



**Xavier v County Government of Narok & 4 others; Mutua (Applicant); Primary (Interested Party)
(Environment & Land Case 3 of 2023) [2024] KEELC 1190 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 3 OF 2023**

**CG MBOGO, J
MARCH 6, 2024**

BETWEEN

LODI MESEYIEKI XAVIER PETITIONER

AND

COUNTY GOVERNMENT OF NAROK 1ST RESPONDENT

URBAN DEVELOPMENT 2ND RESPONDENT

KILGORIS 3RD RESPONDENT

CHIEF LAND REGISTRAR, KILGORIS 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

AND

JOHN MUTUA APPLICANT

AND

ENORETET PRIMARY INTERESTED PARTY

RULING

1. Before this court for determination is the Notice of Motion Application dated 23rd June, 2023 filed by the proposed 2nd interested party/ applicant and it is expressed to be brought under Section 66 of the *Law of Succession Act*, Sections 1A, 1B and 3A and 80 of the *Civil Procedure Act*, Order 1 Rule 10, Order 9 Rule 9 Order 42 (6) and 45 and Order 51 Rule (1) of the Civil Procedure Rules and Articles 40 and 50 (1) of *the Constitution* of Kenya seeking the following orders:-

1. Spent.



2. This honourable court be pleased to join the intended proposed 2nd interested party herein John Mutua to the instant proceedings and that the original petitioner Sanamwala Ole Mutua Nkairipiani now deceased be substituted by the proposed 2nd interested party in his capacity as the legal representative of the estate.
 3. This honourable court do issue leave in order for the firm of M/s Netaya Pion & Company Advocates be placed on record for the proposed 2nd interested party.
 4. This honourable court be pleased to stay execution of the consent between the respondents herein which was adopted by this court as its judgment on the 8th June, 2023 pending the hearing and determination of this application inter parties.
 5. This honourable court be pleased to review, vary and/or set aside the consent adopted by this court as its judgment on the 8th of June, 2023 together with all consequential orders therein.
 6. This honourable court be pleased to grant leave to the applicant to prosecute the case on behalf of the deceased person and that the case be heard and determined on merit.
 7. This honourable court be pleased to issue and order of injunction restraining the respondents herein from interfering with the quiet possession of the suit property that is land parcel number TransMara/Enoosaen/59 by the applicant herein and the other beneficiaries of the estate of the deceased pending the hearing and determination of this application.
 8. The costs of this application be provided for.
2. The application is premised on the grounds inter alia that he is one of the legal representatives of the estate of the Sanamwala Ole Mutua Nkoipian together with the petitioner herein and that he has an identifiable stake in the suit property.
 3. The application was supported by the affidavit of the proposed 2nd interested party sworn on even date. The proposed 2nd interested party deposed that his late father before his demise had filed the petition in this case and after he passed on, the petitioner herein substituted himself as the petitioner. He deposed that the petitioner presented himself as the sole administrator and prosecuted the case on behalf of the beneficiaries. Further, that the family allowed him the opportunity to be their representative despite having the suit drag for more than five years. That being a co-administrator pursuant to the grant of letters of administration issued on 19th September, 2016, he should also participate as an administrator in the deceased's estate.
 4. The proposed 2nd interested party deposed that when his advocate perused the file, they realized that the matter had never proceeded due to a petition for removal of the judge dated April, 2023. He deposed that the affidavit attached to the said petition are forgeries as he has never signed any such affidavit and neither are his family members. Further, that it is surprising that the petitioner who had no trust or confidence in the judge, hastily proceeded to record the consent which was adopted by the same judge as the judgment of the court.
 5. The proposed 2nd interested party further deposed that the petitioner is one of the legal representatives of the estate of the deceased but not a beneficiary of the estate and that as per the certificate of confirmation of grant, the suit property was to be shared by Naibartuni Ene Kayopiani, Ford Potii Muneria, Jane Nashuru Kisepei and Noolkiramati Emily Shaai. Further, that the petitioner never informed the beneficiaries nor sought their consent before recording the consent and that he is apprehensive that the petitioner colluded with the other respondents to defeat the ends of justice.



