



**Appolo Hotels Limited v Mbuggus & 6 others; Kangogo & 3 others  
(Intended Defendant) (Environment and Land Case Civil Suit  
77 of 2013) [2022] KEELC 15447 (KLR) (5 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15447 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE CIVIL SUIT 77 OF 2013  
LL NAIKUNI, J  
DECEMBER 5, 2022**

**BETWEEN**

**APPOLO HOTELS LIMITED ..... PLAINTIFF**

**AND**

**CHRISTOPHER MBUGGUS ..... 1<sup>ST</sup> DEFENDANT**

**KIPROTICH CHESIRE ..... 2<sup>ND</sup> DEFENDANT**

**RICHARD MUIRURI KURIA ..... 3<sup>RD</sup> DEFENDANT**

**DAVID K KANDIE ..... 4<sup>TH</sup> DEFENDANT**

**GISIMBA GENERAL ENTERPRISES LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**COUNTY LAND REGISTRAR OF LANDS ..... 6<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT**

**AND**

**JOB KIGEN KANGOGO ..... INTENDED DEFENDANT**

**MINNIE JEMUTAI TUBEI ..... INTENDED DEFENDANT**

**JOSEPHINE CHEPKECHEI ..... INTENDED DEFENDANT**

**EUNICE WAIRURI KIBERA ..... INTENDED DEFENDANT**



## RULING

### I. Introduction

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants filed a Notice of Motion application dated June 22, 2022 for this Honorable Court to make its determination. The application was premised under the dint of Article 50 (1) of the Constitution of Kenya, 2010, Sections 3A Cap 21; Order 1 Rule 10 (2); Order 51 Rules 1 and 4 of the Civil Procedure Rules, 2010.

### II. 1st, 2nd & 3rd Intended Defendants/Applicants Case

2. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Intended Defendants/Applicants sought for the following orders reproduced herein verbatim.
  - a. Spent;
  - b. That this Honorable Court be pleased to join the intended Defendants /Applicants' as the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants in this suit.
  - c. That upon joinder of the intended Defendants, the Honorable Court be pleased to order that the plaint be amended and amended summons be issued to the Defendant as 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants respectively.
  - d. That upon grant of prayers 2 and 3 above the Honorable Court be pleased to reopen the Plaintiff's case and recall the Plaintiff witness for cross examination by the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> Defendants.
  - e. That costs of application be provided for.
3. The application is based on the ground, testimonial facts and averments made in the fourteen (14) Supporting Affidavit of Mr Job Kigen Kangogsworn and of the even date and the three (3) annexures Marked as 'JKK – 1 and 2A & 2B) annexed hereto. He deponed that being the 1<sup>st</sup> Intended Defendant/Applicant herein hence conversant and duly authorized by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants herein to swear this Affidavit on their behalf. He further averred that sometimes in December 2021 he purchased all that parcel of Land Known as Land Reference Number Kwale/ Galu Kinondo/2062 (Hereinafter referred to as 'The Suit Land') from the 4<sup>th</sup> Defendant herein for the consideration of a sum of Kenya Shillings Two Million Six Hundred Thousand (Kshs 2,600,000.00). He was and was issued with a Certificate of title deed on December 19, 2012. He attached copies of the Certificate of Title deed, official search and receipt of stamp duty payment marked as 'JKK – 1'.
4. He deposed being aware that the 2<sup>nd</sup> and 3<sup>rd</sup> intended Defendants/Applicants were the registered legal owners of the sub - divisions from the main parcel of land being numbers 2060 & 2062 and 2067 respectively having purchased the same on diverse dates from the 4<sup>th</sup> Defendant. He also informed Court that he was aware that the 4<sup>th</sup> Defendant was the registered legal owner of the parcel sub - division number 2068 having purchased the same from the 2<sup>nd</sup> Defendant. He further attached copies of the Certificate of Title deed, official search and receipt of stamp duty payment Marked as 'JKK – 2A and 2B'.
5. He averred that he was further that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> Intended Defendants/Applicants herein and himself though held valid titles to the suit property being claimed by Plaintiff/Respondent herein, they were all unaware of the suit herein until recently when it was brought to their attention. The Plaintiff/



Respondent herein had prayed for an order for rectification and cancellation against all titles relating to the former Land Reference Numbers Galu/Kinondo/ 394 and restoration of the same in his name. He deposed that the Plaintiff/Respondent while instituting this suit advertently failed to include the Applicants as Defendants to the proceedings despite of being aware of their valid =legal interest in the matter.

