of the [Civil Procedure Act](#) and the Civil Procedure Rules, the institution of a suit requires certain procedural steps to be followed. Order 3 Rule 1 states that:-
- ' Every suit must be initiated by presenting a Plaint to the Court or in any other manner prescribed by the rules'.
33. This means that a Plaint, which is the written statement of the Plaintiff's claim, serves as the primary document to commence a suit. Furthermore, the provision of Sections 2 & 19 of the [Civil Procedure Act](#), Cap 21 reinforces the importance of adhering to the prescribed rules when instituting a suit. It states that every suit should be instituted in the prescribed manner determined by the rules. This highlights the mandatory nature of following the procedural guidelines outlined in the applicable rules and regulations. Some of those methods include Summons, Originating Summons and Petitions. Certainly, a Notice of Motion is not one of such prescribed methods for instituting a suit whatsoever. See the Case of '*Geofrey Ndungu Theuri – Versus Law Society of Kenya (1998) eKLR* and *Joseph Kbowen Chemior – Versus – William C Kisera (2013 eKLR)*'. Where courts held:-
- ' The word 'Suit' has several meanings. Black Law Dictionary defines 'Suit' as Civil proceedings by a party or parties against another in a Court of law (7) 'Suits' of Civil nature' is defined to be a Civil action. (8). 'A Civil action' is an action brought to enforce redress or protect a private or civil right.
34. In cases where the subject-matter of the suit involves immovable property, specific requirements must be met. Order 4 Rule 3 mandates that the Plaint, in such instances, should contain a description of the property that is sufficient to identify it. This provision ensures that the property in question is clearly and unambiguously specified in the Plaint, enabling proper identification during the legal proceedings.
35. Overall, these provisions emphasize the significance of proper initiation of a suit, particularly when it involves immovable property. The Plaint serves as a crucial document, providing essential details about the claim and enabling the court to identify and understand the subject-matter of the dispute. By following the prescribed procedures, parties involved in a suit ensure that their claims are presented accurately and in compliance with the legal requirements.
36. It is important to note that these provisions aim to promote a fair and efficient administration of justice by establishing clear guidelines for initiating legal proceedings. Parties are expected to adhere to these rules and regulations to ensure the smooth progression of their cases and maintain the integrity of the court process.
37. The Applicant in this case failed to institute the suit by either of the afore stated methods including a Plaint, which is required to initiate a suit. I reiterate that the Notice of Motion application submitted is not legally recognized as an originating process, and it can only be filed within a properly instituted



suit. The Court in the case of *Photo Energy Limited – Versus - Hashi Energy Limited Misc 180 of 2018* stated that a suit can generally only be instituted by way of a Complaint, Petition, or Originating summons. Filing a suit through a Notice of Motion renders the entire suit incurably defective. It has to die on arrival.

38. As a result, the Applicant does not have a competent suit before the court as per the definition of 'Suits' under the provision of Sections 2 and 19 of the *Civil Procedure Act*, Cap 21 and other relevant provisions of the Law herein. Further, the Notice of Motion application is not anchored in any pleading, thereby lacking validity. It is important to emphasize that the rules prescribed for instituting a suit must be followed. The term 'suit' has various meanings, such as any proceedings in a court of law by one party against another. Section 2 of the *Civil Procedure Act* defines a 'suit' as all civil proceedings commenced in any prescribed manner.
39. Regarding the deficiency in the current case, it is worth considering whether Article 159(2)(d) of the *Constitution* can remedy it. The case of the Court of Appeal in *Kakuta Maimai Hamisi – Versus - Peris Pesi Tobiko & 2 Others [2013]* cautioned that the absence of statutory/ donation or conferment should not be disregarded as a mere procedural technicality. They stated that Article 159(2)(d) of the *Constitution* is not a panacea that cures all litigation-related problems and defaults.
40. Compliance with procedural rules is essential for the just determination of cases, and it should not be viewed as contradictory to the *Constitution* or the objective of ensuring justice. Procedure plays a crucial role in facilitating fair outcomes in legal proceedings.
41. Based on this averments, I am satisfied that the objection has basis in law as it raises matters of pure points of law. As stated, the Respondent is contending the method upon which the Applicant instituted the suit do not need evidence to establish. They are also capable of ending the suit if they are established. Following the above considerations, the Court finds that the Respondent preliminary objections by the Respondent is merited and thus succeeds.
42. The Respondent in the matter herein sought that the Notice of Motion dated January 17, 2021 be struck off. In the case of *Co - Operative Merchant Bank Ltd – Versus - George Fredrick Wekesa (Civil Appeal No 54 of 1999)*, the Court of Appeal emphasized that striking out a pleading is a serious action that should only be taken in clear-cut cases. Whether a case is considered plain or not is a factual determination. If oral evidence is required to disprove the claims made by either party, the defence cannot be deemed frivolous, scandalous, vexatious, or likely to cause prejudice, embarrassment, or delay in the expeditious disposal of the respondent's action. In this case, the appellant's defence does not meet the criteria for striking out.
43. Similarly, in the case of *Yaya Towers Limited – Versus - Trade Bank Limited (In Liquidation) (Civil Appeal No 35 of 2000)*, the Court of Appeal held that a Plaintiff or Defendant has the right to pursue a claim in court, regardless of its plausibility or chances of success. Unless the Defendant can clearly demonstrate that the Plaintiff's claim is bound to fail or constitutes an abuse of the court's process, the claim should be allowed to proceed to trial. The court possesses the inherent jurisdiction to dismiss claims that are abusive, but this power should be exercised sparingly and only in exceptional cases. The mere improbability or difficulty in believing the story presented in the pleadings is not sufficient justification for dismissal.
44. Having determined that the notice of motion is irreparably defective, it would be an abuse of the court to entertain it any further. I fully concur with the arguments advanced by the Learned Counsel for the Respondent based on the provision of Order 2 Rule 6 of the Civil Procedure Rules, 2010 that parties are bound by their own pleadings. Therefore, without any hesitation I proceed to exercise my discretion to strike it out.



