



REPUBLIC OF KENYA



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**Enacta Limited v Nagari & 5 others (Environment & Land Case
E228 of 2021) [2022] KEELC 15449 (KLR) (9 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E228 OF 2021**

**LL NAIKUNI, J
DECEMBER 9, 2022**

BETWEEN

ENACTA LIMITED PLAINTIFF

AND

MARTIN MUREITHI NAGARI 1ST DEFENDANT

BEATRICE WACERA NGARI 2ND DEFENDANT

**LAHARI JETHANAND MANGHNANI T/A SACHDEVA & COMPANY
ADVOCATE 3RD DEFENDANT**

LAND REGISTRAR MOMBASA COUNTY 4TH DEFENDANT

KENYA COMMERCIAL BANK LTD 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

RULING

I. Introduction

1. The 3rd Defendant/Applicant herein – “Lahari Jethanand Manghnani T/Sachdeva & Company Advocate moved this Honorable Court through filing of a Notice of Motion application dated April 12, 2022 for its determination. The application was brought under the provision of Order 4 Rule 1 (4) and (6) of the *Civil Procedure Rules*, 2010.

II. The 3rd Defendant/Applicant’s case

2. The 3rd Defendant/Applicant sought for the following orders:-
 - a) That the Plaintiff be struck out;



- b) That the costs of this application and of the suit be paid by Mr Bhupinder Singh Dogra who purporting to be the director of the Plaintiff (which he is not) authorized the filing of the suit in the name of the company;
3. The application was based on the grounds, testimonial facts and the averments made out under the Seven (7) Paragraphed Supporting Affidavit sworn by Mr Lahori Jethanand Manghnani, the 3rd Defendant/Applicant herein sworn and dated the April 12, 2022 together with one (1) annexature marked as “LJM – 1” annexed hereto. He deposed being an Advocate of the High Court of Kenya and previously practiced law in the Law firm trading in the name and style of Sachdeva & Company Advocates but had since retired from active practice. He made on the following grounds:
- i. The Plaintiff had not been accompanied by a verifying affidavit sworn by an officer of the Plaintiff duly authorized under the seal of the company.
 - ii. The verifying affidavit filed herein had been sworn by one Bhupinder Singh Dogra who was not an officer of the Plaintiff.
 - iii. The said Bhupinder Singh Dogra had improperly authorized the filing of the suit in the name of Enacta Limited purporting to be the Managing Director of the company.
4. In his supporting affidavit the 3rd Defendant herein averred that the provisions of Order 4 Rules 1(2) and (4) of *Civil Procedure Rules*, 2010 provided that a Plaintiff should be accompanied by an affidavit verifying the correctness of the averments of the particulars of the Plaintiff. Whereas as was the case herein, the Plaintiff was a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.
5. The 3rd Defendant averred that the Plaintiff filed in this suit had been accompanied by a verifying affidavit sworn by one Bhupinder Singh Dogra who was not a director or an officer of the Plaintiff company. He deposed that as of July 21, 2000, the Directors of Enacta Limited, the Plaintiff herein were Kassim Essak Bharadia, Chankdrakant Hemraj Shah and Bharat Hemraj Shah. This fact is confirmed by the copy of the CR - 12 Form issued by the Senior Assistant Registrar of Companies and annexed hereto marked as “LJM - 1”.
6. Furthermore, he averred that the said deponent of the verifying affidavit had not exhibited any authority given to him under the seal of the company to make the verifying affidavit. He deposed that the Plaintiff filed in the above suit had contravened the mandatory provisions of Sub Rules 2 and 4 of Order 4 Rule 1 of the *Civil Procedure Rules*, 2010 and the same should be struck out as provided in Order 4 Rule 6 of the *Civil Procedure Rules*. He urged Court to allow the application.

