



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL, COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL SUIT NO. 61 OF 2014**

**MARY MBAIRE (Attorney and Agent of**

**MARIANNE DIEKHANS).....1<sup>ST</sup> PLAINTIFF**

**SUFI LTD (Formely HEINZ DIEKHANS LTD).....2<sup>ND</sup> PLAINTIFF**

**-VERSUS-**

**RUDOLF STEFAN.....1<sup>ST</sup> DEFENDANT**

**ZIIDA SADIQ BRUNO.....2<sup>ND</sup> DEFENDANT**

**REGISTRAR OF COMPANIES.....3<sup>RD</sup> DEFENDANT**

**RULING**

1) There are two applications for consideration before this court which are the subject of this ruling. The first application is dated 30/8/2019 filed by the Plaintiff while the second application is dated 1/11/2019 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

2) Parties consented to have the two applications heard and disposed of concurrently. I will deal with the Plaintiff's application first. The application 30/8/2019 (herein the Plaintiff's application) is expressed to be brought under Order 40 Rule 10, Order 51 Rule 1, Section 1A, 1B, 3A of the Civil Procedure Act, Article 159(2)(d) of the Constitution of Kenya Act and all other enabling provisions of the law and is seeking for the following orders:

a) Spent

b) Spent

c) **That the Honourable court be pleased to issue a prohibitory order against the Defendants prohibiting them from carrying on any dealings with the title to land parcel LR.No. KWALE/GALUKINONDO/759 pending the hearing and determination of the suit.**

d) **That the status quo of land parcel LR. No. KWALE/GALUKINONDO/759 be maintained pending the hearing and determination of this application and this suit.**

e) **That the Notice of withdrawal dated 1<sup>st</sup> April, 2019 filed by the Defendants be struck out.**

f) **That the Notice of withdrawal dated 1<sup>st</sup> April, 2019 filed by the Defendants be declared null and void Ab Initio.**

g) **That the costs of the application be in the cause.**

3) The application is based on the grounds on its face which can be fairly summarized as; that the 1<sup>st</sup> & 2<sup>nd</sup> defendants are clandestinely arranging the sale of LR. No. KWALE/GALUKINONDO/759 (herein after the subject suit property) knowing that there is a suit pending before court touching on the subject property whereas the subject property is the only property owned by the 2<sup>nd</sup> Defendant, that prospective buyers have visited the subject property and the sale agreement may be finalized and the suit property disposed of anytime from now, that it

is material the suit property be preserved pending the hearing and determination of the suit. It is also averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not directors in the second Plaintiff's Company and any share held by them thereof is highly contested; and finally, that it is only in the interest of justice that the application be allowed.

4) The application is further supported by an affidavit sworn on 30/8/2019 and a supplementary affidavit sworn on 22<sup>nd</sup> November, 2019, both sworn by Mary Mbaire, the 1<sup>st</sup> Plaintiff herein. She reiterates the grounds on the face of the application however she adds that the Defendants filed a notice of withdrawal dated and filed on 1<sup>st</sup> April, 2019 purporting that the 2<sup>nd</sup> Plaintiff had withdrawn the suit against them. According to the 1<sup>st</sup> Plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant cannot withdraw a suit against themselves and that this court should not hesitate to declare the same null and void. It is the Plaintiff's further case that 1<sup>st</sup> and 2<sup>nd</sup> Defendants purported to change the name of the 2<sup>nd</sup> Plaintiff and hide behind those illegalities to secretly dispose the subject parcel of land.

5) In response to the application, the Defendants filed a replying affidavit sworn on the 1<sup>st</sup> November, 2019 by the 1<sup>st</sup> Defendant on his own behalf and that of the 2<sup>nd</sup> Defendant. He averred therein that the suit is bad and defective since the Plaintiff lacks locus standi to institute it and the same should be struck out. He adds that the court lacks Jurisdiction on some of the issues raised therein. He avers that the Plaintiff had earlier filed two applications seeking substantially similar prayers to the ones sought herein and the court ruled on the same. That though the suit relates shareholding and directorship in Sufi Ltd, the Plaintiff seeks to include the issue of land therein hence the Jurisdiction of the court is questionable to that effect. The deponent adds that the 2<sup>nd</sup> Plaintiff company was incorporated by himself together with Heinz Diekhans, each holding 1 share. That the Plaintiff has not produced any grant showing that she is the beneficiary for the share held by Heinz Diekhans after his demise.