6. He held that the Applicants being in possession of legal interest over the said parcels of land were proper and necessary parties to any suit that challenged ownership of the said parcels of land and therefore ought to be made party to the said suit. He held that their sole purpose for seeking to be joined in the suit was to protect the sanctity of the legal titles in their possession against the Plaintiff's Claim. He averred that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> intended Defendants/Applicants herein would be highly prejudiced if there were denied an avenue to protect their proprietary interests thus eroding their constitutional and statutory guarantees on the sanctity of titles.

### **III. The Replying Affidavit by Plaintiff/Respondent**

7. On July 25, 2022, while opposing the application, the Plaintiff/Respondent herein filed both a five (5) pointer grounds of opposition and an eight (8) Paragraphed Replying Affidavit of Shashikant Mepa Shah both dated July 22, 2022 and the two (2) annexures Marked as 'SM – 1 & 2) annexed thereto. The Deponent argued that the application was bad and ill - conceived in law, fatally defective, misconceived, frivolous, an abuse of the due lacked cogent reason to warrant the Court to grant said orders and ought to be struck out.
8. The Deponent, a director of the Plaintiff/Respondent deposed that the present suit was between the Plaintiff and eight (8) Defendants who illegally trespassed Plaintiff's land and purported to sub - divide the suit land without valid Title Deed as the original Title Deed for the suit land property being Land Reference Numbers Kwale/Galu Kinondo 394 was still in his possession copies of the title and official search he annexed and marked as 'SM – 1 & 2'. He affirmed that the original Certificate of Title was still intact and had never been sub – divided at all.
9. The Deponent asserted that the orders being sought would prejudice the Plaintiff/Respondent for the reasons that:-
  - a. The Plaintiff/Respondent had no claim against the Intended Defendants/Applicants herein as they were strangers and hence he would not amend the pleadings nor re – issue summons to enter appearance.
  - b. The intended Defendants/Applicants should pursue the 4<sup>th</sup> Defendant without involving the Plaintiff herein as there was no privity of contract between the Applicants/intended Defendants, 4<sup>th</sup> Defendant and Plaintiff.
  - c. The Plaintiff/Respondent had already closed its case and re – opening it would cause a lot of prejudice to the Plaintiff. Indeed, the Surveyor who testified in support of the Plaintiff case was deceased and Plaintiff.
  - d. Most of the Defendants had presented their case. The intended Defendants however had the option of instituting a fresh either Civil or Criminal suit against the 4<sup>th</sup> Defendant or other Defendants without involving the Plaintiff.
10. Thus, he prayed that the application to be dismissed with costs.



## VI.Submissions

11. On July 29, 2022 while all parties were present in Court, directions on how to dispose off with the Notice of Motion application dated June 22, 2022 by way of written submissions. Parties having been given stringent time lines, all fully complied. Subsequently, the Honorable Court reserved a date for rendering of a Ruling accordingly.

