



REPUBLIC OF KENYA



**Mbugua v Wanjohi (Environment & Land Case E006 of 2020)  
[2022] KEELC 13720 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13720 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E006 OF 2020**

**JO MBOYA, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**FLORENCE WAIRIMU MBUGUA ..... PLAINTIFF**

**AND**

**ISAAC GATHUNGU WANJOHI ..... DEFENDANT**

**RULING**

1. Vide the Notice of Motion Application dated the June 30, 2021, the Defendant/Applicant herein has approached the court seeking for the following Reliefs;
  - I. This Honourable Court be pleased to order the Plaintiff/Respondent to give Security for cost for Kshs 1, 000, 000/= Only, or any other sum the court deems fit into a Joint Interest Earning Account to be opened by the Advocates herein, as security for the cost of the Defendant/Applicant within 30 days of the order.
  - II. The Directorate of Criminal Investigation shall ensure that the Investigation on the Fake Court order are speedily commenced and brought to conclusion and persons suspected to have been involved in the creation of the same charged in a court of law.
  - III. This Honourable Court be pleased to issue an order that the court order dated the December 3, 2020 purportedly issued by Justice Samson Okong'o in ELC Case No 501 of 2020, Florence Wairimu Mbugua v Isaac Gathungu Wanjohi and the letter dated the January 27, 2021 purportedly issued by the office of the Registrar and purportedly signed of by the Deputy Registrar, J Baraza authenticating the aforementioned court order are fake and therefore illegal, null and void and of no consequence.
  - IV. This Honourable Court be pleased to order Release of the award of Kshs 14, 625, 330/= Only, by the Government to the Applicant for the compulsory acquisition of part of title LR No 28/1.



- V. This Honourable Court do provide such other orders and directions as it may deem fit and just to grant.
- VI. The Costs of this Application be provided for.
2. The subject application is premised and/or anchored on the numerous grounds that are contained on the face of the application and same is further supported by the affidavit sworn by the Defendant/Applicant on the June 30, 2021.
  3. Though the subject Application was duly served upon the Plaintiff/Respondent, same has never filed any Response to the Application.
  4. In the premises, the Application is factually unopposed. But nevertheless, even in the absence of a Response, it does not mean that the Application must of necessity succeed.

**Deposition By The Parties:**

Applicant's Case

5. Vide the Supporting affidavit sworn on the June 30, 2021, the Defendant/Applicant, has averred that the subject suit was filed and/or lodged by the Plaintiff/Respondent on or about the August 20, 2020.
6. Nevertheless, the deponent has further averred that despite the filing of the subject suit, the Plaintiff/Respondent failed and/or neglected to effect service of the Pleadings and the summons to enter appearance upon same.
7. Further, the deponent has averred that despite not having been served with the pleadings and Court process, in respect of the subject matter, same became aware of the existence of the subject case when the Director of valuation, one Charles Moemi wrote a letter unto him forwarding copies of some court order, which was purported to have been issued in favor of the Plaintiff/Respondent herein.
8. It has been averred that upon receipt of the impugned order, which was alleged to have been issued vide Milimani ELC E501 of 2020, the deponent herein instructed his counsel on record to correspond with the Deputy Registrar of the court and ascertain whether indeed the impugned order was lawful and legitimate.
9. On the other hand, the deponent has averred that when his nominated advocate wrote to the Deputy Registrar of the court, seeking to ascertain the authenticity of the order which was alleged to have been issued vide Milimani ELC E521 of 2020, the Deputy Registrar respondent and stated that the impugned order did not emanate from this court.
10. Other than the foregoing, it has also been averred that the Deputy registrar also pointed out that the suit, namely, Milimani ELC E521 of 2020, wherein the purported order is said to have been issued, was similarly not available amongst the court files obtaining in the courts' Registry.
11. Be that as it may, the deponent added that the Deputy Registrar however pointed out that there existed a separate and distinct suit, namely, ELC (OS) No E006 of 2021 being the subject suit. For clarity, it has been averred that it is the Deputy Registrar of the court that brought the existence of the subject suit to the attention of the Defendant/Applicant.
12. Further, the deponent has averred that upon being made aware of the existence of the subject suit, same instructed his advocates on record to proceed and obtain copies of the pleadings and incidental documents obtaining in the court file.



