Gikunji & 3 others v Nyaga & 3 others (Environment & Land Case 808 of 2021) [2022] KEELC 15583 (KLR) (31 October 2022) (Ruling)

Neutral citation: [2022] KEELC 15583 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 808 OF 2021

JO MBOYA, J

OCTOBER 31, 2022

BETWEEN

JOSEPH MWANGI GIKUNJI ..... 1ST PLAINTIFF

SAMUEL MUGUCHIA NDUNGU ..... 2ND PLAINTIFF

SYLVESTER MAGENI KISANJI ..... 3RD PLAINTIFF

JAMES KURIA NGARA ..... 4TH PLAINTIFF

AND

CRISPUS RAINI NYAGA ..... 1ST DEFENDANT

MARY KAMAU ..... 2ND DEFENDANT

PETER CHEGE ..... 3RD DEFENDANT

CITY COUNCIL OF NAIROBI ..... 4TH DEFENDANT

RULING

1. Vide notice of motion application dated the January 25, 2022, the plaintiffs/applicants herein has approached the honourable court seeking for the following reliefs;

   i. Spent.

   ii. That the firm of M/s Kiprop & Kiprop Advocates be granted leave to come on record on behalf of the plaintiffs herein after judgment.

   iii. That pending hearing and determination of this application, this honourable court be pleased to issue an order of stay of execution of the judgment delivered on February 8, 2019 and all consequential orders.

iv. That this honourable court be pleased to set aside the judgment of February 8, 2019 and all consequential orders.

v. That this honourable court be pleased to issue an order re-instating the plaintiffs' suit instituted by way of a plaint dated and filed on November 7, 2012 and which was subsequently amended by an amended plaint and further amended plaint and which was dismissed by this honourable court on November 7, 2018 for want of prosecution and to thereafter grant the plaintiffs leave to file their pretrial documents.

vi. That cost of this application be provided for.

2. The application herein is premised and anchored on the various grounds that have been articulated at the foot thereof and same is further supported by the affidavit of the plaintiff/applicant sworn on January 25, 2022 and in respect of which the deponent has made various averments and depositions.

3. Upon being served with the subject application, the 1st defendant/respondent responded thereto vide replying affidavit sworn on the March 1, 2022.

4. On the other hand, the 2nd defendant/respondent filed elaborate grounds of opposition dated the March 1, 2022.

5. However, there is no evidence that the 3rd and 4th defendants herein ever filed or lodged any response to the subject application.

6. Be that as it may, when the application came up for hearing on the March 2, 2022, the advocates for the respective parties agreed to have the impugned application canvased and disposed of by way of written submissions. In this regard, timelines for filing and exchange of written submissions were thereafter circumscribed and stipulated.

7. However, it is important to point out that even though the court gave the plaintiffs/applicants 14 days within which to file and serve written submissions, the plaintiffs/applicants herein kept playing lottery with the due process of the court and only filed their written submissions on the July 19, 2022.

8. Nevertheless, the 1st and 2nd defendants/respondents however filed their written submissions timeously and in any event long before the plaintiffs/ applicants' filed their written submissions.

9. Notwithstanding the foregoing, it is appropriate to point out that the written submissions, (whose details have been alluded to hereinbefore) forms part of the court record and same shall be taken into account in crafting the subject ruling.

Submissions By The Parties:

a. Plaintiffs'/applicants' submissions:

10. The Plaintiffs/Applicants herein filed written submissions dated the July 19, 2022 and in respect of which same have raised, highlighted and canvassed three pertinent issues for determination.

11. First and foremost, counsel for the Plaintiffs/Applicants has submitted that the Plaintiffs duly engaged and instructed the firm of M/s Eric Kinyua Advocates to take up the conduct of the matter and to prosecute same on their behalf.

12. Further, counsel for the Plaintiffs has added that upon instructing and retaining the said firm of advocates, the Plaintiffs trusted in the ability and competence of their appointed advocate to effectively handle the matter on their behalf up to and until completion.

13. Nevertheless, learned counsel for the Plaintiffs has added that despite the instructions given to the said advocates, same failed to diligently prosecute the suit on behalf of the Plaintiffs/Applicants.

14. In any event, counsel has further submitted that the said advocates also failed to revert back to and to update the Plaintiffs on the status and progress of the subject suit.

15. Essentially, learned counsel has thus submitted that the circumstances leading to the dismissal of the Plaintiffs' suit, arose as a result of the failure, mistake, error and inadvertence on the part of the Plaintiffs' previous advocates on record.

