



**Ravate & another v Agbeko & 2 others; Ravasam Development Company Limited  
(Interested Party) (Civil Case 450 of 2011 & 476 & 637 of 2015 (Consolidated))  
[2021] KEHC 321 (KLR) (Commercial and Tax) (30 September 2021) (Ruling)**

Neutral citation: [2021] KEHC 321 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 450 OF 2011 & 476 & 637 OF 2015 (CONSOLIDATED)**

**WA OKWANY, J  
SEPTEMBER 30, 2021**

**BETWEEN**

**FAROUK RAVATE ..... 1<sup>ST</sup> PLAINTIFF  
JUSTINE SAMOURGOMPOULLE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ERIC AGBEKO ..... 1<sup>ST</sup> DEFENDANT  
PHILIP NYAMBOK ..... 2<sup>ND</sup> DEFENDANT  
SPIRE BANK LIMITED FORMALLY KNOWN AS EQUATORIAL  
COMMERCIAL BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**RAVASAM DEVELOPMENT COMPANY LIMITED ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect to 2 applications namely;
  - a. The plaintiff's application dated 26<sup>th</sup> March 2020 (herein after "the 1<sup>st</sup> application")
  - b. The Intended Interested party's application dated 2<sup>nd</sup> November 2020 (herein after "the 2<sup>nd</sup> application")



2. The 1<sup>st</sup> applicants in the 1<sup>st</sup> application seek the following orders: -
  1. Spent
  2. That the Honourable Court be pleased to grant orders directing that the Sub County Police Commander, Kilimani Police Station to provide the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs and/or their lawful agents with security and any other reasonable assistance as may be required, to control and manage all that building known as Elysee Plaza erected on L.R No 2/186 in line with the judgment of Honourable Mr. Justice F Tuiyott's judgment delivered on 20<sup>th</sup> January 2020.
3. The application is supported by the affidavit of Lily Buerek and is premised on the following grounds: -
  - a. This Honourable Court delivered its judgment in this matter on 20<sup>th</sup> January 2020 in which it inter alia found that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are the rightful shareholders and directors of the Interested Party.
  - b. On 12<sup>th</sup> February 2020, this Honourable Court granted the 1<sup>st</sup> and 2<sup>nd</sup> defendants a partial stay of execution of the judgment pending the hearing and determination of an application for stay filed by them.
  - c. Owing to abuse of court process and fraud perpetuated by the 1<sup>st</sup> and 2<sup>nd</sup> defendants this Honourable Court discharged the partial stay of execution on 11<sup>th</sup> March 2020.
  - d. In the absence of any stay orders the judgment delivered on 20<sup>th</sup> January 2020 is in full force and the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are entitled to take over the management and control of the interested party.
  - e. To that end, on 11<sup>th</sup> March 2020, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs have appointed Richland Properties Limited as their caretaker managers of Elysee Plaza, owned by the Interested Party.
  - f. On 13<sup>th</sup> March 2020 the staff of Richland Properties Limited attempted to take over the management of the Elysee Plaza but received heavy resistance from goons engaged by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. This was reported at the Kilimani Police Station and OB Number 51/13/3/2020 was issued.
  - g. Further to the resistance of the takeover of Elysee Plaza, the goons engaged by the 1<sup>st</sup> and 2<sup>nd</sup> defendants physically assaulted the staff of Richland Properties Limited and even stole their personal belongings. This was reported at the Kilimani Police Station and OB Number 104/13/3/2020.
  - h. In the circumstances, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs have no option but to seek the intervention of this Honourable Court to peacefully deal with the handover process of the management of the Elysee Plaza from the 1<sup>st</sup> and 2<sup>nd</sup> defendants, who have clearly demonstrated that they will stop at nothing to ensure that this Honourable Courts judgment shall not be complied with.
  - i. Unless the Honourable Court urgently intervenes, the 1<sup>st</sup> and 2<sup>nd</sup> defendants continue to deny the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs the fruits of their judgment by



continuing to cause disturbance at the suit property with the possibility of occasioning harm to the staff of Richland Properties Limited.

