



Njenga & another v Njuki & another (Environment and Land Case Civil Suit E027 of 2022) [2022] KEELC 13617 (KLR) (21 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E027 OF 2022**

**JO MBOYA, J
OCTOBER 21, 2022**

BETWEEN

DAVID MUNGAI NJENGA 1ST PLAINTIFF

SUSAN CHEPKEMEI SANG 2ND PLAINTIFF

AND

EVELYNE LOISE NJUKI RESPONDENT

AND

CAROLINE NGUGI DEFENDANT

RULING

1. The Plaintiffs' have commenced and originated the subject suit *vide* Plaint dated the 24th June 2022. However, the subject suit has erroneously been listed as ELC OS E027 of 2022, which seems to suggest that the originating pleadings were generated *vide* originating summons, which is erroneous and incorrect.
2. Nevertheless, it is appropriate to point out that the error and or mistake in referencing the subject suit as Originating Summons emanates from the Registry or the Department of the Judiciary that deals with the mandate of accepting pleadings and registration of same.
3. Be that as it may, it is appropriate to return to the terms of the Plaint that has commenced and originated the suit. For clarity, the Reliefs sought at the foot of the Plaint are as hereunder;
 - i. A Declaration that the goods the subject of the suit belong to the 2nd Plaintiff herein.
 - ii. An Order to Evict the 1st Defendant from the Suit Premises.
 - iii. The Plaintiffs' be allowed to Re-occupy the premises at Swan Villa Plot Number 27



- iv. The OCS Embakasi Police Station to oversee the Eiction under (b) above
 - v. The Defendants to be found jointly and severally liable for any item not found in the House.
 - vi. Cost of this suit be provided for.
 - vii. Any other or further Relief as this Honorable Court may Deem fit to grant.
4. Simultaneously with the filing of the Plaint, the Plaintiffs herein also filed an application dated the 24th June 2022, wherein same sought various albeit numerous reliefs *inter-alia*, orders of temporary injunction to bar the Defendants from removing the objects and items contained in the house situate at Swan Villa Plot No. 27, pending hearing and determination of the suit.
 5. Upon being served with the Plaint and Summons to enter appearance, and the application, both the Defendants herein duly entered appearance, filed Replying affidavit and took out a Notice of Preliminary Objection dated the 8th August 2022.
 6. Suffice it to sate that the subject matter came up for hearing of the application on the 27th September 2022, when counsel for the Defendants intimated that same had filed and served a Notice of Preliminary objection both touching on the suit and the application.
 7. Premised on the intimation by counsel for the Defendants that same had filed a Notice of Preliminary Objection touching on the Jurisdiction of the Honourable Court, the court proceeded to and issued directions pertaining to the hearing and disposal of the preliminary objection filed by the Defendants.
 8. Similarly, the court also directed the Parties to consider issue of jurisdiction appropriately and extensively and to make submissions thereon, to enable the court to determine once and for all, whether the Environment and Land court, is truly and justly vested with the requisite Jurisdiction to hear and entertain the subject dispute.
 9. In view of the foregoing, the ruling herein concerns the question of the Jurisdiction of the Honourable court, the Competence of both the Verifying affidavit and the supporting affidavit Sworn on the 24th June 2022; and essentially the competence of the suit before hand

Submissions by the parties:

a. Defendant's submissions:

10. Counsel for the Defendants raised three pertinent and salient issues touching on the competence of the suit and the notice of motion application dated the 24th June 2022.
11. First and foremost, counsel for the Defendants submitted that both the verifying affidavit to the Plaint and the supporting affidavit attached to the application before hand were made and commissioned in the United State of America, which is outside the Commonwealth.
12. To the extent that both the Verifying affidavit and the Supporting were commissioned/notarized in the United State of America (U.S.A), it was incumbent upon the Notary Public/Commissioner of Oaths to authenticate at the foot of the Notarization that same is duly authorized and certified to administer such oath.
13. On the other hand, counsel for the Defendants also submitted that both the verifying affidavit and supporting affidavit, having been taken and commissioned outside the commonwealth, it was therefore



incumbent that same comply with and adhere to the Provisions of Section 88 of the Evidence Act, Cap 80 Laws of Kenya.

