**Maina v Wamala (Environment and Land Case Civil Suit E154 of 2022) [2024] KEELC 1707 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1707 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT AND LAND CASE CIVIL SUIT E154 OF 2022**

**JO MBOYA, J**

**APRIL 4, 2024**

**BETWEEN**

**MICHAEL WAITITU MAINA .................................................................. PLAINTIFF**

**AND**

**ABDULRAHMAN WAMALA ............................................................... DEFENDANT**

**RULING**

1. The Defendant/Applicant herein has approached the Honorable Court vide Chamber Summons Application dated the 27th of February 2024, brought pursuant to the provisions of Order 1 Rule 15 Rule (10)(c) of the Civil Procedure Rules, 2010; and in respect of which same has sought for the following reliefs:[verbatim]

    i. ................................................................................Spent

    ii. That this Honorable court be pleased to grant leave to file out of time an Application for leave to issue and serve a 3rd Party Notice on Kiambu Dandora Farmers Company Ltd.

    iii. That the Defendant/Applicant be granted Leave to issue and serve 3rd Party Notice upon Kiambu Dandora Farmers Company Ltd.

    iv. That the costs of this Application be in the cause.

2. The instant Application is premised and anchored on various grounds which have been enumerated in the body thereof. Furthermore, the Application is supported by the Affidavit of the Defendant/Applicant sworn on even date [namely 27th February 2024] and in respect of which the deponent has averred that same bought and acquired plot number 493, zone 11 from one Elisha Gwendu, following [sic] assurance from the intended 3rd party herein.

3. Upon being served with the subject Application, the Plaintiff/Respondent filed a Replying Affidavit sworn on the 1st of March 2024 and wherein same has contended inter-alia that the instant Application

is a gimmick and an; attempt by the Defendant/Applicant to obstruct, delay and/or defeat the hearing and determination of the subject suit.

4. Additionally, the Plaintiff/Respondent has also averred that the instant Application has been made and/or mounted with unreasonable and inordinate delay, which has not been accounted for nor explained at all.

5. Be that as it may, the instant Application came up on the 4th of March 2024; whereupon the advocates for the respective Parties covenanted to canvass and dispose of the application by way of written submissions. Consequently and in this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of written submissions.

6. Suffice it to point out that thereafter the Defendant/Applicant filed written submissions dated the 11th of March 2024 whereas the Plaintiff/Respondent filed written submissions dated the 15th of March 2024. For good measure, both sets of written submissions are on record.

**Parties' Submissions:**

**a. Applicant's Submissions:**

7. The Applicant herein filed written submissions dated the 11th of March 2024; and in respect of which same has adopted and reiterated the grounds contained at the foot of the Application, as well as the averments contained in the body of the Supporting Affidavit.

8. Furthermore, learned counsel for the Applicant has thereafter raised, highlighted and canvassed three [3] salient issues for due consideration and determination by the Honourable court.

9. Firstly, learned counsel for the Applicant has submitted that the Applicant herein bought and/or purchased the property otherwise known as Plot No 493 Zone 11, situate within L.R No. 11379/3, from one Elisha Gwendu [hereinafter referred to as the vendor], albeit upon obtaining assurances from Kiambu Dandora Farmers Company Ltd, namely the intended 3rd Party.

10. To the extent that the Applicant bought and purchased the designated plot, albeit on the basis of assurances from the intended 3rd party, learned counsel for the Applicant has submitted that the Defendant/Applicant is thus within his lawful rights to implead the 3rd Party herein.

11. Further and in addition, learned counsel for the Applicant has submitted that the intended 3rd party is thus a necessary party and hence her presence is crucial to enable the court to determine all the issue in controversy once and for all.

12. Secondly, learned counsel for the Applicant has submitted that the Applicant has been able to establish and demonstrate that there is a nexus between the suit property, which is claimed by the Plaintiff/Respondent and the parcel of land giving rise to the plot, which was bought and acquired by the Defendant/Applicant.

13. Arising from the foregoing, learned counsel for the Applicant has submitted that the Applicant has therefore established and demonstrated that there exists a basis of liability of the 3rd party, in the manner stipulated and/or envisaged by dint of the provisions of Order 1 Rule 15(1) of the Civil Procedure Rules, 2010.

14. In support of the foregoing submissions, learned counsel has therefore cited and relied on the case of Hass Petrolium Kenya Ltd vs Lota Engineering & Construction Ltd [formerly Lota Excavation and

Rental Ltd]; White Lotus Project Ltd [Intended 3rd Party] [2020]eKLR and Kenya Commercial Bank Ltd vs Suntra Investment Bank Ltd (2015)eKLR, respectively.

