



Mike Kipkorir Kipyego v Raska Investments Limited & another (Environment & Land Case 123 of 2020) [2022] KEELC 3713 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3713 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 123 OF 2020**

**JO MBOYA, J
JUNE 30, 2022**

BETWEEN

MIKE KIPKORIR KIPYEGO PLAINTIFF

AND

RASKA INVESTMENTS LIMITED 1ST DEFENDANT

ALI ABU OMAR 2ND DEFENDANT

RULING

1. Vide the Notice of Motion Application dated the June 2, 2020, the Plaintiff herein has approached the court seeking for the following Reliefs;
 - i.(Spent).
 - ii. An Interim order of Injunction do issue restraining the Defendants or their agents form further encroachment onto, making any further developments on, selling, leasing or in any other way intermeddle with L R No 330/506, situated on Riara Road, Nairobi pending the hearing and determination of this Application *Inter-partes*.
 - iii. An Interim order of Injunction do issue restraining the Defendants or their agents form further encroachment onto, making any further developments on, selling, leasing or in any other way intermeddle with L R No 330/506, situated on Riara Road, Nairobi pending the hearing and determination of the main suit.
 - iv. The OCS Muthangari Police Station to oversee compliance of orders herein.
 - v. Costs be provided for.



2. The subject Application is premised on the grounds enumerated at the foot thereof and same is further supported by the affidavit of one, Mike Kipkorir Kipyego, who describes himself as the Plaintiff/Applicant and in respect of which same has annexed a total of one annexure.
3. Upon being served with the subject application, the 2nd Defendant/Respondent entered appearance and thereafter filed a Replying affidavit sworn on July 2, 2020, and to which the deponent has annexed four annexure thereto.
4. On the other hand, the 2nd Defendant has also file a Notice of Preliminary objection dated July 2, 2020 and in respect of which the 2nd Defendant has contended as hereunder;
 - i. The Dispute before the Honourable court is *Res-Judicata*, same having been substantively determined vide HCC NO 502 of 2011.
 - ii. The Honourable Court lacks jurisdiction to hear and determine the matter.

Depositions by the Parties:

Plaintiff's/applicant's Case:

5. Vide Supporting Affidavit sworn on June 24, 2020, the Plaintiff herein, namely, Mike Kipkorir Kipyego,(hereinafter referred to as the deponent), has averred that same is the registered proprietor and/or owner in respect of L R No 330/506, situate at along Riara Road, within the city of Nairobi.
6. Further, the deponent has averred that by virtue of being the proprietor of the suit property, same is entitled to exclusive occupation, possession and use thereof.
7. Nevertheless, the deponent has averred that on or about June 20, 2020, the Defendants herein entered upon and trespassed onto the suit property, albeit without his permission, authority and/or consent.
8. It is the deponent's further averment that the actions and/or activities by the Defendants, have denied and/or deprived same of its lawful rights over and in respect of the suit property.
9. Based on the foregoing, the deponent has thus contended that same is entitled to the orders of Temporary injunction, so as to protect and vindicate his ownership rights and Interests over the suit property.
10. Finally, the deponent has averred that unless the orders sought are granted, same is disposed to suffer Irreparable loss, denial and deprivation of the suit property.
11. In the premises, the deponent has thus averred that same has established and/or proved the requisite conditions to warrant the grant of the orders sought,namely, the Orders of Temporary Injunction to bar and/ or prohibit the Defendants from further Trespassing onto the Suit Property.

Response by the 2ndDefendant/respondent

12. Vide Replying Affidavit sworn on July 2, 2020, the 2nd Respondent herein has averred that the suit property, which is being claimed by the Plaintiff herein, lawfully belongs to the 1st Defendant and not otherwise.
13. On the other hand, the deponent herein has averred that same entered into and/or executed a Tenancy agreement with the 1st Defendant, whereby the 1st Defendant/Respondent authorized same to enter upon and take possession of the suit property.