14. Be that as it may, Learned Counsel for the Defendants pointed out that the two documents similarly did not comply, with the stipulation contained *vide* the Evidence Act and hence the said affidavits, were legally untenable, bad in law and otherwise invalid.
15. Secondly, counsel for the Defendants submitted that even though the Plaintiff has impleaded and sued the 2nd Defendant, there is no scintilla of allegation or claim that has been made against the 2nd Defendant in the suit, to warrant and to sustain the said joinder. In this regard, counsel submitted that the 2nd Defendant has been improperly joined and impleaded in the subject suit.
16. The third issue that was ventilated by counsel for the Defendants relates to Jurisdiction of the court to entertain and adjudicate upon the subject suit, which *inter-alia*, touches on the determination of ownership of Personal properties, household goods and chattels contained in the House, which is the subject matter of this suit.
17. According to counsel for the Defendants, the issues as pertains the Plaintiffs' household goods and chattels does not fall within the constitutional mandate and Jurisdiction of this Honourable court.
18. Finally, though counsel for the Defendants had hitherto pointed out that the suit herein touches on and or concerns a claim touching of Matrimonial Property Act 2013, however, Learned counsel abandoned the said ground.
19. For clarity, Learned Counsel indicated that same would want to pursue the said Ground during the substantive proceedings.

b. Plaintiffs' Submissions:

20. Learned Counsel for the Plaintiffs opened her submissions by admitting and acknowledging that both the Verifying affidavit and the supporting affidavit, in respect of the application of 24th June 2022 were taken and notarized in the United State of America and thus outside the commonwealth.
21. Secondly, Learned Counsel also admitted and conceded that having been taken and notarized in the United State of America, it was therefore necessary that the impugned affidavits do contained the requisite certification, as prescribed *vide* the provisions of Section 88 of the Evidence Act, Cap 80 Laws of Kenya.
22. Thirdly, counsel for the Plaintiffs also conceded that despite the explicit provisions and requirements of Section 88 of the Act, the impugned affidavits did not have or exhibit evidence of certification by and at the instance of the notary public, who administered the Oath, to show that same were authorized or mandated to administer such Oath in their areas of Jurisdiction.
23. Be that as it may, counsel submitted that the issue pertaining to the failure to show and exhibit the requisite certification was one of procedure and hence same does not go to the root of the subject suit.
24. In respect of the foregoing submissions, counsel for the Plaintiffs' invited the Honourable court to take cognizance of and to apply the import and tenor of Article 1592(d) of the Constitution 2010.
25. Thirdly, counsel for the Plaintiffs submitted that the provisions of Rule 9 of the Oaths and Statutory Declarations Rules do not apply to and in respect of Affidavits and annexures that are commissioned/ notarized outside the Republic of Kenya.



26. Premised on the foregoing submissions, counsel therefore contended that the failure to serialize and securely seal the annexures attached to the supporting affidavit in the manner provided for under Rule 9 (*supra*) does not therefore invalidate the annexures and by extension the supporting affidavit.
27. Similarly, Learned Counsel also added that the provisions of Rule 9 of the [Statutory Declarations Rules](#) also touches issues of form and procedure and hence same are not fatal to the application.
28. Fourthly, counsel submitted that the suit before hand does not only touch on ownership of Personal effects, households good and chattels in the impugned house, but also relates to Eviction of the 1st Defendant from the suit premises.
29. Consequently, counsel for the Plaintiffs reiterated and emphasized that the suit herein has been filed before the appropriate court and hence same should be heard and determined on merits.
30. In view of the foregoing, Learned Counsel for the Plaintiffs therefore invited the Honourable court to find and hold that the Notice of Preliminary objection, which has been ventilated and canvased by the Defendants, is misleading, misconceived and thus legally untenable.
31. Premised on the foregoing, Learned Counsel therefore invited the Honourable Court to Dismiss the Preliminary Objection and allow the matter to proceed.

