



Kenya Redeemed Church (Suing through its Chairman, Secretary & Treasurer) v New Life Redemption Ministry (Being sued through its Chairman, Secretary & Treasurer) (Environment & Land Case 9 of 2019) [2022] KEELC 13807 (KLR) (23 September 2022) (Ruling)

Neutral citation: [2022] KEELC 13807 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 9 OF 2019
JO MBOYA, J
SEPTEMBER 23, 2022**

BETWEEN

**KENYA REDEEMED CHURCH PLAINTIFF
SUING THROUGH ITS CHAIRMAN, SECRETARY & TREASURER**

AND

**NEW LIFE REDEMPTION MINISTRY DEFENDANT
BEING SUED THROUGH ITS CHAIRMAN, SECRETARY & TREASURER**

RULING

Background

1. Vide the Notice of Motion Application dated the June 28, 2022, the Plaintiff/Applicant herein has approached the court seeking for the following Reliefs;
 - i. This Honourable Court be pleased to set aside its orders dated the June 27, 2022, Dismissing the Plaintiffs suit and reinstate the same for an open court physical hearing.
 - ii. The Costs of this Application abides the result of the full hearing of this matter.
2. The subject application is premised on the grounds enumerated at the foot of the application and same is further supported by the affidavit of one P W Kariuki, Advocate sworn on the June 28, 2022.
3. Upon being served with the subject application the Defendant/Respondent filed a Replying affidavit sworn by one, Elizabeth N Mukuna and which is sworn on the September 20, 2022.



Deposition By The Parties:

a. Plaintiff's/applicant's Case:

4. Vide supporting affidavit sworn on the June 28, 2022, one P W Kariuki, Advocate (hereinafter referred to as the deponent) has averred that same is the duly appointed advocate for the Plaintiff/Applicant and in this regard, same is conversant with the facts of the case.
5. Further, the deponent has averred that the subject matter was fixed for hearing on the June 27, 2022 and on which date same attended court via the video conference (online platform). The deponent has added that upon attending court via the online platform, same applied for an adjournment over and in respect of the subject matter.
6. At any rate, the deponent has added that prior to attending court and applying for an adjournment, same had spoken to and discussed the issue of the adjournment with counsel for the Defendant/Respondent. For clarity, the deponent has added that the Defendant's counsel and himself had agreed to take out the matter.
7. Be that as it may, the deponent has further averred that upon applying for adjournment, which was not opposed by counsel for the Defendant, the said application for adjournment was declined.
8. On the other hand, the deponent has added that upon the application being declined, the court ordered and or directed that hearing in respect of the subject matter would proceed in open court at 11 o'clock.
9. Nevertheless, the deponent has added that according to him when the Honourable court ordered and/or directed that the matter shall proceed for hearing in open court, same projected and or imagined that the scheduled hearing in open court would be taken on another day, other than the June 27, 2022.
10. The deponent has further added that based and/or premised on his projection that the open court herein would proceed on another date and not on even day, same did not make any arrangements to attend court.
11. In any event, the deponent has averred that other than the subject matter, same was also engaged in another matter, namely, Kerugoya HCCA No 9 of 2017, which was similarly, listed for Hearing.
12. In view of the foregoing, the deponent has contended that it was therefore not possible for him to attend court, open Court Hearing, and participate in the scheduled hearing.
13. On the other hand, the deponent has averred that owing to his failure to attend court at 11 o'clock, the suit herein was latter called out and thereafter dismissed for want of prosecution.
14. Notwithstanding the foregoing, the deponent has stated that the dismissal of the Plaintiff's suit has denied and/or deprived the Plaintiff of an opportunity to ventilate her case on the merits.
15. Consequently and in the premises, the deponent has implored the court to find and hold that substantive justice can only arise, if the impugned orders of dismissal are set aside and vacated.

b. Response by the Defendant/respondent

16. Vide Replying affidavit sworn on the September 20, 2022, one Elizabeth N Mukuna has averred that same is an Advocate duly instructed and/or retained by the Defendant/Respondent and that by dint of such instructions, same is conversant with and hence authorized to swear the subject affidavit.



