



**Oyolla v Awange & 2 others (Environment and Land Miscellaneous Application E035 of 2022) [2024] KEELC 1708 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1708 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E035 OF 2022**

**JO MBOYA, J**

**APRIL 4, 2024**

**BETWEEN**

**JOHN KENNETH AJIMA OYOLLA ..... PLAINTIFF**

**AND**

**RED ROSE REALTORS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**PERES ANYANGO AWANGE ..... 2<sup>ND</sup> DEFENDANT**

**GOLD GREEN LIGHT RESIDENCE LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff/Applicant herein has approached the Honorable Court *vide* Notice of Motion Application dated the 14<sup>th</sup> of February 2024; brought pursuant to the provisions of Order 8 Rule 2 and 3 of the Civil Procedure Rules, 2010; and in respect of which the Plaintiff/Applicant has sought for the following reliefs:
  - i. ....Spent.
  - ii. That the Plaintiff be allowed to amend his Plaint in terms of the amended Plaint annexed to the Supporting Affidavit herein.
  - iii. That costs of this Application be in the cause.
2. The instant Application is premised on the grounds which have been enumerated in the body thereof. Furthermore, the Application is supported by the Affidavit of John Kenneth Ajima Oyola [the Plaintiff/Applicant] sworn on even date and in respect of which the deponent has annexed one document, namely, the proposed Amended Plaint, which is sought to be adopted by the Applicant.
3. Upon being served with the instant Application, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondents filed a Replying Affidavit sworn on the 27<sup>th</sup> of February 2024 and in respect of which the deponent has



contended *inter-alia* that the Application beforehand has been mounted with unreasonable and inordinate delay and in any event, same is intended to plug the gaps [loopholes] that became evident during cross examination.

4. On the other hand, the 3<sup>rd</sup> Defendant has filed a Replying Affidavit sworn by one Saban Yilmazturk and which is sworn on the 26<sup>th</sup> of February 2024. For good measure, the deponent of the said affidavit has contended that the intended amendment is calculated to bring forth a new cause of action and hence same shall prejudice the rights and interests of the 3<sup>rd</sup> Defendant/Respondent.
5. Be that as it may, the instant Application came up on the 4<sup>th</sup> of March 2024; and 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 the written submissions.
6. For coherence, the advocates for the respective parties thereafter proceeded to and filed their respective written submissions. Instructively, the Plaintiff/Applicant filed written submissions dated the 7<sup>th</sup> of March 2024; whereas the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed written submissions dated the 14<sup>th</sup> of March 2024.
7. Furthermore, the 3<sup>rd</sup> Defendant filed written submissions dated the 13<sup>th</sup> of March 2024. For good measure, all the three [3] sets of written submissions are on record.

#### **Parties Submissions:**

##### **a. Applicant's Submissions:**

8. The Applicant herein filed written submissions dated the 7<sup>th</sup> 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 contents of the Supporting Affidavit.
9. Furthermore, learned counsel for the Applicant has thereafter proceeded to and highlighted two [2] salient and pertinent issues for due consideration by the Honourable court.
10. Firstly, learned counsel for the Applicant has submitted that the application beforehand, which seeks for leave to file an amended Plaint, with a view to introducing an additional relief, is meritorious and thus ought to be allowed.
11. For coherence, learned counsel for the Applicant has submitted that the entirety of the suit beforehand touches on and/or concerns a claim by the Plaintiff/Applicant to be entitled to the suit property on the basis of trust. In this regard, learned counsel for the Applicant has submitted that even though the Plaintiff/Applicant had impleaded his claim based on trust and fraud respectively as against the Defendants jointly and/or severally, the Plaintiff omitted to include a specific prayer as against the 3<sup>rd</sup> Defendant.
12. Nevertheless, learned counsel for the Plaintiff/Applicant has contended that the intended amendment, which is calculated to implead a specific relief as against the 3<sup>rd</sup> Defendant, shall not introduce and/or bring forth a new cause of action, either as alleged or at all.
13. In any event, learned counsel for the Plaintiff/Applicant has invited the court to take cognizance of paragraphs 19, 20, 21 and 22 of the Plaint, which is sought to be amended and to note that indeed the claim by the Plaintiff/Applicant touches on and impacts upon the 3<sup>rd</sup> Defendant.