14. Further, the deponent has averred that pursuant to the Tenancy agreement, details which have been alluded to in the preceding paragraph, same indeed entered upon the suit property and has remained thereon to date.
15. In any event, the deponent has further averred that upon entry on to the suit property, same commenced to and has been operating a Motor vehicles repairs shop, as well as a Garage.
16. The deponent has further averred that same has been in occupation, possession and use of the suit property for more than 20 years and denies the allegation that same entered upon and trespassed on the suit property on June 20, 2022, as alleged by the Plaintiff/Applicant.
17. Other than the foregoing, the deponent has averred that upon being served with the subject pleadings, same carried out investigations to authenticate and/or ascertain the basis of the Plaintiff's claim to the suit property and in the course of carrying out such investigations, the deponent discovered that the Plaintiff herein had filed some proceedings before the Business Premises Rent Tribunal, wherein the Plaintiff/Applicant purported to be the landlord in respect to the suit property.
18. Besides, the deponent has also averred that despite the claim by and/or on behalf of the Plaintiff/Applicant to be the landlord of the suit property, its claim to that effect was duly dismissed.
19. Other than the foregoing, the deponent has also averred that same also came across a Judgment rendered by the High court vide Nairobi HCC No 502 of 2011, wherein the court dealt with issue of Title to and ownership of the suit property, namely, L R No 330/506.
20. Further, the deponent has averred that vide the aforesaid decision, namely, HCC No 502 of 2011, the Court found and held that the suit property belongs to Francis Maina Kibunyi and Kamunyu Kahenya, respectively.
21. In the premises, the deponent has averred that the Plaintiff herein therefore has no known Legal Rights and/ or Interests over and in respect of the suit property.
22. It has further been averred that based on the fact that the Plaintiff does not have any known and/or legal interest over and in respect of the suit property, the reliefs sought at the foot of the Application herein, inter-alia, an order for temporary injunction, cannot therefore issue, either as sought or at all.
23. Coupled with the Notice of preliminary objection, the deponent has therefore averred the Plaintiff's suit, as well as the application under reference therefore ought to be dismissed.

Submissions by The Parties:

24. The Application herein came up for hearing on November 16, 2021, whereupon the counsel for the 2nd Defendant indicated that same had filed a Notice of preliminary objection dated July 2, 2020.
25. Based on the indication that the 2nd Defendant had filed a Notice of Preliminary objection, directions were thereafter given that the pending application, namely, the Application dated June 24, 2020 and the Preliminary Objection be canvassed simultaneously.
26. On the other hand, the court also directed that the Application and the Notice of preliminary objection be canvassed by way of written submissions, which were to be filed and exchanged within set timelines.
27. Pursuant to the foregoing, it was incumbent upon the Plaintiff to proceed and file his written submissions within the set timelines and in particular, within 14 days, being the duration that was set by the court.



28. Nevertheless, despite the clear and explicit orders of the court, the Plaintiff herein failed and/or refused to file and serve the written submissions, either within the stipulated timelines or at all.
29. On the other hand, the 2nd Defendant proceeded to and filed written submissions which were filed on April 14, 2022, that is a duration of more than five months, from the date when directions for the filing and exchange of written submissions were made and/or set.
30. Be that as it may, the written submissions by and/or on behalf of the 2nd Defendant are on record and therefore, same are worthy of consideration. In the premises, the court shall proceed to consider the Application and taking into account the submissions filed by the 2nd Defendant/Respondent.
31. Briefly, the 2nd Defendant has contended that the issue pertaining to Title to and ownership of the suit property was subject to proceedings vide Nairobi HCC No 502 of 2011, where the court proceeded to and pronounced itself on the issue of ownership of the suit property.
32. Based on the foregoing, counsel for the 2nd Defendant has therefore contended that the subject issue, having been duly considered and determined vide judgment of the court rendered on July 8, 2020, the issue of ownership cannot now be re-agitated in the subject matter.
33. In the premises, the 1st Defendant has therefore submitted that the subject suit is therefore *Res-judicata* and thus barred by the provisions of Section 7 of the [Civil Act](#), Chapter 21, Laws of Kenya.
34. In support of the submissions that the subject suit is barred by the doctrine of *Res-judicata*, the 2nd Defendant has relied on various decision, *inter-alia*, [Independent Electoral and Boundaries Commission versus Maina Kiae & 5 Others](#) (2017)eKLR and [Mburu Kinyua versus Gachini Tuti](#) (1978)eKLR.
35. Secondly, the 2nd Defendant has contended that the Plaintiff herein, is neither the registered owner nor proprietor of the suit property and that to the extent that same is not such owner, the Plaintiff cannot accrue and/or attract any orders of injunction.
36. In the premises, the 2nd Defendant has thus submitted that the relief/ Order of temporary injunction, which has been sought by the Plaintiff cannot therefore issue in favor of the said Plaintiff/ Applicant.
37. Based on the foregoing, the 2nd Defendant has therefore submitted that the entire Suit, as well as the application filed by and/or on behalf of the Plaintiff ought to be dismissed with Costs.
38. In support of the foregoing submissions, the 2nd Defendant has invoked and relied on a number of decisions *inter-alia* [John Nzomo Wambua versus Joseph Taiti Wambua](#) (2021)eKLR, [Mrao Ltd versus First American Bank of Kenya Ltd & 2 Others](#) (2003)eKLR, [Franco Nderitu Kanyari & 6 Others versus County Government of Nyandarua](#) (2018)eKLR, [Paul Gitonga Wanjau versus Gathuthis Tea Factory Company Ltd & 2 Others](#) (2016)eKLR.

