



**Gichuhi & another (Suing as the managers of the Estate of Margaret Wanjiru Gichuhi) v Wanjohi & 5 others (Environment & Land Case 1006 of 2010) [2022] KEELC 13697 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13697 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1006 OF 2010  
JO MBOYA, J  
SEPTEMBER 23, 2022**

**BETWEEN**

**JOHNSON HOME GICHUHI ..... 1<sup>ST</sup> APPLICANT  
GEORGE MURIUKI GICHUI ..... 2<sup>ND</sup> APPLICANT  
SUING AS THE MANAGERS OF THE ESTATE OF MARGARET WANJIRU  
GICHUHI**

**AND**

**ISAAC GATHUNGU WANJOHI ..... 1<sup>ST</sup> RESPONDENT  
ISABELLAH NYAGUTHII WANJOHI ..... 2<sup>ND</sup> RESPONDENT  
WAHFARM LIMITED ..... 3<sup>RD</sup> RESPONDENT  
ZACKY HINGA MUNYUA ..... 4<sup>TH</sup> RESPONDENT  
KOOME MBOGO T/A KOOME MBOGO & CO ADVOCATES .... 5<sup>TH</sup>  
RESPONDENT  
CITY COUNCIL OF NAIROBI ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. Vide the Notice of Motion Application dated the July 28, 2022, the Plaintiffs/Applicants herein has approached the court seeking for the following Reliefs;
  - a. ....spent.
  - b. Pending the hearing and determination of this Application, there be a Temporary Stay of Execution of the Notice of Eviction issued on the April 27, 2022 by the Defendants to the



Plaintiffs and their tenants and further that the Defendants be restrained from Evicting the Plaintiffs, their employees, Tenants or any person living on the suit herein and further from entering into or interfering with the Plaintiffs' possession of the Suit premises herein being LR No 209/1461, Nairobi.

- c. This Honorable Court be pleased to enlarge time and otherwise grant Leave to the Plaintiffs' to apply for the Substitution out of time of Margaret Wanjiru Gichuhi, deceased with Jonson Home Gichuhi as the Plaintiff in this suit.
  - d. Upon grant of Leave to apply for Substitution out of time as prayed in prayer (c) above, this Honorable Court be pleased to substitute Margaret Wanjiru Gichui and Jonson Home Gichuhi being her duly appointed Personal Representative in the matter by way of Grant of Letters of Administration *ad Litem* issued vide High Court Succession Cause No 2839 of 2012.
  - e. Upon substitution, the Honorable Court be pleased to revive the suit and give Directions as will be appropriate for the Substantive hearing hereof.
  - f. Cost of the Application be provided for.
2. The subject application is premised on the various grounds which have been enumerated in the body of the application and same is further supported by the affidavit of one Johnson Home Gichuhi, the 1<sup>st</sup> Applicant herein and to which same has attached assorted annextures in support thereof.
  3. Upon being served with the Application, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants filed a Notice of Preliminary Objection dated the August 11, 2022 and in respect of which, same have raised a Plethora of issues, *inter-alia*, the invocation of and reliance on the Doctrine of res-judicata.

### **Deposition By The Parties:**

#### **Plaintiffs' case:**

4. Vide Supporting affidavit sworn on the July 28, 2022, one Johnson Home Gichuhi, has averred that the subject suit was filed and/or lodged by Margaret Wanjiru Gichuhi, now deceased, with a view to contesting the manner and circumstances leading to the transfer and registration of LR No 209/1461, Nairobi in the name of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants/Respondents.
5. Nevertheless, the deponent has added that during the pendency of the suit, the Plaintiff herein passed on and/or died. For clarity, it has been pointed out that the Plaintiff died on the January 12, 2009.
6. Besides, the deponent has added that upon the death of the Plaintiff, the family of the deceased caucused and decided that the deponent herein be appointed as the legal administrator of the Estate of the deceased and thereafter same be substituted in place of the deceased herein.
7. Pursuant to the foregoing, the deponent has averred that same proceeded to and lodged a Succession cause vide Nairobi Hcc Succession no 2839 of 2012, seeking to be issued with the requisite Grant of Letters of Administration *ad Litem*.
8. On the other hand, the deponent has added that subsequently same was issued with the Grant of letters of administration *ad litem* and that upon the issuance of the Grant of Letters *ad litem*, same was duly forwarded to the Plaintiff's previous advocates, namely, M/s Kibe Kinoti & Co Advocates.
9. However, the deponent has added that despite the Grant of letters of administration being forwarded to the said previous advocates, same failed and/or neglected to act on the Grant of letters of



administration ad litem and in particular, to file the requisite application for substitution of the deceased Plaintiff.