6. Further, that he is aware that the 1st interested party had earlier on indicated that the suit land does not form part of the school and it will only be good if the case is heard on merit. Also, that the reason why the deceased had withdrawn the judicial review proceedings was because of a consent where the 1st respondent had written a letter to the Lands Officer to have the land registered in the name of the deceased.
7. The application was opposed by the replying affidavit of the petitioner sworn on 5th July, 2023. The petitioner deposed that the proposed 2nd interested party and his advocate were fully aware of the consent entered on 10th May, 2023 and the proposed 2nd interested party failed to demonstrate that he had no authority at all to enter into a consent with the respondents on behalf of the estate of the deceased.
8. The petitioner further deposed that the firm of Netaya Pion & Company Advocates is not properly on record to bring the instant application as it contravenes Order 9 Rule 9 of the Civil Procedure Rules. Further, that the application is overtaken by event as the consent judgment has already been fulfilled and finalized, and nothing is pending before the court to be set aside. Further, that the issue of defrauding the deceased estate funds is baseless as no complaint has been made against him, and that he withdrew the suit by consent, vide a right expressly conferred upon him by Order 25 of the Civil Procedure Rules.
9. The petitioner further deposed that when a matter has been withdrawn by consent of the parties in the suit, the case no longer exists and the court does not have jurisdiction to entertain the motion to reopen it again as it functus officio. Further, that as the sole petitioner in the estate of the deceased, he is clothed with authority to compromise the suit without any consultation at all and the express authority of the proposed 2nd interested party is not needed for him to enter into a consent or compromise within the scope of the suit.
10. He further deposed that the proposed 2nd interested party/ applicant is just but an administrator of the deceased estate and was not entitled to get any shares from the estate of the deceased. Further, that the four beneficiaries listed in the confirmed grant in relation to parcel of land comprised in title no. TransMara/Enoosaen/30 are fully catered elsewhere as the two daughters named therein are married, the mother is elderly and while the fourth beneficiary, Fodi Otii Muneria, has his own land registered in his name situate in Olochani location. He further deposed that the proposed 2nd interested party/ applicant has his own parcel of land and he will not suffer any loss if the application is dismissed as the property was reserved for use of Enooetet Primary School.
11. In conclusion, the petitioner deposed that parcel no. Trans Mara/Enoosaen/59 now registered in the name of the Cabinet Secretary, Ministry of Treasury on behalf of the Ministry of Education in trust for Enooetet Primary School is not occupied by anyone but the same has been leased to different persons for sugarcane farming.
12. The petitioner filed a notice of preliminary objection dated 6th July, 2023 challenging the application on the following grounds: -
 1. That the application before this court is incompetent, incurably defective, misconceived, misplaced, frivolous, scandalous, vexatious and otherwise an abuse of due process of this honourable court.
 2. That the said application offends both the word and the spirit of the provisions of Order 1 Rule 10 of the Civil Procedure Rules, 2010 and has absolutely no basis within the context of the suit that is now spent.



3. That the application has brought the application in complete breach of Section 19 of the *Civil Procedure Act*, Cap 21 Laws of Kenya as read together with Order 2 Rule 1 and Order 3 Rule 1 of the Civil Procedure Rules 2010.
 4. That the application lacks leave to commence the instant proceedings for revocation of the withdrawal.
 5. That the application is fatally defective as it contravenes and offends the clear and mandatory provisions of Order 9 Rule 9 of the Civil Procedure Rules 2010.
 6. That the application is improperly before court having been brought in the original suit instead of a miscellaneous application.
 7. That this honourable court lacks requisite jurisdiction to entertain the said application, as it offends Section 7 of the *Civil Procedure Act*.
 8. That the firm of Netaya Pion & Company Advocates is improperly on record.
 9. That the orders sought cannot issue since the application is improperly on record.
 10. That the application is informed by circumstances and facts that arose subsequent to the orders issued by this honourable court on the 8th day of June, 2023, vide judgment consent.
 11. That the implementation of the orders issued on the 8th day of June 2023 have been finalized and nothing is left to be set aside, reviewed and/or varied.
 12. That Order 25 of the Civil Procedure Rules 2010 has no provisions permitting reinstatement of a suit once withdrawal has taken effect.
 13. That the said application is devoid of merit and is not deserving case for this honourable court to exercise its inherent jurisdiction.
 14. That the cited provisions of law in the said application are inapplicable in these proceedings, and cannot support the orders sought.
 15. That this honourable court ought to declare the preliminary objection to be meritorious and the suit stands withdrawn as per the orders issued by this honourable court on the 8th day of June, 2023 and the application dated 23rd day of June, 2023, and filed in court on the 27th day of June, 2023, be dismissed and/or struck out with costs to the petitioner and the respondents.
13. The 2nd, 3rd, 4th and 5th respondents and the interested party filed their grounds of opposition dated 6th July, 2023 in opposition to the application on the following grounds: -
1. That the applicant has no locus standi to set aside consent judgment and take over the matter herein.
 2. That the applicant has not the threshold for setting aside consent judgment as espoused in the supreme court petition of County Government of Narok versus Livingstone Kunini Ntutu and Others.
 3. That the applicant has not exhibited the interest over the suit land from the consent judgment herein to warrant setting aside the same.
 4. That the Civil Procedure Rules do not provide for interested party taking over matters from party who has withdrawn/ consented to or determined.