16. Consequently and in the premises, learned counsel for the Plaintiffs has submitted that the mistake before hand was not made by the Plaintiffs, but by their erstwhile counsel hitherto on record.

17. Secondly, counsel for the Plaintiffs has submitted that the mistake having been made by the Plaintiffs' previous counsel, such a mistake ought not to be visited against the Plaintiffs, who were innocent and trusted in the competence of the previous advocates to prosecute the matter on their behalf.

18. In support of the submissions that the mistake of the counsel ought not to be visited upon the client, counsel for the plaintiffs' has cited and relied on the decision in the case of *Philip Keipto Chemwolo & Another versus Augustine Kubende* (1986)eKLR, *Belinda Murai & Others versus Amos Wainaina* (1978)eKLR and *CMC Holding Ltd versus Nzioki* (2004)eKLR.

19. The third point that has been highlighted and amplified by counsel for the Plaintiffs' relates to the need and necessity to allow a Party to have his/her case heard and determined on merits.

20. In this regard, counsel for the Plaintiffs' has submitted that the subject suit touches on and concerns a claim to land and by its nature, there is need to have the matter heard and determined on merits, as opposed to technicality.

21. At any rate, counsel added that the court has a discretion in circumstances akin to the subject matter, to set aside, vacate or review the impugned orders and to allow the matter to proceed to hearing on merits.

22. In support of the foregoing submissions, counsel for the Plaintiffs' has invited the Honourable court to be guided by the holding in the case of *Edny Adaka Ishmael versus Equity Bank Ltd* (2014)eKLR, where the Honourable court underscored the need to afford Parties an opportunity to be heard.

23. Finally, counsel implored the Honourable court to find and hold that the Defendants/Respondents shall not suffer any undue prejudice and that in any event, the prejudice or detriment, if any, to be suffered is compensable in monetary terms.

b. 1st defendant's submissions:

24. The 1st Defendant filed written submissions dated the July 18, 2022 and same has basically raised and highlighted two(2) issues for consideration.

25. The first issue raised by counsel for the 1st Defendant relates to the fact that the Plaintiffs herein having appointed their previous advocate, same are therefore bound by the acts or omissions of their said advocates.

26. Consequently and in this regard, counsel has submitted that the Plaintiffs herein cannot now seek to run away from the consequences, inter-alia, inaction and failure, of their recognized agents.

27. Secondly, counsel for the 1st Defendant has submitted that even where the Plaintiffs had appointed and retained an advocate, same were still enjoined to take appropriate steps and exercise due diligence in following up the progress of their suit.

28. However, counsel added that the Plaintiffs herein have not shown any efforts that was taken by and on behalf of same to follow up (sic) the progress of the suit herein, either prior to or even after its dismissal.

29. Premised on the foregoing, counsel for the 1st Defendant has therefore submitted that the Plaintiffs/Applicants were not diligent in the prosecution of the subject suit and hence same were/are guilty of latches.

30. In support of his submissions and essentially to underscore that the Plaintiffs were still obligated to follow up and make diligent efforts to ensure the prosecution of their case, Learned Counsel has stated and relied on the decision in *Duale Maryann Gure versus Aminal Mohamud & Another* (2014)eKLR.

c. 2nd defendant's/respondent's submissions:

31. The 2nd Defendant/Respondent filed submissions dated the July 18, 2022 and same has similarly raised and canvassed two issues for consideration.

32. Firstly, counsel for the 2nd Defendant has submitted that the subject suit came up for hearing on various occasions, including the November 7, 2018, when the Plaintiffs failed to attend court and prosecute their claim.

33. Having failed to attend court and by extension to prosecute their suit, the honourable court was therefore left with no alternative, but to dismiss the Plaintiffs suit.

34. In the premises, counsel for the 2nd Defendant has therefore contended that the conduct of the Plaintiffs/Applicants, was one that was devoid of due diligence and hence the Plaintiffs herein cannot now be heard to lament the fact that their suit was dismissed for want of prosecution.

35. Secondly, counsel for the 2nd Defendant has also submitted that even though the suit was dismissed on the November 7, 2018, the Plaintiffs' herein did not take any appropriate steps or action, whatsoever to discern or authenticate the status of the suit.

36. At any rate, counsel has added that it has taken the Plaintiffs more than 3 years before filing or mounting the subject application.