10. To the extent that the previous counsel had failed to take action and filed the requisite application, the deponent has averred that same was constrained to instruct and or engage the current advocates, with instructions to file the requisite application for inter-alia, revival of the abated suit and substitution of the deceased.
11. Premised on the foregoing, the deponent has averred that the current advocates thereafter took up the instructions and proceeded to file an application seeking for the revival of the abated suit and the substitution of the deceased Plaintiff. In this regard, it has been stated that an application dated the April 3, 2017, was indeed filed and/or lodged with the court.
12. Further, the deponent has also averred that subsequently the said application dated the April 3, 2017 was heard and disposed of vide ruling of the court rendered on the July 14, 2017, whereupon the court dismissed the application beforehand.
13. Other than the foregoing, the deponent has added that upon the dismissal of the application dated the April 3, 2017 same was aggrieved and thereafter filed an appeal before the Court of Appeal vide Nairobi Court of Appeal Civil Appeal No 335 of 2017. For clarity, it has been added that the appeal was thereafter heard and disposed of vide Judgment rendered on the March 18, 2022.
14. Nevertheless, the deponent has stated that even though the application dated the April 3, 2017 was dismissed, same was however dismissed on the basis that it was incompetent and not otherwise.
15. Similarly, the deponent has also averred that the decision by the Court of Appeal vide Judgment rendered of the March 18, 2022, also dismissed the appeal, albeit not on the merits thereof.
16. Be that as it may, the deponent has stated that the applicants application seeking for extension of time, revival of the suit and substitution of the deceased of the Plaintiff has never been heard on merits. In this regard, the deponent has added that the subject application is therefore premised on the need to have the application heard on merits.
17. Finally, the deponent has stated that even though the suit that was filed by the Plaintiff, has never been heard and determined on the merits, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants/Respondent have since extracted and issued a Notice of Eviction against the Applicants. For clarity, it has been added that the Notice of Eviction, will culminate into the Eviction of the Applicants and their various tenants from the suit property.
18. In the premises, the deponent has therefore sought that the application be granted and thereby enable the suit to be heard and determined on merits.

**Response by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants'/Respondents':**

19. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants/Respondents filed a Notice of Preliminary Objection dated the August 11, 2022, and in respect of which same have raised the following grounds;
  - a. The Honourable Court lacks Jurisdiction to hear and entertain the application herein as the issues raised are res-judicata and therefore barred by dint of section 7 of the *Civil Procedure Act*, Cap 21 Laws of Kenya.
  - b. This Honourable Court having delivered its ruling on the July 14, 2017 between the same parties and touching the same issues in this cause, same lacks Jurisdiction to hear the said application as it is now *functus officio*.



- c. At any rate, the subject Application is calculated and or intended to circumvent and/or defeat the Judgment of the Court of Appeal vide civil Appeal Number 335 of 2017, whereby the Court of Appeal dismissed the Applicants appeal pertaining to similar issues.
- d. The Subject Application constitutes and/or amounts to an abuse of the due process of the court.