### A.The Written Submissions by the Intended Defendants/Applicants

12. On September 15, 2022 the Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants the Law firm of M/s Lumatete Muchai & Co Advocates filed their written submissions dated 22<sup>nd</sup> June, 2022. Mr Muchai Advocate submitted that the 4 Intended Defendants were persons having a legal interest in the suit property and therefore they were necessary parties to any suit touching on and/or affecting the same. He argued that it would be highly prejudicial if an adverse order was issued in their absence, which would be contrary to the rules of natural justice which dictated that parties should not be condemned unheard.
13. The Counsel submitted on whether the Applicants had made out a case for joinder as Defendants in the suit by stating that they had verifiable interest and state in the subject matter. The suit property hence were necessary parties to the suit though the Plaintiff contended otherwise. To support his assertion he cited the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 and several decisions. For instance, the case of *Pravin Bowry – Versus- John Ward & Another (2015) eKLR* and *Civicon Limited – Versus- Kivuwatt Limited & 2 Others (2015) eKLR*. Where the court considered the principles to be considered in an application for joinder of parties to a suit. The court referred to the Ugandan Case of *'Deported Asian Custodian Board –Versus- Jaffer Brothers Ltd. (1999) 1EA 55 (SCU)* where the court stated as follows:-
  - a. The Counsel informed Court that the Applicants acquired a legally verifiable interest and title in the suit land as shown under Paragraphs 2 and 3 of the Supporting Affidavit of Job Kangogo Kigen. Hence they had stated in the suit property as the four (4) titles were birthed by the sub-division of all that parcel of land known as Land Reference Kwale/Galu Kinondo/394. Further, the counsel contention that the prayer sought in the amended Plaint dated October 9, 2018 had the consequences of extinguishing the applicant's titles and Interested thus the more reason to give them an opportunity to defend the suit. Indeed, the relief sought would adversely affects the Applicant if granted the presence in the suit of the Applicants is necessary to enable the court to effectively and completely adjudicate and settle all the issues in the suit.
  - b. In conclusion the counsel urged court to allow the application for the joinder of the Applicants as it has merit.
  - c. The counsel was of the view that upon the perusal of the application by the Appellant, it was evidence that their cause of action was against the 4<sup>th</sup> Defendant and not the Plaintiff. To him there was nothing that stopped them from instituting a separate distinct suit against the 4<sup>th</sup> Defendant. He held that the Appellant were merely calculated at frustrating the Plaintiff from prosecuting its case to finality. To support their case, they relied on the decision of *Carol Construction Engineers Ltd Versus- Naomi Chepkorir Langat (2019) eKLR* and *Good News Church of Africa –Versus- Board of Management Eldoret Secondary School (2020) eKLR*.
  - d. Where the courts held that there was need to impose parties to the Plaintiff who he had no claim against as it would end in an absurd situation where there were Defendants in the matter but who the Plaintiff had nothing against parties should not force a Plaintiff to sue person that



they did not have a claim against as if the case was dismissed then a party must bear the burden of paying costs.

- e. The Counsel urged Court to exercise its discretion judiciously and dismiss the application as it was akin to introducing a new cause of action eight (8) years later after the suit was filed. He held that it was an afterthought. He argued that they failed to disclose how and when they became aware of the existence of the suit.
- f. Finally, the counsel averred that the Plaintiff was desirous to prosecute its case and entertain the application at this time would cause great prejudice to the Plaintiff and that they summons could not be renewed as the law was quite clear on the period within which summons could be renewed. He prayed for the application to be dismissed with costs.

#### **B.The Written Submissions by the Plaintiff/Respondent**

14. On October 6, 2022, the Learned Counsels for the Plaintiff/Respondent the Law firm of M/s Muturi, Gakuo & Kibara Advocates filed their written submissions of even date. Mr Gakuo Advocates submitted that the Plaintiff/Respondent had no cause of action against the proposed parties, it instituted the suit in year 2013 mainly against the 1<sup>st</sup> to 7<sup>th</sup> Defendants clearly indicating the cause of action and the appropriate reliefs sought against them.
15. The Counsel was of the view that upon the perusal of the application by the Appellant, it was evidence that their cause of action was against the 4<sup>th</sup> Defendant and not the Plaintiff. To him there was nothing that stopped them from instituting a separate distinct suit against the 4<sup>th</sup> Defendant. He held that the Appellant were merely calculated at frustrating the Plaintiff from prosecuting its case to finality. To support their case, they relied on the decision of Carol Construction Engineers Ltd \_Versus- Naomi Chepkorir Langat (2019) eKLR and Good News Church of Africa –Versus- Board of Management Eldoret Secondary School (2020) eKLR.

