



Alem & another (Both Suing on Behalf of themselves and on Behalf of the Landlords and Tenants of Migadini Kipevu Area at Chaani) v Focus Container Freight Stations Limited; National Environment Management Authority (Interested Party) (Environment and Planning Civil Case E016 of 2024) [2025] KEELC 292 (KLR) (31 January 2025) (Ruling)

Neutral citation: [2025] KEELC 292 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND PLANNING CIVIL CASE E016 OF 2024**

LL NAIKUNI, J

JANUARY 31, 2025

BETWEEN

AMON OCHIENG ALEM 1ST PLAINTIFF

MIRIAM KAZUNGU 2ND PLAINTIFF

**BOTH SUING ON BEHALF OF THEMSELVES AND ON BEHALF OF THE
LANDLORDS AND TENANTS OF MIGADINI KIPEVU AREA AT CHAANI**

AND

FOCUS CONTAINER FREIGHT STATIONS LIMITED DEFENDANT

AND

**THE NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY INTERESTED PARTY**

RULING

I. Introduction

1. This Honorable Court is tasked to make determination over the Notice of Motion application dated 2nd December, 2024 filed by Amon Ochieng Alem and Miriam Kazungu (Both suing on behalf of themselves and on behalf of the landlords and tenants of Migadini Kipevu area at Chaani), the Plaintiffs/Applicants herein. It was brought under the provision of Sections 3 (2) of the High Court (Practice and Procedure) Rules and under Sections 1A, 1B and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya and Order 40 Rules 1 (a), 2 and 4 of the Civil Procedure Rules, 2010.



2. Upon service of the application to the Respondent, they responded through a Replying Affidavit sworn on 17th December, 2024. Nonetheless, the 2nd Plaintiff filed a Notice to withdraw suit on 11th December, 2024 and thus the Court will be dealing with the issues on their own merit whatsoever.

II. The Plaintiffs/Applicants case

3. The Plaintiffs/Applicants sought for the following orders:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. The Honourable Court be pleased to issue a temporary injunction stopping the Defendant, whether by itself, its servants, agents, proxies, assignees, transferees or directors from carrying out any further assemblies meant for setting up a liquefied Petroleum Gas (LPG) in Migadini area, Chaani ward in Mombasa County pending the full hearing of this suit.
 - e. The Honourable Court be pleased to issue a temporary injunction barring the Interested Party from receiving any fresh Environmental Social Impact Assessment Report from the Defendant herein regarding the setting up a liquefied Petroleum Gas (LPG) in Migadini area, Chaani ward in Mombasa County pending the full hearing of this suit.
 - f. That the Honourable court do issue an order compelling the Officer Commanding Station (OCS) (Bamburi Police Station) to assist in the enforcement and implementation of the orders sought herein once granted.
 - g. Costs of this Application be provided for.
4. The application by the Applicant herein was premised on the grounds, testimonial facts and averments made out under the 28 Paragraphed Supporting Affidavit of –Amon Ochieng Alem & Miriam Kazungu, the Applicant herein sworn and dated on the same day as the Application with six (6) annexures marked as ‘AM-1 to 6’. The Applicants averred that:-
 - a. The Defendant was in the process of setting up a liquefied Petroleum Gas (LPG) within the residential area at Migadini within Chaani ward, Mombasa County. The Defendant’s letter inviting the parties to the meetings dated 5th November, 2024 and marked as “AM – 1”.
 - b. The Gas Plant being set up by the Defendant was massive and dangerous to the residents who had their permanent homes within the same locality.
 - c. An attempt to set up this Gas Plant was made by the Respondents back in the year 2020 which the Applicants successfully opposed through court. Vide the judgment of the National Environment Tribunal Appeal No. 22 of 2018 delivered on 12th September 2022, the Tribunal agreed with the Plaintiffs and revoked license No. NEMA/EIA/PSL/9219 that had been issued to the 2nd Respondent. (The Judgment dated 12th September, 2022 and marked as “AM – 2”).
 - d. The Defendant filed an appeal against the judgment of the National Environment Tribunal to this Honourable Court; which was in the “ELC Civil Appeal No. E042/2022 - Focus Container Freight Stations Limited – Versus - Michael Barasa Nato & Others” which was eventually withdrawn by the Appellant.