14. In the premises, learned counsel for the Plaintiff/Applicant has thus submitted that the intended amendment would therefore enable the court to entertain and adjudicate upon the entirety of the Applicant's claim, as pertains to ownership of the suit property.
15. In support of the foregoing submissions, learned counsel for the Plaintiff/Applicant has cited and relied on inter-alia the holding in the case of *Elijah Kipng'eno Arap Bii vs Kenya Commercial Bank Ltd* (2013)eKLR and *John Nyagaka Osoro vs Reinold Kariasa Cahro & 5 Others* (2021)eKLR, respectively.
16. Secondly, learned counsel for the Applicant has also submitted that the nature and scope of amendment that is sought to be introduced at the foot of the proposed amended Plaint shall not prejudice the interests of the Defendants/Respondents or at all.
17. In any event, learned counsel for the Applicant has submitted that whatever prejudice and/ or inconvenience, if any, to be suffered by the Defendants/Respondents can be compensated by an award of costs.
18. Premised on the foregoing, learned counsel for the Plaintiff/Applicant has therefore implored the Honourable court to find and hold that the Application beforehand [which merely seeks to introduce an additional relief only] is meritorious and thus ought to be granted.

**b. 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Submissions:**

19. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein have filed written submissions dated the 14<sup>th</sup> of March 2024 and in respect of which same has reiterated the contents of the Replying Affidavit sworn on the 27<sup>th</sup> of February 2024; and thereafter highlighted three [3] salient and pertinent issues for consideration by the Honourable court.
20. First and foremost, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents has submitted that the Application beforehand, which seeks leave to amend the Plaint, has been mounted with unreasonable and inordinate delay, and hence same ought not to be allowed.
21. Secondly, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents has also contended that the Plaintiff/Applicant herein has been litigating in bits and pieces and that by virtue of the conduct of the Plaintiff/Applicant, the Defendants/Respondents have been unduly prejudiced.
22. Additionally, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents has contended that if the subject Application were to be allowed, then the Defendants may be compelled and/or constrained to re-open their cases and that such an endeavor shall occasion grave injustice and inconvenience on account of delayed justice.
23. Thirdly, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents has submitted that the Plaintiff/Applicant herein has neither tendered nor produced before the court any plausible/ cogent reason to explain why the relief intended to be brought forth, was not impleaded in the first instance.
24. Further and at any rate, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents has submitted that the allegation that the failure was informed by mistake, is misconceived and otherwise legally untenable. Instructively, learned counsel has invited the court to find and hold that there are certain classes of mistake, like the instant one, which ought not to be excused and countenanced by the court.
25. In support of the foregoing submissions, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents has cited the holding in the case of *Tana & Ardhi Rivers Development Authority vs Jeremiah Kimigbo Mwakio & 3 Others* (2015) eKLR, to vindicate the contention that a mistake of counsel, which borders on negligence ought not to be countenanced.



26. Arising from the foregoing submissions, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents has therefore implored the Honourable court to find and hold that the subject Application is negated by inordinate and unreasonable delay, and thus same ought to be dismissed.

**c. 3<sup>rd</sup> Respondent's Submissions:**

27. The 3<sup>rd</sup> Respondent filed written submissions dated the 13<sup>th</sup> of March 2014 and in respect of which same [3<sup>rd</sup> Defendant/Respondent] has reiterated the averments at the foot of the Replying Affidavit sworn on the 26<sup>th</sup> of February 2024; and in respect of which same has thereafter raised and canvassed two [2] salient issues for consideration by the Honourable court.