Where the courts held that there was need to impose parties to the Plaintiff who he had no claim against as it would end in an absurd situation where there were defendants in the matter but who the Plaintiff had nothing against parties should not force a Plaintiff to sue person that they did not have a claim against as if the case was dismissed then a party must bear the burden of paying costs.

The counsel urged court to exercise its discretion judiciously and dismiss the application as it was akin to introducing a new cause of action 8 years later after the suit was filed. He held that it was an afterthought. He argued that they failed to disclose how and when they became aware of the existence of the suit.

Finally, the counsel averred that the Plaintiff was desirous to prosecute its case and entertain the application at this time would cause great prejudice to the Plaintiff and that they summons could not be renewed as the law was quite clear on the period within which summons could be renewed. He prayed for the application to be dismissed with costs

#### **IV. Analysis And Determination**

16. I have keenly read the Notice of Motion application dated June 22, 2022 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants herein, the affidavits and attached annexures from both parties, their elaborate written submissions, authorities and relevant provision of the Constitution of Kenya, 2010 and statutes.
17. In order to arrive at an informed, fair and reasonable decision, the Court has condensed the subject matter of the application onto the following three (3) core issues for its determination. These are:-



- a. Whether the Notice of Application dated June 22, 2022 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants herein has any merit.
- b. Whether the parties are entitled to the relief sought.
- c. Who bears costs of the application?

**ISSUE No. a). Whether the Notice of Application dated 22<sup>nd</sup> June, 2022 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants herein has any merit.**

18. The application before this Court by the Applicants is basically one that seeks for two broad issues – the joinder of the Applicants as parties and the re – opening of the Plaintiffs’ case. The Concept of Joining a party to a suit is provided under the provision of Order 1 Rule 3 of the Civil Procedure Rules, 2010 which reads, ‘inter alia’:-

‘ All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.

Additionally, under the provision of Order 1 Rule 10 (2) provides:-

‘ The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. In the case of *'Habiba W Ramadhan & 7 others – Versus - Mary Njeri Gitiba (2017) eKLR;* Nairobi High Court ELC Case No 119 of 2014 the Court stated as follows:-

‘As already observed by the Court, under Order 1 Rule 10(2) the Court has discretion to order joinder of any party to a suit at any stage of the proceedings so long as the presence of that party before the Court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions in dispute.’

19. But joinder of parties may be refused where such joinder would lead into practical problems of handling the existing cause of action together with the one of the party being joined, is unnecessary or will just occasion unnecessary costs on the parties in the suits – or just being a nuisance on rocking the boat from the bottom. In other words, joinder of parties would be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from the existing cause of action or the relief. The determining factor in joinder of parties would be a common question of fact or law would arise between the existing and the intended parties. (See the case of *'Lucy Nangari Ngigi & 128 Others –Versus- National Bank of Kenya Limited & Another (2015) eKLR'*).
20. The above illustrated legal litimus test on joinder is what I shall apply to the instant case. In consideration and application of all the facts stated here, this Court strongly holds that the Proposed Intended Interested Party has not made a strong demonstration to be joined in the instant case. The Court has not seen that need for them added as a party to the suit is necessary for the determination of the real matter in dispute (add value) or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. While arriving



at this rather difficult decision, the Court has not been persuaded with any empirical documentary evidence as such for the following reasons.

21. In the instant case, it is noteworthy that the Applicants/ intended Defendants varied their prayers in their submissions. It is however trite law that submission do not constitute evidence and parties cannot present or argue their cases through submissions. This was succinctly stated by the Court of Appeal in the case of *Daniel Toroitich Arap Moi – Versus -Mwangi Stephen Muriithi & another [2014] eKLR* when it held that:-

' Submissions cannot take the place of evidence. Submissions are generally parties' 'marketing language', each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all.'