5. That the application is frivolous, vexatious, mis informed and an abuse of the court process.
 6. That the petition has been settled and hence nothing is to be set aside as the application has been overtaken by events.
 7. That the application breathes of contempt of court and hence the applicant has no audience before the court.
 8. That the entire application is sham meant to achieve no good and hence a waste of the courts judicious time.
14. John Kararam, a former teacher of Enooretet Primary School filed a cross petitioners' replying affidavit in response to the application sworn on 18th October, 2023. The said John Kararam filed the replying affidavit on behalf of the cross-petitioners and the 2nd to 5th respondents. He deposed that the suit land herein was reserved for the use of the public primary school and has always remained so save for the few instances of the likes of the proposed 2nd interested party seeking to trespass on the suit land. Further, that the court made an order directing that no party should occupy the suit land until the dispute is determined which was determined on 10th May, 2023.
 15. The cross petitioner deposed that reinstating the matter will prejudice the right of the respondent in establishing a school and which will go along way in helping the children access learning facilities.
 16. The application and the notice of preliminary objection were canvassed by way of written submissions. On 11th January, 2024, the proposed 2nd interested party/ applicant filed his written submissions dated 20th December, 2023.
 17. The proposed 2nd interested party/applicant submitted that as per the certificate of confirmation of grant, the suit property was to be shared by Naibatuni Ene Kayopiani, Ford Potii Muneria, Jane Nashuru Kisepei and Noolkiramat Emily Shai. Further, that the petitioner did not seek the consent of the beneficiaries before he entered into the consent which will greatly affect the beneficiaries who will remain landless. Further, that the petitioner without any reason entered into a consent to have the whole land transferred.
 18. He further submitted that John Ole Kararam and Chief Ole Naleke have now stopped the family from carrying on any activity on the suit land but the Board of Management of the interested party have never stopped the family. Further it was not possible that in a serious contest like the one for ownership, that parties suddenly become friends and record a consent. He submitted that the petitioner herein was not acting on his own volition but was representing the interest of the estate of the deceased and that consenting to have the suit property transferred was not to the best interest of the beneficiaries.
 19. The proposed 2nd interested party/applicant further submitted that due to the urgency of the matter, it was only necessary that they seek leave among other orders, in one application. He urged the court to consider the provisions of Article 159 of *the Constitution* of Kenya.
 20. The proposed 2nd interested party/applicant raised two issues for determination as follows: -
 - a. Whether the applicant has satisfied any of the grounds for grant of a review.
 - b. Whether the court should exercise its discretion in favour of the applicant.
 21. On the first issue, the proposed 2nd interested party/ applicant submitted that it is manifest and self-evident that there was a pending application by the petitioner before the Judicial Service Commission



and the judge presiding over the matter did not have the jurisdiction to entertain the consent and adopt it as the judgment of the court.