6) The 1<sup>st</sup> defendant expressed his discontent with the power of attorney held by the Plaintiff and alleges the same is forged because the donor of the power of attorney has never been in Kenya. The 1<sup>st</sup> Defendant further alleged that the Plaintiff had no authority to transpose the third Defendant to be the 2<sup>nd</sup> Plaintiff because there was no resolution to that effect. As such the 2<sup>nd</sup> Plaintiff had earlier instructed the firm of Isaac Onyango when it was sued and there has been no notice of change of advocates hence the notice for withdrawal of the suit is tenable in law.

7) In a supplementary affidavit, the Plaintiff avers that there is a certificate of heirship issued on 25/5/2010 by a court in Germany and subsequently adopted and resealed by the High Court of Kenya on 19/3/2012 and therefore the allegations that the Plaintiff lacks locus standi in the suit is misguided. It is averred that the court allowed the Plaintiff's application to transpose the 3<sup>rd</sup> Defendant as the 2<sup>nd</sup> Plaintiff and the ruling was not appealed against. The plaintiff is of the view that The Defendants are approaching the court with unclean hands with the aim of hiding behind its illegalities and with a further aim of delaying the matter.

#### **The Defendants application**

8) The Defendant's application is dated 1/11/2019 and seeks for the following orders;

**a) That the Honourable court be pleased to order, the Plaintiff, Marianne Diekhans and or her agents Mary Mbaire to deposit a sum of Kshs. 2,500,000/= as security for the whole or any part of the costs of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this suit within 14days from the date such orders are granted or such period as this honourable court shall deem fit and just to direct and in default thereof, this suit to stand dismissed as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.**

**b) That the cost of this application be borne by the Plaintiff.**

9) The application is premised on the grounds on its face and further supported by an affidavit sworn by the 1<sup>st</sup> Defendant, Rudolf Stefan, on 1/11/2019. The major grounds advanced are that; the suit was filed more than five years ago but has never been set up for hearing and the Defendants have had to incur lots of costs in defending unscrupulous applications made by the Plaintiff; that the Principal Plaintiff, Marianne Diekhans is a foreign national with no known assets or property in Kenya and her agent has no authority to settle expenses and costs incurred in this suit; that the power of attorney is unauthentic and to avoid the abuse of court process then the Plaintiffs should be ordered to deposit the sum of Kshs.2,500,000/= as security for the whole or part of the costs of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the suit.

10) The Plaintiff in reply to this application, filed a replying affidavit she swore on 22/11/2019. She avers that the application is vexatious and an afterthought for the reasons that the plaintiff has not delayed the disposal of the suit having had the suit fixed for pre-trial and for the hearing of various applications. That the 1<sup>st</sup> Defendant is also a German National like the Plaintiff and they have been communicating, hence the allegations that the Plaintiff is not a Kenyan national are baseless. It is averred that the Plaintiff is a person of means and able to cater for any costs incurred by the Defendants in the suit. That the amount of Kshs.2,500,000/= sought is baseless, exaggerated and only intended to lock out the Plaintiff from pursuing the suit. According to the Plaintiff, she is one of the 2<sup>nd</sup> Plaintiff's directors hence eligible to institute this suit. Lastly, the Plaintiff alleges that the Defendants fraudulently allotted the share to themselves after the demise of Heinz Diekhans and do not deserve equity having approached this court with unclean hands.

11) The parties filed written submissions to dispose of the two applications which I will proceed to consider in determining the same.

#### **Plaintiff's Submissions**

12) In her submissions, the Plaintiff established four issues for determination which are;

*a) whether the Plaintiffs are entitled to prohibitory orders pending the hearing and determination of the suit,*

b) whether the status quo of the subject property should be maintained pending the hearing and determination of the suit,

c) whether the notice of withdrawal dated 1/4/2019 by the Defendant should be struck out and declared null and void ab initio, and

d) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are entitled to security for costs.