Issues for determination:

32. Having evaluated the Plaint dated the 24th June 2022, which is the operative Pleading and therefore critical in the determination of the Preliminary objection and having considered the Notice of Preliminary objection dated the 8th August 2022; and having similarly analyzed the oral submissions that were ventilated on behalf of the Parties, the following issues are pertinent for Determination;
 - i. Whether the Honourable Court is seized of the requisite Jurisdiction to entertain and determine the Subject suit.
 - ii. Whether the Verifying Affidavit and the Impugned supporting affidavit comply with Section 88 of the [Evidence Act](#), Cap 80 Laws of Kenya and whether the annexures comply with the Provisions of Rule 9 of the [Oaths and Statutory Declaration Rules](#).

Analysis And Determination

Issue Number 1

Whether the Honourable Court is seized of the requisite Jurisdiction to entertain and determine the Subject suit.

33. It is common ground that Jurisdiction is everything and without Jurisdiction a court law, this court not excepted, is enjoined to down his/her tools.
34. Essentially, where a Court finds and holds that same is not seized of the requisite jurisdiction, there would be no need or basis to adjourn or defer the matter, *inter-alia* for purposes of production additional documents, evidence or such other endeavors, whatsoever.



35. To underscore the centrality of Jurisdiction, it is therefore appropriate to recall the dictum of Nyarangi J A in the case of *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited* [1989] KLR 1: The Honourable and Eminent Judge expressed himself as follows on the issue of Jurisdiction: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings”.

36. Similarly, the significance and importance of the issue of Jurisdiction was also addressed and articulated in the case of *Phoenix of E.A. Assurance Company Limited v Simeon Muruchi Thiga t/a Newspaper Service* [2019] eKLR, where the Court of Appeal held as hereunder;

1. 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?
2. 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 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.

37. Additionally, it is important to listen to the useful reminder articulated by the Supreme Court *vide* the decision in the case of *Samuel Kamau Macharia v Kenya Commercial Bank & Another* (2012) eKLR, paragraph 68 where the court stated and held as hereunder;

(68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits.

It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.

38. Nourished and duly educated by the dicta obtaining in the decisions alluded to in the preceding paragraphs, it is now appropriate to discern whether this court is indeed seized with the requisite jurisdiction to entertain and determine the subject suit.



39. In this respect, the entry point to determining the critical issues that underpin the subject suit is by taking into account the contents of paragraph 15 of the Plaintiff.
40. Given its importance to this determination, it is therefore appropriate to reproduce same. For convenience and completeness, the said paragraph is reproduced as hereunder;
15. At a meeting held at the Embakasi Police Station on June 17, 2022, the parties and the attorneys for the first Plaintiff agreed that the objects should not be taken from the property until the completion of the following:-
- i. Determining who is the rightful owner of the objects in the house because the second defendant claimed possession of them
 - ii. Whether the first plaintiff and the first defendant are married is to be decided. The first defendant claims there is a marriage between them, but the union that was formed under duress and intimidation was dissolved 37 days later.
41. My understanding of the contents of paragraph 15, which has been reproduced in the preceding paragraphs connotes that one of the critical issues that this court is called upon to determine is the rightful ownership of the objects (read personal effects and household goods and chattels) which are currently contained in the house in question.
42. For the avoidance of doubt, the details of the objects/Household items, which this Honourable court will be called upon to determine are said to be items that were shipped from the United State of America to the port of Mombasa and which items were intended to furnish the suit house on behalf of the one Elvis, who is said to be the son of the Plaintiffs.
43. Nevertheless, the details and particulars of the households items, which this court shall be called upon to determine are elaborated and articulated vide paragraph 7 of the Plaintiff.
44. In my considered view, the determination of the rightful ownership or otherwise of the households items, personal effects and chattels, which are alleged to have been shipped by the 2nd Plaintiff into Kenya, does not certainly fall within the mandate and Jurisdiction of this court.
45. Without belaboring the point, it is appropriate to draw the attention of the Plaintiffs and their learned counsel to the Provisions of Article 162 2(b) of The Constitution 2010. For ease of reference, the said provisions are reproduced as hereunder;



