Kiarie v Embakasi Ranching Company Ltd (Environment & Land Case E131 of 2020) [2022] KEELC 13776 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEELC 13776 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE E131 OF 2020

JO MBOYA, J

SEPTEMBER 22, 2022

BETWEEN

BILITA WAMBUI KIARIE ..... PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LTD ..... DEFENDANT

RULING

1. Vide the Notice of Motion Application dated the 18th May 2022, the Defendant/Applicant herein has approached the court seeking for the following Reliefs;

   I. .....(spent)

   II. The Honourable Court be pleased to grant a stay of Execution in this matter pending the hearing and determination of this Application and the suit.

   III. That the Judgment entered against the Defendant on the 20th April 2022 together with all the consequential orders and or decree against the Defendant be set aside and Leave be granted to the Defendant to defend the suit on merit.

   IV. That Upon the grant of prayer 3 above, Leave be granted to the Defendant to file their Defense, together with the List of Documents, List of Witnesses and the Witness statements within 7 days from the date of the order.

   V. The Costs of the Application be in the cause.

2. The subject application is premised and/or anchored on the various, albeit numerous Grounds that are anchored in the body thereof and same is further supported by the affidavit of one, namely, Walter Waireri Kigera sworn on the 18th May 2022.

3. Upon being served with the subject application, the Plaintiff/Respondent responded thereto vide Replying affidavit sworn on the 7th June 2022. For clarity, the Replying affidavit raises various pertinent issues, inter-alia, that the Honourable court is divested of Jurisdiction to entertain and adjudicate upon the subject suit.

Depositions by the Parties:

a.Defendant's/applicant's Case:

4. The Defendant's/Applicant's case revolves around the numerous grounds enumerated at the foot of the subject application and the supporting affidavit sworn on the 18th May 2022.

5. Where pertinent, the deponent of the supporting affidavit has averred that same is a director of the Defendant/Applicant company and that by virtue of being such a director, same is authorized to swear the affidavit on behalf of the Defendant/Applicant.

6. Further, the deponent has averred that the Defendant/Applicant herein was duly served with the application and the suit pleadings in respect of the subject matter and that upon receipt of the suit pleadings, the Defendant/Applicant instructed the firm of M/s Gitonga Muriuki & Company Advocates to file the requisite papers and to defend the interests of the Defendant/Applicant.

7. It has been averred that pursuant to the instructions issued on behalf of the Defendant/Applicant to her nominated advocates, the nominated advocate proceeded to and filed a Notice of appointment of advocates on the 23rd November 2020.

8. Nevertheless, the deponent has further stated that despite filing the Notice of appointment of advocate, the Defendant's nominated advocate failed and/or neglected to file Statement of Defense and the incidental documents in accordance with the law or at all.

9. On the other hand, the deponent has further averred that at the time when the Defendant handed over the suit pleadings that were served upon her, to the nominated advocates, same also availed to the advocate the various documents necessary for the filing of the statement of defense and further responses.

10. In any event, the deponent has also stated that after the nominated advocate had been duly instructed, the Defendant/Applicant herein followed up with her nominated advocate with a view to ascertaining the status or the progress of the suit. In this regard, the deponent has averred that the nominated advocate continuously informed the Defendant that same had duly filed a statement of defense in the matter.

11. Besides, the deponent has further stated that the Applicant's nominated advocate also indicated that what was outstanding and/or pending was the fixing of a hearing date and that once same was fixed, an indication would be disseminated to the Defendant/Applicant.

12. Be that as it may, the deponent has averred that on the 26th April 2022, the Defendant/Applicant herein received a letter from the Plaintiff's advocate endorsed with a copy of the Judgment of the court rendered on the 20th April 2022 and in respect of which, the Plaintiff sought compliance with the terms of the Judgment.

13. It is the averment of the deponent that upon receipt of the impugned letter, together with a copy of the Judgment, it transpired that indeed the Defendant's/Applicant's nominated advocate had neither entered appearance nor filed a Statement of Defense in the matter.

14. Other than the foregoing, the deponent has also averred that thereafter same made efforts to ascertain the circumstances leading to the non-filing of a Statement of Defense in the matter, but the previous nominated advocate failed to offer any reasonable explanation for the failure or neglect.

15. Notwithstanding the foregoing, the deponent has averred that the mistake or error leading to the none-filing of the statement of defense was mistake on the part of the Applicant's previous nominated counsel and hence same ought not to be visited upon the Defendant.