III. The Replying Affidavit by the Plaintiff/Respondent.

7. On June 13, 2022 the Plaintiff filed a twenty five (25) Paragraphed Replying Affidavit sworn and dated on June 10, 2022 by Bhupinder Singh Dogra, a Director and Shareholder of the Plaintiff together with Six (6) annexatures Marked as “BSD – 1 to 6” annexed thereto. The Deponent contended that sometimes in the year 1993, he retained the 3rd Defendant/Applicant as his Advocate in the purchase of all that parcel of land known as Land Reference Numbers 3176 Section I Mainland North under Grant Number CR 23122 (the suit property) and acquisition of Enacta Limited and thereafter entrusted the Applicant with the Original Documents in his custody for years as he was in and out of the country.
8. He averred that the Applicant then through fraudulent schemes manipulated and forged several of the Plaintiff's records at the offices of the Registrar of Companies in bid to sell of the Plaintiff's only Asset



- (the suit property). Indeed the 1st and 2nd Defendants have alleged that they bought the property from the 3rd Defendant/Applicant as shown by the annexure marked as “BSD – 2”.
9. He deposed that he had never resigned from the position of the Director of the Plaintiff and any document purporting the same was a forgery. The Application before Court was therefore misconceived and a desperate attempt to protect the 3rd Defendant/Applicant from the consequences of his fraudulent and underhand dealings over the Plaintiff’s assets and properties. He averred being a bona fide Director/ Shareholder of the company with a verifiable and undisputed paper trail to show for it as indicated from the annexure marked as “BSD – 3”.
 10. He averred that the purported CR – 12 Form annexed to the Application and marked “LJM – 1” was a fake document generated by the 3rd Defendant/Applicant to aid his underhand dealings over the suit property and the dates in the said purported CR – 12 Form coincided with the periods when the Applicant had a field day in manipulating the Plaintiff’s company documents at will. Indeed the said annexed CR – 12 Form had not been authentication either in the nature of a payment receipt or verification stamp from the registrar of Companies and as such it was of no probative value capable of supporting the application at hand. At the filing of the suit the Plaintiff’s record was unavailable at the Company’s Registry both on-line and manually/ physically a fact which was confirmed to them by the Registrar of Companies of Kenya as shown by Annexure marked “BSD – 4” which are copies of letters from the Registrar of Companies.
 11. He deposed that in a surprising coincidence, just before the Defendants put in their memorandum of appearance and statement of Defense, he was notified by a private investigator that the Company’s file and records had resurfaced and the file was now available for perusal. This prompted by the revelation, a search was done and they obtained a CR - 12 Form on March 24, 2022 and as further surprise, it showed the 1st and 2nd Defendants (who live in the suit property as husband and wife) as Directors of the company as shown by annexure “BSD - 5’.
 12. He averred that strangely, the 1st and 2nd Defendants had all along stated they are innocent purchasers for value without notice any notice of defect in the title having purchased the property from Mr Maghnani (the 3rd Defendant). His understanding of the import of the statement was that the 1st and 2nd Defendants indeed had no clue how they become directors of the Plaintiff as seen in annexure 6 (a) and (b) which were letters and statement of defence from the 1st and 2nd Defendants herein.
 13. He deposed that he had the opportunity to telecommunicate with the 1st and 2nd Defendant on the issue of the acquisition of the property and they informed that they had lodged a criminal complaint with the police against the 3rd Defendant for fraudulent sale over the property. Even assuming for argument purposes that the 1st and 2nd Defendants herein were directors, buying the Plaintiff property and executing the documents both as buyers and sellers while Directors smacks of criminal offence for Asset Misappropriation Fraud and or stealing by means of fraudulent ways. The import of the foregoing was that the 1st, 2nd and 3rd Defendants had substantially manipulated the Plaintiff’s records that it was impossible to know who the *bona fide* directors of the Plaintiff are by looking at the records. The only way to know would be by scrutinizing the primary documents exchanged between himself and the 3rd Defendant/Applicant at the inception of the Plaintiff and acquisitions of the suit property. It would be grave injustice if the suit herein was struck out considering all the circumstances at play. The 3rd Defendant/Applicant was deserving of rebuke for orchestrating the mess they are in and then coming back with the knowledge from his past underhand dealing to scuttle of the court process in an attempt to defeat justice.