15. Thirdly, learned counsel has submitted that even though the Plaintiff/Respondent is privy to and knowledgeable of the fact that the suit property came from and/or arose as a result of [sic] the subdivision of L.R No. 11379/3 [I.R No. 19935/7], same has chosen to contend otherwise merely to mislead the court and thereafter to defeat the cause of justice.

16. Be that as it may, learned counsel for the Applicant has submitted that both the suit property [which is claimed by the Plaintiff/Respondent] and plot number 493 Zone 11 [which is claimed by the Applicant] trace their origin to L.R No. 11379/3.

17. Owing to the foregoing, learned counsel for the Applicant has therefore invited the court to find and hold that there is indeed a nexus between the suit property and the plot which is claimed by the Applicant and as a result of the said nexus, there exists a basis to warrant the inclusion of the intended 3rd party as a party to the instant suit.

18. Based on the foregoing submissions, learned counsel for the Applicant has thus implored the Honourable court to find and hold that the subject Application ought to be granted.

**b. Respondent's Submissions:**

19. The Respondent filed written submissions dated the 15th of March 2024; and in respect of which same has adopted and reiterated the contents of the Replying Affidavit sworn on the 15th of March 2024 and thereafter raised and highlighted three [3] salient issues to be determined before the court.

20. Firstly, learned counsel for the Respondent has submitted that the Applicant herein is on record as having stated that same [Defendant/Applicant] acquired plot number 493 Zone 11 from Elisha Gwendu and not from Kiambu Dandora Farmers Company Ltd [who are the intended 3rd party].

21. Arising from the foregoing, learned counsel for the Plaintiff/Respondent contends that to the extent that the Applicant did not acquire and/or purchase his plot from the intended 3rd party, the notice is premature and misconceived.

22. Secondly, learned counsel for the Plaintiff/Respondent has submitted that the only party who could be joined as a third party is the Vendor, namely Elisha Gwendu and not otherwise. Nevertheless, learned counsel for the Plaintiff/Respondent has contended that the joinder of Elisha Gwendu is however not legally tenable on account of the existence of an arbitration clause in the sale agreement that was entered into and executed between the parties.

23. Owing to the existence of an arbitration clause in the sale agreement entered into and executed between the Plaintiff and the Vendor that in the event an issue were to arise between the Defendant/Applicant and the Vendor, such a dispute would have to be referred to arbitration in accordance with the provisions of Section 6 of the *Arbitration Act*, 1995 Laws of Kenya.

24. Thirdly, learned counsel for the Respondent has also submitted that the instant Application has been made and mounted by the Defendant/Applicant with unreasonable and inordinate delay, which delay has neither been accounted for nor explained by the Defendant/Applicant.

25. Consequently, and in the premises, learned counsel for the Plaintiff/Respondent has submitted that the late filing of the instant Application is yet another calculated ploy by the Defendant/Applicant to halt the expeditious hearing and determination of the suit beforehand.

26. In any event, learned counsel for the Plaintiff/Respondent has contended that taking into account the time lapse before the filing of the instant application, and coupled with the number of applications which had hitherto been filed by the Applicant, the instant application reeks of mala fides [bad faith] and hence same ought not to be allowed.

**Issues for Determination:**

27. Having appraised and reviewed the subject Application and the Response thereto and upon taking into consideration the written submissions filed by and on behalf of the respective parties, the following issues do arise and are thus worthy of determination:

    i. Whether the instant Application has been made and/or mounted timeously and with due promptitude, and if not, whether the delay has been duly accounted for.

    ii. Whether the Defendant/Applicant has established and/or demonstrated the existence of a legal basis of liability as against the intended 3rd party or otherwise.

**Analysis And Determination:**

**Issue Number 1 Whether the instant Application has been made and/or mounted timeously and with due promptitude, and if not, whether the delay has been duly accounted for.**

28. It is common ground that the subject Application seeks for extension of time within which to issue and/or take out a 3rd party notice as against the intended 3rd Party, namely Kiambu Dandora Farmers Company Ltd.