Issue for Determination:

39. Having reviewed the Application dated the June 24, 2020, the Supporting Affidavit thereof, the Response thereto, as well as the Notice of Preliminary Objection and having considered the written submissions filed by the 2nd Defendant herein, the following issues are pertinent and thus germane for Determination;
 - i. Whether the Subject suit is barred by the Doctrine of *Res-Judicata* and therefore contravenes the Provisions of Section 7 of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya.
 - ii. Whether the Plaintiff/Applicant has disclosed and/or established a *Prima facie* case or at all.



- iii. Whether the subject suit amounts to and/or constitutes an abuse of the Due process of the Court.

Analysis and Determination

Issue Number 1 Whether the subject suit is barred by the Doctrine of *Res-Judicata* and therefore contravenes the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.

40. The 2nd Defendant has averred and/or contended that the issue pertaining to and/or concerning the ownership of the suit property was deliberated upon and resolved vide judgment rendered in Nairobi HCC No 502 of 2011.
41. At any rate, the 2nd Defendant has proceeded to and exhibited a copy of the Judgment vide Nairobi HCC No 502 of 2011 and in respect of which, the court therein found and held that the suit property lawfully belongs to Francis Maina Kimunyi and Kamunyu Kahenya, who were the 1st and 2nd Defendants in the said suit.
42. Based on the foregoing Judgment, the 2nd Defendant has therefore contended that the subject suit is therefore barred by the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya and essentially by the doctrine of *Res-Judicata*.
43. Having invoked and relied on the doctrine of *Res-judicata*, it is therefore incumbent upon the court to consider the various aspects and perspectives of the Doctrine of *Res-Judicata* and to ascertain whether indeed the subject suit is barred by the doctrine in question.
44. Towards and in a bid to resolve the issue of *Res-judicata*, it is therefore appropriate to discern the meaning and import of what constitutes *Res-judicata*.
45. In the premises, it is therefore appropriate to consider and take into account the provisions of Section 7 of the *Civil procedure Act*, Chapter 21 Laws of Kenya which underscores the salient features of the said Doctrine.
46. For convenience, the provisions of Section 7 of the *Civil Procedure Act*, (*supra*) provides as hereunder;

7. *Res judicata*

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation.—The expression “former suit” means a suit which has been decided before the suit in—(1) question whether or not it was instituted before it.

Explanation.—For the purposes of this section, the competence of a court shall be determined—(2) irrespective of any provision as to right of appeal from the decision of that court.

Explanation.—The matter above referred to must in the former suit have been alleged by one party—(3) and either denied or admitted, expressly or impliedly, by the other.

Explanation.—A matter which might and ought to have been made ground of defence or attack—(4) in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.



Explanation. Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

47. Other than the foregoing provisions, it is also appropriate to take cognizance of the holding in the case of *Benjob Amalgamated Limited & Another v Kenya Commercial Bank Limited* [2014] eKLR, where the Court of appeal observed as follows;

The Court went on to state that:

“the courts have never accepted *res judicata* as an absolute principle of law which applies rigidly in all circumstances irrespective of the injustice of the case. There is one established exception to this doctrine, and that is where the Court itself has made such an egregious mistake that grave injustice to one or more of the parties concerned would result if the Court’s erroneous decision were to form the basis of an estoppel against the aggrieved party.... In such a case, the tension between justice principle and the finality principle is resolved in favour of the former.”

“... the general rule is that where a litigant seeks to reopen in a fresh action an issue which was previously raised and decided on the merits in an earlier action between the same parties, the public interest in the finality of litigation (“the finality principle”) outweighs the public interest in achieving justice between the parties (“the justice principle”) and therefore the doctrine of *res judicata* applies. In such cases, it is usually immaterial that the decision which gives rise to the estoppel is wrong because “a competent tribunal has jurisdiction to decide wrongly, as well as correctly, and if it makes a mistake its decision is binding unless corrected on appeal.”

