Kariuki v John (Environment and Land Case Civil Suit E149 of 2020)
[2023] KEELC 20249 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20249 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE CIVIL SUIT E149 OF 2020

JO MBOYA, J

SEPTEMBER 28, 2023

BETWEEN

SARAH WAMBUI KARIUKI ..... APPLICANT

AND

PETER KAHAMA JOHN ..... RESPONDENT

RULING

1. Th Applicant herein, who is the Defendant in the main suit, has filed the Application dated the 8th June 2023; and in respect of which same has sought for the following reliefs;

   i. .....Spent

   ii. Pending hearing and determination of the Application, the Honorable court be pleased to issue a Temporary Injunction restraining the (sic) Defendant and the appointed signatories from proceeding using the bank account open against the court order. [verbatim]

   iii. The Honorable court be pleased to issue a Permanent Mandatory Injunction restraining the Respondent and other signatories from transacting using the name and style of Muthiria Kagaa Partners registered under business number BN-L5CLDX5.

   iv. The Honorable court do order that the orders in the decree be adhered to by all the beneficiaries of the Estate.

   v. That the Honorable court be pleased to declare that the Respondents and the signatories appointed against the court order are in total contempt of the orders issued by the court on the 19th December 2022.

   vi. That the Honorable court be pleased to issue an order compelling the Respondent and the signatories appointed against the order of the court to give a detailed account of the bank account opened against the court order and Absa Bank Account Number 07XXXX

vii. That a valuer be appointed to give the value of the property.

viii. That the Honourable court be pleased to issue an order directing that the property be disposed of.

ix. That in the alternative, the court be pleased to issue an order that the Applicant be given her share of the property upon valuation that the Honorable court be pleased to issue an order compelling the Respondent to produce minutes of the meetings held from the month of December 2022 to date.

x. The cost of the Application be provided for.

2. The instant Application is premised and/or anchored on the various grounds which have been enumerated at the foot of the Application. Furthermore, the Application herein is supported by the affidavit of the Applicant sworn on the 8th June 2023; and wherein the Applicant has reiterated the grounds alluded to in the body of the Application.

3. Instructively, upon being served with the instant Application, the Plaintiff/Respondent filed two sets of Documents, namely, the Replying affidavit sworn on the 10th July 2023; and a Notice of Preliminary Objection dated on the same/ even date.

4. First forward, the Application beforehand came up for hearing on the 20th June 2023, whereupon the advocate for the Parties covenanted to canvass and dispose of the Application by way of written submissions. Consequently and in this regard, the court proceeded to and directed the Parties to file and serve their respective submissions within set/ circumscribed timelines.

Parties' Respective Submissions :

a. Applicant's Submissions:

5. The Applicant herein filed written submissions dated the 19th July 2023; and in respect of which same has highlighted, canvassed and amplified four (4) salient issues for consideration by the Honourable court.

6. Firstly, Learned counsel for the Applicant has submitted that same is seized and/or possessed of the requisite locus standi to file and/or commence the instant Application for and on behalf of the Applicant, insofar as same duly filed and served the requisite Notice of Change upon the Applicant's erstwhile advocates on record.

7. Furthermore, Learned counsel has submitted that upon obtaining instructions from the Applicant, same served the Notice of Change upon the firm of M/s P.K Njiiri & Co. Advocates; and that it is the said Notice of change that was relied upon for purposes of mapping the current advocates to the E-Platform, prior to the filing of the current Application.

8. Be that as it may, Learned counsel for the Applicant has admitted and/or conceded that same has however failed and/or neglected to serve (sic) the Notice of change upon the Plaintiff's/Respondent's advocate on record. Nevertheless, Learned counsel has contended that the failure to serve the Notice of change on the Plaintiff's advocate on record was an inadvertent omission/ mistake that ought not to be relied upon to non-suit the Applicant.

9. Additionally, Learned counsel for the Applicant has contended that mistake of counsel ought not to be visited upon the Applicant. In this regard, Learned counsel has cited and relied on, inter-alia, the case

of Gehona v Seventh Day Adventist Church of East Africa Union [2013]eKLR; and Philip Chemwolo & Another v Augustine Kubende [1986]eKLR, respectively.

10. Secondly, Learned counsel for the Applicant has further submitted that the Applicant herein has the requisite locus standi to file and maintain the current Application, insofar as the Applicant herein had been sued in her personal capacity and not otherwise.