- e. The Defendant had now started re-organizing and was in advanced stages of putting up the gas plant once again through purported public participation /Civic education meeting which were being used to manipulate the people.
- f. The deadly gas plant was being set up in a very densely populated residential area without change of user of the land of the project from residential to commercial and in case there was any change of user, there was no public participation conducted.
- g. The Defendant was now using deceptions in conducting public participation as it could be seen from the letters signed by the Chiefs and Deputy County Commissioners but written on the Defendant's letter heads.
- h. The Plaintiffs were aggrieved with the whole process because the so-called public participation meetings are being used as an avenue to collect names of the attendances which were later converted into names of those supporting the project.
- i. Indeed, the Defendant had the history of using the local leaders to collect the Plaintiffs' names for use as those that had embraced the project. The letter from the chief and marked as "AM - 4".
- j. The so-called public participation meetings were being carried out with heavy deployment of local administration officers and the police in their uniforms who were being used by the Defendant to misinform and mislead the public that the project was government sponsored in order to gain support for it.
- k. The meetings were also characterized by heavy presence of police in their uniform whose aim was to instill fear in the would-be critics of the project.
- l. The local administration was being used by the Defendant to draw and rubberstamp all invitation letters so that the project actually looked like it originated from the government in a bid to confuse the members of the public into embracing it.
- m. The local administration was heavily involved in the campaign for the setting up of the project to an extent that they were used as the Masters of Ceremonies during the public meetings.
- n. In the past, the Defendant purported to have conducted public participation in the area by using Chiefs, Assistant Chiefs and village elders who collected for them the names of the residents purporting that they had welcomed the setting up of the gas plant but in the process included even the names of the dead in the list.
- o. The Defendant had once again deployed local leaders who were manipulating the residents into attending their meetings thinking that it was a government initiative, only for the lists of attendees of the meetings to be collected as evidence of those that have embraced the project through public participation.
- p. Part of the reason that the first attempt to set up the deadly gas plant was rejected is that there was no public participation conducted and hence the reason as to why the Defendant is trying by all means to produce false evidence of public participation.
- q. The Plaintiffs were apprehensive that, the Defendant would submit the names of those that had attended the meetings to the Interested Party herein as proof of public participation carried out and evidence of those that have embraced the project and as such manipulate the Interested Party into issuing another licence against their will.



- r. The Residents of the affected area were unanimous in their decision against the setting up of the gas plant in their area and were afraid that the Defendant would misuse the data it was collected from them into manipulating the concerned authorities for issuance of licence. A list of the residents who were against the gas project and marked as “AM – 5”.
- s. The Defendant had once again deployed local leaders who were manipulating the residents into attending their meetings thinking that it was a government initiative, only for the lists of attendees of the meetings to be collected as evidence of those that had embraced the project through public participation. (The photos from the meetings being conducted by the Defendants and marked them as annexure as “AM – 6”)
- t. The Plaintiffs were a live to the recent incidents of gas explosions in Embakasi East Constituency in Nairobi and the most recent one at Makande Girls Secondary School in Mombasa which lead to loss of lives and bodily injuries to scores of people and as such would not wish to be exposed to a similar danger.
- u. The area at which the Defendant was desirous of setting up the gas plant was densely populated and as such if the Defendant is left to proceed with his activities, then this would be a disaster in the waiting.
- v. It was imperative that the Honourable Court issued a temporary injunction to temporarily stop the ongoing meetings disguised as public participation since they are being conducted in bad faith by concealing of material facts and manipulation of the population.
- w. It was important that the court issues interim orders stopping any assembly disguised as a public participation/public sensitization barazas by the administration in conjunction with the Defendant because, in the same manner, the last public participation that involved the administration and the Defendant over the same project resulted into data infringement through which names, Identification numbers, signatures and telephone numbers of the residents including those of the dead were acquired and submitted to the Interested Party leading to the issuance of the revoked licence No. NEMA/EIA/PSL/9219.
- x. The meetings were intended to revive a serious and dangerous exercise that has far reaching ramifications to the members of the general public and will also affect lives if not halted.
- y. Unless the Honourable Court urgently stopped the activity, the Defendant may go ahead with its implementation hence exposing the entire community to dangers.
- z. The Court was vested with jurisdiction to entertain and resolve the issues raised in this Application.
- aa. The Affidavit was sworn in support of his Application issuance of restraining orders.