162.	System of courts					
(1)	The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).					
(2)	Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to — <table border="1" data-bbox="1139 887 1372 1487"> <tr> <td data-bbox="1139 887 1198 1111">(a)</td> <td data-bbox="1198 887 1372 1111">employment and labour relations; and</td> </tr> <tr> <td data-bbox="1139 1111 1198 1487">(b)</td> <td data-bbox="1198 1111 1372 1487">the environment and the use and occupation of, and title to, land.</td> </tr> </table>		(a)	employment and labour relations; and	(b)	the environment and the use and occupation of, and title to, land.
(a)	employment and labour relations; and					
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46. Certainly, where a litigant throw such an issue relating to determination of ownership of movable properties, personal effects and households items to the Environment and Land court, then something is a miss.
47. In this regard, there is need for a wake call, for all and sundry and particularly the learned counsel for the Plaintiffs to spare a moment and consider or better still reconsider the constituting Charter of the Environment and Land Court and pay more emphasis, to the Provisions of the *Constitution*, 2010.
48. Other than the foregoing, there is also no gainsaying that the second limb of paragraph 15 of the Plaintiff is intended to call upon this court to determine whether the 1st Plaintiff and the 1st Defendant are duly



married or whether the marriage, if any, was procured under duress and intimidation and if so, whether same was dissolved 37 days later.

49. I must point out, without fear of contradiction that the determination of whether there exists a lawful marriage between the 1st Plaintiff and the 1st Defendant and whether such a marriage, if any, was a nullity ab initio, falls within the mandate of the Magistrate's Court pursuant to and by dint of the Marriage Act, 2014 as read together with the Magistrate's Court Act, 2015.
50. Better still, if the 1st Plaintiff and by extension the 2nd Plaintiff, with whom the 1st Plaintiff is reported to be married to are not keen to approach the Magistrate's Court for whatever reason, then same have a window to approach the High Court, Family division for the determination of the question of the marriage and its existence or validity.
51. Similarly, I come to the conclusion that the Plaintiffs and their learned counsel again missed the boat when same decided to anchor and ventilate such a Claim, before the Environment and land court and not otherwise.
52. Thirdly, it is important to also take cognizance of the reliefs sought at the foot of the Plaintiff. For clarity and for good measure, the reliefs were reproduced at the onset of this ruling.
53. Without repetition, it would be recalled that the first prayer at the foot of the Plaintiff relates to a Declaration in respect of the goods, whose details are captured *vide* paragraph 7 of the Plaintiff.
54. In this respect, this Honourable Court shall be expected or called upon, if at all, at the tail end to Declare that the said goods, personal effects, households item and chattels do belong to the 2nd Plaintiff.
55. As pertains to the said prayer, I have pointed out elsewhere herein before that same does not fall for determination before this Honourable Court or within purview of this court, either by dint of Article 162 (2) (b) or the provisions of Section 13 of the Environment and Land Court Act, 2011.
56. Other than the foregoing Relief, there is also the prayer for Eviction of the 1st Defendant from the premises. However, it is imperative to note that before the court can venture to entertain and decree such eviction there is the question as to whether the 1st Plaintiff and the 1st Defendant are married or whether the marriage was procured under duress or Coercion.
57. Additionally, there would be the issue as to whether the suit property wherein the 1st Defendant is sought to be evicted from, is Matrimonial Property or otherwise. It is not lost on this court that the determination of the consequential issue as to whether or not as to the suit property, namely, Swan Villa Plot No 27, is Matrimonial Property or otherwise, falls outside the mandate of this court. For clarity, the provisions of Section 6 and 7 of the Matrimonial Property Act 2013 are succinct and relevant
58. On the other hand, it is also appropriate to state that there would be need to determine whether a Wife, that is, (subject to determination), can legally or lawfully be evicted from a Matrimonial house/home.
59. Without endeavoring to determine any of the perspectives or nuances, that I have highlighted and amplified, it is noteworthy to take cognizance of the provisions of Article 45 of the Constitution as pertains to the right of Spouses.
60. For convenience, Article 45 of the Constitution 2010, provides as hereunder;