17. On the other hand, the deponent has confirmed that the subject matter was duly fixed and/or listed for hearing on the June 27, 2022. For clarity, the deponent has added that same indeed attended court on the scheduled hearing date.
18. Further, the deponent has also added that during the call over, counsel for the Plaintiff/Applicant applied for an adjournment and sought for time to be able to prepare his witnesses in respect of the subject matter.
19. Besides, the deponent has also averred that owing to the fact that same had agreed not to oppose the adjournment, same indicated that she readily conceded the adjournment. In short, the deponent contended that the adjournment sought by counsel for the Plaintiff was indeed consented to.
20. Nevertheless, the deponent has added that despite her consent for the adjournment, same was declined and dismissed by the Honourable court and thereafter, the court directed that the hearing do proceed in open court at 11 o'clock.
21. However, the deponent has further added that despite being aware of the fact that the subject matter had been fixed and/or set down for hearing at 11 o'clock, on the June 27, 2022, same however did not attend court as scheduled.
22. At any rate, the deponent has averred that by the time she ultimately attended court, the matter herein had long been called out and Dismissed for want of prosecution.
23. Be that as it may, the deponent contends that she is neither opposed to the application nor is she consenting to same. For clarity, the deponent maintains that she leaves the matter to the Honourable court to determine either way.

Submissions by the Parties:

a. PLaintiff's/aplicant's Submissions:

24. The Application dated the June 28, 2022, was fixed and/or listed for mention/direction on the September 21, 2022. However, when the matter was called out, advocates for the Parties consented to have the Application heard on even date.
25. Based on the foregoing, the Honourable court ordered and directed that the application be canvassed and be disposed of by way of oral submissions. For clarity, the directions to have the application disposed of vide oral submissions were duly accepted by the counsel for the Parties.
26. Premised on the foregoing, counsel for the Plaintiff/Applicant submitted that indeed the subject matter was fixed for hearing of the main suit on the June 27, 2022.
27. Further, counsel for the Plaintiff has added that on the said date, he attended court via the online platform and applied for an adjournment on various, albeit numerous grounds.
28. At any rate, counsel added that prior to attending court and applying for the adjournment, same had spoken to counsel for the Defendant/Respondent and both of them were agreeable to take out the matter and adjourn same.
29. Nevertheless, it has been submitted that the application for adjournment was heard and same was ultimately declined by the court.
30. Other than the foregoing, counsel has also submitted that upon the dismissal of the application for adjournment, the Honourable court directed that the hearing does proceed in open court at 11 o'clock.



31. Despite the orders and directions of the court, counsel has submitted that same was not able to attend the Honourable court and thus participate in the scheduled hearing, which had been directed by the court.
32. In view of the foregoing, counsel for the Plaintiff/Applicant now submits that the dismissal orders, which were meted out by the court on account of want of prosecution, are grossly prejudicial to the interests of the Plaintiff.
33. In any event, counsel for the Plaintiff has added that the dismissal orders in question have condemned the Plaintiff/Applicant, without having been heard or at all. Consequently, the counsel for the Plaintiff/Applicant has contended that the lapses, mistake and/or failure which led to the dismissal are not exclusively blamable on the Plaintiff.
34. In view of the foregoing, counsel has submitted that it is appropriate that the impugned orders be set aside, vacated and/or reviewed and the suit be reinstated for hearing and determination on merits.
35. Finally, counsel for the Applicant has also invoked and relied on the provisions of Article 159 2(d) of the Constitution. In this regard, counsel has pointed out that procedural lapses, ought not to deny the Plaintiff of a right to be heard on merits.

b. Defendant's/Respondent's Submissions

36. Though the Respondent had filed a Replying affidavit, counsel for the Respondent pointed out that same was not keen on making any submissions. In this regard, counsel for the Defendant/Respondent stated that she will leave the matter to the Honourable court to determine one way or the other.
37. Other than the foregoing, counsel for the Defendant/Respondent contended that same would adopt and reiterate the contents of the Replying affidavit.