28. First and foremost, learned counsel for the 3<sup>rd</sup> Respondent has submitted that the Plaintiff/Applicant herein has been litigating *vide* instalments and that as a result of the *modus operandi* adopted by the Plaintiff/Applicant, the entire proceedings have been delayed and hence it is not legally tenable to accommodate the Plaintiff/Applicant any further.

29. Additionally, learned counsel for the 3<sup>rd</sup> Respondent has submitted that if the subject Application was to be allowed, then the determination of the instant matter would be delayed and thus causing undue prejudice to the 3<sup>rd</sup> Defendant/Respondent.

30. Secondly, learned counsel for the 3<sup>rd</sup> Respondent has submitted that the intended amendment is calculated to bring forth and introduce a new cause of action, which would then precipitate the re-opening of the 3<sup>rd</sup> Defendant's case.

31. Instructively, learned counsel for the 3<sup>rd</sup> Defendant/Respondent has submitted that where the intended amendment is calculated to bring forth a new cause of action, like the instant case, then the court should be reluctant to grant leave to amend pleadings.

32. Lastly, learned counsel for the 3<sup>rd</sup> Defendant/Respondent has submitted that the instant Application has been made and mounted too late in the day and hence same [application] reeks of mala fides.

33. At any rate, learned counsel for the 3<sup>rd</sup> Defendant/Respondent has submitted that where an application for an amendment is made too late in the day, like in the instant case, then the court should decline such an amendment. For clarity, learned counsel has added that the instant application has been made long after the respective parties had closed their cases and timelines provided for the filing and exchange of substantive submissions.

34. Based on the foregoing, learned counsel for the 3<sup>rd</sup> Respondent has therefore invited the Honourable court to find and hold that the Application beforehand is devoid of merits and thus same [application] ought to be dismissed with costs.

**Issues for Determination:**

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

- i. Whether the subject Application for Leave to amend the Plaintiff's Complaint, is meritorious or otherwise.
- ii. Whether the Defendant/Respondents shall suffer any prejudice or grave injustice, not compensable by an award of costs.



## Analysis and Determination:

### Issue Number 1 - Whether the subject Application for Leave to amend the Plaintiff, is meritorious or otherwise.

36. The Plaintiff/Applicant herein filed the instant suit *vide* Plaintiff dated the 3<sup>rd</sup> of March 2022 and in respect of which same sought for various reliefs, *inter-alia* a declaration that the Defendants jointly and/or severally hold the suit property in trust for him [Plaintiff/Applicant].
37. Furthermore, in the body of the said Plaintiff, the Plaintiff/Applicant adverted to various issues, whose import and tenor includes cancellation of the transfer of the suit property to the 2<sup>nd</sup> Defendant and subsequently to the 3<sup>rd</sup> Defendant. For clarity, the contents of paragraph 22 of the Plaintiff are explicit and unequivocal.
38. Be that as it may, even though the Plaintiff/Applicant made averments touching on ownership of the suit property and cancellation of the transfer of the suit property to and in favor of the 2<sup>nd</sup> Defendant and subsequently in favor of the 3<sup>rd</sup> Defendant, same [Plaintiff/Applicant] however did not seek a specific prayer [relief] as against the 3<sup>rd</sup> Defendant in whose name the suit property is registered.
39. Suffice it to point out that upon realizing the failure, neglect and/or omission to implead a specific prayer [relief] as against the 3<sup>rd</sup> Defendant, the Plaintiff/Applicant herein has now filed the current Application and wherein same [Plaintiff/Applicant] is seeking liberty to introduce a specific prayer to that effect.
40. Upon filing the subject Application, the Defendants/Respondents have filed/responded *vide* Replying Affidavits and in respect of which same [Defendants/Respondents] have raised a plethora of issues.
41. Firstly, it has been contended by the Defendants/Respondents that the intended amendment is calculated to bring forth a new cause of action and hence the Defendants/Respondents shall be constrained to re-open their respective cases. Consequently, and in this regard, the Defendants/Respondents have invited the Honourable court to refuse the leave sought.
42. Nevertheless, it is not lost on this court that the Plaintiff/Applicant herein has in the body of the Plaintiff impleaded various averments touching on and/or concerning ownership of the suit property which is in dispute before the court. In particular, paragraphs 19, 20, 21 and 22 of the Plaintiff, have averred that the Title in favor of the 3<sup>rd</sup> Defendant ought to be canceled and/or revoked.
43. Other than the foregoing, it is also worthy to recall that the Plaintiff/Applicant herein was subjected to cross examination by *inter-alia* learned counsel for the 3<sup>rd</sup> Defendant and during which time the Plaintiff herein is on record to have stated that same [Plaintiff/Applicant] has a claim as against the 3<sup>rd</sup> Defendant.
44. For coherence, the Plaintiff/Applicant, who testified as PW1 stated during cross examination by learned counsel for the 3<sup>rd</sup> Defendant as hereunder:

“I don’t fully understand what a joint venture agreement connotes. I have a claim as against the 3<sup>rd</sup> Defendant. I went to the project in the year 2021 and I found that there was a person who was developing the project. The name of the developer is the 3<sup>rd</sup> Defendant. The 3<sup>rd</sup> Defendant was the one who was on the property in May 2021. When I did a search, the search showed that the property was registered in the name of the 2<sup>nd</sup> Defendant.”



45. Furthermore, whilst still under cross examination by counsel for the 3<sup>rd</sup> Defendant, the witness stated as hereunder:

“The 3<sup>rd</sup> Defendant was not a party to the suit at the time the case was filed. The transfer was filed before the court order was issued. Referred to paragraph 20 of the Plaintiff and the witness affirms that the same has laid a claim against all the Defendants before the court. The particulars of fraud include the 3<sup>rd</sup> Defendant.”

46. In my humble view, the issue as to whether or not the Plaintiff/Applicant has a claim against the 3<sup>rd</sup> Defendant has been adverted to and substantially highlighted in the body of the Plaintiff.

47. For good measure, the only issue which was omitted relates to a specific prayer and/or relief touching on and/or concerning the 3<sup>rd</sup> Defendant.

48. Arising from the foregoing, I hold the firm view that the introduction/inclusion of an additional relief as against the 3<sup>rd</sup> Defendant shall not introduce a new cause of action, either as alleged by the Defendants/Respondents or at all.

49. Furthermore, it is difficult to appreciate and comprehend the basis of contention by the Defendants/Respondents that the inclusion of a specific relief as against the 3<sup>rd</sup> Defendants/Respondents, shall alter and change the character of the suit beforehand.

50. To my mind, the intended amendment has superficial and/or peripheral impact on the suit beforehand. For good measure, I say that the intended amendment has peripheral impact on the suit beforehand because the issues pertaining to the claim as against the 3<sup>rd</sup> Defendant/Respondent are already part of the pleadings and the evidence tendered before the court.

51. Consequently and in the premises, even if there was no specific prayer and/or relief directed as against the 3<sup>rd</sup> Defendant/Respondent, the court would still be called upon to address that particular issue and to render a determination thereon premised on the ratio decidendi established in the case of *Odd Jobs vs Mumbia* (1970) EA 467.

52. Further and at any rate, it is also not lost on this court that the ratio which was espoused [highlighted] in the case of *Odd Jobs vs Mumbia* (supra) was reiterated by the Court of Appeal in the case of *Vyas Industries vs Diocese of Meru* [1976] eKLR.

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

The second question is whether the issue of vicarious responsibility became an issue in the suit. The circumstances in which an unpleaded issue can become an issue in a suit is a question which was considered in *Odd Jobs v Mubia* [1970] EA 476 in which it was held that: a) a court may base its decision on an unpleaded issue if it appears from the course followed at the trial that the issue had been left to the court for decision; b) on the facts the issue had been left for decision by the court as the advocate for the appellant led evidence and addressed the court on it.