37. Consequently, counsel for the 2nd Defendant has submitted that the subject application has similarly been mounted with inordinate and unreasonable delay, which essentially militates the exercise of equitable discretion to and in favor of the Plaintiffs/Applicants.

38. Finally, counsel for the 2nd Defendant has pointed out that the subject application has not laid out or met the requisite threshold to warrant being allowed. For clarity, counsel pointed out, that whoever seeks exercise of Judicial discretion, must come to court timeously and with clean hands.

39. Other than the foregoing, counsel for the 2nd Defendant added that litigation must come to an end. In this regard, it was submitted that the subject suit having been filed in the year 2012, it is inappropriate to reinstate and restore same for hearing on merit, in the manner sought by the Plaintiffs/Applicants.

Issues For Determination

40. Upon considering and evaluating the contents of the Application dated the January 25, 2022, the supporting affidavit thereto, the Responses filed on behalf of the adverse Parties; and similarly upon

considering the written submissions filed by the Parties, the following issues do arise and are worthy of determination;

i. Whether this Honourable Court is seized and possessed of the requisite Jurisdiction to set aside, vary or review the impugned orders that were made on the 7th November 2018.

ii. Whether the subject Application discloses sufficient cause or reasonable basis to warrant being granted.

Analysis And Determination:

Issue number 1 - whether this honourable court is seized and possessed of the requisite jurisdiction to set aside, vary or review the impugned orders that were made on the November 7, 2018.

41. Before venturing to address and resolve the 1st issue herein, it is appropriate to state and observed that the subject suit was fixed for hearing on the November 7, 2018, when it was expected that the Plaintiffs would attend court and produce evidence in support of their case.

42. On the other hand, it is also important to underscore that on the 7th November 2018, the duly appointed counsel for the Plaintiffs' attended court and intimated to the court that same was not ready to proceed with scheduled hearing and instead same was keen to procure and obtain an adjournment in the matter.

43. Further, Learned counsel for the Plaintiffs signaled that upon being granted with an adjournment same would be keen to mount an application to cease acting for the Applicants.

44. Be that as it may, the application that was made by and at the instance of counsel for the Plaintiffs was vehemently opposed by counsel for the Defendants, who contended that the subject suit was an old one and hence there was need to fast-track the hearing.

45. Having evaluated the arguments that were made before her, the honourable Judge (differently constituted), proceeded to and dismissed the application for adjournment. For clarity, the Honourable observed that the Plaintiffs' had not been keen to prosecute the suit.

46. On the other hand, when opportunity was afforded to counsel for the Plaintiffs to tender evidence, same signaled that he did not have the witnesses in court. In this regard, the Plaintiffs had no evidence to offer, despite opportunity having been availed and presented by the court.

47. Consequently and as a result of the failure to present or adduce evidence before the court, the honourable court was left with no alternative, but to dismiss the Plaintiffs suit.

48. For completeness, the Plaintiffs' suit was thereafter dismissed for want of prosecution with costs to the Defendants. In this regard, it is worthy to note that the Suit was dismissed for want of prosecution, albeit in the presence of counsel for the Plaintiffs.

49. Even though the order of the court was silent on the provision or the rule of law that was relied upon in the dismissal of the suit, it is evident that the dismissal took place in the presence of counsel for the Plaintiffs. Consequently, the relevant and applicable provisions are the provision of Order 17 rule 4 of the *Civil Procedure Rules 2010*.

50. Having discerned the circumstances leading to the dismissal of the Plaintiffs suit, it is now appropriate to interrogate the said circumstances and to ascertain whether this honourable court is seized of the requisite Jurisdiction to set aside, vacate and reinstate the suit for hearing and determination on merits, in the manner sought.

51. First and foremost, it is appropriate to state that the dismissal of a suit in the presence of a Party or the Parties duly recognized agents, (in this case) the advocate for the Plaintiffs, gives rise to a Judgment in favor of the adverse Party.

52. Suffice it to point out that the dismissal of the Plaintiffs suit in the presence of their duly appointed advocate culminated into a Judgment in favor of the Defendants/Respondents herein.

53. Further, it is imperative to state and underscore that the dismissal having been meted out or undertaken in the presence of counsel for the Plaintiffs, same was therefore made Inter-Parties.

54. To this end, it is important to recall that an order made in the presence and with the participation of a Party or the Parties duly appointed advocates, is binding on the Parties. See the dictum in the case of *Brokebond Liebig (T) Limited versus Mallya*.