13) On the first issue as to whether the Plaintiffs should be granted the prohibitory orders, it is submitted that there is no dispute to the 2<sup>nd</sup> Plaintiff's ownership to the subject parcel of land. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants, without any colour of right allotted to themselves a share and appointed themselves as directors of the 2<sup>nd</sup> Plaintiff in order to lay claim to the subject parcel of land. It is further averred that the subject property is in danger of being disposed of by the defendants to the detriment of the 2<sup>nd</sup> Plaintiff since it is the only asset owned by the 2<sup>nd</sup> Plaintiff. The Plaintiff is of the view that the parcel of land being the subject matter of the suit should be preserved. In support of the argument, the Plaintiff relies on the case of **Michael Kimani Thuo & Another-vs- Sos Peter Kariuki Ngoro Embu ELC No. 195 of 2014 and Dorcas Muthoni & 2 others-vs-Michael Ileri Ngari**.

14) As for whether the orders of status quo should issue, the Plaintiff avers that the suit property is in danger of being disposed of by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and if the orders are not issued then the suit may be rendered nugatory if the subject property is sold. The case of **Bpabab Beach Resort –vs- Saifudeen Abdullahi & 4 others**, where the court stated that an order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.

15) Turning to the third issue on whether the notice of withdrawal has any legal effect, the Plaintiff avers that the court granted her leave to amend the plaint and transpose the 3rd Defendant as the 2<sup>nd</sup> Plaintiff and if the Defendants were aggrieved by the decisions, they ought to have appealed against the same. Since the amended Plaint raises triable issues the suit against the defendants cannot be withdrawn and should proceed to full trial.

16) Lastly, on the issue of whether the Defendants being entitled to orders for security of costs, the Plaintiff counters the same with averments that the 1<sup>st</sup> Defendant is a German national and has not produced any documents to show that he resides in Kenya. Further, that the amount suggested of Kshs.2,500,000/= is exaggerated since the subject parcel of land has not been assessed to determine its value. The Plaintiff therefore opines that the Defendants have not established a reasonable cause why the court should exercise its discretion to grant the orders for costs.

#### **1<sup>st</sup> & 2<sup>nd</sup> Defendant's Submissions**

17) The Defendants submit that the injunctive orders sought by the Plaintiff cannot issue since the issue has already been dealt with and it is henceforth res judicata. That the Plaintiff had been given an opportunity to present its case on this issue and it cannot seek to reopen it and re-litigate on the same. The Plaintiff had made a similar application and the court has already ruled out that the issue is res judicata and the decision cannot be reopened in the circumstances. Public interest dictates that there should be an end to litigation and as such the court has been invited to appreciate the view as observed in the case of **John Florence Martine Services Ltd & another-vs-Cabinet Secretary for Transport and Infrastructure & 3others [2015] eKLR**.

18) It is argued that the principal contention in the suit concerns shareholding in the 2<sup>nd</sup> Plaintiff Company and not issues to do with land so that if the plaintiff had any concern thereof then she should file claim to the Environment and Law Court which is the right court vested with the requisite jurisdiction on land matters.

19) The Defendants further submitted that the suit was filed on May 16, 2014 and on 4<sup>th</sup> November,2014, the court granted injunctive orders that were to last for 8 months. It is now 6 years since and there has been no sign of the suit even proceeding for hearing. **Order 40 Rule 6 of the Civil Procedure** infers that, an injunction order can only be issued within 12 months of filing the suit hence the suit which is six years old is not at all eligible for an injunction.

20) On the legality of the notice of withdrawal, it is submitted that when the 3<sup>rd</sup> Defendant was transposed to the 2<sup>nd</sup> Plaintiff, the firm of Isaac Onyango was still on record representing the Company. There has been no change of advocates and the withdrawal of the suit was legally done, hence the suit cannot be reinstated.It is averred that the 1<sup>st</sup> Plaintiff is an agent of a deceased director and cannot legally act for the 2<sup>nd</sup> Plaintiff Company.