13. Premised on the foregoing, the deponent has stated that his advocate on record proceeded to and procured the pleadings and requisite documents from the court file and upon receipt of the said documents, the advocate was able to enter appearance and thereafter file the subject application.
14. Notwithstanding the foregoing, the deponent has stated that the Plaintiff herein has engaged and/or indulged in fraudulent and criminal activities, inter-alia, the generation of fake court orders, whose purport is merely meant to defraud the cause of justice.
15. At any rate, the deponent has stated that upon coming into contact with the fraudulent/fake court order which was served upon the Chief land registrar by the Plaintiff herein, same proceeded to and lodged a complaint with the Police vide OB No 98/16/02/2021-Kilimani Police Station.
16. However, it has been stated that despite having lodged the complaint with Kilimani Police Station, vide the named OB Number, the police have never taken any appropriate steps towards investigating the fake order which was generated by the Plaintiff.
17. In this regard, the deponent therefore seeks that this Honourable court does issue orders directing the Directorate of Criminal Investigations to hasten and finalize the investigations in respect of the fake orders.
18. Other than the foregoing, the deponent has also averred that the suit herein which has been filed by the Plaintiff constitutes and/or amounts of an abuse of the Due process of the court and in any event, same was merely meant to cover up for the fraudulent/fake orders which the Plaintiff had generated and served upon the Chief Land Registrar.
19. Besides, it has also been pointed out that the suit property herein was bought and/or purchased by the deponent from a Public auction conducted by M/s Standard Chartered Bank, same being the Chargee, to whom same had been charged by the Plaintiff herein.
20. Given that the suit property was sold and /or disposed vide public auction and thereafter the Defendant became the registered owner, it is contended that the Plaintiff's claim to the suit property by way of an adverse possession is therefore misconceived and Legally untenable.
21. In the premises, it has been contended that the suit by the Plaintiff herein is not only premature and misconceived, but same is equally, devoid of bona fides.
22. Given the contention that the suit has been filed in bad faith and in any event, lacking in substance, the deponent has averred that the suit herein is therefore meant to vex him and not otherwise.
23. In the circumstance, the deponent has averred that the lack of substance, coupled with the bad faith that inform the subject suit should therefore warrant the imposition of an order for provision of Security for cost.
24. Finally, the deponent has also averred that long after of the acquisition of the suit property, the Government of the Republic of Kenya proceeded to and compulsorily acquired a portion of the suit property. In this regard, the Government certified the compensation as Kshs 14, 625, 330/= only, which amount is yet to be paid.
25. To this end, the deponent has stated that it is the said money that the Plaintiff herein attempted to procure and obtain through the fake order which was served on the Chief Land Registrar.
26. However, given that the suit property belongs that the deponent, it has been averred that this Honourable court therefore ought to order and/or direct that the said monies be forthwith paid out to or released to the deponent.



27. In the premises, the deponent has therefore implored the Honourable court to proceed and allow the subject application for the Ends of Justice to be realized and/or achieved..

### **Response By The Plaintiff/respondent**

28. The subject application was duly and variously served upon the Plaintiff/Respondent including by way of substituting service. For clarity, service was advertised vide one of the Daily Newspapers with wide circulation in the Country.
29. Following the service of the application herein upon the Plaintiff/Respondent, by way of an advertisement, the Defendant/Applicant filed the requisite affidavit of service, which showed that the advertisement was carried out on the June 13, 2022.
30. Nevertheless, despite service upon herself resting with service vide substituted means, the Plaintiff/Respondent, has never deemed it fit or expedient to file any Responses to the Application.
31. In the premises, it is evident and/or apparent that the subject Application has not been responded and hence the Honourable Court will proceed to deal with same premised on the foregoing background and basis.

### **Submissions By The Parties:**

Submissions By The Defendant/applicant:

32. The Defendant/Applicant herein filed written submissions dated the October 29, 2021 and in respect thereof same has addressed four pertinent issues for determination;
33. Firstly, counsel for the Defendant/Applicant has submitted that the Plaintiff/Respondent herein is aware and knowledgeable of the circumstances leading to the sale and transfer of the suit property to and in favor of the Defendant/Applicant. For clarity, it has been pointed out that the suit property was sold vide public auction by the chargee.
34. Further, it has been submitted that following the sale of the suit property and the subsequent registration of same in the name of the Defendant/Applicant, the Defendant/Applicant entered upon and took possession of the suit property.
35. At any rate, it has also been submitted that the Plaintiff/Respondent herein through her agents, namely, John Macharia Mwangi has previously purported to have issue and serve Eviction notice upon the tenants thereof, occupying the suit property.
36. Premised on the issuance and service of the Eviction notices, it has been submitted that same connotes that the Plaintiff/Respondent is not in occupation and/or possession of the suit property.
37. In short, counsel for the Defendant/Applicant has submitted that the purported claim by the Plaintiff/respondent herein based on Adverse possession, is therefore ex-facie, premature, incompetent, shallow and sham.
38. To this end, counsel for the Defendant/Applicant has thus submitted that it is therefore appropriate that an order be made for the provision of security for costs, to safeguard and protect the interest of the Defendant/Applicant.
39. Secondly, counsel for the Defendant/Applicant has also submitted that upon the Defendant/Applicant becoming aware of the fake and fraudulent order which was purportedly issued vide



Milimani ELC 501 of 2020, the Defendant/Applicant lodged a Formal complaint with the Police at Kilimani Police Station.

40. On the other hand, it has further been submitted that upon the lodgment of the Complaint, the Defendant/Applicant was issued with an OB No 98/16/02/2021. In this regard, submissions have been made that it was therefore incumbent upon the Police to hasten and conclude the investigations.
41. Nevertheless, counsel for the Defendant/Applicant has submitted that despite the lodgment of the said Complaint, the Police have not carried out and/or concluded the investigations and hence there is need to direct the Directorate of Criminal Investigations to carry out and conclude the investigations as relates to the impugned fake order.
42. Thirdly, counsel for the Defendant/Applicant has submitted that to the extent that the Deputy registrar wrote back and authenticated that the purported order which was allegedly issued vide Milimani ELC 501 of 2020 was fake, there is need for this Honourable court to declare that said order was indeed illegal null and void.
43. Finally, counsel for the Defendant/Applicant has also submitted that the Honourable court should be pleased to order and or direct that the Government of Kenya to release to the Defendant/Applicant the sum of Kshs 14, 625, 330/= only, being the award at the foot of compensation for compulsory acquisition over and in respect a portion of the suit property.
44. In support of the foregoing submissions, Learned Counsel for the Defendant/Applicant has cited and relied on various decisions inter-alia, *Shah & 2 Others v Shah & 2 Others (1982)eKLR*, *Raw Bank PLC versus Yusuf Shah Mohamed Omar & Another (2020)eKLR* and *The Commissioner of Police & Another versus Kenya Commercial Bank & 4 Others (2013)eKLR*.

#### **Submissions By The Plaintiff/respondent**

45. Similarly, it is appropriate to state that the Plaintiff/Respondent herein also did not file any written submissions in respect of the subject matter.
46. Simply put, the only submissions on record are the submissions filed by and or on behalf of the Defendant/Applicant, whose details have been adverted to herein before.

#### **Issues For Determination:**

47. Having reviewed the Notice of Motion Application dated the June 30, 2021, the Supporting affidavit thereto and having considered the written submissions filed by and/or on behalf of the Defendant/Applicant, the following Issues do arise and are thus pertinent for determination;
  - I. Whether this Honourble Court is seized of Jurisdiction to make Declaratory Orders pertaining to (sic) orders if any, that were made vide Milimani ELC 501 of 2020, same being a Separate cause and or file.
  - II. Whether this Honourable Court in an ordinary suit and where the Directorate of Criminal Investigation is not a Party, can make an order against the Directorate of Criminal Investigation.
  - III. Whether the Honourable court can decree and/or direct the release of Kshs 14, 625, 330/= only, (sic) held by the Government of Kenya to the Applicant on the basis of an Interlocutory application and without the presence of the Attorney General.



- IV. Whether this is a suitable case for an order for Provision of security OF costs and if so, the Quantum thereof.

### **Analysis And Determination**

#### Issue Number 1

Whether this Honourable court is seized of Jurisdiction to make Declaratory orders pertaining to (sic) orders if any, that were made vide Milimani ELC 501 of 2020, same being a separate cause and or file.