14. He deposed that the circumstance of this suit was that it would impossible for an Honorable to decide about the bona fide director at this interlocutory stage. A verifying affidavit had a separate life, independent of the Plaintiff verifies as it did not go to the root of the suit as such failure to file a proper and regular affidavit could be rectified with the leave of the court.
15. He averred that in the circumstances that the court made the finding that he was not a *bona fide* director then the just thing to do was to stand over the suit generally to grant the Plaintiff appropriate time to regularize the records at the Company Registrar and make an appropriate affidavit. As it stood now it was impossible to have the 1st and 2nd Defendants sign a suit paper as directors against themselves. He prayed for the Honourable court to dismiss the application in the interest of justice.

III. Submissions

16. On June 14, 2022 while all the parties were present in Court, directions were granted and parties agreed to have the Notice of Motion application dated April 12, 2022 be canvassed by way of written submissions. Pursuant to that all parties fully complied. Subsequently, the Honourable Court reserved a date for the delivery of its ruling accordingly.

A. The Written Submissions by the 3rd Defendant/Applicant.

17. On September 30, 2022, the Learned Counsel for the 3rd Defendant/Applicant herein, the Law firm of Messrs Kamoti Omollo and Co Advocates filed their written submissions of the even date.

Mr Omollo Counsel for the 3rd Defendant/Applicant herein submitted that the suit was filed in the name of the Plaintiff's company claiming to be the owners of all that parcel of land known as Land Reference Number 3176 Section I Mainland North had been transferred to the 1st and 2nd Defendants fraudulently through falsification of documents, misrepresentation and corrupt scheme.

18. The Counsel submitted that together with the Plaintiff, the Plaintiff filed the following documents:-
 - a. Verifying affidavit sworn by one Bhupinder Singh Dogra who stated that he was the Managing Director of the Company.
 - b. Minutes of a meeting of the board of directors of the Company.
19. He argued that the application was seeking to strike out the suit under the provisions of Order 4 Rule 1(4) and (6) of the Civil Procedure Rules, 2010 because the Plaintiff's application was not accompanied by a Verifying Affidavit sworn by an officer of the Company duly authorized under the seal of the company. The official search at the Registrar of the Company showed who the Directors of the Plaintiff's were and which did not include Bhupinder Singh Dogra. On June 14, 2022 an officer from the Registrar of Companies was summoned. On July 27, 2022, one Mr Njagi from the Business Registration Centre attended Court. He produced a report on the company dated 13th July, 2022 together with copies of the supporting documents. The said report confirmed that Mr Bhupinder Singh Dogra ceased being a director of the Company upon executing Form 203A. This was a Notification of Change of Directors being filed by Messrs Samvir Registrars the Company secretary for the Plaintiff's Company.
20. The Counsel argued that Mr Bhupinder Singh Dogra may wish to challenge the issue of his removal as a Director but that would not be in this case nor was this Court clothed with the legal mandate to deal with such an issue. He advanced the argument that the appropriate Court under such circumstances was the Commercial Court. According to the Counsel what was at stake here was whether the Verifying Affidavit sworn by Mr Bhupinder Singh Dogra and filed in this suit was valid or not and whether the Plaintiff's application should be struck out. To buttress his argument he relied on the provisions of the Law and the case



of: - "*Korica (U) Limited & Another v Kenya Ports Authority* [2008] e KLR, where the Court opined, 'The objective of verifying affidavits is to avoid suits being filed without the authority of the Plaintiffs themselves. That is why Order 7 Rule 1 requires that the filing of Plaintiffs should be accompanied by verifying affidavits sworn by the Plaintiffs themselves as authority that the suits are filed with their authority.'

21. The Counsel also placed reliance on the case of:- "*Chevron (K) Limited v Harrision Charo wa Shutu* [2016] eKLR, where the Court of appeal stated thus; -

"it is a well-known principle of company law that, being an artificial body, a company can only act through the agency of its organs, the board of directors and shareholders. Where, for example, it is demonstrated that a suit was instituted without the resolution of the board, the company cannot be said to be before the court. That was what the case of Bugerere (supra) decided. That being so, the only error the Learned Judge made was to apply Order 4 Rule 1 (4) aforesaid which had not been promulgated at the time the suit was filed'