29. To the extent that the Application beforehand seeks liberty to issue and take out a 3rd Party notice, it is imperative to take note that whoever desires to take out and issue a 3rd party notice, the Defendant/ Applicant not excepted, is obligated to take out and issue such 3rd party notice within a prescribed timeline. For good measure, the provisions of Order 1 Rule 15 of the Civil Procedure Rules, 2010; prescribes the timeline within which a 3rd party notice ought to be issued and/or taken out.

30. For the sake of brevity, it is imperative to reproduce the provisions of Order 1 Rule 15 of the Civil Procedure Rules, 2010.

31. Consequently, same are reproduced as hereunder:

    15. Notice to third and subsequent parties [Order 1, rule 15]

        1. Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party):

            a. that he is entitled to contribution or indemnity; or

            b. that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

            c that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice

(hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.

(2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.

(3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed and served within fourteen days of leave, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith.

(4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions "third party notice" and "third party" shall respectively apply to and include every notice so issued and every person served with such notice.

(5) Where a person served with a notice by a third party under sub rule (4) makes such a claim as is mentioned in sub rule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule.

32. From the provisions of the law which have been cited [supra], it is evident that a Defendant who desires to take out and/or issue a third-party notice against an intended third party is obliged to file the requisite Application within 14 days from the date of close of pleadings.

33. For good measure, the pleadings in respect of this matter closed on or about 23rd January 2023, following the filing and service of the Reply to the amended statement of defense by the Plaintiff/Respondent herein.

34. Arising from the foregoing, it is important to point out that if the Applicant was keen and desirous to procure leave to take-out a third-party notice, then same ought to have complied with and/or adhered to the stipulated timeline.

35. Be that as it may, there is no gainsaying that the requisite application for leave to issue and/or take out a third-party notice was never sought for within the prescribed timelines or at all.

36. To the extent that the requisite application seeking leave to issue and/or take out a third party notice was never filed and/or lodged within the circumscribed timelines, then it behooved the Applicant herein to account for and/or explain the delay in the late filing of the application seeking for such leave.

37. To my mind, it was incumbent upon the Defendant/Applicant herein to provide plausible and cogent explanation as to why the application beforehand was neither filed timeously nor in accordance with the prescribed timeline.

38. For good measure, the reasons and/or explanations, if any would have been contained in the body of the Supporting Affidavit. In any event, it is the reasons/explanations, if any, that would enable the court to discern whether or not the application is being made in good faith [bona fide] or otherwise.

39. Be that as it may, I beg to point out that despite being aware that the application beforehand was filed after a substantial lapse of time, the Defendant/Applicant has neither found it fit nor appropriate to outline the reasons [explanations] underpinning the delay in the filing of the subject application.

40. Instructively, it is not lost on the court that it is the reasons, if any, tendered and provided to the court that would enable the court to exercise its equitable discretion [jurisdiction], one way or the other.

41. Put differently, it is the reasons and explanations, if any, tendered and produced to the court that would underpin the exercise of equitable discretion in favor of the Applicant. However, where no reason[s] are tendered by the Applicant, then it becomes difficult for the court to exercise discretion.

42. Suffice it to point out that the discretion of the court can only be exercised on the basis of evidence [explanation] and due justification and not in vacuum.

43. To underscore the foregoing exposition of the law, it suffices to cite, restate and reiterate the elaborate holding of the Supreme Court of Kenya [The Apex Court] in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR, where the court held thus:

    From the above caselaw, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

    This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

    1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;

    2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court

    3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

    4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

    5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

    6. Whether the application has been brought without undue delay; and

    7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

44. Additionally, the Supreme Court of Kenya also revisited the necessity for an Applicant seeking extension of time to account for the delay in the case of Nairobi Bottlers versus Mark Ndumia & Another [Supreme Court 2023] [Ruling] delivered on the 28/12/2023], where the court held thus:

    > (27) Having so found, we also hold that the applicant has not offered any explanation for the delay between 17th August, 2023 and 2nd October 2023 when it filed its Motion for extension of time. In Marvin Opiyo Ambala & another v. Oduor Hawi Ambala & Another, SC Applic No. 1 of 2021; [2021]

eKLR, this Court pronounced that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. In the circumstances, the Motion for extension of time lacks merit.

(28) Furthermore, even assuming that the applicant had offered satisfactory explanation for the entire period of delay, which it hasn't, its Motion for extension of time would still be subject to the same fate. This is because, the applicant has urged this Court that upon extending time to deem the appeal as being properly filed. Time and time again, we have reiterated that filing an appeal out of time without leave and then seeking this Court's discretion to extend time is presumptive and in-appropriate.