48. From the face of the application filed by the Defendant/Applicant, same has contended that there was a purported order that is said to have been issued vide Milimani ELC No 501 of 2020, but which order has since turned out to be fake and fraudulent.
49. Other than the foregoing, it has also been stated that even the said suit, namely Milimani ELC 501 of 2020, wherein the fake order was said to have been issued, was also found to be non-existent.
50. Premised on the foregoing perspectives, the Defendant/Applicant has now implored the court to proceed and issue Declaratory orders and in particular, to declare that the said orders which were issued vide Milimani ELC NO 501 of 2020, are illegal, null, void and of no consequence.
51. To start with, it is not lost on this court that what is before the court is an interlocutory application and not a substantive suit. Consequently, the question that must be addressed is whether the court is seized of jurisdiction to make any declaratory order in an application.
52. In my considered view, a Declaratory order by whatsoever nature, can only issue and/or made by a court as a final order, albeit in a substantive suit and not otherwise.
53. Clearly, where an applicant seeks declaratory orders in the manner sought herein, same become misconceived and otherwise legally untenable.
54. Additionally, to underscore the fact that a Declaratory order can only issue in a substantive suit, it is imperative to take cognizance of the provisions of Order 3 Rule 9 of the [Civil Procedure Rules 2010](#), which provides as hereunder;

9. Declaratory judgment [Order 3, rule 9.]

No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make a binding declaration of right whether any consequential relief is or could be claimed or not.

55. Secondly, it is common ground that the purported fake order is said to have been issued in a separate and distinct case, that is separate from the subject suit.
56. However, despite that admission, the Defendant is inviting this Honourable court to make such declaration touching on and/or concerning proceedings and orders, if any, made in a different file and by a Different Judge.
57. Respectfully, I must point out that the suit before me is not a Judicial review, to warrant the kind and nature of the Orders sought. However, even if it were judicial review, the Superior court, is not amenable to another Superior court and therefore one Judge cannot superintend and/or supervise other proceedings, before a different Judge.
58. To my mind, such kind of an invitation is not only fraught and replete with illegality, but is tantamount to anarchy. In this regard, such an invitation must deprecated.



59. In respect of this observation, I can do no better than to quote and endorse the dictum of the Court in the case of *Bellevue Development Company Ltd v Francis Gikonyo & 7 others [2018] eKLR*, where the court observed as hereunder;

' This position is so well established that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals. Pronouncements by judges of the High Court on this point are germane and demonstrative of this understanding. In *Kombovs Attorney General*[1995-98] 1EA 168, cited by Ole Keiwua, J (as he then was) properly rejected and repulsed an invitation to scrutinize and interrogate the conduct and decision of a judge of concurrent jurisdiction mounted by way of an application for enforcement of fundamental rights under section 84 of the retired Constitution.'

60. Informed by the foregoing observation, I must state without fear of contradiction that this Honourable court cannot grant the nature of reliefs sought vide prayer 3 of the application and to do so will amount to absurdity.

61. However, if the Defendant herein is keen to pursue the kind of relief vide prayer 3, the answer to such an intention obtains in Order 3 Rule 9 (supra) or by filing a requisite Application in the said file.

62. In a nutshell, my answer to issue number one is in the negative. For clarity, this Honourable court cannot grant the kind of Declaratory order sought therein.

## **Issue Number 2**

Whether this Honourable Court in an ordinary suit and where the Directorate of Criminal Investigation is not a Party, can make an order against the Directorate of Criminal Investigations.

63. Apart from seeking the impugned declaratory order on the face of an Interlocutory application, the Defendant/Applicant has also sought that this court be pleased to direct the Director of Criminal Investigations to ensure that the investigations over and in respect of (sic) the fake order be commenced and brought to conclusion and that the persons responsible for the fake order be charged.

64. First and foremost, it is not lost on the court that Directorate of Criminal Investigation is a unit within the Kenya Police Service established pursuant to the Article 243 of the *Constitution* and whose objects and functions are delineated vide Article 244 of the *Constitution* 2010.

65. By virtue of its creation, (details in terms of the preceding paragraph), the Directorate of Criminal Investigation and the National police Service are not amenable to this Honourable court, ( Environment and Land Court), as pertains to the manner in which same must commence, undertake and conclude investigations in respect of matters lodged before her.

66. Contrarily, the National Police Service and by extension the Directorate of Criminal Investigation are amenable to the directions of the office of the Director of Public Prosecution by dint of Article 157(4) of the *Constitution* 2010.



67. For coherence and to enable the Defendant/Applicant to be properly guided; the Provision of 157(4) of the Constitution are reproduced as hereunder;

(4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.