In conclusion, the Counsel stated that at all material times of filing the suit and affidavits thereto, Mr Bhupinder was not a director nor were the persons who purported to pass the resolution to file the suit namely Bhupinder Singh Dogra, Talijinder Kaur Dogra and George Kilonzo. For this reason whereof the suit should be struck out with costs

B. The Written Submission by the Plaintiff/Respondent

22. On September 30, 2022, the Learned Counsel for the Plaintiff/Respondent, the Law firm of Messrs Omondi, Odegi & Company filed their written submissions dated even date. Mr. Omondi, Advocate submitted along the following the following grounds. Firstly, he commenced his submission by providing Court with a brief background of the case to the effect that at the time of filing the suit the records for the Plaintiff could not be traced at the Company's Registry a fact which was confirmed by the Registrar of Companies. The Counsel informed Court that unable to secure the current CR – 12 Form, Mr. Dogra filed the suit on the strength of the last known records that he was its Director. Coincidentally, the records and CR – 12 Form would later on emerge just about the time the Defendants filed their statement of Defence. He sensed some foul play here.
23. Secondly, the Counsel submitted that Mr. Dogra acquired the suit property in the year 1992 through the 3rd Defendant who was his Advocate. Further, he recounted that on July 14, 2022, the Advocates of the 1st and 2nd Defendants herein had stated on record that the said Defendants denied ever being Directors of the Plaintiff. They outrightly rejected their names as the Directors of the Plaintiff as per the CR – 12 dated March 24, 2022. He stated that on November 27, 2022 during the cross examination of the Official from the Business Registration, the Advocate of the 1st and 2nd Defendants doubled down on his earlier averments and stated that once again that his clients never understood how they were made directors of the Plaintiff without their knowledge. Subsequently, he sought leave to file such an affidavit being the second time he had done so but which todate he had not done so. The Counsel held that the 1st and 2nd Defendants had filed their Statement of Defence whereby they averred that they bought the land from the 3rd Defendant without any notice of the defect on the title.
24. Thirdly, the Counsel contended that this Court had no jurisdiction to determine the issue of Directorship of a Company contrary to the provision of Article 162 (2) (b) of *the Constitution* of Kenya, 2010 and Section 13 of the *Environment and land Court Act*, No 19 of 2011 where the Court was clothed the powers to deal on matters relating to land. He argued that the issue directorship of the Plaintiff was one so interconnected with the cause of action before this Honorable Court that it could not be severed as a lone issue and determined elsewhere. He cited several authorities to support that



argument being – “ELC (OS), (Thika) case No 8 of 2021, *Naomi Nimazuri Zani & 2 Others v Lettas Development Limited & Another* [2002] Eklr” and “*Ken Kasing’a v Donald Kiplagat Kirui & 5 Others* [2015], eklr”

25. Fourthly, he submitted that the Complaint filed by the Plaintiff should be struck out as it was not accompanied by a Verifying Affidavit sworn by an officer of the company duly authorized under the seal of the company. Instead, the Complaint was supported by the verifying affidavit of Mr. Bhupinder Singh who as per the testimony of Mr Njagi’s an officer from business registration services, had seized being director of the company from the period of July 12, 2000. The Counsels submitted that the provision of Order 4 Rule 1(4) of the *Civil Procedure Rule*, 2010 provided that where the Plaintiff was a corporation the Verifying Affidavit should be sworn by an officer of the company duly authorized under the company seal. Failure to file a Verifying Affidavit would not invalidate the suit.
26. On the second issues, it was Mr Omondi’s submission that all documents saved for the CR -12 Form and the Defense letter marked as annexure “BSD - 5 & 6” pointed out to the strong indication that Mr Dogra was the bona fide director of the Plaintiff. In any case the 1st and 2nd Defendants admitted that the CR - 12 Form dated March 24, 2022 annexed to the Replying Affidavit of Mr Dogra and Marked as “BSD – 5’ and subsequently presented before the Court was a forgery. Secondly, the Counsel opined that the “CR -12 Form annexed to the 3rd Defendant/Applicant’s application marked as annexure “LJM – 1” was dismissed by the officer from the Business Registration office as inauthentic and no reference was made to it in the submission reasons whereof the Counsel urged the Court to find that there is on record proper Verifying Affidavit.
27. On the third issue, it was Counsel’s submission that lack of a proper resolution, should not invalidate a suit though it was their position that there was proper resolution. He placed reliance on the case of:- “*Microsoft Corporation v Mitusimii Computer Garage Ltd* [2001] 2 EA 460.
28. In the long run, the Counsel held that what was displayed by the Business Registration as CR – 12 Form was disputed by none other than the said listed Directors. What remained therefore was just for them to officially withdrew their names from the said documents. The Counsel held that the application was orchestrator of the fraudulent schemes was now using every possible means to scuttle the hearing the Plaintiff’s case and thus should have the application dismiss with costs.