21) With regard to the application for security of costs, the defendants submit that it is established as a general rule that where a Plaintiff resides outside the jurisdiction the court should order the requirement for security of costs. That it will be difficult for the Defendants to obtain the costs since the Plaintiffs are shielded in their role as agents and administrators of the 2<sup>nd</sup> Plaintiff's, deceased director. Further, that the power of attorney does not disclose the extent of the agent's own liability and the agent cannot respond to the issues of the principal's liability. The 1<sup>st</sup> Plaintiff ought to have responded to the application personally and not through the agent without provisions disclosing the agent's own liability.

22) Lastly, the Defendants submitted that when faced with a prayer for security for costs, it is not sufficient for a non-resident plaintiff to aver that he is a citizen of good standing and has assets. Such Plaintiff should do more and even file an affidavit of means which has not been done in the instant case. This argument is buttressed by an excerpt from the case of **Godfrey Otieno Onyango (Suing on behalf of Ronald Onyango) & 2 others-vs- crispin Odour Obudo & 8 others [2014] eKLR**.

#### **Analysis and Determination**

23) Having set out the respective parties' positions as above, It is my most considered view that the following issues fall for determination;

*a) Whether the Plaintiffs have met the threshold for grant of prohibitory orders or status quo orders as sought,*

*b) Whether the notice of withdrawal dated 1<sup>st</sup> April, 2019 has any legal effect;*

*c) Whether the Defendants have established good grounds to condemn the Plaintiffs to orders for security of costs.*

**Whether the Plaintiff deserves the injunctive/ status quo orders sought.**

24) The principles for grant of temporary injunction have been long settled in the case of **Giella ...Vs... cassman Brown Co Ltd (1973) EA 358**, and later repeated in various judicial pronouncements. See the case of **Kibutiri...Vs...Kenya Shell, Nairobi High Court, Civil Case No.3398 of 1980 (1981) KLR**, the Court held that:-

***“The conditions for granting a temporary injunction in East Africa are well known and these are: First, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience. See also E.A Industries ..Vs...Trufoods (1972) EA 420.”***

25) The 1<sup>st</sup> Plaintiff's main ground in seeking these orders is that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have fraudulently transferred to themselves shares in the 2<sup>nd</sup> Plaintiff Company for purposes of claiming the only asset owned by the 2<sup>nd</sup> Plaintiff which is the suit property. The Plaintiff avers that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants may then dispose of the suit property and there is need to preserve the subject property because if sold, then the suit will be wholly rendered nugatory. It is therefore this Court's opinion that the basis upon which the Plaintiffs/Applicants are seeking to be granted an injunction are based on mere speculations since the Plaintiffs/Applicants have not demonstrated that their rights have been breached. The Plaintiffs have not shown any thing to support the allegation that the Defendants were seen with third parties on the suit parcel of land intending to dispose of the same. There is no sale agreement with regard to subject property; and the onus of proving the same lies with the Plaintiffs/ Applicants and This court cannot therefore issue orders in vain or on mere speculation.

26) Be that as it may, I agree with the Defendant's submissions that this court has already adjudicated on this issue. I have perused the ruling delivered on 13<sup>th</sup> October, 2016 by Hon. Lady Justice Njoki Mwangi, where she observed that injunctive orders had been earlier granted on consent of the parties to run for 8 months and the Plaintiff cannot litigate twice on the same issue. The learned Judge clearly stated that the prayer for an injunction is thus res judicata. For the time being, the Plaintiffs have not demonstrated any change of circumstances. Litigating on the same issue again would amount to this court sitting on its own appeal. For the above reasons the Court finds that the Plaintiffs/Applicants have not established case for grant of injunctive orders and the same are denied.

27) With regard to the order of status quo being issued, in my view it is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. In the case of **Pricillah Wanja Kibui v James Kiongo Kibui & another [2014] eKLR**, the court observed that it does not depend on proof of a right or a prima facie case. So, what is the status quo in the instant case with regard to subject property being LR. No. KWALE/GALUKINONDO/759. It has not been disputed that the said parcel of land is still registered in the name of the 2<sup>nd</sup> Plaintiff herein. The Plaintiff avers that it is the only asset held by the Plaintiff and there is need to preserve it pending the hearing and determination of the suit. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. It is my considered view that ownership of the subject property be maintained until such a time that the respective shareholding on the 2<sup>nd</sup> Plaintiff Company is determined.