16. Premised on the foregoing, the deponent has therefore contended that it is appropriate and just for the Honourable court to set aside the default Judgment entered on the 20th April 2022 and thereafter grant liberty to the Defendant/Applicant to file Statement of Defense and the incidental documents, to enable the matter be heard on merits.

17. At any rate, the deponent has averred that the Defendant/Applicant are ready and willing to abide by the terms and/or conditions that the Honourable court may deem fit and expedient.

b. Response By The Plaintiff/respondent:

18. Vide Replying affidavit sworn on the 7th June 2022, the Plaintiff/respondent has averred that upon the filing of the subject suit, the Defendant/Applicant was duly served with the suit pleadings and thereafter same duly instructed an advocate who filed a notice of appointment.

19. Further, the deponent has averred that after the filing of the Notice of appointment, the Defendant/Applicants previous nominated advocates participated in the proceedings on various dates, albeit aware of the fact that same had not filed the statement of defense and the statutory documents, necessary for defending the interests of the defendant/Applicant.

20. Nevertheless, it has been averred that being aware that same had not filed the statement of defense and the incidental Documents, the Defendant Applicant's previous advocate, sought for and obtained several indulgence by both the Deputy Registrar and finally the Honourable Court to enable same to comply.

21. It has further been stated that despite several instances and opportunity granted to the defendant/Applicant to file her pleadings and documents, same remained reluctant and apathetic.

22. As a result of the foregoing, the deponent has averred that the Honourable court was thereafter constrained to issue final orders calling upon the Defendant/Applicant to comply with the court orders and in default, the matter to proceed with hearing, with or without the Defendant's Documents..

23. In the circumstances, the Plaintiff/Respondent has stated that the background of the subject matter and the various opportunities that were granted to the Defendant/Applicants, show that the Defendant/Applicant herein was not keen to have the suit prosecuted.

24. Based on the foregoing, the Plaintiff/ Respondent contends that the conduct of the Defendant/Applicant militates against the exercise of Equitable discretion in favor of the Defendant/Applicant.

25. In short, the Plaintiff/Respondent has contended that the application is not only misconceived, but amounts of an abuse of the Due process of the court.

Submissions by the Parties:

a. Submissions by the Defendant/Applicant:

26. The Defendant/Applicant filed written submissions dated the 29th June 2022 and same has identified and raised three pertinent issues for consideration,

27. First and foremost, the Defendant/Applicant has submitted that this Honourable court is seized and/or possess the requisite Jurisdiction to entertain and/or adjudicate upon the subject application,

28. Counsel for the Defendant/Applicant has submitted that the Judgment which was rendered by the Honourable court on the 20th April 2022, was a Default Judgment premised on the basis that the Defendant/Applicant herein had neither entered an appearance, nor filed a Statement of Defence.

29. On the other hand, counsel for the Defendant has also indicated that the issues raised vide the subject application touched on and/or concern execution, satisfaction or discharge of the decree and hence this court is the one authorized to handle and deal with question of execution.

30. For coherence, Learned Counsel for the Defendant/Applicant has relied on the provisions of Section 34(1) of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.

31. Secondly, counsel for the Defendant/Applicant has also submitted that the Doctrine of Functus officio does not apply in the subject application insofar as the subject application seeks for the setting aside of the Default Judgment.

32. In any event, counsel for the Defendant has submitted that the issues raised in terms of the subject application fall with the known exceptions to the Doctrine of Functus officio.

33. Thirdly, it has been submitted by the counsel for the Defendant that the Judgment that was rendered was entered on error on the part of the counsel previously appointed by the Defendant/Applicant and hence, such a mistake ought not to visited upon the Defendant/Applicant.

34. In this regard, counsel further submitted that the fact that an error nor mistake was made by the p[previous advocate appointed by the Defendant/Applicant, such a mistake ought not to deny or deprive the Defendant/Applicant of a right to be heard on merits.

35. In view of the foregoing, counsel for the Defendant/Applicant has therefore contended that the Application beforehand is meritorious and same ought to be granted. For clarity, counsel has added that unless the Application is granted, the Defendant/Applicant shall be condemned unheard and thus same shall be disposed to suffer grave Injustice.