11. On the other hand, Learned counsel for the Applicant has submitted that to the extent that the Applicant was sued in her personal capacity, the question that the Applicant has not filed and/or brought before the court the Grant of Letters of administration in respect of the Estate of her deceased husband , does not therefore arise, either in the manner adverted to by the Plaintiff/ Respondent or at all.

12. In any event, Learned counsel for the Applicant has contended that the issue of lack of Grant of Letters of administration, which is being ventilated by the Plaintiff/Respondent is calculated to defeat the cause of justice and in particular, the import and tenor of the Consent which was duly entered into by the Parties and by extension, the Decree of the court issued on the 21st September 2022.

13. Thirdly, Learned counsel for the Applicant has submitted that the orders of the court which were issued on the 21st September 2022 and thereafter extracted on the 19th December 2022, are explicit and devoid of ambiguity. However, counsel has contended that despite the clear terms of the orders of the court, the Plaintiff/Respondent has disregarded, ignored and/or otherwise acted in contravention of the said orders of the court.

14. In view of the foregoing, Learned counsel for the Applicant has thus invited the Honourable court to find and hold that the Plaintiff/Respondent has acted in contempt of the orders of the honorable court and thus the Respondent should be suitably punished for contempt of court.

15. In support of the submissions, that the Respondent is guilty of contempt and thus ought to be punished, Learned counsel for the Applicant has cited and relied on the case of Samuel M.N Mweru & Others versus National land Commission and 2 Others (2020)eKLR.

16. Lastly, learned counsel for the Applicant has submitted that the Applicant herein has placed before the honorable court plausible and cogent evidence to warrant a finding that the Applicant is indeed entitled to the reliefs sought at the foot of the current Application.

17. Consequently and in the premises, Learned counsel for the Applicant has implored the court to find and hold that the Application before the court is meritorious and thus ought to be allowed, so as to vindicate the dignity and integrity of the Court.

b. Respondent's Submissions:

18. The Respondent filed written submissions dated the 28th July 2023; and in respect of which same has highlighted, raised and canvassed three issued for due consideration by the court.

19. Firstly and foremost, Learned counsel for the Respondent has submitted that the counsel for the Applicant herein is improperly on record, insofar as same did not comply with the provisions of Order 9 Rule 9 of the Civil Procedure Rules 2010, which requires that counsel seeks and obtains Leave of the Court before filing a Notice of Change of Advocate, more particularly, after Judgment has been delivered in a matter, like in the instant case.

20. Instructively, Learned counsel for the Respondent has submitted that it behooved the Applicant's current advocate to either procure and obtain a consent from the Applicant's erstwhile/outgoing

advocate and thereafter to file same alongside the Notice of change of advocates, which Learned counsel has contended did not happen.

21. Alternatively, Learned counsel for the Respondent has submitted that the advocate for the Applicant herein would also have been at liberty to file the requisite application seeking leave to come on record in place of the erstwhile counsel; and thereafter move the court to grant the requisite leave in accordance with the law prior to and or before effecting the Notice of change of the advocate.

22. Notwithstanding the foregoing, Learned counsel for the Respondent has further submitted that the current advocate for the Applicant also did not file and/or serve any Notice of change of advocate at all. In this regard, Learned counsel for the Respondent has cited and quoted the provisions or Order 9 Rule 9 as read together with Order 9 Rule 5 of the Civil Procedure Rules 2010.

23. Learned counsel for the Respondent has also invited the court to take cognizance of the holding in the case of S.K Tarwadi v Veronica Muelhlemann [2019]eKLR, wherein the import and tenor of Order 9 Rule 9 of the Civil Procedure Rules, were elaborated upon.

24. Secondly, Learned counsel for the Respondent has submitted that the suit property was jointly owned by 5 brothers, namely, Peter Kahama John, Jotham Kamau, Mwangi Many'angi, Stephen Gatimu and Geoffrey Kariuki Njagi, respectively.

25. In addition, it has been contended that of the 5 named brothers, only the Respondent herein remains alive. For good measure, it was pointed out that the rest of the brothers, who were Joint owners have since passed on.

26. Furthermore, Learned counsel for the Respondent has submitted that to the extent that the suit property was jointly owned, the death of the other joint owners has therefore divested the deceased persons of any interests and/or rights over and in respect of the suit property. Consequently and in this respect, Learned counsel has thereafter invoked and relied on the Doctrine of Jus-accrescendi.

27. Other than the foregoing, Learned counsel for the Respondent has also cited and relied on the holding in the case of Issabel Chellangat v Samuel Tiro Rotich & 5 Others [2012]eKLR.