4. The respondents opposed the application through the replying affidavit of the 1<sup>st</sup> respondent, Mr. Eric Agbeko, who describes himself as the Interested Party's General Manager. He avers that there is no order, in the impugned judgment/decreed, that requires enforcement by police action. He contends that allowing the application will be tantamount to infringing the rights of the Interested Party's employees and other interested parties. He further avers that there was no order or decree for eviction of persons from the suit property and contends that the applicants have subjected the Interested Party's employees and tenants to harassment. He accuses the applicants of using goons to gain illegal entry into the suit premises thus exposing the suit property and assets of the tenants to wastage and vandalism.
5. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether this court should grant orders directing that the Sub County Police Commander, Kilimani Police Station to provide the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs and/or their lawful agents with security and any other reasonable assistance as may be required, to control and manage the suit building.
6. The plaintiffs seek police assistance in order to assume the management of suit property. They contend that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have refused to comply with the judgment and partial decree by preventing their appointed managers from taking possession of the building. It is their case that all the attempts by their duly appointed agents, Richland Properties Limited, to take over the management of the suit property have been met with heavy resistance from the goons hired by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
7. The 1<sup>st</sup> and 2<sup>nd</sup> defendants opposed the application and faulted the plaintiffs for failing to seek leave of the court before executing the partial decree as is required under Section 94 of the [Civil Procedure Act](#). The defendants further argued that there is no decree or order for eviction of tenants from the suit property. They maintained that the present application seeks to legitimize the plaintiffs' criminal acts.
8. A perusal of the court record reveals that on 20<sup>th</sup> April 2020 this court, differently constituted, delivered a judgment in favour of the plaintiffs as follows: -

“83.1 I declare that the first and second Plaintiffs namely Farouk Ravate and Justin Samourgompouille are the true and rightful Directors of Ravasam Development Company Limited.

83.2 The names of Eric Agbeko and Philip Nyambok shall be struck out from the records of Ravasam Development Company Limited and be replaced with those of Farouk Ravate and Justin Samourgompouille.

83.3 A mandatory injunction is hereby issued to compel Erick Agbeko and Philip Nyamboke to transfer all shares held by them in Ravasam Development Limited to the 1st and 2nd Plaintiffs through Heaven Heights Properties Limited and Bid Ocean Indien respectively or to the directions of the Plaintiffs within 30 days pursuant to the signed declaration of trust, failing which the Registrar of Companies do make the necessary share transfers.

83.4 An order of permanent injunction do issue restraining the 1st and 2nd Defendants whether by themselves, agents, employees, assigns, servants or otherwise howsoever and any persons whatsoever from selling, disposing of, charging, pledging, diluting, dealing, interfering with and/or intermeddling in any manner whatsoever with:



- a) The Interested Party's Company's property known as L. R Number 2/186 situated off Elgeyo Marakwet Road within Nairobi's Kilimani area ("the suit property");
  - b) The shares and shareholding in and of the Interested Party Company.
  - c) All other properties, funds and assets belonging to the Interested Party Company.
- 83.5 A permanent injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants whether by themselves, their agents, employees, assigns, servants or otherwise howsoever and any persons whatsoever from withdrawing or otherwise dealing with the Interested Party's bank account with any Bank.
- 83.6 A permanent injunction do issue restraining the 1st and 2nd Defendants whether by themselves, their agents, employees, assigns, servants or otherwise howsoever from issuing, allotting or transferring any shares in the Interested Party or causing or permitting any shares in the Interested Party to be issued, allotted or transferred or otherwise dealt with without the consent of the Plaintiff.
- 83.7 The 1st and 2nd Defendants to account for all the monies, assets, and property that they have unlawfully misappropriated from the Interested Party.
- 83.8 An order of restitution of all documents, agreements, monies, assets, accounts, or any other property unlawfully taken from the Interested Party by the 1st and 2nd Defendants.
- 83.9 The first and second Defendant shall within 90 days hereof render an account of monies, assets, property and affairs of Ravasam Development Limited including but not limited to the occupation and use of LR. No. No. 2/186 (the suit property up to the times of the judgment).
- 83.10 It is hereby declared that the corporate guarantee by Ravasam Development Company Ltd. in favour of the 3rd Defendant Bank to secure the loan to Vakkep and the variations of the charge dated 11<sup>th</sup> May 2015 are void and the third Defendant has no right to recover from Ravasam in respect thereof.
- 83.11 A declaration is hereby made that the mortgage dated 13th September 2011 is valid.
- 83.12 An account be taken by the Plaintiffs, Ravasam Development Limited and the 3rd Defendant Bank in respect to the repayment of the facility of Kshs. 180,000,000.00 made pursuant to the credit Agreement of 18th August 2011.
- 83.13 For purposes of Order 83.12 above the parties to the Accounts shall within 21 days hereof appoint a joint accountant failing which each party shall appoint their accountant and the accountants so appointed shall appoint an umpire.
- 83.14 The Accounts ordered above shall be concluded and completed within 90 days and the report of the joint account or of the accountants and umpire as the case may be shall be filed with Court within 90 days.