68. Secondly, the Defendant/Applicant also seeks for an order from this Honourable court to direct the Directorate of Criminal Investigations that upon completion of the impugned Investigations, that same do charge the persons responsible for the fake order.

69. Similarly, I must point out that the Directorate of Criminal Investigation has no power to commence, institute and/or undertake the charging of any suspect before a court of law. To my mind, such powers inhere in the office of the Director of Public Prosecution vide Article 157(6a) of the Constitution, 2010.

70. Yet again, it is imperative to reproduce the provisions of Article 157 (6) of the Constitution, 2010.

71. For coherence, Same is reproduced as hereunder;

(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may

(a) Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(a) Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

72. Premised on the explication of the law in terms of the preceding paragraph, it is appropriate to point out that this Honourable court is devoid of Jurisdiction to direct the Director of Criminal Investigations, to do what, inter-alia, the Constitution does not allow same to do.

73. Similarly and in this regard, I would decline to grant prayer 2 of the application.

### **Issue Number 3**

Whether the Honourable court can decree and/or direct the release of Kshs 14, 625, 330/= only, (sic) held by the Government of Kenya to the Applicant on the basis of Interlocutory application and without the presence of the Attorney General.

74. As pertains to the third issue herein, the defendant/Applicant seeks an order for the release of Kes 14, 625, 330/= only, by the Government of Kenya, on the basis that the said monies constitutes an award at the foot of Compulsory acquisition over and in respect of a portion of the suit property.

75. Sadly though, it is evident that the Government of the Republic of Kenya or the principal adviser of the government, have neither been impleaded nor sued in this matter.

76. Nevertheless, the Defendant/Applicant is keen to invite the Honorable court to make an order for the release of a substantial chunk of money, by a person who is not a party to the suit. Surely, such an order would be contrary to or in contravention of Articles 10, 27,47 and 50(1) of The Constitution 2010.



77. Other than the foregoing, it is also important to note that the prayer for the release of the said money is being sought vide an interlocutory application, which can never anchor and/or be the basis of such a substantive order.
78. Thirdly, even assuming that the Honourable court were to close its eyes, can such an order be issued without proof that there was any compulsory acquisition and that the award was assessed in the figure alluded to.
79. It is my considered view, that time is ripe for litigants and their advocates to appreciate the nature of reliefs that can be sought for and be procured vide Interlocutory Applications and those that cannot be so obtained.
80. To my mind, if that were to be done, all the stakeholders in the Civil justice sector, would help in the preservation and nurturing of the Rule of law. In any event, it will also facilitate compliance with and/or observance of the provisions of Section 1A of the Civil Procedure Act, Cap 21 Laws of Kenya.
81. Perhaps it is imperative to reproduce Section 1A of the Civil Procedure Act Cap 21, for purposes of emphasis only.
82. For convenience, Same are reproduced as hereunder;

1A. Objective of Act

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

[Act No 6 of 2009, Sch.]

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

[Act No 6 of 2009, Sch.]



83. In the circumstances, it is my considered view that the order for the release of (sic) the sum of Kshs 14, 625, 330/= only, is not legally tenable. Consequently, Same be and is hereby declined.

#### **Issue Number 4**

Whether this is a suitable case for an order for Provision of Security Of costs and if so, the Quantum thereof.

84. The Plaintiff/Respondent herein is said to have been the previous and registered owner of the suit property, which was thereafter charged to Standard Chartered Bank Limited to secure some banking facility in favor of the Plaintiff/respondent.
85. Subsequently, it appears that there was default in the service and/or liquidation of the banking facility and thereafter the charged property was sold and/or disposed of vide Public auction.
86. However, the Plaintiff/Respondent herein seems to be disputing the validity or legality of the sale, disposal and eventual transfer of the suit property to the Defendant/Applicant. For clarity, the Plaintiff/Respondent is on record as stating that the sale in favor of the Defendant/Applicant was fraudulent.
87. Notwithstanding the foregoing, the Plaintiff/Respondent, who is aware that the suit property was sold by the Chargee to and in favor of the Defendant/Applicant, has now filed a claim premised on adverse possession.
88. Besides, the same Plaintiff/Respondent, who seeks a claim on account of adverse possession, is also on record to have issued and served Eviction Notices on the Defendant's/Applicant's tenants, who are in occupation of the suit property.
89. Somehow, the Plaintiff/Respondent seems to be conceding that she is not in occupation of the suit property. clearly, if same is not in occupation of the suit property, then a critical ingredient that underpins a claim for Adverse possession is missing.
90. Other than the foregoing observation, I must also point out that the Originating summons that have been filed herein have neither exhibited nor attached a copy of the extract of title, which is a fundamental requirement under the law. See Order 37 Rule 7 of the Civil Procedure Rules 2010.
91. From the foregoing, even though the suit herein is still pending hearing in the usual manner, subject to interrogatories and discovery, the validity and bona fides of the suit, seems to be in question.
92. In my considered view, the circumstances surrounding the filing of the subject matter and the nature of the Reliefs sought thereunder, bring me to the conclusion that this is one such suit, where an order for provision of security of costs is warranted.
93. My position that an order for security for cost is warranted is fortified by the holding in the case of *Guff Engineering (east Africa) Ltd V Amrik Singh Kalgi*, Where the Court at page 281 quoted the dictum of Lord Denning MR and observed as hereunder;