Issues for Determination:

38. Having reviewed the Application dated the June 28, 2022, the supporting affidavit thereto and the Replying affidavit filed in respect thereof; and having similarly considered the oral submissions which were ventilated, the following issues do arise and are thus pertinent for determination;
 - i. Whether this Court is seized and/or possessed of Jurisdiction to entertain the subject Application on the face of the Provisions of Order 17 Rule 4 of the Civil Procedure Rules.
 - ii. Whether the Plaintiff has shown and/or established sufficient cause to warrant excise of Judicial discretion.

Analysis and Determination:

Issue Number 1 - Whether this Court is seized and/or possessed of jurisdiction to entertain the subject application on the face of the Provisions of Order 17 Rule 4 of the Civil Procedure Rules.

39. Before venturing to deal with and/or answer the issue herein, it is appropriate to provide a brief background culminating into the filing of the subject application.
40. To this end, it suffices to observe that the suit herein was fixed and/or scheduled for hearing on the June 27, 2022. For clarity, the hearing date had been fixed by consent and in the presence of the advocates for the respective Parties.



41. Having, duly participated in the fixation of the hearing date, both advocates attended court via online platform on the morning of the scheduled hearing date for purposes of call over.
42. However, when the subject matter was called out, counsel for the Plaintiff/Applicant applied for an adjournment on various reasons, inter-alia that same had not been able to ready and prepare the Plaintiffs witnesses.
43. Further, the counsel for the Plaintiff/Applicant also added that because he had anticipated that he was not ready, same reached out to the counsel for the Defendant/Respondent and both of them agreed not to proceed with the hearing.
44. On the other hand, counsel for the Defendant/Respondent also signaled and or indicated that same was similarly not ready to proceed with the hearing because she had also not readied her witness.
45. Notwithstanding the foregoing, Learned counsel for the Defendant added that she was not opposing the adjournment and therefore the adjournment ought to be granted.
46. After listening to the reasons, explanation and core excuses that were raised by counsel for the Plaintiff/Applicant to support the application for adjournment and considering that the date had been fixed by consent of the Parties, the Honourable court found no merits in the application for adjournment. Consequently, the application was declined.
47. Following the refusal to grant the adjournment, the court was enjoined to make further directions and in this regard, the court ordered and directed that the main suit do proceed for hearing in open court at 11 a.m.
48. Later, the subject filed was called out at 11 a.m, but neither the advocates nor the respective Parties were present. Consequently, the file herein was placed aside until 11:40 a.m.
49. Suffice it to note, that by the time the file was called out again, none of the advocates and none of the Parties were present.
50. Premised on the fact that an application for adjournment had hitherto been dealt with and disposed of, the Honourable court found no credible basis or sufficient cause to warrant the adjournment of the matter.
51. In any event, the advocates for the parties having been present during the online call over and having been duly notified of the place and time of hearing, their failure to attend court constituted and or amounts to contempt of court and or flagrant disregard of lawful orders.
52. Be that as it may, there being no reason offered and given that the advocates had not deemed it fit to attend court, at the scheduled time, the court proceeded to and dismissed the suit for want of prosecution in line of the provisions of Order 17 Rule 4 of the *Civil Procedure Rules*.
53. It is the dismissal of the suit pursuant to and in line with the provisions of Order 17 Rule 4 of the Civil Procedure Rules, that has provoked the filing of the subject application.
54. Based on the foregoing background, it is now appropriate to discern whether this court has Jurisdiction to revisit the subject matter and to reinstate same for hearing and determination on the merits, in the manner sought or at all.
55. The starting point to determining whether or not this court has Jurisdiction to reinstate the suit is by taking cognizance of Order 17 Rule 4 of the Civil Procedure Rules 2010.



56. For convenience the said provisions are reproduced as hereunder;

Court may proceed notwithstanding either party fails to produce evidence [Order 17, rule 4.]

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith.