55. Consequently, the impugned order that was made on the November 7, 2018 was essentially an Inter-Parties Judgment, that does not lend itself to setting aside, in the manner sought by the Plaintiff/ Applicants.

56. To buttress the foregoing observation and analysis, it is imperative to take cognizance of the holding in the case of *Njue Ngai versus Ephantus Njiru Ngai & Another* (2016) eKLR, where the Honourable Court of Appeal 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". [Emphasis added]

57. Whereas the Honourable Court of Appeal was dealing with an instance where the dismissal occurred in the absence of the adverse Party, who would then be at liberty to file an application for setting aside, subject to compliance with the provision of the current Order 12 Rule 7 of the *Civil Procedure Rules 2010*, the situation beforehand relates to where the dismissal took place in the presence of the adverse Party.

58. Essentially, where a court proceeds to and dismiss a suit pursuant to the provisions of Order 17 Rule 4 of The *Civil Procedure Rules 2010*, the resultant order, which constitutes a Judgment in favor of the beneficiary Party, is not capable of being set aside pursuant to an application for re-instatement of the suit.

59. To my mind, such an order, (which constitutes a Judgment), can only be appealed against and not otherwise, noting that prior to meting out the dismissal, the Honourable court calibrated on the issues raised and thereafter made conscious and deliberate findings, which underpin the dismissal.

60. Notwithstanding the foregoing, it is also imperative to recall and reiterate that this Honourable Court has previously pronounced self on the Legal implications of a Dismissal of a Suit for Want of Prosecution and essentially, Dismissal premised on the Provisions of Order 17 Rule 4 of the *Civil Procedure Rules, 2010*.

61. For coherence, the pronouncement was made vide the Decision in 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."

62. Be that as it may, my reasoning in the preceding paragraph is further fortified by the holding of the Court of Appeal in the case of *Kenya Power & Lighting Company Ltd versus 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".

63. Premised on the foregoing, it is my finding and holding that the impugned orders which were made on the November 7, 2018, albeit in the presence of counsel for the Plaintiffs, were final orders, which could only be appealed against and not otherwise.

64. In view of the foregoing, it is my holding and finding that this Honourable court is not seized of the requisite Jurisdiction to set aside, vacate or to review the orders in the manner sought or at all.

Issue number 2: Whether the subject application discloses sufficient cause or reasonable basis to warrant being granted.

65. Other than the Jurisdictional question, which I have addressed and deliberated upon vide the foregoing paragraphs, there is yet the issue of delay prior to and before the filing of the impugned application.

66. It is common ground that the impugned orders were made on the November 7, 2018, and yet the subject application was not filed until the January 25, 2022. For clarity, it took the Plaintiff a duration of 3 years 2 months, prior to filing of the subject application.

67. On the other hand, even though the Plaintiffs took a duration of more than 3 years before filing of the subject application, same have however not found it fit or expedient to offer any explanation for the delay for the period of more than 3 years.

68. It is imperative to note that whenever an Applicant is seeking to partake of or benefit from the equitable discretion of the court, such a Party, is called upon to supply and avail credible reasons and explanation to justify the impugned delay.

69. Nevertheless, the Plaintiffs/Applicants herein did not find it fit or appropriate to do so. In this regard, the Honourable court is constrained to find and hold that in the absence of any credible explanation, the subject application has been made with unreasonable and inordinate delay, which has not been explained or at all.

70. To this end, it is appropriate to take cognizance of the holding of the Court of Appeal in the case of *Johnson Home Gichhi And George Muriuki Gichuhi (Suing as the Managers of the Estate of Margaret Wanjiru Gachuiversus Isaac Gathungu Wanjohi & 5 Others* Civil Appeal 335 of 2017 (unreported), where the court held as hereunder;

> "(35) In the impugned ruling, the learned judge observed that an application for reconstruction was filed on June 28, 2016 and was allowed on July 4, 2016. This was about two years and ten months from the time the appellant obtained. letters of administration, and about 7 years from the time Margaret died. This period of inaction has been blamed on the previous advocates.. However, the appellants have not demonstrated any action they took in following up the matter. It seems that the appellants just sat back during this period without taking any initiative in pursuing the matter in court or with their advocates. This was an inexcusable lapse on their part, given the prejudice suffered by the respondents who have the title to the suit property subject of the litigation, and have not been able to enjoy possession due to the pending suit.
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> (36) As observed by this Court in Habo Agencies Limited v Wilfred Odhiambo Musingo [2015] eKLR:

"It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel."