- 83.15 Final orders in respect to the claim for damages by the Plaintiffs against the Defendants and the Counterclaim by the 3rd Defendant against Ravasam Development Limited shall be made upon receipt of the all accounts ordered above.
- 83.16 Prayer (p) of the Plaintiffs claim in the Further Amended Plaint dated 29th March 2018 is dismissed.
- 83.17 All the prayers in the joint Amended Defence dated 12th July 2018 on behalf of the 1st, 2nd and Interested Party are hereby dismissed.
- 83.18 The Plaintiffs shall have costs of their claim against the 1st and 2nd Defendants.
- 83.19 The Order of costs as between the Plaintiffs and the 3rd Defendant shall await the final orders of this Court.”

9. I have carefully perused the above final orders and I am unable to find that there is any aspect of the said orders whose enforcement or compliance requires police intervention as has been suggested by the applicants. The crux of the judgment was the order to, inter alia, restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from dealing, interfering and intermeddling in whatever manner with the suit property. The defendants did not deny that they have not handed over the management of the suit property to the Plaintiffs. The defendants did not also deny that they continue to collect rent from the tenants and that they have stopped the plaintiffs from accessing the premises. The defendants’ sole contention was with regard to the Plaintiffs’ alleged non-compliance with Section 94 of the [Civil Procedure Act](#) which provides that -

94. Execution of decree of High Court before costs ascertained

Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

10. My finding is that Section 94 of the [Civil Procedure Act](#) is not applicable to this case and that the court judgment was specific that the orders were to be obeyed before the court could issue its final orders.
11. It is trite that once the court settles a matter, parties are expected to move with haste and comply with the court orders. In this regard, while I find that the plaintiffs have a valid claim against the defendants, such a claim can only be pursued through the institution of contempt of court proceedings and not by involving the police in a purely civil matter. I say so because courts have also taken the position that they will not involve police in execution in civil matters except in exceptional cases.
12. In *Kenya Commercial Bank vs. NJB Hawala Civil Application No. 240 of 1997*, the Court of Appeal held that the Police have no legal basis for participating in an attachment. A similar view was taken in *Khaminwa & Khaminwa vs. Jubilee Insurance Co. Ltd. Nairobi HCCC No. 1304 of 1995* where the Court held that Police should not be involved in eviction. In *Kamau Mucuba vs. The Ripples Ltd. Civil*



Application No. Nai. 186 of 1992 [1990-1994] EA 388; [1993] KLR 35, Kwach, JA expressed himself as follows: -

“The only valid criticism of the order of the Judge as of now, but which does not swing the scale one way or the other in this application is the direction that the assistance of the police should be enlisted to secure compliance by the applicant. The police should never be involved in securing compliance with court orders as there is specific provision for the enforcement of an injunction under Order 21 rule 28 of the Civil Procedure Rules.”

13. In George Arab Muli Mwalabu vs. Senior Resident Magistrate Kangundo & 2 others; Festus Mbai Mbonye (Interested Party) [2019] eKLR it was held: -

“Whereas in exceptional cases, the Court may be entitled to direct that police maintain law and order during the execution of its decisions, it is clear that the police have no role otherwise in the execution of civil process. That role is simply restricted to overseeing that peace, law and order is maintained during the process of execution which process is to be undertaken by a duly authorised court officer. It is however my view that such exceptional order ought to be granted only where there is satisfactory evidence of the likelihood of a resistance to the execution of the said decisions and ought not to be dishd as a matter of course or simply for the asking.”

14. In the instant case, I note that the judgment in question did not include orders for eviction or attachment of property for which police assistance is ordinarily sought albeit purely for the maintenance of law and order during such an exercise. The applicants’ case is that the defendants have resisted the take-over of the suit property and have engaged goons who physically assaulted the appointed agents’ staff and even stole their personal belongings.
15. My finding is that the actions that the applicants complain about fall within the purview of criminal acts that ought to be pursued in criminal proceedings. My take is that in the circumstances of this case, where the claim is over non-compliance with the court judgment, the police cannot be roped in so as to compel the defendants to comply with the judgment. I reiterate that the proper approach should have been to institute of contempt of court proceedings against the defendants for this court’s consideration. I therefore find that the application is misconceived and I therefore strike it out with no orders as to costs.