45.	Family			
(1)	The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.			
(2)	Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.			
(3)	Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.			
(4)	Parliament shall enact legislation that recognises— <table border="1" data-bbox="1136 1442 1315 2004"> <tr> <td data-bbox="1136 1442 1197 2004">(a)</td> <td data-bbox="1197 1442 1315 2004"> marriages concluded under any tradition, or system of religious, personal or family law; and </td> </tr> </table>		(a)	marriages concluded under any tradition, or system of religious, personal or family law; and
(a)	marriages concluded under any tradition, or system of religious, personal or family law; and			



		<p>(b) any system of personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent that any such marriages or systems of law are consistent with this Constitution.</p>
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61. From the foregoing analysis, I come to the inescapable and irresistible conclusion that this Honourable court is devoid of the requisite Jurisdiction to entertain the nature and kind of dispute that is contained at the foot of the Complaint dated the 24th June 2022.
62. Similarly, the Honourable Court shall also not be able or capable of granting any or either of the Reliefs sought at the Foot of the Impugned Complaint.



Issue Number 2

Whether the verifying affidavit and the impugned supporting affidavit comply with Section 88 of the Evidence Act, Cap 80 Laws of Kenya and whether the annexures alluded to comply with Rule 9 of the Oaths and Statutory Declaration Rules:

63. In respect of the second issue, I wish to point out that where an affidavit is taken or commissioned/notarized outside the Republic of Kenya and outside the commonwealth, it is trite and established that commissioner of oaths/notary public, before whom the affidavit is taken must supply the requisite certification to authenticate that same is authorized/mandated to administer such oath.
64. Indeed, the requirement for such authentication is statutorily prescribed vide Section 88 of the evidence Act Cap 80 Laws of Kenya. For completeness, the provisions of Section 88 of the Act are reproduced as hereunder;

88.	<p>Documents admissible in England.</p> <p>When any document is produced before any court, purporting to be a document which, by the law in force for the time being in England, would be admissible in proof of any particular in any Court of Justice in England, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed—</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; padding: 5px;">(a)</td> <td style="padding: 5px;">the court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims in such document; and</td> </tr> <tr> <td style="width: 10%; padding: 5px;">(b)</td> <td style="padding: 5px;">the document shall be admissible for the same purpose for which it would be admissible in England.</td> </tr> </table>	(a)	the court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims in such document; and	(b)	the document shall be admissible for the same purpose for which it would be admissible in England.
(a)	the court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims in such document; and				
(b)	the document shall be admissible for the same purpose for which it would be admissible in England.				

65. From the foregoing provisions of the Evidence Act, what is apparent is that, if the Affidavit or Document to used or relied on was made or procured in the United Kingdom, the the Courts within



the Republic of Kenya are mandated to use and rely on same without necessity of certification or authentication of the Stamp or Seal thereon.

66. However, for such Affidavits, Statutory Declarations and Documents, which are made and procured from outside United Kingdom and the by extension, the Commonwealth, it is incumbent upon the person administering the Oath, to provide the requisite certification or authentication, to establish that same is mandated to administer such Oath and without such certification, the Affidavit/ Document, will not be admissible.
67. In respect of the subject matter, there is no gainsaying that both the verifying affidavit and the impugned supporting affidavit were taken and notarized in the United State of America, but the notary public has neither provided the requisite authentication or certification to attest that same is authorized to administer such oath in the State/County of origin.
68. Premised on the foregoing observation, the verifying affidavit attached to the Plaintiff would thus be rendered legally untenable, bad in law and invalid.
69. The net effect of such invalidation would then be that the impugned Plaintiff is neither suitably nor duly verified in accordance with the provisions of Order 4 Rule 1(2) of the *Civil Procedure Rules* 2010.
70. Effectively, the impugned Plaintiff would therefore be incompetent and similarly invalid. In any event, in the absence of any application or request to file a Compliant verifying affidavit, the court has no discretion to grant such latitude.
71. In this regard, I would similarly be obligated to strike out the Plaintiff and by extension the entire suit.
72. To this end, I share the sentiments and observation and succinct decision of the Court of Appeal in the case of *Research International East Africa Ltd V Julius Arisi & 213 Others* [2007] eKLR, where the court stated as hereunder;