III. The Defendant/Respondent’s response.

- 5. The Defendant/Respondent responded to the Application through a 33 Paragraphed Replying Affidavit sworn by Dalib Abdirahman, the manager of the Defendant/Respondent where she averred that :-
 - a. The Applicants had grossly misrepresented the facts of this matter in an attempt to mislead this Honourable Court and unjustly prevent the lawful implementation of the proposed project.
 - b. Contrary to the assertions that no Civic education conducted, she averred that there was civil education that was conducted on the 7th November 2024 where the community and other



stakeholders were invited through letters to administrative bodies and the said meeting was attended by the community and various stakeholders. Attached and marked as “DA – 2” were the copies of minutes of the said civil education.

- c. Interestingly the said residents whom the Plaintiff alleged to represent were present, and were allowed to raise any form of grievances that they had about the project.
- d. Furthermore, they had since scheduled to have a public participation exercise on the 19th December, 2024 to continue engaging the locals before formalizing our application with the Interested Party. Any grievances and challenges ought to be raised in the said public participation exercise. Attached and marked as “DA – 3” were copies of the invitation to the public participation exercise on 19th December, 2024.
- e. This suit in its entirety was premature as the Defendant was yet to procure any licenses and was still at the preliminary stages of the project. In law, one cannot move the Honourable court merely on speculation, rumors and innuendo. A court of law was the place of last resort. In this case, any party with grievances still had the public participation exercise scheduled for 19th December, 2024.
- f. Where a party’s grievance was not solved, the best forum to raise the same as the place of first instance was with the Interested Party. Until these fora was exhausted, one should not move the court prematurely based on speculation and on a project that was still on its conception stages.
- g. The Applicant had raised in Paragraph 4 of the supporting affidavit that there was a similar project that was initialized in 2020. Notably the current project was not in any way related to the said project and does not bear the same dynamics nor was it to be located or conducted on the same site.
- h. The Plaintiff was out to fight any project raised by the Defendant, and that was well supported by their assertions in Paragraph 6 wherein the Plaintiff questions the need for civic education that was being conducted by the Defendant. It was their position and that of the Defendant that Public Participation/Civic Education is well anchored under the provision of Article 10 (2) of [Constitution of Kenya, 2010](#) and all that the Defendant was doing was to conform with constitutional provisions of the law. The Defendant had invited all the members of the public to the civic education wherein the project was well explained, and any grievances or fears by the members of the community were equally shared. An additional public participation exercise had been scheduled for the 19th December, and anyone including the Plaintiff/Applicant were at liberty to attend.
- i. The Applicants’ participation underscored the transparency and inclusiveness of the public participation/civic education process undertaken by the Respondent and Interested Party in compliance with [the Constitution](#) of Kenya and the Environmental Management and Coordination Act.
- j. They were in the initial stages of the project and had not engaged the Interested Party in order to do the normal procedures that result in the Interested Party issuing an EMCA license as required by law.
- k. This Honourable Court did not have the jurisdiction to interfere with the Respondents’ lawful preparation and compliance efforts at this stage, as there was no actionable decision by NEMA or any other authority that affects the Applicants’ rights.