22. He further submitted that the allegations by the petitioner contained in paragraph 27 of his replying affidavit are contradictory and that the suit property is the sole property that is owned by the beneficiaries and that in as much as there no discovery of new evidence and the error apparent might also be minimal, he believes that there are other sufficient reasons to warrant review. On this issue, the proposed 2nd interested party relied on the cases of Wanjiru Gikonyo & 2 Others v National Assembly of Kenya & 4 Others [2016] eKLR, Republic v Advocates Disciplinary Tribunal Ex-parte Apollo Mboya [2019] eKLR, Anthony Gachara Ayub versus Francis Mahinda Thinwa [2014] eKLR, Attorney General & Others v Boniface Byanyima, HCMA No. 1789 of 2000 and Republic versus Public Procurement Administrative Review Board & 2 Others [2018] eKLR.
23. On the second issue, the proposed 2nd interested party/ applicant submitted that the exercise of discretion in setting aside ex-parte judgment and orders is an issue that has been widely addressed by the courts and that he has demonstrated the injustice of hardship he will greatly suffer if the orders sought are not granted. The proposed 2nd interested party relied on the case of Shah versus Mbogo [1967] EA 116.
24. On 25th January, 2024, the 2nd,3rd,4th,5th respondents and the interested party filed their written submissions dated 11th January, 2024 where they raised three issues for determination as listed below: -
 - i. Whether the interested party can take over principal party's dispute?
 - ii. Whether the consent judgment can be set aside.
 - iii. Who should pay costs.
25. On the first issue, the 2nd to 5th respondents and the interested party submitted that an interested party has a by stander role and his claim will be premised on the principal parties claim to the suit as an interested party and cannot seek to take over the dispute between the principal parties. They relied on the case of Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others [2014] eKLR.
26. On the second issue, and while relying on the cases of Francis K. Muruatetu & Another versus Republic & 5 Others [2016] eKLR and Skov Estate Limited & 5 Others versus Agricultural Development Corporation & Another [2015] eKLR, the 2nd to 5th respondents and the interested party submitted that the application for joinder is fatally defective as the petitioner and the interested party have a common cause of action and the proposed 2nd interested party/applicant has not brought any evidence different from the right that could have accrued to the petitioner to allow him be enjoined in these proceedings.
27. On the third issue, the 2nd to 5th respondents and the interested parties submitted that for setting aside consent judgment, one has to demonstrate that indeed the consent judgment was obtained by fraud, illegal and express provisions of *the Constitution*. They relied on the cases of Flora Wasike versus Destimo Wamboko [1982-88] 1KAR and Mike Gideon Sonko v Attorney General & 8 Others [2014] eKLR.
28. In conclusion, the 2nd to 5th respondents and the interested parties submitted that an interested party cannot sustain principal party suit or claim when the principal parties have agreed and compromised the claim. Further, that the intended interested party does not have separate and identifiable claim different from the petitioner or respondent which he will suffer prejudice and or his participation is essential to enable him be made a party that will help the court reach final determination. Finally,



that the consent judgment was not obtained by fraud, illegally or against public policy and no other sufficient reason has been demonstrated to warrant setting aside.