57. My reading of the foregoing provision of the law, suggest and/or connotes that where a Party has been afforded and/or availed sufficient and/or reasonable opportunity to tender evidence, but same has failed to do so, the court is at liberty to determine the suit forthwith.

58. It is apparent, that by the usage of the Word determining the suit; the court is granted the liberty to either enter Judgment, where there is a limb of the claim that is admitted by the adverse Party or better still, dismiss the suit as against the Defendant.

59. Nevertheless, it is imperative to note that even where the suit is dismissed for want of prosecution, such a dismissal constitutes or amount of a Judgment in favor of the Defendant.

60. To this End, imperative to take cognizance of the holding in the case of *Njue Ngai v Ephantus Njiru Ngai & Another (2016) eKLR*, where the Honourable Court of Appeal stated and observed as hereunder;

' Another issue may arise as to whether a dismissal of a suit for non-attendance of the plaintiff or for want of prosecution, amounts to a judgment in that suit. The predecessor of this Court answered that issue in the affirmative when considering the dismissal of a suit for failure by the plaintiff to attend court in the case of Peter Ngome vs Plantex Company Limited [1983] eKLR stating:-

Rule 4(1) does not say 'judgment shall be entered for the defendant or against the plaintiff'. It uses the word 'dismissed'. The *Civil Procedure Act* does not define the word 'judgment'. According to Jowitt's Dictionary of English Law 2nd ed p 1025:

Judgement is a judicial determination; the decision of a court; the decision or sentence of a court on the main question in a proceeding or/one of the questions, if there are several.'

Mulla's Indian Civil Procedure Code, 13th Ed Vol 1 p 798 says: 'Judgment' means the statement given by the judge on the grounds of a decree or order,' 'Judgment – in England, the word judgment is generally used in the same sense as decree in this code'.

In my view, a judgment is a judicial determination or decision of a court on the main question(s) in a proceeding and includes a dismissal of the proceedings or a suit under Rule 4(1) of Order 1XB or under any other provision of law. A dismissal of a suit, under Rule 4(1) is a judgment for the defendant against the plaintiff. An application under Rule 3 of Order 1XB includes application to set aside a dismissal. This must be so because, when neither party attends court on the day fixed for hearing, after the suit has been called on for hearing outside the court, the court may dismiss the suit, and, in that event, either party may apply under Rule 8 to have the dismissal set aside or the plaintiff may bring a fresh suit subject to any law of limitation of actions: See Rule 7(1) of Order 1XB. This, I think, clearly shows



that Rule 7(2) was intended to bar a plaintiff whose suit has been dismissed under Rule 4(1), only from bringing a fresh suit. That provision does not bar such a plaintiff from applying for the dismissal to be set aside under Rule 8'.

61. Nevertheless, this Honourable court has also had an opportunity to deal with a similar issue and or situation pertaining to the dismissal of a suit for want of prosecution after the Parties had been afforded an opportunity to present their evidence, but failed to do so.

62. In this regard, reference is made to the case of *Homboyz Entertainment Limited versus Secretary National Building Inspectorat & 2 others [2022] eKLR*, where the court stated as hereunder;

‘My reading of the foregoing provision of the law [Order 17 Rule 4 of the Civil Procedure rules, 2010], suggest and/or connotes that where a Party has been afforded and/or availed sufficient and/or reasonable opportunity to tender evidence, but same has failed to do so, the court is at liberty to determine the suit forthwith. It is apparent, that by the usage of the Word; by determining the suit, the court is granted the liberty to either enter judgment, where there is a limb of the claim that is admitted by the adverse party or better still dismiss the suit as against the Defendant. Nevertheless, it is imperative to note that even where the suit is dismissed for want of prosecution, such a dismissal constitutes or amounts to a Judgment in favour of the Defendant.