‘If there is reason to believe that the company cannot pay the costs, then security may be ordered, but not must be ordered. Some of the matter which the court might take into account, such as whether the company’s claim is bona fide and not a sham and whether the company has reasonably good prospects of success.

Again it will consider whet her there is an admission by the Defendant on the pleadings or elsewhere that money is due.



The court might also consider whether the application for security was being used oppressively – so as to stifle a genuine claim. It would also consider whether the company’s wand of means has been brought about by any conduct by the Defendants, such as delay in payment or delay in doing their part of the work.

94. Having come to the conclusion that this is a suitable and appropriate case where an order for provision of security for costs is expedient, the next question that arises is the Quantum thereof.
95. Essentially, the Defendant/Applicant herein ought to have placed before the Honourable court a Draft Party and Party bill of cost, duly tabulated, as a yardstick for ascertaining the likely Costs to be incurred. However, no such Draft Party and Party bill of costs was ever attached to the supporting affidavit.
96. In the absence of such Draft bill of costs, it is not possible to discern how counsel for the Defendant/Applicant arrived at the proposed figure at Kshs 1, 000, 000/= only, which has been claimed vide prayer 1 of the application.
97. Nevertheless, it is not lost on the court that an award on account of security for cost falls for the discretion of the Honourable court, albeit to be exercised judicially and on reasonable expectation, taking into account the obtaining Advocate Remuneration Order.
98. In my considered view, the current Advocates Remuneration Order 2014 stipulates the relevant charges applicable to such matters as the one before the court. In the premises, I come to the conclusion that a figure in the region of Kshs 500, 000/= constitutes a reasonable and fair assessment of the costs that may ultimately ensue at the conclusion of the hearing.
99. Consequently, I am inclined to find and hold that the Plaintiff/Respondent should provide security for costs in the sum of Kshs 500, 000/= only and same shall be deposited in Court within a period of forty-five (45) days from the date of this order.

**Final Disposition:**

100. In conclusion and from the analysis contained elsewhere herein before, it is evident that only one prayer contained on the face of the application dated June 30, 2021 is meritorious.
101. Premised on the foregoing, I therefore make the following orders;
  - I. The Plaintiff/Respondent shall provide Security for cost assessed and certified in the sum of Kshs 500, 000/= only, which monies shall be deposited with the court within forty-five (45) days from the date of the order herein.
  - II. The amount in terms of clause (i) herein shall be held by the court/Deputy Registrar of the Court pending hearing and determination of this suit.
  - III. In default to provide and deposited with the Honourable court the sum of Kshs 500, 000/= Only, on account Of security for costs within the stipulated time herein, the Plaintiff’s/ Respondent’s suit shall stand dismissed with costs to the Defendant/Applicant.
  - IV. In the event of compliance, the Plaintiff/Respondent herein shall also take the necessary steps to have the suit herein heard and concluded within a duration of six (6) months.
  - V. Prayers number 2, 3 and 4 of the Application dated the June 30, 2021 are hereby declined.
  - VI. Cost of the Application be and are hereby awarded to the Defendant/Applicant.
  - VII. Either Party is at liberty to apply.



It is so ordered.

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

**OGUTTU MBOYA**

**JUDGE.**

**In the Presence of;**

**Kevin Court Assistant**

**Mr. Wamae for the Defendant/Applicant.**

**No appearance for the Plaintiff/Respondent.**