54. From the foregoing exposition of the law and taking into account the pleadings as well as the evidence that was tendered, it is evident and apparent that the claim as against the 3<sup>rd</sup> Defendant has already been made an issue for determination before the court.

55. Secondly, the Defendant/Respondent contended that the subject Application has been made and mounted too late in the day and in particular, long after the parties had closed their respective cases.



56. Be that as it may, my short answer to the contention premised on the lateness is to the effect that an Application for amendment can be brought and/or mounted at any time of the proceedings. [see the provisions of Order 8 Rule 3 of the [Civil procedure Rules, 2010](#)].
57. Thirdly, it has also been contended by the Defendants that the intended amendment shall have the ripple effect, *inter-alia* of causing the Defendants to re-open their respective cases.
58. To my mind, I do not share the contention and/or reservation by the learned counsel for the Defendants. Instructively, I have reproduced certain excerpts of the testimony that was tendered before the court and where the claim against the 3<sup>rd</sup> Defendant had already been adverted to.
59. Other than the foregoing, it is appropriate to underscore that the purpose of amendments, the one beforehand not excepted, is to enable the court to deal with and/or adjudicate upon all the issues in controversy between the parties once and for all. For coherence, the purpose of amendment[s] is to obviate a multiplicity of suits over and in respect of the same matter; or a portion of the same matter.
60. Quiet clearly, what the Plaintiff/Applicant desires to achieve by bringing forth the intended specific relief [prayer] is to enable the court to speak to the totality of the reliefs beforehand.
61. In my humble view, the import and tenor of the intended amendment is to obviate any limb of the dispute being left hanging and which may thereafter precipitate *inter-alia* request for review.
62. In a nutshell, I hold the firm view that the Application by and on behalf of the Plaintiff herein and which essentially seeks to introduce a specific relief [prayer] as against the 3<sup>rd</sup> Defendant is meritorious.
63. Before departing from the subject issue, it is appropriate to restate and reiterate that the circumstances under which an amendment can be granted and allowed are now trite and established. In any event, it is not lost on the court that an application for amendment is ordinarily subject to the discretion of the court, which discretion is in any event, unfettered.
64. To this end, I take cognizance of the ratio decidendi in the case of [Elijah Kipng'eno Arap Bii vs Kenya Commercial Bank Ltd](#) [2013]eKLR where the court stated and held thus:

“The law on amendment of pleading in terms of section 100 of the [Civil Procedure Act](#) and Order via rule 3 of the repealed [Civil Procedure Rules](#) under which the application was brought was summarized by this Court, quoting from [Bullen and Leake & Jacob's Precedents of Pleading](#) - 12th Edition, in the case of [Joseph Ochieng & 2 others vs. First National Bank of Chicago](#), Civil Appeal No. 149 of 1991 as follows:-

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case



or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”