### **Submissions by the Parties:**

#### **Applicants' submissions:**

20. When the Application came up for hearing, the court gave and/or issued directions that both the application and the Notice of Preliminary objection shall be heard simultaneously. In this regard, the advocates for the Parties were invited to canvas the cross-cutting issues at the same time.
21. On behalf of the Applicants, counsel submitted that the application which had hitherto been filed and which was ultimately heard and disposed of by Lady Justice K Bor, Judge, vide ruling rendered on the July 14, 2017, only related to revival of the abated suit and substitution of the deceased Plaintiff.
22. Further, counsel submitted that there was no limb and or prayer in the previous application which sought for extension of time within which to seek for the revival of the suit and extension of time within which to under take substitution of the deceased Plaintiff.
23. Premised on the foregoing issues, counsel for the Applicants has contended that the issues raised in the current application are therefore dis-similar to the ones, which were advanced and dealt with vide the previous application.
24. Secondly, counsel for the Applicants has also submitted that the previous application, which was filed and prosecuted before this Honourable court, culminating into the ruling rendered on the July 14, 2017, was not heard on merits, but was disposed of on account of technicality, for being incompetent.
25. Pursuant to the foregoing, counsel for the Applicants has therefore submitted that the Doctrine of Res-judicata does not apply in respect the subject application. Consequently, counsel has contended that the Notice of Preliminary Objection is therefore misconceived and irrelevant.
26. Thirdly, counsel for the Applicants has submitted that the current Application is competent and therefore same ought to be heard and determined on the merits. In any event, counsel has further added that the court has the requisite discretion to entertain the application and extend time for revival of the abated suit and substitution of the deceased Plaintiff.
27. Fourthly, it has been submitted that the delay attendant to the subject application has been duly and adequately explained vide the supporting affidavit, which any event, has not been controverted.
28. To the extent that the contents of the supporting affidavit have neither been controverted nor impeached, Learned counsel for the Applicants has stated that the contents thereof are therefore deemed to be admitted.
29. In view of the foregoing, counsel therefore implored the Honourable court to find and hold that the application was meritorious and same ought to be granted, to pave way for the hearing and determination of the suit on merits.



### **Submissions by 1<sup>st</sup> to 3<sup>rd</sup> Respondents’:**

30. On behalf of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants’, counsel raised three pertinent issues. First, it was contended that the subject application raises similar issues and facts as the application dated the April 3, 2017, wherein the same applicant had sought leave to revive the suit herein and also to substitute the deceased.
31. Given that the issues about the revival of the suit and substitution of the deceased Plaintiff, had been raised and ventilated vide the previous application, counsel contended that the subject application was therefore prohibited by dint of Section 7 of the *Civil Procedure Act*.
32. Secondly, it was submitted that the issue pertaining to revival of the abated suit and substitution of the deceased Plaintiff, having been duly addressed and determined by a court of coordinate jurisdiction, the subject application was barred by the Doctrine of Functus officio.
33. Thirdly, counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants submitted that upon the dismissal of the Application dated the April 3, 2017, the Applicants herein filed and/or mounted an Appeal to the Court of Appeal vide Civil Appeal No 335 of 2017.
34. Besides, counsel added that the said appeal was thereafter heard and disposed of vide the Judgment rendered on the March 18, 2022, whereupon the Honorable Court of Appeal dismissed the appeal in its entirety.
35. To the extent that the Court of Appeal had also dealt with and addressed the issue of revival of the abated suit and substitution of the deceased Plaintiff, counsel for the Defendants submitted that the current application is therefore meant to upset the decision of the Court of Appeal.
36. In the premises, Learned counsel added that given the hierarchy of the Court of Appeal, an invitation for this court to sit on appeal on the decision of the Court of Appeal, would be tantamount to abusing the Due process of the law.
37. Based on the foregoing, counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, therefore implored the court to find and hold that the subject application other than being an abuse of the due process of the court, is also legally untenable.

### **Issues for Determination:**

38. Having reviewed the application dated the July 28, 2022, the Supporting Affidavit thereto and the Notice of Preliminary objection and having similarly considered the submissions made on behalf of the Parties, the following issues do arise and are pertinent for determination;
  - i. Whether the subject Application is Res-Judicata and thus barred by the Provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.
  - ii. Whether this Honourable court is Functus Officio.

### **Analysis and Determination:**

#### **Issue number 1 - Whether the subject Application is Res-Judicata and thus barred by the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.**

39. It is common ground that the Applicant herein had previously filed and/or mounted an application dated the April 3, 2017, wherein same sought to revive the instant suit and also to substitute the