III. Analysis and Determination

29. I have keenly considered the filed Notice of Motion application dated April 12, 2022 by the 3rd Defendant/Applicant, the responses by the Plaintiff/Respondent, the annexures attached, the written Submissions and the myriad of authorities, the relevant provisions of the *Constitution* of Kenya, 2010 and the statutes.
30. For the Honorable Court to arrive at an informed, fair, reasonable and Equitable decision on the subject matter, it has condensed the matter into two (2) issue for its determination. These are:-
 - a. Whether the Notice of Motion application dated April 12, 2022 filed by the 3rd Defendant/Applicant has any merit.
 - b. Who will bear the costs of the application.IssueNo. a). Whether the Notice of Motion application dated April 12, 2022 filed by the 3rd Defendant/Applicant has any merit.



31. The substratum of this application is one whereby the 3rd Defendant/Applicant herein, seeks to striking out of the suit instituted by the Plaintiff/Respondent herein for the reasons adduced herein. From the very onset, I discern and bear in mind that striking out of any suit or pleadings filed in Court is an extremely draconian remedy that should only be resorted to in the clearest of cases. Mainly, the law makes the provisions for striking of suit under the grounds founder under Order 2 Rule 15 of the Civil Procedure Rules, 2010. I am alive to the very wise Counsel rendered by Justice Madan JA in the now famous case of:- ”D.T. Dobic & Company (Kenya) Limited v Joseph Mbaria Muchina & another [1980] eKLR where he held that:

“ A Court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.

32. In the present case, the reason advanced by the 3rd Defendant/Applicant herein for seeking for the striking out of the Plaint is that there is non - compliance with the mandatory provisions of Order 4 Rule 1(4) of the Civil Procedure Rules 2010 to the extent that the deponent of the affidavit verifying the filed Plaint had not exhibited any authority under seal to do so. Thus, for this sole reason, the filed Plaint was therefore set for striking out under the provision of Order 4 Rule 1 (6).

33. Undoubtedly, the Court is being invited to perform such a serious and exceptionally herculean task here. Thus, before proceeding any further, it is imperative that the Court critically and closely assesses all the filed pleadings with utmost care and high level of prudence. Like a Surgeon, the Court must exercise its role using a scientific prism glass. In order to do so, the Court has perused the filed pleadings being the Plaint and the Verifying Affidavit sworn by Bhupinder Singh Dogra. It is instructive to note that the Plaintiff/Respondent describes itself as a limited liability company incorporated under the Company laws of this Country. Therefore, it is governed by the Company and other Laws of this Country. Indeed, the deponent of the Verifying Affidavit was required to exhibit an authority under seal of the Plaintiff company pursuant to the provision of Order 4 Rule 1 (4) of the Civil Procedure Rules, 2010. Accordingly, I see no such authority annexed to the verifying affidavit and the deponent does not depose that he obtained an authority under seal. On this aspect of the law, I fully concur with the Learned Counsel for the 3rd Defendant/Applicant herein that this by itself is a breach contrary to the laid – down rules.

34. The provision of Order 4 Rule 1(4) states:

“ Where the Plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

35. While the provision of Order 4 Rule 1(6) states:

“ The Court may of its own motion or on the application by the Plaintiff or the Defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule”.