29. On 1st March, 2024, the petitioner filed his undated written submissions. The petitioner raised four issues for determination as listed below: -
- i. Whether the Law firm of Pion Netaya & Co. Advocates and the applicant herein have leave to commence the instant proceedings and locus standi to move the court.
 - ii. Whether the applicant has made a case for reinstatement of the principal parties suit.
 - iii. Whether this court has jurisdiction to determine this suit.
 - iv. Whether the present application is meritorious.
30. On the first issue, the petitioner submitted that the firm of Netaya Pion & Company has offended the express provisions of Order 9 Rule 9 of the Civil Procedure Rules which are couched in mandatory terms. The petitioner further submitted that the present application is unmerited and, in all intents and purposes, has been overtaken by events as the consent judgment has already been fulfilled and finalized and nothing is pending before this court to finalise. He submitted that when a matter has been withdrawn by consent of the parties in the suit, the case no longer exists and the court does not have jurisdiction to entertain a motion to reopen it again as it is functus officio.
31. The petitioner further submitted that as the substitute of Sanamwala Ole Mutua Nkairipiani (deceased), and the then sole petitioner, he was clothed with authority to compromise the suit contrary to the proposed 2nd interested party/ applicant's opinion and/or assertions. Further, that the express authority from John Mutua or any other person is not needed for him to enter into a consent or compromise within the scope of the suit.
32. On the second issue, the petitioner submitted that the application is misplaced, since an interested party cannot file a notice of motion seeking injunctive orders, in a suit he did not file. Also, that his action of withdrawing the suit is binding and final, making the suit no more. The petitioner relied on the case of *Methodist Church in Kenya v Mohammed Fugicha & 3 Others* [2019] eKLR.
33. The petitioner further submitted that the proposed 2nd interested party/applicant has no interest in the already withdrawn suit, since he was not a beneficiary and/or entitled to get a share of the land comprised in *Trans Mara/ Enoosaen/ 59*. Further, that in case of non-joinder, the proposed 2nd interested party/applicant will not suffer any harm, damage, injury or loss. Further, that allowing the reinstatement of the suit will greatly prejudice the principal parties and proper parties who unanimously agreed and signed a binding consent which was adopted as a judgment of the court.
34. On the third issue, the petitioner submitted that upon withdrawal of the suit, the case ceased to exist and the court has no jurisdiction to entertain the application and the proposed 2nd interested party cannot claim that he had no instructions to withdraw the suit. The petitioner relied on the case of *Priscilla Nyambura Njue v Geovhem Middle East Limited: Kenya Bureau of Standards (Interested Party)* [2021] eKLR.
35. The petitioner further submitted that once the consent was adopted, it formed the judgment of the court and created a valid decree. Further, that since the judgment of the court marked the suit as withdrawn, the same ceased to exist. He submitted that withdrawal of a suit is the only step that any court must as of necessity caution the parties that once done, that decision cannot be reneged, especially if it is done by the consent of the parties. Reliance was placed in the case of *PIL Kenya Limited v Joseph Oppong* [2009] eKLR.



36. On the fourth issue, the petitioner submitted that the respondents have incurred a lot of expenses in prosecuting the main suit and convolution of the matter by the present application only goes to further these expenses and negatively affect the respondents. It was his submission that public constitutional rights should not be tramped by individual interest. The petitioner relied on the case of *Kofinaf Company Limited & Another v Nahashon Ngige Nyagah & 20 Others* [2017] eKLR.
37. I have considered the application, replies thereof, the grounds of opposition, the notice of preliminary objection and the written submissions as well as the authorities relied upon by the proposed 2nd interested party and the 2nd to 5th respondents and interested party and also those of the petitioner.
38. The issues for determination are in my view as follows: -
- i. Whether the application contravenes Order 9 Rule 9 of the Civil Procedure Rules.
 - ii. Whether the proposed 2nd interested party has met the threshold for grant of the orders of review.
39. On the first issue, Order 9, Rule 9 of the Civil Procedure Rules provides as follows;
- “When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—
- (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be.”
40. The above provision of the law is clear on the procedure which a party ought to follow once judgment has been entered in a case. The proposed 2nd interested party/applicant was not a party to the suit prior to the judgment of the court on 8th June, 2023. This provision of the law seeks to bring order to the proceedings before the court and it is couched in mandatory terms.
41. However, I am not of the view that the application offends the mandatory provisions of Order 9 Rule 9 of the Civil Procedure Rules for the reason that Order 9 Rules 10 gives provision.
42. Order 9, Rule 10 of the Civil Procedure Rules provides;
- “An application under rule 9 may be combined with other prayers provided the question of change of Advocate or party intending to act in person shall be determined first.”
43. Section 80 of the *Civil Procedure Act*, provides as follows: -
- “Any person who considers himself aggrieved—
- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”(with emphasis)
44. Based on the above provision of the law, the proposed 2nd interested party was correct in bringing forth the instant application as it sought among other orders, an order for leave to come on record, for the



proposed 2nd interested party. Further, Section 80 of the *Civil Procedure Act* provides for any person and not necessarily the parties to the suit.