28. Learned counsel for the Respondent has submitted that the Applicant herein has neither established nor demonstrated the basis for the grant of the various reliefs that have been sought for at the foot of the Application. Instructively, Learned counsel has contended that the Applicant herein has no right to and in respect of the suit property and therefore cannot stake a claim thereto.

29. Furthermore, Learned counsel for the Respondent has also submitted that the Applicant herein has not provided a basis for the grant of an order of temporary or permanent injunction, either as enumerated in the body of the Application or otherwise. In any event, Learned counsel has contended that prior to and before an order of temporary injunction can issue, the Applicant must demonstrate the existence of a prima facie case.

30. To this end, Learned counsel has cited and relied on inter-alia the case of Kenya power and Lighting Ltd v Sheriff Molana Habib [2018]eKLR; Mrao Ltd v First American Bank Limited and 2 Others [2003]eKLR; and Pius Kipchirchir Kogo v Frank kimeli Tenai [2018]eKLR.

31. Finally, Learned counsel for the Respondent has submitted that the Applicant herein has not demonstrated the basis for the grant of an order for contempt either as sought or at all. At any rate, counsel has submitted that the Application for contempt is pre-mature and incompetent, insofar as same does not meet the threshold enunciated in the case of Nyamodi Ochieng Nyamogo & Another v Kenya Post Telecommunication Corporation [1994]eKLR and Samuel M.N Mweru & Others v National Land Commission & 2 Others [2020]eKLR.

32. Based on the foregoing, counsel for the Plaintiff/ Respondent has therefore implored the court to find and hold that the subject Application is incompetent and misconceived and thus same ought to be dismissed with costs.

Issues for Determination:

33. Having reviewed and analyzed the Application together with the Responses thereto; and upon consideration of the written submissions filed by and on behalf of the respective Parties, the following issues emerge and are thus pertinent for determination;

    i. Whether the Applicant's current advocate are properly on record; or better still, whether the current advocate complied with the provisions with Order 9 Rule 9 of the Civil Procedure Rules 2010.

    ii. Whether the Defendant/Applicant has the requisite Locus standi to commence and or maintain the instant Application.

    iii. Whether the Applicant is entitled to the reliefs sought at the foot of the Application.

Analysis And Determination:

Issue Number 1. Whether the Applicant's current advocate are properly on record; or better still, whether the current advocate complied with the provisions with Order 9 Rule 9 of the Civil Procedure Rules 2010.

34. Before venturing to address and resolve the issue herein, it is imperative to take cognizance of the background of the subject matter and particularly, the circumstances leading to the adoption of the consent order by the court on the 21st September 2022.

35. Pertinently, there is no gainsaying that the instant suit was filed by and on behalf of the Plaintiff/ Respondent vide Plaint dated the 28th September 2020; and wherein same sought for various reliefs, inter-alia an order of Permanent injunction to restrain the Defendant/Applicant from (sic) interfering with property known as L.R No. 36/1/913, (hereinafter referred to as the suit property).

36. Moreover, following the filing of the instant suit, the Defendant/Applicant herein duly entered appearance and thereafter filed a Statement of Defense. However, before the suit could be set down for hearing, the Parties herein agreed to have the dispute referred to mediation and consequently, same was duly referred to the Court annexed mediation.

37. Subsequently, the mediation process culminated into a consent being entered into, whereupon the Parties agreed on various terms, towards and in settlement of the entire dispute.

38. Invariably, the consent which was arrived at and/or entered into during the mediation process was ultimately adopted by the court on the 21st September 2022, culminating into a decree, which was extracted and sealed by the Deputy Registrar of the Court on the 19th December 2022.

39. For good measure, there is no gainsaying that the consent which was entered into by both Parties herein constituted a Judgment and upon its adoption, the entire suit was resolved.

40. Having outlined the foregoing preliminary facts, which are not in dispute, it is now appropriate to revert to the issue under consideration and to interrogate whether the current advocate for the Applicant was required to comply with Order 9 Rule 9 of the Civil Procedure Rules 2010 or otherwise.

Furthermore, it would also be appropriate to interrogate whether non-compliance or at all, vitiates and/or invalidates the entire Application before the court.

41. To start with, it is important to state and underscore that where a Party, the Applicant not excepted, seeks to either act in person or to effect change of advocate, after Judgment has been entered; such change of advocate can only be effected with Leave of the court and not otherwise. See Order 9 Rule 9 of the Civil Procedure Rules, 2010.