(37) While we appreciate that a party should not be blarmed for mistake of counsel, a party must satisfy the court that he has on his part exercised due diligence and has done everything possible to pursue the matter. Although the appellants have explained the remainder of the timeline as having been spent on reconstruction of the file and subsequent filing of the application, no sufficient explanation has been tendered for the two years 10 months' delay in taking action to pursue the substitution of Margaret.

71. Finally, it is also imperative to state that it is not enough to shift blame to ones erstwhile advocate and to imagine, that by shifting blame to the previous advocate, the Party would attract mercy and sympathy from the court.

72. In respect of the subject matter, the Plaintiffs herein have spent a considerable amount of time and energy, blaming their their previous counsel. However, such blame-games, don't suffice to warrant exercise of Discretion.

73. In any event, the Plaintiffs herein have not endeavored to place before the Honourable court any evidence pertaining to efforts made by themselves towards ensuring that their own suit was duly and promptly attended to.

74. Suffice it to point out and to reiterate, the blame being shifted on to the previous counsel does not by itself constitute a sufficient cause or provide a credible basis to attract exercise of discretion in favor of the Plaintiffs.

75. In this respect, I beg to adopt and reiterate the holding of the Honourable court vide the case of *Charles Wanjohi Wathuku versus Githinji Ngure & another* [2016] eKLR, where the court held as hereunder;

"14. With respect, such attitude is not helpful to the respondents. They have all along been represented by able counsel who have their offices within the vicinity of the courts in Nyeri. The advocates themselves have not sworn any affidavit to affirm that the court was to blame for not responding to their letter bespeaking copies. The relevant court registry itself has not been asked to supply support for the assertion that it was to blame. Indeed, we have had no difficulty dealing with this application which contains all the proceedings and ruling made before Makhandia J. At any rate, a diligent and conscientious party or counsel will not sit back and wait for a response to a crucial letter when they can send reminders or personal follow ups. There was no single reminder written since June 2009! What is apparent in this case was pure inaction or neglect.

15. This Court has stated before as follows:-

"It is not enough simply to accuse the Advocate of failure to inform as if there is no duty on the client to pursue his matter. If the Advocate was simply guilty of inaction that is not excusable mistake which the Court may consider with

some sympathy". See *Rajesh Rughani –Vs- Fifty Investment Ltd & Another* (2005) eKLR .

Also in the Case of *Bains Construction Co Ltd -Vs- John Mzare Ogowe* 2011 eKLR the Court observed:-

> " It is to some extent true to say mistakes of Counsel as is the present case should not be visited upon a party but it is equally true when Counsel as agent is vested with authority to perform some duties and does not perform as principal and does not perform it, surely such principal should bear the consequences".

76. In a nutshell, I come to the conclusion that the length of delay to originate and mount the subject application was unreasonable and inordinate.

77. Further, I also find and hold that despite the unreasonable and inordinate delay which colors the subject application, the Plaintiffs/Applicants did not find it fit, just and expedient to provide any credible explanation, whatsoever and howsoever.

78. Consequently, I am minded to hold that the Plaintiffs are guilty of latches and indolence. In this regard, equity does not aid the indolent.

Final Disposition:

79. Having reviewed the issues which were isolated, highlighted and amplified in the body of the subject Ruling, it must have become evident and apparent that the subject application is not meritorious.

80. At any rate, a Party cannot take a backseat in own matter, fail to follow up the progress thereof and after substantial lapse of time, wake up to invoke(sic) the right to be heard on merits. Clearly, such conduct is not acceptable.

81. On the other hand, it is also appropriate to observe that the obligation and duty of the court is to afford the Parties an opportunity to be heard. However, where such opportunity is offered, but same is not taken, the Party at fault has only him/herself to blame.

82. Notwithstanding the foregoing, I find and hold that the application the January 25, 2022, is devoid of merits and hence same be and is hereby dismissed with costs to the defendants/respondents.

83. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31st DAY OF OCTOBER 2022.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Kevin Court Assistant

Mr. Kiluva h/b for Mr. Njeru for the 1st Defendant/Respondent.

Mr. Kiluva for the 2nd Defendant/Respondent.

Ms. Wesonga h/b for Mr. Kiprop for the Plaintiffs/Applicants.

N/A for the 3rd and 4th Defendants/Respondents.