36. In all fairness, and under the critical interpretation of the Law, although the portion of the rule requiring filing of an authority under seal is couched in mandatory terms, the portion on consequences of non - compliance is not. In such circumstances, therefore, the Honorable Court assumes the inherent discretion on whether or not to order for the striking out of any pleading that is non - compliant. In exercising that discretion, the Court must in all such cases be alive to its obligations under the provision of Article 159 of the Constitution of Kenya, 2010 to see to it that justice is administered without undue regard to procedural technicalities. I appreciate the reasoning in the cited persuasive decisions by the High Court and courts equal status cited to the effect that a suit filed without an authority under seal being exhibited is defective. Indeed, the Court wishes to cite the case already relied on by the Learned Counsel for the Plaintiff/Respondent of:- “Microsoft Corporation v Mitusimii Computer Garage Ltd (Supra), where A. Ringera JJA so wisely stated ‘*inter alia*’:-

“rules and procedure are handmaidens and not mistresses of Justice and should not be elevated to fetish as theirs is to facilitate the administration of Justice in a fairly orderly and predictable manner not fetter or chock itThe purpose of verifying the contents of the Complaint may be attained by rejecting a defective affidavit and ordering that a fresh and complying one be made and filed on record.”

37. In other words, taking that the purpose of verifying the contents of the Complaint may be attained by rejecting a defective affidavit, that defect is not fatal at all. It is one that could be cured by an order made by this Court that a fresh and complying one be made and filed on record. This principle is very applicable to the instant case herein.

38. Further, the Court is aware of the binding decision by the Court of Appeal in ”Kenya Commercial Finance Co. Limited v Richard A Onditi [2010]eKLR for the proposition of law that a court of law should weigh the options available to a party before striking out an action. In this matter, I do not consider that the justice of the case would be served by striking out but rather the Plaintiff ought to be given a chance to avail the resolution before the matter is fixed for hearing of the suit by taking of evidence. In my view, whether or not there was given authority under seal is a matter of evidence that certainly cannot be resolved exhaustively through the current interlocutory Notice of Motion application filed by the 3rd Defendant/Applicant herein. I would reiterate the foregoing determination and find that even authority to the application could be filed at any time before the evidence was taken.

39. I do not consider that failure to exhibit an authority under seal should result, in the present dispensation, to striking out of a Complaint or Counterclaim in the first instance. The court should give the litigant a chance to comply with the rules. It is only after failure to comply that such drastic consequences as striking out should be resorted to or come into operation.

III. Conclusion and Disposition

40. Consequently, upon conducting an intensive analysis of the framed issues herein, on preponderance of probability, this Honorable Court now proceeds to make the following determination. Specifically, these are the orders:-

- a) That the Notice of Motion application dated April 12, 2022 by the 3rd Defendant lacks merit and hence be and is hereby dismissed with costs.
- b) That the Plaintiff be and is hereby granted Sixty (60) days leave from the date of delivery of this ruling, to file and serve fresh Verifying Affidavit with full compliance with the provision of Order 4 Rule 1(4) of the Civil Procedure Rules, 2010.



- c) That for expediency sake, all facts remaining constant, this suit should be fixed for hearing and final determination within the next One Hundred and Eighty (180) days without fail, that is on May 17, 2023. There should be a mention of the matter on March 1, 2023 for Pre – Trial Conference in accordance with the provision of Order 11 of the *Civil Procedure Rules*, 2010.
- d) That in default of compliance with Order (b) above, the suit shall automatically stand struck out with costs to the 3rd Defendant/Applicant herein.
- e) That each party to bear its own Costs.

41. It is so Ordered Accordingly.

RULING DELIVERED SIGNED AND DATED AT MOMBASA THIS 9TH DAY OF DECEMBER, 2022.

HON. JUSTICE MR. L. L. NAIKUNI (JUDGE)

ENVIROMNENT AND LAND COURT AT

MOMBASA

In the presence of:

- a) M/s. Yumna, the Court Assistant;**
- b) Mr. Omondi Advocate for the Plaintiff/Respondent.**
- c) Mr. Kariuki Kiarie Advocate for the 1st & 2nd Defendants.**
- d) Mr. Omollo Advocate for the 3rd Defendant/Applicant.**