42. Additionally, whereas an Applicant seeking to procure leave of the court to effect change of advocate after Judgment, is at liberty to co-join the limb seeking for leave to come on record alongside other reliefs; however it behooves the limb for leave to come on record to be prosecuted and/or canvassed in the first instance, before venturing into the merits of the Application. See Order 9 Rule 10 of the Civil Procedure Rules, 2010.

43. However, despite the clear terms and tenor of the Order 9 Rules 9 and 10 of the Civil Procedure Rules, 2010, there is no gainsaying that the Applicant's current advocates neither procured nor obtained the consent from the previous counsel, who was on record for the Applicant; nor did the Applicant's current advocate filed an Application for leave to come on record in lieu of the erstwhile counsel.

44. In any event, it is import to point out that even after being served with the Notice of Preliminary Objection dated the 10th July 2023, Learned counsel for the Applicant herein did not deem it fit and/or expedient to make reasonable efforts to comply with the crystal-clear provisions with Order 9 Rule 9 of the Civil Procedure Rules, 2010.

45. Clearly, Learned counsel for the Applicant herein has been acting and continues to act with gross impunity and utter disregard of the provisions of the law. In this respect, there is no doubt in my mind that the learned counsel for the Applicant, is not only guilty of gross negligence but serious inaction, which cannot be countenanced by a court of law.

46. Most importantly, it is worthy to underscore that the Rules of Procedure and the provisions of law at large, are made to be complied with by all and sundry. Furthermore, there is no gainsaying that ignorance of the law is no defense.

47. Nevertheless, I beg to reiterate that Learned counsel for the Applicant has simply failed to abide by and/or play within the four corners of the law. In any event, same has not made even an attempt ex-post-facto, to remedy the situation.

48. In this respect, I think it is appropriate to draw the attention of Learned counsel for the Applicant of the dictum of the Court of Appeal in the case of Kakuta Maimai Hamisi versus Peris Pesi Tobiko & 2 others [2013] eKLR, where the court of appeal stated and observed as hereunder;

> " A five-judge bench of this Court expressed itself very succinctly but a few days ago on this precise point is the case of Mumo Matemu v Trusted Society Of Human Rights Alliance & 5 OthersCivil Appeal No. 290 of 2012 as follows;
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> "In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under Section 1A and 1B of the *Civil Procedure Act* (Cap 21) and Section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases."

49. On the other hand, the Supreme court of Kenya has also had an occasion to elaborate on the importance of the Rules of procedure and in particular, where the procedure is intertwined and/ or interwoven with the substance of the case.

50. For good measure, the decision by the Supreme Court obtains in the case of Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others [2016] eKLR, where the court held thus;

> "(65) This Court has on a number of occasions remarked upon the importance of rules of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case, that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the Court would not hesitate to declare the attendant pleadings incompetent."

51. Taking the cue from the ratio decidendi enunciated in the decision cited supra, I come to the humble conclusion that it was incumbent upon learned counsel for the Applicant herein to comply with the provisions with Order 9 Rules 9 of the Civil Procedure Rules, 2010; prior to and before coming on record for and on behalf of the Applicant.

52. Furthermore and before departing from the issue herein, it is also appropriate to put the record of the court straight. In this regard, even though Learned counsel for the Applicant has contended that same filed a Notice of change of advocate; and thereafter served same upon the Applicant's previous counsel on record; it is evident from the case tracking system (CTS) that no such Notice of change was ever uploaded on the E-platform and/or paid for, whatsoever.

53. Surely, if the Applicant's advocate truly and honestly filed any such Notice of change, there is no gainsaying, that same would have been captured by the case tracking system and in any event, a copy thereof would be obtaining on the electronic record of the court, which is not the case.

54. Lastly, even assuming, for arguments sake that the Notice of change was filed as purported by Learned counsel for the Applicant (which position is erroneous), the concession by the Applicant's advocate that no such change of advocate was served upon the Plaintiff's/Respondent's advocate, would still be fatal. Clearly, the provisions of Order 9 Rules 6 of the Civil Procedure Rules, 2010; underscore that the requisite Notice of change of advocate filed pursuant to Order 9 Rule 6 of the Civil Procedure Rules, would only become effective upon service of same on all the adverse Parties.

55. Irrespective of which angle one looks at the competence of the Applicant's advocate and whether same is properly on record or otherwise; there is no gainsaying, that the Applicant's advocate on record is not properly before the court. Put differently, the Applicant's Advocate is improperly on record.