36. In support of the foregoing submissions, counsel for the Defendant/Applicant has cited and relied on various decisions inter-alia, *Samuael Kamau Macharia & Another versus Kenya Commercial Bank Ltd & 2 Others* (2012)eKLR, *Mombasa Bricks and Tiles Ltd & 5 Others versus Arvind Shah & 7 others* (2018)eKLR, *Telcom K Ltd versus John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telcom K Ltd)* (2014)eKLR, *Leisure Lodge Ltd versus Japheth Asige & Another* (2018)eKLR and *Lee G Muthoga versus Habib Zurich Finance K ltd & Another* Civil Application No. 236 of 2009 (unreported), *James Mwangi Gatharia & Another versus OCS Loitoktok & 2 Others* (2018)eKLR and *Nguruman Ltd versus Jan Bonde Nielsen & 2 Others* (2014)eKLR.

b. Submissions By The Plaintiff/respondent:

37. The Plaintiff/Respondent filed written submissions dated the 21st June 2022 and same has identified and ventilated two issues for consideration by the Honourable Court..

38. The first issued identified and raised by the Plaintiff/Respondent relates to the question of the Jurisdiction to hear, entertain and adjudicate upon the subject Application.

39. It has been submitted that the Defendant's/Applicant's previous advocate, duly participated in the course of the proceedings herein, right from the onset, the case conference, the hearing of the matter and ultimately filed final submissions on behalf of the Defendant/Applicant.

40. At any rate, it has further been submitted that during the course of the hearing, the Defendant's previous counsel sought for and obtained various indulgence from the Honourable Court, with a view to complying with the provisions of Order 7 Rule 5 and Order 11 of the *Civil procedure Rule* 2010.

41. Nevertheless, it has been pointed out that despite being afforded the various, albeit numerous opportunities, the Defendant's previous counsel failed to file the requisite pleadings and the Incidental Documents in the matter.

42. Be that as it may, it is the submissions of counsel for the Plaintiff/Respondent that having participate in the entire proceedings including filing of written submissions, the Defendant cannot now be heard to turn back and state that the Judgment under reference was a default Judgment.

43. Secondly, counsel for the Plaintiff has submitted that the Honourable court having dealt with all the issues in dispute and having rendered a merit based and just decision, this Honourable Court is now Functus officio. Consequently, counsel has further added that the court is devoid of the requisite Jurisdiction.

44. Finally, the counsel for the Plaintiff has submitted that the reliefs sought vide the application cannot be granted by the Honourable court on the face of the previous order by the court, which had hitherto granted the Defendant an opportunity to file a statement of defense and necessary documents which orders were disregarded and/or ignored.

45. On her part, counsel for the Plaintiff/Respondent has relied on several decisions inter-alia, *Raila Odinga & Others versus IEBC & Others* (2013)eKLR, *John Gilbert Ouma versus Kenya Ferry Services Ltd* (2021)eKLR, *KPLC versus Benzene Holding Ltd T/a Wyco Paints (2016)eKLR and Ruga Distributors Ltd* HCC 534 of 2011 (unreported).

Issues For Determination:

46. Having reviewed the Application dated the 18th May 2022, the Supporting affidavit thereto, as well as the Replying affidavit filed in opposition; and having similarly considered the written submissions filed by and/or on behalf of the respective Parties the following issues do arise and thus merits determination;

    I. Whether the Judgment rendered by the Honourable court on the 20th April 2022 was a Default Judgment and if not, whether same Can be set aside by the court in the manner sought.

    II. Whether the Honourable Court herein is seized of the requisite Jurisdiction to entertain the subject Application.

    III. Whether the Doctrine of Functus Officio is relevant and applicable to the subject matter.

Analysis and Determination

Issue Number 1

Whether the Judgment rendered by the Honourable court on the 20th April 2022 was a Default Judgment and if not, whether same Can be set aside by the court in the manner sought.

47. The subject application has been made pursuant to the provisions of Order 10 Rule 11 of the Civil procedure rules 2010, allegedly on the basis that the Judgments sought to be set aside was a default Judgment.

48. Before venturing to interrogate whether indeed the Judgment rendered on the 20th April 2022, was a default Judgment or otherwise, it is appropriate to reproduce the provisions of Order 10 Rule 11 of the *Civil Procedure Rules.*

49. For convenience, the said provisions are reproduced as hereunder;

> Setting aside judgment [Order 10, rule 11.]
>
> Where Judgment has been entered under this Order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.

50. To my mind, a default Judgment relates to and or ensues in a scenario where the adverse party not only fails to enter appearance and file Statement of Defense, but fails to participate in the court proceedings, which ultimately culminate into the impugned Judgment.

51. In the premises, a Judgment can only be termed to be a default Judgment if same arose pursuant to a default on the part of the adverse Party who, as a result of some default, has been prevented from taking part and/or participating in the impugned proceedings.