- l. The said project had no relationship at all with License No. NEMA/EIA/PSL/9219 or the judgment of the tribunal dated 12th September 2022. Additionally, the current proposed project was distinct from the previous one and did not involve the same, design, or logistics.
- m. Throughout the affidavit and the Application of the Plaintiff, he had elected to slander the Defendant by alleging police intervention in the civic exercises, interference from the local leaders yet no evidence had been attached.
- n. The Plaintiff/ Applicant was engaging in a fear mongering exercise all in a bid to mar the Defendant in made and strong arm them into a settlement. There was nothing more other than kicks attempted at stalling the Defendant's well willed and wished project in an attempt to be given kick - backs for their silence.
- o. The Defendant was a well-structured company who would not be cowed into attempts by the Plaintiff and others to pressure them into corrupt tendencies all in the name of buying silence and avoid litigation.
- p. In this same suit, the 2nd Plaintiff had since withdrawn and had only left the 1st Plaintiff with the current suit. The said withdrawal came within a month of this suit being initiated. Attached in the affidavit and marked as "DA - 4" was the Notice of Withdrawal by the 2nd Plaintiff.
- q. Similarly another suit was filed by other Applicants through the same law firm and was later withdrawn vide "ELC Miscellaneous application no. e005 of 2024" before this Honourable Court. In the said suit, the same issues were raised and litigated upon, but later on the applicants withdrew the suit and the court allowed the same with costs. Annexed in the affidavit and marked as "DA - 5" was a copy of Notice of Motion dated 6th November, 2024.
- r. Strangely, this current application in its entirety was a copy paste of the previous "ELC Miscellaneous application no. e005 of 2024" seeking similar orders but with different litigants. Worse off, one litigant had since withdrawn thereby raising major eyebrows on the real intention behind this suit and application in its entirety. Attached in the affidavit and marked as "DA - 6" was the Notice of Withdrawal in E005 of 2024.
- s. The remaining Plaintiff alongside the said law firm had since opted to bury them in dubious and numerous litigations in bad faith and in a bid to stall them from engaging the public in any civic education and further set up an environmentally friendly plant as they intend to.
- t. The instant application and the suit herein was incurably defective as the suit was purportedly instituted on behalf of the Land - lords and Tenants of Migadini Kipevu area at Chaani. However, the Applicants had not attached the signed list of landlords and tenants of Migadini Kipevu area at Chaani consenting to the Plaintiffs/Applicants to institute the instant suit.
- u. In response to Paragraph 7 on the Applicants' assertions that the project is "dangerous" and "deadly" were alarmist, unfounded, and made without the benefit of any expert assessment.
- v. The orders sought by the Applicants were prejudicial to the Respondents' legitimate economic interests and those of the broader community, who stood to benefit significantly from the proposed project in terms of job creation and enhanced energy access.
- w. The Applicants had failed to demonstrate "a prima facie case" or any imminent danger warranting the issuance of the injunctive orders sought. The balance of convenience tilted in favor of allowing the Respondents to proceed lawfully with the project.



- x. The Applicants' attempt to bar the Respondents from receiving or submitting a fresh Environmental and Social Impact Assessment Report was unlawful, as such reports were mandated by law and could not be obstructed without valid reasons.
- y. The signatures appended to the Applicants' supporting documents that was the Supporting affidavit sworn by AMON OCHIENG ALEM and MIRIAM KAZUNGU never conformed to recognized legal standards.
- z. The signatures appeared to be calligraphy or stylized marks rather than authentic handwritten and/or E-signatures as required under the provision of the *Oaths and Statutory Declarations Act*, Cap. 15 and the *Evidence Act*, Cap. 80.
- aa. In addition, in any case that the signatures amount to E-signatures, the Applicants had not provided any electronic signature certificate, which was a mandatory requirement under the *Evidence Act*, for the admissibility and validity of electronically signed documents.
- ab. For these reasons, the Supporting Affidavit filed in court should be struck out as it was fatally defective.
- ac. The face of the Applicants' application, the orders sought were not anchored in law, nor had the Applicants demonstrated a clear legal basis for their issuance. The application was therefore frivolous and devoid of merit.
- ad. The affidavit in opposition motion dated 2nd December, 2024 and in support of the Respondent's position that the application lacked merit and should be dismissed with costs.