22. It is well established that the Applicants/ intended Defendants are bound by their pleadings and prayers sought remain those on the Notice of motion dated June 22, 2022. From the Court of Appeal authority cited by the Learned Counsel for the Intended Defendant/Applicants, the case of:- 'Pravin Bowry – Versus - John Ward & Another [2015] eKLR it considered the applicable principles, or test in an application for joinder. The court adopted with approval the holding by the Uganda Supreme Court in the case of:- 'Deported Asians Property Custodian Board – Versus - Jaffer Brothers Limited [199] 1 EA 55 (SCU) where the court stated: -

' A clear distinction is called for between joining a party who ought to have been joined as a Defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter. For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.'

23. The Court further in the Bowry case (supra) also referred to the court's decision in the case of 'Civicon Limited – Versus - Kivu Watt Limited & 2 Others [2015] eKLR. It stated thus:-

' Again the power given under the rules is discretionary which discretion must of necessity be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined. From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a Defendant in a suit based on the general principles set out in Order 1 Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party, in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the Plaintiff



should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit, and the interest need not be the kind that must succeed at the end of the trial.'

24. Be that as it may, from the facts in the instant case, this Honorable Court is persuaded that the application by the Applicants to have them joined as 9<sup>th</sup>, 10<sup>th</sup>, 11 and 12<sup>th</sup> Defendants and their presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Indeed, the Court has taken cognizance of the view held by Learned Counsel for the Plaintiff/Respondent that there exists no cause of action against these Defendants and therefore his proposal as the only remedy left for the Applicants is to institute a separate and distinct Civil or Criminal suit against the 4<sup>th</sup> Defendant, would tantamount to multiplicity of suits over the same subject matter. Definitely, the proposal defeats logic as this is what this provisions of the law attempts to avoid – having multiplicity of suits.
25. The Court reiterates that a party may be joined in a suit because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter. For these reasons, the application must succeed whatsoever.

**ISSUE No. b). Whether the parties are entitled to the relief sought.**

26. As its now well established, the powers for joiner is at the discretion of the Honorable Court. The said discretion is not fettered but one to be exercised judiciously and not capriciously. From evidence on record, the title deed for sub - division of Plot No 394 issued to 1<sup>st</sup> Applicant and 2<sup>nd</sup> was registered on December 19, 2012; for the 2<sup>nd</sup> Applicant it was registered on February 19, 2013. The third Applicant title deed for the suit property was registered on February 19, 2013 and the 4<sup>th</sup> Applicant had his title deed registered on July 16, 2013 for suit property No 394. Juxtapose, this Court fully concurs with the Learned Counsel for the Plaintiff/Respondent that it was unclear how and when the intended Applicants/ intended Defendants were un aware of the ongoing suit for the past nine (9) good years.
27. However, all said and done, from the evidence provided by the Intended Defendants/Applicants, in particular the contents of Paragraphs 2 and 3 and the annexures of the Supporting Affidavit of Job Kangongo and Marked as 'JMM – 1, 2A and 2B' being copies of the Certificates of Titles deeds and official searches of the four (4) title deeds for the Applicants. There is no doubt so far that they held legal proprietary interests in the suit property that is the subject of this suit. These are matters this Court would want to hear to details during the full trial.
28. Procedurally, in the given circumstances, the Plaintiff/Respondent would have to undertake three (3) things. Firstly, it follows and for good order towards maintaining strict adherence to the rule of law and procedure, the Plaintiff/Respondent would have to amend its pleadings. Secondly, they would have to re – issue summons against the 9<sup>th</sup>, 10<sup>th</sup> 11<sup>th</sup> and 12<sup>th</sup> Defendants to enable them file their Defences and/or Counter Claim if they so desire. Thirdly, taking that the proceedings was rather at an advanced stage, under the provision of Section 146 (4) of the *Evidence Act*, Cap 80 and Order 18 Rules 10 of the Civil Procedure Rules, 2010, it is just fair and reasonable that case for the Plaintiff/Respondent be re – opened by re – calling some of the key witnesses strictly for cross examination and nothing else.
29. The Plaintiff/ Respondent avers that the claim should be against the 4<sup>th</sup> Defendant. As elaborately stated herein, this aspect would be occasioning to having a multiplicity of suits arising from a similar subject. In any case, which ever angle one looks at it, the moment the Intended Defendants/Applicants decide to institute a separate suit against the 4<sup>th</sup> Defendant, the legal right of the Plaintiff/Respondent herein still would be adversely affected as it would deal with the subject suit property.