#### The 2nd Application

16. Through the application dated 2<sup>nd</sup> November 2020 applicant/intended Interested Party seeks the following orders; -
1. Spent
  2. Spent
  3. Spent
  4. This Honourable Court be pleased to enjoin Nicholas Sankok Teeka as the 2<sup>nd</sup> Interested Party in the suit.
  5. That this Honourable Court be pleased to stay all proceedings in the suit pending the joinder of the Intended Interested Party



6. That this Honourable Court be pleased to order and direct that the Intended Interested Party be served with all the pleadings, applications and documents filed in the suit.
  7. That pending the hearing and determination of this application inter parties this honourable court issues an injunction against the plaintiffs, jointly and severally whether by themselves, proxies, agents or parties claiming under them or on their authority restraining them from interfering in any manner whatsoever with the Intended Interested Party's possession of land known as LR No 2/186 located in Kilimani area within Nairobi County.
  8. That this Honourable Court be pleased to issue an order injunction against the Plaintiffs jointly and severally whether by themselves, proxies, agents or parties claiming under them or on their authority, restraining them from interfering in any manner whatsoever with the intended Interested Parties possession of Land known as LR No 2/186 located in Kilimani area within Nairobi county
  9. That costs of this application be awarded to the intended interested party.
17. The application was supported by the affidavit of Nicholas Sankok Teeka and is based on the following grounds: -
1. That the Intended Interested party is a bona fide purchaser for valuable consideration and in good faith of all 1000 shares in Ravasam Development Company Limited the Interested Party herein. The Intended Interested Party is therefore sole legal shareholder and director of the Interested Party.
  2. That the Interested Party owns land known as LR No. 2/186 located in Kilimani area within Nairobi on which there is a constructed building known as Elysee Plaza
  3. That the intended Interested Party is in possession of the property
  4. That before the purchase of shares, the intended Interested party conducted due diligence by carrying out a search with the Registrar of Companies. the records indicated the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as shareholders and directors of the Interested party. All along and during the said transaction, the intended Interested party was unaware of this or any other suit, proceedings or encumbrances over the shares in the Interested Party Company.
  5. That the Intended Interested Party/applicant has now learnt that this honourable court on 20<sup>th</sup> January 2020 delivered a judgment which essentially dealt with the question of shareholding of the Interested party.
  6. That in the aforesaid, the learned judge (Honourable Justice Francis Tuiyott) directed that the shareholding and directorship of the Interested party to the plaintiffs.
  7. That as at the date of the Judgment, the shares of the Interested Party passes to the plaintiffs. The shares of the Interested Party had already been transferred to the intended Interested Party/Applicant and the changes to that effect had



already effected with the registrar of companies. The judgment had therefore been overtaken by events.

8. That the Intended Interested Party/Applicant has also become aware that the plaintiffs are in the process of making changes with the registrar of Companies Pursuant to the judgment of the court.
  9. That the Intended Applicant's Constitutional right to property under Article 40 of the Constitution of Kenya 2010 is under imminent threat.
  10. That the suit is coming up for hearing on 12<sup>th</sup> November 2020 pending applications hence its urgency.
  11. That the substratum or crux of this suit involves the shareholding, directorship and management of the affairs of the interested party in which the applicant is the current registered shareholder and Director. It is therefore, in the interest of Natural Justice and a cardinal right of the applicant to participate in judicial proceedings in which his proprietary rights are in question or the subject of adjudication. This right is underlined in Article 50 of the Constitution of Kenya 2010. It would, therefore be an abrogation of the applicant's constitutional right if his joinder herein is not allowed.
  12. That the intended interested party/applicant has a right to be heard as any orders made in the suit will adversely affect his rights.
  13. It is therefore imperative that the interested party be enjoined in these proceedings and be served with all pleading, applications and documents filed to enable him defend his rights.
18. The 3<sup>rd</sup> defendant/respondent opposed the application through the replying affidavit of its Assistant Legal Manager Mr. John Wageche who states that the defendant's advocates conducted a search at the Companies registry which revealed that Nicholas Sankok is the sole shareholder of the interested party. He states that the shareholder was not a party to the proceedings and that there was no explanation on how he acquired the shares. He states that the 1<sup>st</sup> and 2<sup>nd</sup> defendants and the new shareholder should not be allowed to frustrate the successful parties' realization of the fruits of the court's judgment.
  19. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether the intended Interested Party has sufficiently demonstrated that it deserves to be admitted to this suit as an interested party.
  20. The application is anchored on Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) that state;
    - 2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.