45. Other than the foregoing, it is also instructive to take cognizance of the holding in the case of Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) (Ruling), where the court stated and held thus:

12. In order to exercise its discretion whether or not to grant condonation, the court must be appraised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success. Condonation cannot be had for the mere asking.

An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.

13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.

46. Premised on the ratio elaborated in the foregoing decisions, there is no gainsaying that any Applicant desirous to partake in the equitable discretion of the court for purposes of inter-alia extension of time, must account for the delay attendant to the application beforehand.

47. Nevertheless, in respect of the instant application, I have found and held that no explanation has been tendered and/or availed to the court by the Defendant/Applicant as to why the instant application was not filed within the prescribed timelines.

48. For coherence, there being no explanation which has been tendered by and on behalf of the Applicant herein, the court is denied [deprived of] the relevant information that would have been critical and essential in discerning whether or not the application beforehand is bona fide.

49. Furthermore, the extent of delay, which spans over 14 months, is so unreasonable and inordinate and hence in the absence of any explanation, such delay invites the application and invocation of the doctrine of latches.

50. To this end, it suffices to take cognizance of the holding in the case of the Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR, where the Court of Appeal conceded the import, tenor and effect of the doctrine of latches.

51. For coherence, the Court of Appeal stated and held thus:

> 55. Laches means the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. This equitable defense is based upon grounds of public policy, which requires the discouragement of stale claims for the peace of society. (See Republic of Phillipines v Court of Appeals, G.R. No. 116111, January 21, 1999, 301 SCRA 366, 378-379).

52. In a nutshell, my answer to issue number one [1] is therefore threefold. Firstly, it behooved the Defendant/Applicant to tender and place before the court plausible evidence to explain the delay in the filing of the instant application, which is not the case.

53. Secondly, the failure to account for and/or tender plausible explanation underpinning the delay deprives the court of the requisite foundation for invoking and exercising equitable discretion in favor of the Defendant/Applicant.

54. Thirdly, that the application beforehand is defeated by the doctrine of latches, on account of the unreasonable and inordinate time lapse, which has neither been accounted for nor explained.

**Issue Number 2 Whether the Defendant/Applicant has established and/or demonstrated the existence of a legal basis of liability as against the intended 3rd party or otherwise.**

55. Other than the failure by the Defendant/Applicant to tender and place before the court plausible explanation to explain the delay attendant to the filing of the current application, it is also important to underscore that whoever seeks for leave to issue and take-out third-party notice must demonstrate that there exists a basis of liability as against the intended third party.

56. Put differently, the grant of leave with a view to issuing and/or taking out a third-party notice is premised on the existence of a basis of liability [claim as against the third party and not otherwise].

57. Consequently, and in the premises, it suffices to point out that a court of law will only venture forward and grant the leave to take out and/or issue the third-party notice, if the Defendant proves and establishes that same indeed has some scintilla of claim as against the third party and not otherwise.

58. Instructively, no Leave to issue and take out a third-party notice shall issue and/or be granted where there exists no basis of [sic] liability as against the intended third party.

59. Arising from the foregoing, there is no gainsaying that the Defendant/Applicant herein was therefore duty bound to demonstrate to the court that same has some scintilla of claim as against the intended third party, which should found a basis for the issuance of leave to takeout the third-party notice.

60. Be that as it may, it is conceded by the Defendant/Applicant that same [sic] entered into a sale/purchase agreement with one Elisha Gwendu, who sold to and in favor of the Defendant/Applicant plot number 493 Zone 11, situate within the City of Nairobi. In any event, the Defendant/Applicant has proceeded to and indeed exhibited a copy of the sale agreement dated the 25th of March 2021.

61. Suffice it to point out that from the contents of the sale agreement, the contract beforehand was between Elisha Gwendo [vendor] and the Defendant/Applicant [purchaser] and not otherwise.

62. To my mind, the sale agreement [contract] between Elisha Gwendo [vendor] and the Defendant/Applicant [purchaser] is only binding on the named parties and not otherwise. Consequently, if there does arise an issue of breach of the said contract, then the Defendant/Applicant's remedy is against the Vendor and not otherwise.

63. Put differently, the sale agreement between Elisha Gwendo [vendor] and the Defendant/Applicant [purchaser], only creates a privity of contract between the two named parties. In this regard, the only liability, if any, that arises from the sale agreement under reference would be a liability against Elisha Gwendo and not otherwise.