IV. The Grounds of Opposition by the Defendant

- 6. Further to the replies filed herein, the Defendant opposed the Notice of Motion application dated 2nd December, 2024 through 9 Paragraphed Grounds of Opposition dated 17th December, 2024. They were on the following grounds that:-
 - a. The Application dated 2nd December, 2024 was misconceived, incompetent and bad in law and was an abuse of the process of the Honourable Court.
 - b. The Plaintiffs had not adduced any substantive evidence of police interference and local leaders pleaded in the application to entitle them to the orders sought in the Notice of Motion application dated 2nd December 2024.
 - c. The Plaintiff's Application and suit offended and contravened *The Constitution* of Kenya (2010), the *Land Act*, and the same should be dismissed in limine without further consideration.
 - d. A similar suit was previously filed vide the "ELC Miscellaneous Application no. E005 of 2024" and later withdrawn with orders as to costs before this same Honourable Court.
 - e. A similar fate had been shown in this instant suit wherein the 2nd Plaintiff had since withdrawn instructions from the previous firm and gone ahead and withdraw the suit.
 - f. By dint of the withdrawal of the suit by the 2nd Plaintiff, the suit in its entirety ought to stand withdrawn as the Supporting Affidavit were co-signed by both parties and thus the averments cannot be separated from one another.



- g. The signatures appear to be calligraphy or stylized marks rather than authentic handwritten and/or E-signatures as required under the provision of the *Oaths and Statutory Declarations Act*, Cap. 15 and the *Evidence Act*, Cap. 80. As such, the supporting affidavit should stand struck out.
- h. The application was also an abuse of the court process because:
 - i. The application and suit had been filed before exhausting other measures including and not limited to attending the civic education on the 19th December, 2024 and raising the said issues before it.
 - ii. Prior to filing this application and/or suit, the applicant ought to move the National Environment Tribunal to seek redress. Courts have held severally that it is prudent that a party exhausts all mechanisms before resolving to the courts of law as they are the point of last resort.
 - iii. The record will show that the instant application and the application in the "ELC Miscellaneous Application no. E005 of 2024" were similar and thus showed that the applicant was all out to exhaust and frustrate the Defendant/Respondent.
 - iv. The applicants had purportedly instituted this suit on behalf of the landlords and tenants of Migadini Kipevu area at Chaani but had failed to adduce any evidence of the consent of the said residents to institute the said suit on their behalf
- i. Therefore the application was not only mis - contemplated, but was also incompetent, unmeritorious, an abuse of the court process and ought to be dismissed with costs to the Defendant/Respondent.

I. Submissions

- 7. On 25th July, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 10th June, 2024 and Notice of Preliminary objection be disposed of by way of written submissions. Unfortunately, by the time the Honourable Court was penning down the Ruling it had not accessed the submissions by any of the parties herein. Pursuant to that a ruling date was reserved on 31st January, 2025 by Court on its own merit accordingly.

VI. Analysis & Determination.

- 8. I have carefully read and considered the pleadings herein by the Plaintiff/Applicant and the Defendant, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
- 9. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has two (2) framed issues for its determination. These are:-
 - a. Whether the Notice of Motion application dated 2nd December, 2024 has any merit whatsoever.
 - b. Who bear the Costs of Notice of Motion application dated 2nd December, 2024.