- deceased Plaintiff with the 1<sup>st</sup> Applicant herein, who was reported to have obtained Grant of letters of administration ad litem.
40. Following the filing of the said application, same was indeed processed, readied for hearing and was ultimately heard and disposed of vide ruling of the court rendered on the July 14, 2017. For clarity, the court dismissed the said application with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
  41. There is no gainsaying that upon the dismissal of the previous application dated the 3<sup>rd</sup> April 2017, the Applicants herein were aggrieved and thus filed an appeal before the Court of Appeal vide Civil Appeal No 335 of 2017, challenging the dismissal of the impugned application.
  42. Subsequently, the appeal to the Court of Appeal, namely, Civil Appeal No 335 of 2017, was heard and disposed of vide a Judgment of the court rendered on the March 18, 2022, whereupon the Honourable Court of appeal dismissed the appeal.
  43. Notwithstanding the decision by the Lady Justice K Bor, Judge, rendered on the July 14, 2017 and the decision of the Honourable Court of appeal, rendered on the March 18, 2022, the Applicants herein have since returned to this court and same are seeking *inter-alia*, orders for revival of the subject suit as well as substitution of the deceased Plaintiff.
  44. It is apparent, that the previous application, namely the application dated the April 3, 2017, had sought similar or near similar orders. For clarity, the central nay primary relief that was sought in the previous application was the revival of the suit which had abated by operation of the law and upon such revival, substitution.
  45. Nevertheless, even though the said reliefs were entertained and adjudicated upon, the Applicants herein have now returned and are seeking to be granted similar orders premised on the same provisions of the law, that regulate revival of suits and substitution of deceased Parties.
  46. Despite the similarity in the reliefs sought and the provision of the law invoked, counsel for the Applicants still contended that the two applications were dis-similar and hence the doctrine of res-judicata does not apply.
  47. Further, counsel for the Applicants added that to the extent that the wording of the reliefs sought are different and coupled with the facts that no extension of time for substitution was sought in the previous application, Section 7 of the [Civil Procedure Act](#), is therefore irrelevant and inapplicable.
  48. With tremendous respect, the submissions by counsel for the Applicants amounts to splitting hairs, insofar as the previous application had sought for the same reliefs or substantially, the same Reliefs, that are being sought vide the current application.
  49. In any event, event assuming that the issue of extension of time for purposes of revival of the abated suit and extension of time for substitution of the deceased Plaintiff, were not captured in the previous application, would the failure to include same take out the subject application outside the scope and Legal Parametres of the Doctrine of Res-Judicata.
  50. To my mind, the issues about extension of time for purposes of revival of the abated suits and for purposes of substitution, were directly linked to the issues at the foot of the previous application and hence ought and should have been made grounds of attack or defense in the previous application.
  51. To this end, it is appropriate to take cognizance of Section 7 of the [Civil Procedure Act](#), Cap 21 Laws of Kenya.



52. For convenience, same are reproduced as hereunder;

"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  
(1) decided before the suit in question whether or not it was instituted before it.

Explanation. For the purposes of this section, the competence of a court shall  
(2) be determined 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  
(3) alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. Any matter which might and ought to have been made ground  
(4) of defence or attack 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  
(5) 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  
(6) 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."

53. Essentially, explanation 4 of Section 7 (supra), stipulates that issues and reliefs, which ought to have been included in the previous proceedings/applications, but were left out, (either deliberately or otherwise), shall be deemed to be constructively Res-Judicata. In this regard, such issues, cannot be re-agitated in a subsequent suit or application.

54. To buttress the foregoing observation, it is appropriate to adopt and reiterate the dictum of the Court of Appeal vide *Kenya Commercial Bank Ltd versus Benjob Amalgamated Ltd* (2017) eKLR, where the Court of Appeal stated and held as herein;

'Cognizant of the above principles, the courts called upon to decide suits or issues previously canvassed or which ought to have been raised and canvassed in the previous suits have not shied away from invoking the doctrine as a bar to further suits. As was stated in *Henderson v Henderson* (1843) 67 ER 313, res judicata applies 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. In the case of *Mburu Kinyua v*



Gachini Tutu (1978) KLR 69 Madan, J Quoting with approval Wilgram VC in Henderson v Henderson (supra) stated:

“Where a given matter becomes the subject of litigation in, and of 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 in special circumstances) permit the same parties to open the same subject of litigation in respect of a 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 the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time” (emphasis added).

55. Having found and held that the issues raised at the foot of the current Application are barred by the doctrine of Res-Judicata, the next question that must be addressed is what then ought to happen to the application that is caught up by the doctrine of Res-Judicata.