64. In my humble view, if there was need/necessity to issue and/or take out a third-party notice, then such third-party notice would only issue and/or be taken out against Elisha Gwendo [vendor] and not otherwise.

65. Be that as it may, it is evident and apparent that the Defendant/Applicant herein, for reasons only known to him, is not desirous to take out third party notice against the vendor.

66. Conversely, the Defendant/Applicant is desirous and keen to take out a third party notice as against Kiambu Dandora Farmers Company Ltd, with whom same had no dealing, transaction and/or contract.

67. Though the Defendant/Applicant has contended that Kiambu Dandora Farmers Company Ltd issued unto him various assurances pertaining to and concerning the validity of the Title of the plot that was being sold unto the Applicant, I beg to point out that the allegations pertaining to [sic] the assurance are not well founded.

68. In any event, the clauses/terms of the sale agreement dated the 25th of March 2021, which was entered into between the Defendant and the vendor, are explicit as pertains to the conditions and the warranties attendant to same [sale agreement].

69. Taking the foregoing into perspective, I am afraid that the Defendant herein has neither established any legal basis as against the intended third party to warrant the grant of leave either in the manner sought or at all.

70. To this end, I adopt and endorse the holding of the court in the case of Hass Petroleum (K) Limited v Iota Engineering and Construction Limited (Formerly Iota Excavations and Rentals Ltd); White Lotus Projects Limited (Intended 3rd Party) [2021] eKLR, where the court held as hereunder:

> In Oceanfreight (EA) Ltd v Technomatic Ltd & Another (supra), the Court held that;-
>
> "It is, in my opinion professionally expedient that the defendant should seek to enjoin the applicant herein, as a third party. This is because of the perceived connection between the applicant's role in the said contract and the cause of action."
>
> Court further stated "from the several authorities canvassed by counsel on both sides, it emerges, contrary to the applicant's contentions, that joinder of third parties as may be prayed by defendants, is not conceptually linked to contract as such; such joinder may be sought in connection with different causes of action was that, provided only that there exists a basis of liability of the third party to the defendant; and such a basis of liability can arise by operation of the law, in the light of the applicable facts and circumstances."

71. Quite clearly, the issuance of leave to take out and/or issue of a third party notice is not a matter of cause [favour]. For clarity, the Applicant is legally enjoined to demonstrate a basis for the issuance of such leave.

72. Finally, and as concerns the import, scope and tenor of the Doctrine of privity of contract, it suffices to cite and reiterate the holding of the Court of Appeal in the case of Savings & Loan (K) Limited vs Kanyenje Karangaita Gakombe & another [2015] eKLR, where the court held thus:

> In its classical rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly a contract cannot be enforced either by or against a third party. In Dunlop Pneumatic Tyre Co Ltd V Selfridge & Co Ltd [1915] AC 847,Lord Haldane, LC rendered the principle thus:
>
> "My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it."
>
> In this jurisdiction that proposition has been affirmed in a line of decisions of this Court, among them Agricultural Finance Corporation V Lengetia Ltd (supra), Kenya National Capital Corporation Ltd V Albert Mario Cordeiro & Another (supra) and William Muthee Muthami V Bank Of Baroda, (supra).
>
> Thus in Agricultural Finance Corporation V Lengetia Ltd (supra), quoting with approval from Halsbury's Laws of England, 3rd Edition, Volume 8, paragraph 110, Hancox, JA, as he then was, reiterated:
>
> "As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract."

73. Arising from the foregoing, my answer to issue number two [2] is twofold. Firstly, the Defendant/Applicant has neither placed before the court any evidence to warrant a finding that there exists a basis of liability of the intended third-party to warrant the grant of leave.

74. Secondly, the claim by the Defendant/Applicant, if any, arising from the sale agreement dated the 25th of March 2021 is only maintainable as against the Vendor and not otherwise by dint of the doctrine of privity of contract.

**Final Disposition:**

75. Having considered the various issues [which were highlighted and enumerated in the body of the Ruling], it must have become crystal clear that the subject Application is not meritorious.

76. Consequently, and in view of the analysis contained elsewhere hereinbefore, the Application dated the 27th of February 2024, be and is hereby dismissed with costs to the Plaintiff/Respondent.

77. It is so Ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL, 2024.**

**OGUTTU MBOYA,**

**JUDGE.**

***In the presence of:***

***Benson – Court Assistant.***

Mr. Manyara h/b for Mr. Mogire for the Defendant/Applicant

Mr. Macharia for the Plaintiff/Respondent

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