Issue a). Whether the Notice of Motion application dated 2nd December, 2024 has any merit whatsoever.

- 10. Under this sub title, though the Plaintiff/Applicant sought to be granted the interim injunctive orders which are governed by the provision of Order 40 Rules, 1, 2 & 3 of the Civil Procedure Rules, 2010,



but as a matter of precedence and interest of Justice, we shall examine the legality of the supporting affidavit and whether it was defective Order 19 Rule 3 (1) of the Civil Procedure Rules, 2010 as pointed out by the Defendant. Order 19 Rule 3 (1) provides that: -

“Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove: Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.”

11. In the case of “Francis Kariu Gakumbi & Another – Versus - Piliska Njoki Maina [2008] eKLR” Hon. Justice Omollo JA expressed himself as hereunder:

“I do not know that two different people can swear one oath at the same time. An affidavit is sworn evidence and that being so, each party ought to swear a separate affidavit, even if the facts on which they are swearing the affidavits are the same. The practice of the people swearing and signing one affidavit must stop and if the motion had been opposed on the ground that it was not supported by a competent affidavit, I might well have struck it out on that basis.”

12. The provision of Order 19 of the Civil Procedure Rules has rules of court prescribed. Pursuant to the provisions of Sections 18 and 6 of the same Act as read with section 82 of the *Civil Procedure Act*, Cap. 21. Order 19 rule 5 of the Civil Procedure Rules provides that:

“Every affidavit shall be drawn in the first person and divided into paragraphs numbered consecutively which shall be confined as nearly as may be to a distinct portion of the subject.”

13. For instance, where a person states under oath about the truth or falsity of a certain matter, it has to be on some specific portion, not a general statement on the state of affairs. So a deponent must specifically direct his collective mind to each paragraph in the affidavit and accordingly affirm the truth thereof. Whether two or more people can do this is what I am wondering about. Order 19 Rule 7 of the Indian Code of Civil Procedure (Allahabad), and The Supreme Court Practice 1997, Order 41 Rule 2. The latter provides that:

“2. Where an affidavit is made by two or more deponents the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the “above named deponents.”

14. The English practice appears to permit deponents to swear generally, but the Indian practice is stricter. Order 19 Rule 7, aforesaid provides that:-

“Two or more persons may join in an affidavit; each shall depose separately to those facts which are within his own knowledge; and such facts shall be stated in separate paragraphs.”

15. The Courts have often considered whether an affidavit sworn by more than one deponent was competent in the case of “Pastor John Cheruiyot & 6 others – Versus - County Council of Baringo & 3 others Nakuru HCCC No. 120 of 2004 (unreported)”. At page 10 of its ruling this court stated as follows:-

“An affidavit is sworn evidence in a written form. The presumption is that when a person swears an affidavit, he is swearing to what is within his personal knowledge. Affidavit



evidence is comparable to sworn evidence that is given by a person in court. The only difference being that when a person swears an affidavit he may not be cross-examined on its contents without the leave of the court being sought.”

16. Critically speaking, this court concedes that there are certain circumstances where an affidavit sworn by two deponents may be admitted by the court. The *Civil Procedure Act* and the rules made thereunder does not envisage a situation where two deponents can swear to one affidavit. Being that this is an Environment matter and considering the laid-out authorities in regard to whether two or more deponents can swear to an affidavit in support of an application seeking interim reliefs, I strongly hold that the only competent affidavit which can be sworn in support of such an application is an affidavit sworn by one deponent. I affirm that this is not an issue to be simply washed away as being a procedural technicality under the provision of Article 159 (2) (d) of *the Constitution* of Kenya, 2010.
17. Further the Defendant has contended the signatures of the deponents in the supporting affidavits seemed calligraphed. In the interest of justice I will consider the contention by the Defendant. In doing so, I will warn myself that I am not a document examiner nor an expert in signatures but a look at the signature appearing at the back of the supporting affidavit. This Court is meant to examine whether the affidavit as sworn and filed in support of the application was in accordance with the provision of *Oaths and Statutory Declarations Act* rendering the application fatally defective.
18. I want to borrow before examining whether or not the affidavit was defective from my brother Kiage, J.A in the case of “Nicholas Kiptoo Arap Korir Salat – Versus - IEBC & 6 others [2013] eKLR” held: -