52. To fortify the foregoing observation, which underscore the import of default Judgment, it is imperative to take cognizance of the definition of default Judgment vide Wikipedia. The Wikipedia defines default Judgment as hereunder;

> " Default judgment is a binding judgment in favor of either party based on some failure to take action by the other party. Most often, it is a judgment in favor of a plaintiff when the defendant has not responded to a summons or has failed to appear before a court of law. The failure to take action is the default. The default judgment is the relief requested in the party's original petition.[1]
>
> Default can be compared to a forfeit victory in sports. In a civil trial involving damages, a default judgment will enter the amount of damages pleaded in the original complaint. If proof of damages is required, the court may schedule another hearing on that issue. A party can have a default judgment vacated, or set aside, by filing a motion, after the judgment is entered, by showing of a proper excuse."

53. However, in respect of the subject matter, it is common ground that the Defendant/Applicant's duly appointed advocate, namely, M/s Gitonga Muriuki & Co Advocates, filed a Notice of appointment of advocate, attended court, participated in the cross examination of the Plaintiff and ultimately filed final submissions in respect of which same challenged the substantive issues raised by the Plaintiff.

54. preceding paragraph do not warrant a contention that the resultant Judgment, would be and/or is capable of being termed as a Default Judgment, either in the manner purported by the Defendant/ Applicant or at all.

55. In my humble view, the resultant Judgment, which was rendered on the 20th April 2022 was a merit-based Judgment rendered after evaluating the totality of the issues raised and ventilated by the respective Parties and upon consideration of the final submissions that were made, by and on behalf of the respective Parties.

56. Consequently, the resultant Judgment rendered on the 20th April 2022, is not amenable to the provisions of Order 10 Rule 11 of the Civil procedure Rules. Clearly, the impugned Judgment was merit based and obviously, inter-partes.

57. To the extent that the said Judgment was merit based and inter-partes, in nature, any Party aggrieved by such a Judgment, the Defendant/Applicant not excepted, can only impeach same by way of review in accordance with the provisions of Order 45 of the *Civil Procedure Rules* 2010 or by Appeal, subject with the provisions of Section 75 of the *Civil Procedure Act* , Chapter 21, Laws of Kenya and not otherwise.

58. To buttress the foregoing legal statement, it is appropriate to adopt and underscore the dictum of the Court of Appeal vide the case of Kenya Power & Lighting Company Ltd v Benzene Holdings Ltd (2014)eKLR, where the Court stated and observed as hereunder;

> "Apart from the provisions of order 10 rule 11, order 12 rule 7 and order 36 rule 10 of the Civil Procedure Rules, dealing with the setting aside of default judgments, the Civil Procedure Rules does not have a provision for the setting aside of the final judgment. A party aggrieved by a final judgment can either move the court under order 45 for a review of the resultant decree or by lodging an appeal in terms of order 42".

59. In view of the foregoing, I come to the conclusion that contrary to the submissions by the Defendant/ Applicant, the impugned Judgment was not a default judgment and hence same is not amenable to setting aside vide the Provisions of Order 10 Rule 11 of the *Civil Procedure Rules* 2010.

60. In a nutshell, I would not be disposed to disturb the merit-based Judgment, which was rendered on the 20th April 2022, under the pretext and/or guise, that same was a default Judgment, either in the manner alleged by the Defendant/ Applicant, or otherwise.

61. Before departing from the issue herein, it may very well be that the actions or inactions of the Defendants/Applicants previous appointed counsel amounted to default in the discharge of his professional duty, but such default is not the one that is envisaged under the law.

62. Put differently, the various participations and attendance by the previous appointed counsel are deemed to have been attendance and participation by the Defendant/Applicant herein, insofar as the previous appointed counsel was a Recognized agent of the Defendant/Applicant.

63. To this end, the provisions of Order 9 Rule 2 of the *Civil Procedure Rule* are explicit and self-explanatory.

64. For ease of reference of the provisions of Order 9 Rule 2 (supra) are reproduced as hereunder;

> Recognized agents [Order 9, rule 2.]

The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts;

(c) in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.

Issue Number 2 & 3

Whether the court herein is seized of the requisite Jurisdiction to entertain the subject Application.

Whether the Doctrine of Functus Officio is relevant and applicable to the subject matter.

65. In respect of the twin issues herein, it is imperative to note that a court of law can only entertain and/or adjudicate upon a dispute that lawfully falls with her jurisdiction and not otherwise.

66. Suffice it to point out that jurisdiction is everything and without same, a court of law cannot make any step forward. Besides, without jurisdiction, there would be no need for a continuation of the proceedings, awaiting production of further evidence or at all.