65. Additionally, the position as pertains to amendment was also amplified [elaborated upon] by the Court of Appeal in the case of *Jobling vs Firearms Licensing Board* (Civil Application E69 of 2022) [2022] KECA 1170 (KLR) (28 October 2022) (Ruling), where the court stated and held as hereunder:
9. The decision whether to grant or refuse an application to amend a pleading rest in the discretion of the court. The attainment of justice between the parties is not to be obstructed by a too rigid consideration. The object of pleadings is to define the issues: and parties will be kept strictly to their pleas where any departure would cause prejudice or would prevent full enquiry. But within those limits the court has a wide discretion. The primary principle appears to be that an amendment will be allowed in order to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice may be done. The court has the greatest latitude in granting amendments, and it is very necessary that it should have. The object of the court is to do justice between the parties.
  10. The traditional approach in relation to applications for amendment of pleadings was summarized in *Cobbold v Greenwich LBC* {1999} EWCA Civ 2074 as follows: - “[a]mendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient management of justice is not significantly harmed.”
  11. In *Abdul Karim Khan v Mohamed Roshan* [1965] EA.289 (C.A) the court laid down the principle that the courts will not permit an amendment that is inconsistent with original pleading and entirely alters the nature of the defence or plaint. In *Ochieng and others v First National Bank of Chicago* Civil Appeal Number 147 of 1991 the Court of Appeal set out the principles under which courts may grant leave to amend the pleadings as follows: -
    - a. the power of the court to allow amendments is intended to determine the true substantive merits of the case;
    - b. the amendments should be timeously applied for;
    - c. power to amend can be exercised by the court at any stage of the proceedings;
    - d. that as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;
    - e. the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.
66. In a nutshell, my answer to issue number one [1] is to the effect that the instant Application, which seeks Leave to amend the Plaint is indeed meritorious and thus ought to be allowed so as to enable the court to effectively and effectually determine all the issue[s] in controversy.



**Issue Number 2 - Whether the Defendant/Respondents shall suffer any prejudice or grave injustice, not compensable by an award of costs.**

67. Having dealt with and disposed of issue number one [1] herein before, it would have been appropriate to bring the subject Ruling to a close.
68. However, it is not lost on the court that the Defendants/Respondents herein had contended that the intended amendment would occasion grave injustice and/or prejudice to the Defendants/Respondents, if same were allowed.
69. Additionally, the Defendants/Respondents herein ventured forward and highlighted assorted aspects of injustice and inconvenience that may arise if the application was allowed.
70. For good measure, the Defendants/Respondents had contended that the intended amendment would occasion a further delay in the hearing and determination of the suit, would constrain the Defendants to re-open their cases and further that same would introduce a new cause of action.
71. Nevertheless, I have stated and held elsewhere herein before that the intended amendment does not constitute the introduction of a new cause of action and neither would same precipitate the need to re-open the Defense cases. Instructively, the evidence underpinning the intended relief is already part of the record of the court.
72. As pertains to the intended amendment causing any delay in the disposal of the subject suit, I hold the view that no delay would arise and/or ensue. If anything, the delay that may arise may not be unreasonable and/or inordinate, so as to warrant a denial of the discretion in favour of the Plaintiff// Applicant herein.
73. To my mind, the Defendant/Respondents herein are not exposed to suffer any grave injustice and/or prejudice. Nevertheless, whatever nominal prejudice that is likely to arise and/or accrue can be indemnified by an award of costs.
74. Simply put, I have not been able to discern and/or decipher the existence of any grave injustice or prejudice, that may arise to deprive the Plaintiff/Applicant of the discretion of the court to amend the Plaint in the manner sought.

**Final Disposition:**

75. Having reviewed and analyzed the two [2] thematic issues that were enumerated [ highlighted] in the body of the Ruling, I come to the conclusion that the Application by and on behalf of the Plaintiff/ Applicant is meritorious.
76. Consequently, and in the premises, the Application dated the 14<sup>th</sup> of February 2024; be and is hereby allowed. In this regard, the Plaintiff/Applicant shall proceed to file and serve the amended Plaint within seven [7] days from the date hereof.
77. Costs of the Application are hereby awarded to the Defendants/Respondents. In any event, the costs are assessed and certified in the sum of Kes. 15,000/= only payable to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants; and the 3<sup>rd</sup> Defendant, each respectively.
78. It is so Ordered.

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

**OGUTTU MBOYA,**



**JUDGE.**

**In the Presence of:**

Benson - Court Assistant.

Mr. E. Kassimu h/b for Mr. B M Musyoki for the Plaintiff/Applicant.

Ms Muluvi h/b for Mr. Erick K Mutua SC for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.

Mr. Andere for the 3<sup>rd</sup> Defendant/Respondent.