45. Let me also add that the participation of the proposed 2nd interested party in this case is not far fetched as it has not been disputed that he is also an administrator of the estate of the deceased.
46. The proposed 2nd interested party filed the instant application seeking orders of review on the grounds that he has an identifiable stake in the suit property and that the petitioner never informed the beneficiaries nor sought their consent before recording a consent with the respondents. He contended that the consent was entered without the knowledge of the family members and/or beneficiaries and he is apprehensive that all the other beneficiaries stand to lose the entire estate that should be bequeathed to them justifiably. He further contended that the affidavits attached to the petition for the removal of the judge handling the matter were all forgeries as no member of the family signed.
47. The petitioner on the other hand contended that as an administrator of the estate of the deceased, he did not require anyone's consent to record the consent before the court and that all the beneficiaries of the estate of the deceased are fully catered elsewhere as contained in paragraph 27 of his replying affidavit.
48. The question then is, are the reasons advanced by the proposed 2nd interested party sufficient to warrant review?
49. This matter was initially filed before the ELC in Kilgoris and on 8th June, 2023, the petitioner and the Counsel for the respondents informed the court that they had filed a consent dated 10th May, 2023 and sought that the consent be adopted as an order of the court.
50. Washe, J adopted the consent filed by the petitioner and the 2nd to 5th respondents, dated 10th May, 2023 as an order of the court.
51. In the Court of Appeal case of Board of Trustees National Social Security Fund versus Micheal Mwalo Nairobi CA No. 293 of 2014, the court stated as follows with regard to the setting aside of consent orders: -

“...The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. A court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.”
52. In the case of, Flora Wasike versus Destimo Wamboko (1982-1988) 1 KLR 625, the Court of Appeal held that a consent judgment can only be set aside on the same grounds as would justify the setting aside of contract such as fraud, mistake or misrepresentation.
53. Also, in the case of Julius Kigen Kibiego v Angeline Korir & another Eldoret ELC No. 994 of 2012 [2012] eKLR the court stated as follows: -

“The much that counsels for the parties could have done was to record a consent that only binds the two parties to the proceedings. They did not have capacity to enter into a consent that affects a third party. Just as in a contract, the parties to a contract can only agree on rights and duties amongst themselves. Parties to a contract cannot rope in a third party without his consent as this will go against the doctrine of privity of contract. An agreement attempting



to bind a third party is one that cannot be binding on the third party without his consent.
It is for this reason that I take the position that the subject consent was irregular...”

54. The petitioner and the proposed 2nd interested party/applicant are administrators of the estate of the deceased. Whereas they claim no interest in the suit property as beneficiaries, it is their responsibility to ensure that the property of the deceased as contained in the certificate of confirmation of the grant is distributed accordingly. This goes to say that those listed as beneficiaries in Trans Mara/Enoosaen/59 are entitled to give an opinion or otherwise of how their share of land is to be dealt with.
55. The petitioner in my view is casual in the way he seems to be handling the affairs of the estate of the deceased. According to him, the assumption that beneficiaries of the estate of the deceased are fully catered elsewhere is not sound and is unreasonable as well.
56. From the above, I find the reasons advanced by the proposed 2nd interested party/applicant i.e. failure to seek consent of the beneficiaries before recording the consent sufficient for me to set aside the orders of the court. The proposed 2nd interested party/applicant also sought to prosecute the suit on behalf of the estate of the deceased. From the depositions contained in the application and the replying affidavit, there seems to be a disconnect between the petitioner and the proposed 2nd interested party. In my view, the proposed 2nd interested party is at liberty to prosecute the case against the respondents.
57. The notice of preliminary objection dated 6th July, 2023 is dismissed with no orders as to costs.
58. Arising from the above, the notice of motion dated 23rd June, 2023 is hereby allowed in the following terms: -
- i. John Mutua is hereby joined in these proceedings and substitutes Sanamwala Ole Mutua Nkairipiani (deceased) as a legal representative of the estate of the deceased.
 - ii. The firm of Netaya Pion & Company Advocates is hereby placed on record for the proposed 2nd interested party.
 - iii. The orders issued by Washe J on 8th June, 2023 are hereby set aside.
 - iv. John Mutua is hereby granted leave to prosecute this matter on behalf of the estate of the deceased.
 - v. This matter to be heard and determined on merit.
 - vi. Costs to abide the outcome of the main suit.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL this 6TH day of MARCH, 2024.

HON. MBOGO C.G.

JUDGE

6/03/2024.

In the presence of:

Mr. Meyoki – C. A