30. Therefore, it is this Courts view that it is imperative that all issues are raised under one umbrella as the outcome of this suit herein would also affect the legal interests of the Applicants/intended Defendants. Hence, in the interest of natural Justice, Equity and Conscience, the applicants ought to be accorded an opportunity to be heard. In any case the parties could potentially shade more light on the matter herein. Consequently, I discern that the Applicants/ intended Defendants have met all the pre – requisite grounds to be joined as Defendants in this suit.

#### **ISSUE No. c). Who bears costs of the application?**

26. It is trite law that the Court has discretion in making orders as to costs. Costs mean any award that is granted to a party at the conclusion of any proceedings, process or legal action of a litigation. The proviso of Section 27 (1) of the Civil Procedure Act, Cap 21, provides that Costs follow the event. By the events it means the result or outcome of any proceedings, process or legal action.

27. Although in the instant case, the Intended Defendants/Applicants have been successful in prosecuting their application, it is just fair that each party to bears their own costs.

#### **V. Conclusion & Disposition**

31. The upshot of matter, and based on the elaborate analysis of the framed issues herein, in the preponderance of probability, the Intended Defendants/Applicants have managed to establish their case by successfully prosecuting their application. Thus, the Honorable Court proceeds to grant the following orders:-

- a). That the Notice of Motion application dated June 22, 2022 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Intended Defendants/Applicants herein be and is hereby allowed as prayed. To wit that:-
  - i. The 1st, 2nd, 3rd and 4th Intended Defendants/Applicants be joined in the suit as the 9th, 10th, 11th and 12th Defendants respectively.
  - ii. The Plaintiff granted 21 days leave to file and serve an amended Plaintiff and summons to enter appearance be issued to the Defendants as 9th, 10th, 11th and 12th Defendants respectively within that period.
- b). That upon being served with the Summons to Enter appearance and the Amended Defence herein as directed above, the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> Defendants within 14 days thereof to fully comply with the provisions of Orders 6, 7 and 11 of the Civil Procedure Rules, 2010 to wit filing of statement of Defence and/or Counter Claim; well bound copies and paginated List of documents, List of Witnesses and their Statements accordingly within 14 days
- c). That the Plaintiff within a period of 7 days upon service by the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants to file Reply to the Defence and/or Counter Claim and together with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants granted corresponding leave to file other Amended Defence and further documents should it be fit and suitable so to do.
- d). That the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants to be at liberty of invoking the provisions of Sections 146 (4) of the Evidence Act, Cap 80 and Order 18 Rules 10 of the Civil Procedure Rules, 2010 to recall any of the key witnesses by the Plaintiff who already testified strictly to re - open and for purposes of Cross - examination only by the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants.
- e). That for expediency sake, this Suit should be heard and disposed off within the next One Hundred and Eighty (180) days from this date – a hearing date fixed on May 4, 2023. Pursuant



to that there should be a Pre – Trial Session on February 22, 2023 to ascertain full compliance of the directions given herein.

f. That each party to bear their own Costs of the application.

**RULING DELIEVERED, SIGNED AND DATED AT MOMBASA THIS 5TH DAY OF DECEMBER, 2022**

**HON. MR. JUSTICE L.L. NAIKUNI (JUDGE),  
ENVIRONMENT & LAND COURT AT,  
MOMBASA.**

**In the presence of:-**

- a. M/s. Yumnah, the Court Assistant.
- b. M/s. Achien’g Advocate holding brief for Mr. Gakuo Advocate for the Plaintiff/Respondent.
- c. No appearance for the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> 7<sup>th</sup> & 8<sup>th</sup> Defendants.
- d. Mr. Kariuki Henry Advocate for the 3<sup>rd</sup> Defendant.
- e. Mr. Kazungu Advocate for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Intended/Defendant/Applicants