**Whether the notice of withdrawal dated 1<sup>st</sup> April, 2019 has any legal effect**

28) On this issue, the Plaintiff submitted that Defendant's cannot withdraw a suit against themselves after the court had granted leave to amend the plaint and transposed the 3<sup>rd</sup> Defendant as the 2<sup>nd</sup> Plaintiff. The Defendant, on the other hand argued that that when the suit was initially instituted, the 2<sup>nd</sup> Plaintiff had appointed the firm of Isaac Onyango to act on its behalf. After the amendment, the said firm was still on record and there has been no change of advocates filed as per the records. The Defendant further contended that the Plaintiff lacks the requisite authority to initiate a suit on behalf of the 2<sup>nd</sup> Plaintiff Company. In retraction to that statement, the Plaintiff avers that she was duly appointed as a director of the 2<sup>nd</sup> Plaintiff and can adequately act on its behalf.

29) In my view, the issue of whether or not the 1<sup>st</sup> Plaintiff is a director of the 2<sup>nd</sup> Plaintiff, is matter that cannot be determined by way of affidavit evidence. It is the word of the 1<sup>st</sup> Plaintiff against that of the 1<sup>st</sup> & 2<sup>nd</sup> Defendant. It is prudent that parties be allowed to adduce substantive evidence on the same then the court can adjudge on the issue. That being the case, the court by its ruling dated 13/10/2016 granted leave for the Plaintiff to amend its plaint having indicated to the court that she intended to transpose the 3<sup>rd</sup> Defendant to be the 2<sup>nd</sup> Plaintiff. That could only mean that the firm of M/s Isaac Onyango could not appropriately represent the 2<sup>nd</sup> Plaintiff in this suit. An advocate cannot act for one party in a matter and then act for the opposite party in the same matter. There would be mischief and conflict of interest would be inevitable. In a similar circumstance the court in the case of **RakusevvsEllis Munday and Clerke [1912] 1 Ch. 83**, Cozens – Hardy M.R. laid down the test as being that ***“.....a court must be satisfied that real mischief and real prejudice will, in all human probability result if the solicitor is allowed to act.***

30) If an advocate would be allowed to act for one party in a matter and then act for the opposite party, it would seem like one party suing itself since the advocate will have access to evidence on both sides and may prejudice either party. It would then be more or less than the court engaging in an academic exercise. That being the case, it follows that the firm of Isaac Onyango could not properly continue acting for

the 2<sup>nd</sup> Plaintiff Company after the court granted leave to have the Plaint accordingly amended. It follows that the withdrawal notice dated 1<sup>st</sup> April, 2019 cannot be proper in law and the same is hereby declared void.

### **Orders for costs**

31) The last issue is on whether this court should order for security for costs for the suit as claimed by the Defendants. The Defendant requests this court to order for Kshs.2,500,000/= as security for costs. The reasons advanced being that that the Plaintiff has not been keen in prosecuting the matter the same having been filed in 2014 yet it has never been set for hearing. The defendants have thus had to incur expenses in defending unending applications filed by the plaintiff. Secondly, the Plaintiff is a German national with no known assets in Kenya and the power of attorney does stipulate the extent of liability on her agent in Kenya. The defendant further avers that the Plaintiff commenced the suit as an administrator and she is concealed from liabilities incurred in execution of her duties and this may end up with the Defendants not being compensated in event that the suit fails.

32) To counter these averments, the Plaintiff contended that the 1<sup>st</sup> defendant is a German National too and has concealed that fact from the court. She further averred that she is a citizen of good means and able to pay the costs.

33) An order for security for costs is a discretionary one. The discretion is to be exercised reasonably and judicially by taking absolute reference to the circumstances of each case. Such matters as; absence of known assets within the jurisdiction of court; absence of an office within the jurisdiction of court; insolvency or inability to pay costs; the general financial standing or wellness of the Plaintiff; the bona fides of the Plaintiff's claim; or any other relevant circumstance or conduct of the Plaintiff or the Defendant the list is not even exhaustive.