48. Perhaps, for emphasis only, the doctrine of *Res-judicata* was re-visited and/or dealt with in the case of *John Florence Maritime Ltd v The Cabinet Secretary, Transport, Infrastructure & Public Works & Another* (2015)eKLR, where the Court of Appeal stated as hereunder;

Res judicata is a subject which is not at all novel. It is a discourse on which a lot of judicial ink has been spilt and is now sufficiently settled. We therefore do not intend to re-invent any new wheel. We can however do no better than reproduce the re-indentation of the doctrine many centuries ago as captured in the case of *Henderson v Henderson* [1843] 67 ER 313:-

“.....where a given matter becomes the subject of litigation in and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.....”

49. Having quoted the foregoing decisions, what is apparent and/or evident is that before invoking and relying on the Doctrine of *Res-judicata*, the Applicant must show that there existed a previous suit,



touching on the subject matter and wherein the same Parties, as in the subsequent suit, were Parties litigating by themselves or were otherwise duly represented, either by duly authorized Representatives or Agents.

50. On the other hand, it is also incumbent upon the Applicant impleading the Doctrine of *Res-Judicata* to show and/or establish that there was a substantive determination of the dispute before the Court of Competent Jurisdiction, either in terms of a Final ruling or Judgment on merit.
51. At any rate, the proof of the doctrine of *Res-judicata* would require a conjunctive existence of the requisite conditions and/or ingredients that bely the doctrine of *Res-Judicata*. For clarity, it would be incumbent upon the Applicant to establish the existence of a previous suit and also to show that same was between the same Parties and that the said suit was determined on merits.
52. Based on the foregoing, it is worthy to point out that though the proceedings and ultimate Judgment in respect of Nairobi HCC No 502 of 2011 touched on and/or concerned ownership of the suit property, however neither the Plaintiff nor the 2nd Defendant were Parties thereto.
53. To the extent that the Plaintiff herein was not a party to the previous suit and coupled with the fact that there is no allegation that the previous Parties herein were representatives of the Plaintiff, it is difficult to conceive the basis and or foundation upon which the 2nd Defendant herein can invoke and sustain the Doctrine of *Res-Judicata*.
54. To my mind, the Plaintiff herein could be barred by the Judgment and or determination vide Nairobi HCC No 502 of 2011, only if he was a Party thereto, which is not the case herein.
55. In a nutshell, it is my considered finding and holding that the doctrine of *Res-Judicata* does not apply to the subject case and hence the invocation and reliance on same by the 2nd Defendant is not only misconceived, but is also legally untenable.

Issue Number 2 Whether the Plaintiff/Applicant has disclosed and/or established a *Prima facie* case or at all.

56. The Plaintiff herein has contended and/or submitted that same is the lawful and registered proprietor of the suit property. In this regard, the Plaintiff has exhibited a copy of a certificate of lease (sic) issued in the year 2019.
57. Nevertheless, despite exhibiting a copy of the certificate of lease, allegedly issued in 2019, the Plaintiff has however failed to avail and/or exhibit any other document speaking to the process leading to the issuance of the certificate of lease.
58. Nevertheless, it is the Plaintiff's position that same is the registered proprietor and/or owner of the suit property and thus deserving of protection by the court.
59. As to whether the certificate of lease exhibited by the Plaintiff is lawful, valid or otherwise, same must await the plenary hearing, if at all and at the opportune time, subject to compliance with Discoveries.
60. Be that as it may, the attention of this court has been drawn to the Judgment rendered by the High court vide Nairobi HCC No 502 of 2011, where the Title to and ownership of the suit property was dealt with and/or adjudicated upon.



61. For coherence, the Judgment of the court where pertinent held as hereunder;
- “In view of my finding in (a) above, I do find that a valid title in L R No 330/506, Riara Road, Nairobi was passed onto the 1st and 2nd Defendants”.
62. From the foregoing, what the court was underlining is that the suit property, which is being tussled on herein was decreed to belong to persons who are not Parties herein.
63. In any event, none of the Parties herein have indicated that same applied to be joined in the said suit and or have since sought to vacate, impeach and/or negate the decision of the court alluded to in terms of the preceding paragraphs.
64. In my humble view, the court pronounced itself on ownership of the suit property and therefore during the subsistence of the said decision, which was a decision in *Rem*, the Plaintiff herein cannot now be heard to stake a claim over and in respect of the same property.
65. Based on the foregoing, I am afraid that the Plaintiff herein has not established and/or proven any prima facie case with overwhelming chances of success premised and/or anchored on claim to title or ownership of the suit property.
66. In the premises, I return a verdict that the claim by and/or on behalf of the Plaintiff does not measure to the threshold of what constitutes prima facies, as was underscored by the Court of Appeal in the often-cited case of *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 others* (2003) KLR 125 the Court of Appeal at page 137 held:-

“So what is a *prima facie* case? I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

Issue Number 3 Whether the subject suit amounts to and/or constitutes an abuse of the Due process of the Court.