“.....I am not in the least persuaded that Article 159 of *the Constitution* and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.....”
19. Affidavits in Kenya are governed by the *Oaths and Statutory Declarations Act*, Chapter 15 of the Laws of Kenya. Other relevant laws include the *Interpretation and General Provisions Act*, Cap. 2 and the *Civil Procedure Act*, Cap. 21. The general rule is that a party of full age and understanding is normally bound by his signature to a document, whether he reads it or not. The Defendant/ Respondent contended that the signatures appended to the Applicants’ supporting documents that was the Supporting affidavit sworn by Amon Ochieng Alem and Miriam Kazungu did not conform to recognized legal standards. The signatures appeared to be calligraphy or stylized marks rather than authentic handwritten and/or E-signatures as required under the *Oaths and Statutory Declarations Act* and the *Evidence Act*.
20. In addition, in any case that the signatures amount to E-signatures, the Applicants had not provided any electronic signature certificate, which was a mandatory requirement under the *Evidence Act*,



Cap. 80 for the admissibility and validity of electronically signed documents. For these reasons, the Supporting Affidavit filed in court should be struck out as it was fatally defective.

21. Further in the same breath when one keenly observes the Notice of Withdrawal filed by the 2nd Plaintiff dated 11th December, 2024 the signature is different from the one in the supporting affidavit purportedly signed by the 2nd Plaintiff. In as much as justice should be dispensed off in an expeditious matter without barring the parties from the fruits of justice due to illegalities; if this Court is to proceed with the determination of the Plaintiffs' Notice of Motion application dated 2nd December, 2024 then it will be complicit to the illegality being perpetrated by the Plaintiffs and/ or its advocates.
22. For this reason, without any hesitance but proceed to strike out the said application with costs to the Defendant/Respondent. In the given circumstance and for avoidance of doubt, the Honourable Court will not proceed to examine the other issue in the ruling except for the costs.

Issue No. b). Who will bear the Costs of Notice of Motion application dated 2nd December, 2024.

23. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “Jasbir Rai Singh – Versus - Tarchalan Singh” eKLR (2014) and Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited, eKLR (2014).
24. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
25. In this case, this Honourable Court has reserved its discretion to award the Defendant/ Respondent the costs of the Notice of Motion application dated 2nd December, 2024.

VII. Conclusion & Disposition

26. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the application, this court arrives at the following decision and makes the orders below:-
 - a. That the Notice of Motion application dated 2nd December, 2024 be and is hereby found to be fatally defective and the same is struck out.
 - b. That for expediency sake, the matter to be mentioned on 14th February, 2025 before ELC No. 3 before Hon. Justice Mr. Olola for further direction on conducting a Pre – Trial conference pursuant to the provision of Order 11 of the Civil procedure Rules, 2010 and taking a hearing date of the suit.
 - c. That the Defendant/Respondent shall have the costs of the Notice of Motion application dated 2nd December, 2024 to be borne by the Plaintiff/Applicant herein.

It is so ordered accordingly.

RULING DELIVERED THE THROUGH MICROSOFT TEAM VIRTUAL, MEANS SIGNED AND DATED AT MOMBASA THIS 31ST DAY OF JANUARY, 2025.

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HON. MR. JUSTICE L. L. NAIKUNI,



**ENVIRONMENT AND LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. No appearance for the Plaintiffs/Applicants.
- c. Mr. Mitei holding brief for Mr. Yunis Advocate for the Defendant/Respondent.