In our view, the true construction of rule 1 (2) of Order VII Civil Procedure Rules is that even in cases where there are numerous plaintiffs, each plaintiff is required to verify the correctness of the averments by a verifying affidavit unless and until he expressly authorizes any of the co-plaintiffs or some of them in writing, and, files such authority in the case, to file a verifying affidavit on his behalf in which case such a verifying affidavit would be sufficient compliance with the rule. Moreover, the Grace Ndegwa's case (supra) and rule 12(1) of Order I CP Rules leave no doubt that one or more of the co-plaintiffs can validly file an affidavit verifying the correctness of the averments of the plaintiff on behalf of the other co-plaintiffs with their authority in writing.

Having come to the conclusion that the verifying affidavit of Julius Arisi was filed without authority of the other 213 plaintiffs, it follows that the other 213 respondents have not complied with mandatory provisions of rule 1 (2) of Order VII Civil Procedure Rules and that their suit was liable to be struck out by the superior court under rule 1 (3) of Order VII CP Rules.

73. In respect of the provisions of Rule 9 of the Oaths and Statutorily Declarations Rules, I must emphasize and reiterate that I share the sentiments of Hon. Justice J M Mutungi, Judge, in the Decision in the case of *Solomon Omwega Omache & another v Zachary O Ayieko & 2 others* [2016] eKLR, where the court held as hereunder;

Although the point was not taken up by the plaintiffs the court has a duty to uphold the sanctity of the record noting that this is a court of record. Before the court is a replying



affidavit with annexures which are neither marked nor sealed with commissioner's stamp. Are they really exhibits? I do not think so and they cannot be properly admitted as part of the record.

I expunge the exhibits and ineffect that renders the replying affidavit incomplete and therefore the same is also for rejection as without the annexures it is valueless. This should serve as a wakeup call to practitioners not to be too casual when processing documents for filing as it could be extremely costly to them or their clients as crucial evidence could be excluded owing to counsels or their assistants lack of attention and due diligence.

74. Premised on the foregoing observation, which I wholesomely endorse and subscribe to, I would have expunged all the annexures attached to the Supporting affidavit and thereafter struck out the impugned paragraphs of the Supporting affidavit alluding to the ill-fated annexures.
75. Nevertheless, having found and held that this Honourable Court is bereft of the requisite Jurisdiction, the observations made in respect of the 2nd issue herein are therefore moot.

Final Disposition:

76. Having addressed, evaluated and analyzed the pertinent issues that were isolated and highlighted in the body of the subject ruling, it is now appropriate to bring the matter to a close.
77. Be that as it may, I must point out that the subject suit was recklessly mounted and commenced before the Environment and Land Court, albeit without Due regard to the import and tenor of Article 162 (2) (b) of the Constitution 2010.
78. Consequently and in the premises, I find and hold that this Honourable court is devoid of Jurisdiction to entertain the subject suit. In this regard, the suit be and is hereby struck out with costs to the Defendants.
79. Similarly, the Status Quo orders which were granted on the 27th June 2022, be and are hereby vacated.
80. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER 2022.

OGUTTU MBOYA

JUDGE

In the Presence of;

Kevin/ Benson. Court Assistant:

Ms. Kariuki Owesi for the Plaintiffs.

Ms. Wanjiru Kiniti for the 1st Defendant.

Ms. Wambui Gichuhi for the 2nd Defendant.