Whereas, a dismissal which is done in the absence of the Parties or one of the Parties, is amenable to be set aside pursuant to an application under Order 12 Rule 7 of the Civil Procedure Rules 2010, a Dismissal for want of prosecution, made and/or undertaken in the presence of the Parties leads to an Inter-Partes judgment, in the nature of a Dismissal and same does not lend itself to setting aside. In the circumstances, it is my humble position that having entertained arguments from both the Plaintiffs and the Defendants, on the December 16, 2021, the resultant decision is one that can only be Appealed against and not otherwise.

63. As pertains to the subject matter, there is no gainsaying that the Parties herein and in particular the Plaintiff/Applicant, had been afforded an opportunity to present her case and timeline for the presentation of her case had been settled.

64. However, despite being aware and knowledgeable of the set timeline, both the Plaintiff and her counsel declined to avail evidence and or prosecute her case.

65. In the premises, the resultant scenario depicted a Party who was not keen to present evidence even though an opportunity had been availed and/or presented.

66. As a result of the conduct, behavior and or inaction on the part of the Plaintiff, the court was left with absolutely no alternative but to dismiss the suit.

67. In any event, whilst dismissing the suit, the court clearly indicated that the suit was being dismissed for want of prosecution under the provisions of Order 17 rule 4 of the Civil Procedure Rules 2010.

68. In view of the foregoing, I come to the conclusion that the dismissal orders that were meted out on the June 27, 2022, constituted a final Judgment in favor of the Defendant. Consequently, such a Judgment is only amenable to an appeal and not otherwise.

69. Other than the foregoing, it is also appropriate to state that any attempt by this court to revert back to and reinstate the dismissed suit, shall be tantamount to the Honourable court sitting on appeal in respect of own decision, which is neither allowed nor legally tenable.



70. In a nutshell, I come to the conclusion that this Honourable court is devoid and or bereft of the requisite Jurisdiction to entertain and/or adjudicate upon the subject application.
71. Without the requisite jurisdiction, the court is enjoined to down her tools. In this regard, it is appropriate to recall the dictum in the case of *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd 1989 KLR 1*, where the court stated and observed as hereunder;
- ' I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without Jurisdiction'.
72. In short, my answer to issue number one is that this court is devoid of Jurisdiction to entertain an Application challenging a dismissal for want of prosecution anchored on the basis of Order 17 Rule 4 of the Civil Procedure Rules 2010.

Issue Number 2

Whether the Plaintiff has shown and/or established sufficient cause to warrant excise of Judicial Discretion.

73. Having found and held that this court is divested of the requisite Jurisdiction to entertain the subject application, it would have been appropriate to terminate the ruling at this juncture.
74. Nevertheless, assuming that the court is wrong in the analysis pertaining to the legal meaning, import and tenor of the provisions of Order 17 Rule 4 of the Civil procedure Rules, the next issue that would arise is whether the Plaintiff/Applicant herein has established a sufficient cause to warrant exercise of discretion in her favor.
75. It must be recalled that the Plaintiff/Applicant herein and counsel were duly aware and knowledgeable of the scheduled time and place for the hearing. For clarity, the hearing was set to take place at Milimani law courts, Court Room number 25 at 11 am.
76. However, despite being aware of the scheduled time and place, the Plaintiff/Applicant and her counsel, without a show of courtesy and in flagrant contempt of the court, refused, failed and/or otherwise neglected to appear before the court.
77. Perhaps, the conduct of the Plaintiff/Applicant and that of her counsel epitomizes a scenario where same thought that now that we have declined to go, what will the court do. Kind of a conduct calculated to paralyse the operations of Court.
78. To this end, what comes out crystal clear is that the Plaintiff/Applicant and counsel deliberately failed to attend court and same are now keen to leverage on the own wrong but are seeking to take advantage of their own wrong doing, to circumvent, defeat and or otherwise overcome lawful court orders issued by the court.
79. In my considered view, it is not open for a Party to cling on to and or rely upon own wrong doing and take advantage of the Due process of the court.
80. To do so, shall be tantamount to aiding and abating conscious and deliberate acts and omissions, calculated to obstruct, delay and or otherwise defeat the expeditious disposal of cases.