21. The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No. 117 of 2013, (Mutunga Rules), define an interested party as follows: -

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation”

22. The Supreme Court had the following to say on the definition an interested party in *Trusted Society of Human Rights Alliance v Mumo Matemu [2014] eKLR*: -

“An interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings, and champions his or her cause.....”

23. In *Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR* it was held that: -

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: one must move the court by way of a formal application. Enjoinment is not as a right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its participation, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”

24. Further, in *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR*, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated: -

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.

25. The applicant seeks to be enjoined to this suit on the basis that he purchased shares in the Interested Party (the Company) before the court delivered its judgment in January 2020. He argued that he has



a stake in these proceedings and that he is affected by the court's decision. He further states that his joinder will assist the court in determining all issues at once and give all parties the opportunity to be heard.

26. The plaintiffs, on the other hand, argued that the application has been filed too late in the day as the court has already delivered a final judgment that determined the substantive dispute between the parties. The plaintiffs emphasized that the issues of management, shareholding and directorship of the Company have already been determined by this court and that allowing this application will negate the sub judice and res judicata doctrines.
27. Order 10 rule (2) empowers the court to include, to the suit, a person whose presence is necessary in enabling the court to effectually and completely settle the case. I however note that the said provision relates to proceedings that are pending before the court. In the instant case, judgment was delivered on 20<sup>th</sup> January 2020 wherein all the substantive matters relating to the management and shareholding of the Interested Party were dealt with and determined conclusively. What is pending before the court is the issue of costs between the Plaintiffs and the Defendant.
28. While I appreciate that the applicant has a constitutional right to own property under Article 40 of the Constitution, I note that the instant application has been filed too late in the day after the delivery of the final judgment, in which case, this court cannot be expected to re-open an already concluded case so as to accommodate the intended Interested Party.
29. Moreover, if the court is to go by the intended interested party's case, it is clear that it allegedly purchased the shares in the Company during the pendency of this suit. This shows that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sold the said shares with the full knowledge that the same was the subject of an ongoing case. It is for this reason that the Plaintiffs argued that the Defendants' actions offend the lis pendens doctrine.
30. *Black Laws Dictionary* defines lis pendens as follows: -
  - “ 1. A pending law suit. 2. The jurisdiction, power, or control acquired by a court over property while a legal action is pending. 3. A notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that a certain property is the subject matter of litigation, and that any interest acquired during the pendency of the suit are subject to its outcome. – Also termed (in sense 3) notice of lis pendens; notice of pendency.
31. In *Manuji vs U.S. International University and Another (1976-80) KLR 229* Justice Madan addressed the purpose of the principle of lis pendens adopted the finding in *Bellamy vs Sabine (1857) 1 DeJ 566, 584* where it was held as follows: -

“It is a doctrine common to the courts both of law and equity, and rests, as I apprehend, upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendente lite were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings.”

In the same case, Cranworth LJ observed as follows:

“Where a litigation is pending between a Plaintiff and Defendant as to the right of a particular estate, the necessities of mankind require that the decision of the court in the



suit shall be binding, not only on the litigating parties but also on those who derive title under them by alienation pending the suit whether such alienees had or had no notice of the proceedings. If that were so, there could be no certainty that the proceedings would ever end...”

32. Guided by the above cited cases and having noted that the intended Interested Party’s allegedly purchased of the Company’s shares when the suit between the parties herein was still pending, I find that the impugned judgment is binding not only on the parties that litigated before the court but also on the intended Interested Party.
33. It was not disputed that as at the time the applicant applied to be made an interested party in the proceedings, there were no pending proceedings before the court as the case between the parties has already been determined by the court save for the issue of costs. I therefore find that Order 10 rule 2 of the Civil Procedure Rules is not be applicable in this matter. I find that the application lacks merit and I therefore dismiss it with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17<sup>TH</sup> APRIL 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Mr. Ondati and Ms Mwoka for Ahmed Nassir Senior Counsel for Plaintiffs

Miss Masengelli for Ngeresa for the proposed Interested Party

Ms Kadima for Chacha Odera for 3<sup>rd</sup> defendant

No appearance for 1<sup>st</sup>, 2<sup>nd</sup> defendants and Interested Party.

Court Assistant: Sylvia.