67. The dispute herein touches on and/or concerns ownership and title to L R No 330/506 situate on Riara Road, within the City of Nairobi.
68. From the pleadings, the Plaintiff is keen to persuade the court that same is the lawful and registered owner over and in respect of the suit property.
69. However, the ownership of and title to the suit property was deliberated upon and adjudicated upon vide Nairobi HCC No 502 of 2011, wherein the court ordered and/or decreed as hereunder;
- “In view of my finding in (a) above, I do find that a valid title in L R No 330/506, Riara Road, Nairobi was passed onto the 1st and 2nd Defendants”.
70. My reading of and understanding of the pronouncement and/or decision of the High court, in terms of the preceding paragraphs confirms that the High court rendered a Judgment in *Rem*, which spoke to the ownership of the suit property.
71. Suffice it to note that the decision of the High Court over and in respect of ownership of the suit property, which was a Decree in *Rem* and therefore holds sway against the whole world, has not been challenged, rescinded, impeached and/or set aside.



72. Given that the foregoing position is still valid and coupled with the holding that the suit property belongs to Francis Maina Kibunyi and Kamunyu kahenya, respectively, who are not Parties to this suit, it would be difficult, nay impossible to make another parallel pronouncement as pertains to ownership of the suit property, (sic), in favour of the Plaintiff herein.
73. In the premises, it is my finding and holding that the filing of this suit and the continuation with the subject proceedings, despite knowledge of the Judgment rendered by the High court vide Nairobi HCC No 502 of 2011, is tantamount to abusing the Due process of the court.
74. In short, it behooves the Parties herein, if any one of them holds a *bona fide*// claim to the suit property, to proceed and seek review of the Judgment rendered by the High court and thereafter be joined therein for purposes of further proceedings.
75. To my mind, it would be an exercise in futility and/or vanity to maintain the subject suit and proceed to render another Decree in respect of Title to and/or ownership of the suit property, parallel and/or contradictory to the existing Judgment.
76. In short, the subject suit, as well as the Application herein, constitutes and/or amounts to an abuse of the Due process of this Honourable court and thus same cannot be countenanced, whatsoever and / or howsoever.
77. To vindicate the foregoing holding, I find succour in the holding in the case of *Muchanga Investments Ltdv Safaris Unlimited (africa) Ltd& 2 others* [2009] eKLR, where the Court of appeal observed as hereunder;
- “What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of “abuse of process.” It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”
- “The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice ...”
78. Having found and held that the subject suit amounts to and/or constitutes and abuse of the Due process of the court, the question that thus ought to be determined is whether same should remain alive or otherwise.
79. In my humble view, this court has the Inherent power, mandate and/or jurisdiction to ensure that her process is not misused and/or otherwise abused for collateral purposes, or such other ulterior, purposes.
80. Premised on the inherent jurisdiction of the court, I am inclined to find and hold that the subject suit, which essentially, seeks to impugn the Judgment rendered elsewhere, ought to be struck out.
81. As far as the scope, extent and tenor of the Courts inherent jurisdiction is concerned, it is appropriate to take cognizance of the holding of the Court in the case of *Madara Evans Okanga Dondo v Housing Finance Company of Kenya* [2005] eKLR, which cited *Halbury’s Laws of England*, 4th Edition Volume 37 Para 14 under the heading “Inherent Jurisdiction of the Court” at Page 23;
- “The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature



of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise (i) control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ...

In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

82. In the premises, it is evident that the Inherent jurisdiction of the court is provided to ensure that the court is competent to protect and/or preserve her processes from being misused and/ or abused.

Final Disposition:

83. Having reviewed the issues for determination which were outlined hereinbefore and having duly appraised and considered same, I come to the conclusion that the Application dated the June 24, 2020 and the entire suit constitutes an abuse of the Due process of the court.
84. In the premises, the following Ordres commend themselves unto to me;
- i. The Application dated June 24, 2020 be and is hereby Dismissed.
 - ii. The Plaintiff's suit be and is hereby struck out.
 - iii. Costs of the Application and the Main suit be and are hereby awarded to the 2nd Defendant.
85. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Kevin Court Assistant