81. To buttress the foregoing arguments, it is appropriate and worthy to recall the holding in the case of *Nabro Properties Ltd versus Sky Structures Ltd & 2 others [2002] eKLR*, per Gicheru J A where he observed as hereunder;

' It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure. The reasonableness of the rule being manifest, we may observe that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law.'

It 'has been applied to promote justice, in various and dissimilar circumstances and applies also with peculiar force to that extensive class of cases in which fraud has been committed by one party to a transaction, and is relied upon as a defence by the other. We may state the principle upon which (the court of equity) invariably acted, namely - that the author of wrong who has to put a person in a position in which he has no right to put him, shall not take advantage of his own illegal act, or, in other words, shall not avail himself of his own wrong.'

82. On the other hand, the circumstances leading to the dismissal orders, which are now sought to be challenged and/or impeached underscore negligence, inaction and want of bona-fides on the part of both counsel for the Plaintiff/Applicant and by extension the Plaintiff/Applicant.

83. Consequently, in a situation where the impugned order was precipitated by negligence and gross inaction on the part of a duly appointed advocate, can the court be called upon to sanitize such negligence, inaction and worse still, actions that were precipitated in utter contempt of the lawful court orders.

84. I am afraid that the conduct which was displayed and/or exhibited by the Parties herein, do not meet the threshold of what constitutes sufficient cause, which embodies, inter alia, Due diligence and bona Fides on the part of the Applicant.

85. In this regard, I am minded to adopt and endorse the holding of The Court of Appeal of Tanzania in the case of *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others Civil Appeal No 147 of 2006* (Munuo JA, Msoffe JA and Kileo JJA) discussed what constitutes sufficient cause and observed as hereunder:-

' It is difficult to attempt to define the meaning of the words 'sufficient cause'. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant.'

In *Daphene Parry vs Murray Alexander Carson*[16] the court had the following to say:-

'Though the court should no 'doubt' give a liberal interpretation to the words 'sufficient cause,' its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy.'

86. Finally, it would also be imperative to note that the conduct exhibited by counsel for the Plaintiff and which is also attributable to the Plaintiff/Applicant, was one that was calculated to obstruct the cause of justice and by extension calculated to defeat the Administration of Justice.



87. In such a situation, it is my humble view that such a person ought not to partake of or benefit from the Equitable discretion of the court. For coherence, Equity reminds us that he who comes to Equity, must do so with Clean Hands.
88. To this end, I take refuge in the well-considered and succinct observation by the Court of Appeal in the case of *Said Sweilem Gbeithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others [2015] eKLR*, where the Court stated and observed as hereunder;

'Justice shall not be delayed' is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure.

We agree, with respect, with the learned Judge's conclusion that the suit in the High Court was not properly handled by the appellant's advocate. The court cannot be invited to turn a blind eye in the face of such inordinate delay and in the absence of sufficient explanation. Likewise, it cannot be fashionable for parties to blame their advocate and disclaim that the mistakes made by their advocates, who they have themselves appointed cannot be visited upon them.

89. Even assuming that I had come to the conclusion that the subject application was to be determined on the basis of discretion, I would still have declined to exercise such discretion in favor of the plaintiff/Applicant.
90. In a nutshell, the conduct of the Plaintiff's/Applicant's counsel and which binds the Plaintiff/Applicant, is one that smacks of gross negligence, inaction and was replete with mala-fides.
91. Consequently, my answer to issue number two is that the Plaintiff/Applicant has not established a basis and or sufficient cause to warrant equitable intervention, in the manner sought for or at all.

Final Disposition:

92. Having analyzed the issues highlighted in the body of the Ruling herein, it must have become apparent and Evident that the subject Application is devoid of merits.
93. Consequently and in the premises, the application dated the June 28, 2022 be and is hereby Dismissed, albeit with no orders as to Costs.
94. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

OGUTTU MBOYA

JUDGE

In the Presence of;

Kevin Court Assistant

Mr. Wambugu Kariuki for the Plaintiff/Applicant.

Ms. Elizabeth Mukuna for the Defendant/Respondent.