56. Premised on the foregoing, it is my humble finding and holding that the Application crafted and filed by the Applicant's current advocate, albeit without compliance with Order 9 Rule 9 of the Civil procedure Rules, is not only pre-mature but misconceived and fatally incompetent.

57. On this account only, I would have been happy to strike out the Application and to terminate the Ruling. However, having itemized two other issues, it is imperative to venture forward and to address same albeit in brief.

Issue Number 2. Whether the Defendant/Applicant has the requisite Locus standi to commence and or maintain the instant Application.

58. In the course of his submissions, Learned counsel for the Respondent has also impugned, challenged and impeached the locus standi of the Defendant/Applicant to file and/or maintain the instant Application.

59. In particular, Learned counsel for the Respondent has submitted that the suit property was owned by 5 brothers Peter Kahama John, Jotham Kamau, Mwangi Many'angi, Stephen Gatimu and Geoffrey Kariuki Njagi, 4 of whom have since passed on, save for the Respondent herein. In this regard, learned counsel has thus contended that upon the death of the co-joint owners, the deceased persons, were divested of their rights and/or interests over the suit property.

60. Furthermore, Learned counsel for the Respondent has also submitted that the Applicant's claim is premised and/or anchored on the facts that her late husband was one of the joint owners. However, counsel has contended that the Applicant herein cannot lay a claim to any segment of the suit property on the basis of the doctrine of Jus-accrucendi.

61. Other than the foregoing, Learned counsel has contended that the Applicant herein has also not procured nor availed any Grant of letters of administration, to warrant a claim for and on behalf of her Deceased husband.

62. In a nutshell, Learned counsel for the Respondent has therefore implored the court to find and hold that the Applicant is not seized of the requisite capacity/ locus standi to file the application, whatsoever.

63. Despite the elaborate submissions by learned counsel for the Respondent, which have attacked the legal capacity of the Applicant to file and maintain the current Application, my short answer is to the effect that the issue of the Applicant's locus standi, cannot be re-visited and/or otherwise addressed at this juncture.

64. Most importantly, it is imperative to state and observe that the suit which was filed by the Plaintiff/ Respondent was referred by consent of the Parties to court annexed mediation; and thereafter the mediation process culminated into a consent being entered into, which was thereafter signed and executed by both Parties.

65. First forward, it is equally important to state that where Parties resort to mediation and thereafter arrive at an award, such award has contractual effects and is binding on concerned Parties. In any event, there is no gainsaying that an award arising from mediation is not subject to setting aside and/or variation, unless there is extreme circumstances, where it can be shown that same was procured contrary to public policy. See Section 52 (A) of the *Civil Procedure Act*.

66. Notwithstanding the foregoing, it is also not lost on the court that upon the Parties arriving at a consent before the mediation team, the consent in question was subject of adoption by the court, whereupon same was duly adopted and made a Judgment of the court on the 21st September 2022. Instructively, the Judgment of the court has never been vitiated and/or impeached, to date.

67. Based on the foregoing facts, there is no gainsaying that the Respondent cannot now be allowed to re-agitate a point of law and/or issue, which was voluntarily compromised as part of the consent Judgment which was adopted by the court. Clearly, the contention by counsel for the Respondent, would amount to approbating and reprobating at the same time; which constitutes an abuse of the Due process of the court.

68. Lastly, the submissions by Learned counsel for the Respondent in this respect, appear to me to be an attempt to circumvent the clear terms of the consent, albeit through the backdoor. To my mind, such an attempt must be frowned upon and be nipped in bud, so as to protect the integrity of the court process.

69. Consequently and in view of the foregoing, my answer to issue number two is to the effect that the Applicant is clearly seized of the legal capacity to mount the current application, which is in furtherance of the terms of the lawful consent, duly adopted by the Court on the 21st of September 2022.

Issue Number 3. Whether the Applicant is entitled to the reliefs sought at the foot of the Application.

70. The Applicant herein has sought for a plethora of reliefs at the foot of the current Application. Pertinently, the Applicant has sought for inter-alia temporary and permanent injunction; mandatory injunction as well as orders of contempt against the Plaintiff/Respondent.

71. As pertains to the orders of temporary and permanent injunction, it is imperative to underscore that there is no suit which is pending before the court, which is capable of anchoring a prayer of temporary and/or permanent injunction. Clearly, before one can seek for an order temporary injunction, same must demonstrate that there is in existence a suit, which establishes a prima facies case, with probability of success.