34) Moving forward, the general rule is that security for costs is required for Plaintiffs residing out of jurisdiction. See ***Shah vs Shah (1982) KLR 85 at page 98***. However, this does not mean that the Court may not refuse to grant such an order as long as the Court exercises its discretion judiciously. In the current case it is not in dispute that the 1<sup>st</sup> Plaintiff herein German Resident. The 1<sup>st</sup> Plaintiff has not filed an affidavit of means to dispel the Defendants' fears that he has no known assets.

35) I agree with the defendants' submissions that it is not enough for the Plaintiff to only allege that she is a citizen of good standing and with means. The Plaintiff should have done more, for instance they should have filed an affidavit of means or even ascertain whether costs could be claimed against her agent in Kenya. Alleging that the 1<sup>st</sup> Defendant is also a German National could not suffice as good explanation having not asked the court to condemn the 1<sup>st</sup> Defendant to provide security costs too.

36) For the foregoing reasons ,I find the application by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for security of costs *bona fide*. However, it is imperative, in consideration of an application for security of costs, for the court to balance the competing rights of the parties, that is the right to access to justice and the right to security for costs. In the case of ***Patrick Ngetakimanzi -vs- Marcus Mutuamuluvi & 2 others- High Court Election Petition No. 8 of 2013*** held:-

***“Security of costs ensures that the respondent is not left without recompense for any costs or charges payable to him. The duty of the court is therefore to create a level ground for all the parties involved, in this case, the proportionality of the right of the petitioner to access to justice vis-a-vis the respondent's right to have security for any costs that may be owed to him and not to have vexatious proceedings brought against him.”***

37) In the case of ***Harit Sheth Advocate -vs- Shamas Charania – Civil Appeal No. 68 of 2008***, this Court held:-

***“The principal aims of the overriding objective include the need to act justly in every situation; the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the courts by ensuring that the principle of equality of arms is maintained and that as far as it is practicable to place the parties on equal footing.”***

38) However, I am hesitant to grant the amount of Kshs.2,500,000/= as security for costs in favour of the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants. The court being the throne of justice is called upon to balance the rights of both parties in regard to offset access justice on the one hand and the costs to be paid to the applicant in the event that the suit does not succeed.

39) In the circumstances of this application and in exercise of discretion conferred upon me, I am of the considered view that the sum of Ksh.200,000/= will not impede access to justice and is an adequate security for costs in relation to the suit herein.

### **Conclusion**

40) In a synopsis, the following are the orders granted by this Court in relation to the two applications.

**a) The Plaintiffs' Notice of Motion dated 30<sup>th</sup> August, 2019 is allowed in the following terms;**

**i. Orders for Status quo of land parcel LR. No. KWALE/GALUKINONDO/759 be maintained pending the hearing and determination of this application and this suit.**

**ii. The Notice of withdrawal dated 1st April, 2019 filed by the Defendants is hereby struck out.**

**b) The 1st and 2nd Defendants' Notice of Motion dated 1/11/2019 is allowed in the following terms;**

*i. That the 1<sup>st</sup> Plaintiff Deposits Kshs.200,000/= as security for costs before the suit herein is set down for hearing.*

**c) The costs for the two applications shall be in the cause of the main suit.**

**d) Further, this court orders and directs the parties to comply with Order 11 of the Civil Procedure Rules within 60 days from the date of this ruling. The Plaintiffs shall file and serve all their documents (which are yet to be filed) upon the Defendants within 21 days from today. Upon receipt of service the Defendants shall have 21 days to file and serve their documents. Given that this is an old matter filed in the year 2014 and has never been set for hearing, timelines shall therefore be of the essence for expeditious disposition of the matter pursuant to Article 159 of the Kenyan Constitution 2010 and Sections 1A, 1B, & 3A of the Civil Procedure. Any defaulting party shall pay a Court fine of Kshs.100,000/=.**

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF MAY, 2020.**

**D. O CHEPKWONY**

**JUDGE**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemics, and in light of the directions issued by His Lordship, the Chief Justice, on 15<sup>th</sup> March 2020. This ruling/judgment has been delivered to the parties online with their consent. They have waived compliance with Order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159 (2) (d) of the Constitution which requires the court to eschew technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, which impose on this court the duty to use, inter alia, suitable technology to enhance the overriding objective, which is to facilitate just, expeditious proportionate and affordable resolution of civil disputes