56. Without belaboring the point, the succinct answer was underscored vide the holding in the case of *John Florence Maritime Ltd versus The Cabinet Secretary, Transport, Infrastructure & Public Works & Another* (2015)eKLR, where the Court of Appeal stated as hereunder;

“The rationale behind res judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably. In a nutshell, res judicata being a fundamental principle of law may be raised as a valid defence. It is a doctrine of general application and it matters not whether the proceedings in which it is raised are constitutional in nature. The general consensus therefore remains that res judicata being a fundamental principle of law that relates to the jurisdiction of the court, may be raised as a valid defence to a constitutional claim even on the basis of the court’s inherent power to prevent abuse of process under Rule 3(8) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. On the whole, it is recognized that its scope may permeate broad aspects of civil law and practice. We accordingly do not accept the proposition that Constitution-based litigation cannot be subjected to the doctrine of res judicata. However we must hasten to add that it should only be invoked in constitutional litigation in the clearest of the cases. It must be sparingly invoked and the reasons are obvious as rights keep on evolving, mutating, and assuming multifaceted dimensions.”

57. Irrespective of whichever side of the divide that one chooses to view the issues raised vide the application, the common denominator is that the two application were/ are substantially similar and canvassed the same legal issues.



58. In a nutshell, I come to the conclusion that the subject application is caught up by the Doctrine of res-judicata, both substantively and constructively. Same therefore collapses at the door step of Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya.

**Issue number 2 - Whether this honourable court is functus officio.**

59. The twin issues of revival of the abated suit herein and the substitution of the deceased Plaintiff, having been raised and disposed of vide the ruling of the court rendered on the July 14, 2017, it therefore means that similar issues cannot be revisited, re-agitated or regurgitated afresh.

60. Best of all, the decision of this Court (differently constituted) was vindicated and confirmed by the Honourable Court of appeal. See the Judgment rendered on the March 18, 2022.

61. To the extent that a Court of coordinate Jurisdiction had hitherto dealt with and adjudicate upon the subject dispute, it is trite, hackneyed and established that the same issues cannot be re-ventilated before a court of similar/coordinate Jurisdiction.

62. The Rule of law and Public Policy that bars and/or prohibits the same court or a court of coordinate Jurisdiction from dealing with a similar issue is well codified and is popularly referred to as the Doctrine of Functus Officio.

63. Put differently, the Doctrine of functus officio bars the same court or a court of coordinate Jurisdiction from having a second bite on the same issue, which have been hitherto been disposed of. Such is the Rule of the Thumb.

64. The meaning, import and tenor of the Doctrine of *functus officio* was well delineated vide the holding in the case of Telcom Kenya Ltd versus John Ochanda (Suing on behalf and on behalf of 996 former Employees of Telkom K Ltd) (2014) eKLR, where the Court of Appeal stated as hereunder;

‘The Supreme Court in Raila Odinga v IEBC cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 in which the learned author stated;

...“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”

The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. There do therefore exist certain exceptions and these have been captured thus in Jersey Evening Post Ltd vs Ai Thani [2002] JLR 542 at 550, also cited and applied by the Supreme Court;

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when



its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available.”

65. In my considered view, the Applicants herein are inviting the Honourable court to have a second bite on the same issue, which a court of coordinate jurisdiction dealt with and pronounced upon, with finality.
66. Respectfully, I am afraid that this Court has no latitude, Jurisdiction or even discretion to revisit the issues being raised at the foot of the current application. For coherence, to do so would be tantamount to inviting anarchy into the hallowed corridor of Justice.
67. Sadly, the application herein is also barred by the doctrine of *functus officio*.

**Final Disposition:**

68. Having analyzed and/or evaluated the facts contained at the foot of the current application and having considered the applicable law, I come to the conclusion that the subject application other than being misconceived, also constitutes an abuse of the Due process of the court.
69. Similarly, the same application is also calculated to cause violence to the rule of law and the general administration of justice, by attempting to invite this Honourable Court to review, reverse and/or otherwise supplant a Binding decision of the Court of Appeal vide civil appeal No. 335 of 2017.
70. For clarity, such kind of an invite would culminate into anarchy and absurdity, as well as breach of the Constitutional Order.
71. Consequently and in the premises, the application herein is devoid of merits and same be and is hereby Dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents.
72. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2022.**

**OGUTTU MBOYA**

**JUDGE**

**In the Presence of;**

Kevin Court Assistant

Mr. Njenga for the Applicants

Dr. Kamau Kuria Sc for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

No appearance for the 4<sup>th</sup> and 5<sup>th</sup> Defendants