72. Additionally, in respect of a prayer for permanent injunction, there is no gainsaying that same can only issue after a plenary hearing and upon interrogation of the evidence tendered by the court. Simply put, an order of permanent injunction cannot issue on the basis of the application either in the manner alluded to or at all.

73. To buttress the foregoing position, it suffices to reiterate the holding in the case of Kenya Power & Lighting Ltd v Sheriff Molana Habib [2018]eKLR, where the court stated thus;

> " 8. It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.
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> 9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.
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> 10. Generally, an injunction is sought in addition to other remedies. It is often difficult to seek an injunctive relief as a stand-alone remedy. In most cases it accompanies declaratory orders."

74. As relates to the prayer from mandatory injunction, it is worth noting that the standard of proof prior to and/or before such an order can issue is slightly higher than the one (standard of proof) for an order of temporary injunction. Nevertheless, just like in the case of temporary injunction, an Applicant must

demonstrate that there is in existence a suit, to anchor such a claim. Simply put, an order for mandatory injunction cannot issue in vacuum.

75. Lastly, the Applicant herein has also sought to have the Respondent cited and punished for contempt of court, for disregarding the lawful orders in terms of the consent Judgment endorsed on the court record on the 21st September 2022.

76. Importantly, the Applicant herein has contended that despite the court order providing that she (Applicant) would be one of the 5 mandatory signatories to the bank account, wherein the rental income from the suit property are deposited; same has been excluded therefrom and the Respondent is now operating the accounts by himself.

77. On the other hand, the Applicant has also contended that contrary to the terms of the consent Judgment, the Respondent and other beneficiaries of the suit property, have opened a separate and distinct account from the one captured and reflected at the foot of the decree of the court.

78. I beg to point out that if the application before the court was not adjudged to be incompetent for breach and/or violation of the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010; I would have been constrained to interrogate the aspect of contempt of court.

79. Furthermore, it is important to underscore that the law on contempt has since crystalized as enunciated in various decisions inter-alia the case of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR, Basil Criticos v Attorney General & 8 others & 4 others [2012] eKLR, Kenya Tea Growers Association v Francis Atwoli & 5 others [2012] eKLR and Executive Committee Kisii County & 2 others v Masosa Construction Limited & another [2021] eKLR, respectively.

80. Arising from the ratio decidendi in the foregoing decisions, it is now settled that an Applicant seeking to take out contempt proceedings relating to disobedience of lawful court orders/Judgment; does not require leave of the court to file such an application.

81. Further and in addition, it is also important to underscore that the dictum in the foregoing cases also clarifies that there is no more requirement that the Applicant do demonstrate that same extracted and served the impugned order/decree of the court upon the contemnor before filing the application for contempt, provided that it can be shown that the intended Contemnor has/had knowledge of the orders of the Court.

82. Instructively, it has been important to highlight the foregoing position in answer to the contention by Learned counsel for the Respondent that the holding in the case of Nyamodi Ochieng Nyamogo & Another v Kenya Post & Telecommunication Corporation [1994]eKLR; is still relevant and applicable.

83. Perhaps, it is appropriate for the Respondent to appreciate that the legal terrain governing contempt proceedings has undergone seismic change and the dictum in Nyamodi Ochieng Nyamogo (supra) is now bad law.

Final Disposition

84. Having analyzed and reviewed the thematic issues that were highlighted in the body of the Ruling, it is imperative to underscore that the Application by and on behalf of the Applicant herein was/is stillborn.

85. Consequently and in the premises, I have no alternative but to strike out the Application dated the 8th June 2023; and the costs attendant thereto shall be borne by the Applicant's advocate personally.

86. Nevertheless, it is also important to point out to both Parties that court orders must be complied with and/or obeyed. Indeed, both the Plaintiff/Respondent and the Defendant/Applicant, have an unqualified obligation to comply with the orders of the court and hence if there is any scintilla or iota of disobedience, this court shall not be shy from dealing with the situation, appropriately and decisively. See Hadkinson v Hadkinson [1952] 2 All ER 567, 575.

87. Other than the foregoing, the orders of the court are as proclaimed in terms of paragraph 85 hereinbefore.

88. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023.

OGUTTU MBOYA,

JUDGE.

In the Presence of:

Benson - Court Assistant.

Ms Ndichu H/b For Mburu Mashua For The Defendant/applicant.

Mr Kabiru For The Plaintiff/respondent.