67. Simply put, without jurisdiction, the honourable court is called upon to down her tools. Perhaps, the only available option where a court of law finds that same lacks jurisdiction is to strike out the impugned proceedings and no more.

68. To fortify the centrality of the question of Jurisdiction, it is appropriate to take cognizance of dictum of the Court of Appeal vide the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR, where the court stated and observed as hereunder

> " At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
>
> In common English parlance, 'Jurisdiction' denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.

69. Recently, the question of jurisdiction and the implications of lack of Jurisdiction was revisited by the Supreme Court of Kenya in the case of *Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya*

Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] eKLR, where the court observed as hereunder;

> " By jurisdiction, it is clearly meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which jurisdiction shall extend, or it may partake both these characteristics. If for example, the jurisdiction of an inferior court depends on the existence of a particular state of facts, the court must inquire into the existence of the facts in order to decide whether it has jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to a nullity. Jurisdiction, therefore, must be acquired before judgment is given.

70. Armed with the knowledge pertaining to the inclination attendant to lack of jurisdiction, this Honourable court is now able to interrogate and ascertain whether the subject application that seek to set aside a Merit-based and Inter-partes final Judgment can be set aside.

71. To my mind, once a court of law has duly considered the issues raised in a particular matter and/or dispute on their merits, the court in question ceases to have Jurisdiction to have a second bite in the matter, unless same is confronted with an Application for Review, subject the known Statutory Limitations.

72. The import of the foregoing observation becomes clearer by considering the Doctrine of Functus officio, which by its nature bars and/or prohibits a court of law from revisiting a matter, once same is heard and determined on merits.

73. In my considered view, the subject application is prohibited by dint of the Doctrine of functus officio and in this regard this court is divested of Jurisdiction.

74. As pertains to the import and scope of the doctrine of Functus officio, it is appropriate to take cognizance of the observation of the Court of Appeal vide *Telcom Kenya Ltd v John Ochanda (suing on his behalf and on behalf of 996 former employees of Telcom Kenya Ltd)* (2014)Eklr.

75. For completeness, the Honourable Court stated and held as hereunder:

> " 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."

76. In a nutshell, I find and hold that the subject Application, which seeks liberty to revisit the issues as to the filing of a statement of defense, list of witnesses, witness statement and bundle of documents which were the subject of various decision of the Court, including the order made on the 18th October 2021, is essentially barred by the doctrine of functus officio.

77. Other than the foregoing observation, it is also appropriate to underscore the fact that the issues being raised in the subject application and essentially the liberty to file statement of defense and the incidental documents, had hitherto been dealt with and orders given to that effect. For clarity, those were the orders that were neither complied with nor appropriated.

78. In the circumstances, the current application would also run afoul the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya, to the extent that the primarily relief sought herein which is the filing of pleadings and documents, had hitherto been dealt with.

79. Respectfully, I am alive to the contention that mistake of counsel ought not to be visited upon the litigant. Besides, I am also alive to the contention that blunders and/or mistakes will be made from time to time, but the fact that such blunders have been made ought not to disentitle and/or drive a Party away from the seat of justice.

80. But, the foregoing persuasive observations, which have been adhered to and applied for centuries, must be balanced against Public policy considerations and essentially the Constitutional imperatives that Courts out to determine disputes without undue delay. See Article 159 (2b) of *the Constitution* 2010.

81. In any event, my attention has been drawn to the recent decision of the Court of Appeal in the case of *Said Sweilem Gheithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others* [2015] eKLR where the Court of Appeal stated and observed that;

> "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."

82. In this respect, the Defendant/Applicant herein cannot seek to defeat the constitutional imperative, which underscores expeditious hearing and disposal of matters by blaming her own previous counsel. Such blame is not enough.

83. Nevertheless, there is no gainsaying that the Defendant/Applicant is not without recourse. The law books contain several reliefs and/or remedies, that can be pursued by the Defendant/Applicant, if well advised.

Final Disposition:

84. Premised on the extensive and elaborate analysis highlighted and amplified in the body of the Ruling herein, it must have become apparent that the subject Application, is not only misconceived and Bad in Law, but is also legally untenable.

85. Consequently and in the premises, the Application dated 18th May 2022, be and is hereby Dismissed with costs to the Plaintiff/Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22 ND DAY OF SEPTEMBER 2022.

OGUTTU MBOYA

JUDGE

In the Presence of;

Kevin Court Assistant

Ms. Kyumu h/b for Mr. Muchemi for the Plaintiff/Respondent

Mr. Chinei for the Defendant/Applicant