**Issue No. c). Who will bear the Costs of the application.**

45. It is now trite law that the issue of Costs is at the discretion of Court. Costs mean the award that is granted to a party upon the conclusion of a legal action or proceedings in any litigation. The proviso of the provision of Section 27 ( 1 ) of the Civil procedure Act, cap. 21 holds that the costs follow the events. By events it means the result of outcome of the said legal action or proceedings, See the Cases of 'Jasbir Singh Rai – Versus – Tarchalans Singh' eKLR (2014) and Kenya Sugar Board – Versus Ndungu Gatbini (2013) eKLR. Also notable was a Ugandan case that illustrates this principle - Re Ebuneiri Waisswa Kafuko. In this case, the court emphasized the following points:
- a. The Judge has discretion and can choose not to make an order regarding costs. In such a situation, each party would be responsible for their own costs.
  - b. If the Judge does not explicitly address costs, the general rule is that the costs should follow the outcome of the case. However, the judge can deviate from this rule based on the specific circumstances and make a different order regarding the entire or partial costs. The judge should not rigidly apply general rules in a way that prevents the exercise of their discretion. They must have the necessary information and grounds to make decisions regarding costs.
  - c. The judge's discretion, like any other exercise of judicial power, should be exercised judiciously. The judge should not order the successful party to pay costs unless there is a valid reason related to the case. It is not proper for a judge to order costs against a party who was completely successful and faced no allegations of misconduct.
46. Thus, from the instant case, it is evident that, the Applicant filed a defective lawsuit. Pursuant to this, the defectiveness notwithstanding, it compelled the Respondent to participate and expended its resources time, monies and human force on it. In the long run, the said suit has been struck out from the adduced reasons and justifications from this ruling. Resultantly, it will only be fair and just to award them costs of the lawsuit to be borne by the Applicant.

**v. Conclusion & Disposition**

47. Having conducted an indepth analysis of the framed issues herein, the Honorable Court proceeds to make the following findings. These are:-
- a. That the Notice of Preliminary Objection dated February 28, 2022 raised by the Respondent herein be and is hereby found to have merit and hence allowed accordingly.
  - b. That an order be and is hereby made striking out of the Notice of Motion application dated January 17, 2022 by the Applicant for being ill – conceived, fatally defective and incompetent contrary to and pursuant to the provisions of Sections 2 & 19 of the Civil Procedure Act, Cap 21, Order 2 Rule 15 & Order 2 Rule 6 of the Civil Procedure Rules, 2010.
  - c. That based on the aforestated orders, this matter be and is hereby closed.
  - d. That the costs of this matter to be awarded to the Respondent & borne by the Applicant.

It is ordered accordingly

**RULING DELIEVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS IN CHAMBERS,  
SIGNED AND DATED AT MOMBASA THIS 22<sup>ND</sup> DAY OF JUNE 2023**

.....  
**HON. JUSTICE MR. L.L. NAIKUNI (JUDGE)**



**ENVIRONMENT & LAND COURT AT  
MOMBASA**

**Ruling delivered in the presence of:**

- a. M/s. Yumna, the Court Assistant.
- b. Mr. Gambo Advocate for the Applicant.
- c. Mr. Obare Advocate for the Respondent

