



**Kimuta Limited v Flora Fresh Limited & 5 others (Environment & Land Case 40 of 2024) [2024] KEELC 5221 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5221 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT & LAND CASE 40 OF 2024  
MC OUNDO, J  
JULY 11, 2024  
(FORMERLY ELC 301 OF 2018-NAKURU)**

**BETWEEN**

**KIMUTA LIMITED ..... PLAINTIFF**

**AND**

**FLORA FRESH LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**EZEKIEL KARANJA ..... 2<sup>ND</sup> DEFENDANT**

**CAROLINE WACHERU KARUNGAI (BEING THE PERSONAL REPRESENTATIVES OF THE ESTATE OF JOHN NYAMU (DECEASED) ..... 3<sup>RD</sup> DEFENDANT**

**ANTHONY WAITITU IGANJO ..... 4<sup>TH</sup> DEFENDANT**

**ANN WANJIRU IGANJO ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**WILLY KIHARI NJOKI KANYOTU T/A LAKE NAIVASHA NATURES CAMP ..... PROPOSED DEFENDANT**

**RULING**

1. Before me for determination are two Applications, one dated 6<sup>th</sup> March 2024 and the other dated 25<sup>th</sup> April, 2024. For ease of reference, the parties herein shall be referred to as they appeared in the suit. The Application dated 6<sup>th</sup> March, 2024, is a Notice of Motion Application brought by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants pursuant to the provisions of Section 1A, 3A and 63 of the *Civil Procedure Act*; Order 51 Rule 1 and Order 40 Rule 1 and 2 of the Civil Procedure Rules, 2010; Section 5(1) of the *Judicature Act*; Part 81.1, 81.2, 81.3, 81.4, 81.5, 81.6 and 81.7 of the English Civil Procedure Rules (Amendment



- No. 3) Rules and all enabling provisions of law in which they sought to be allowed absolute access to land parcel Nos. L.R 398/7 and 398/8 adjacent to Lake Naivasha and that the Plaintiff's agents, servants, militia and goons be ordered to vacate the said land parcels.
2. They also sought that one Gitonga Mwangi Muriithi, the Plaintiff its servants, militia, employees, security guards and or anybody claiming under them be restrained from interfering with their occupation of the said parcel of land pending the hearing and determination of the instant suit.
  3. That the Plaintiff's Director known as Gitonga Mwangi Muriithi and or its agents, servants and militia be found in contempt of the court order issued on 7<sup>th</sup> December, 2023 and they be committed to civil jail for such term as the court may deem just and further that the Plaintiff, Gitonga Mwangi Muriithi and their agents known as Edge Locks Security and Collindale Security be held liable for the loss occasioned to them (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.)
  4. The Application was supported by the grounds therein and a Supporting Affidavit of an even date sworn by Anthony Waititu Iganjo, the 4<sup>th</sup> Defendant herein, who deponed that the Plaintiff, its purported Director and Advocates had blatantly breached the express court orders of status quo that had been issued in respect of land parcel Nos. L.R 398/7 and 398/8 adjacent to Lake Naivasha (suit properties) which orders of status quo orders meant that they continue with peaceful occupation and possession of the suit properties without interference by the Plaintiff, its purported Director and or its Advocates.
  5. That nevertheless, on 29<sup>th</sup> January, 2024, 5<sup>th</sup> March, 2024 and 6<sup>th</sup> March 2024 while the status quo orders were still in force, the Plaintiff's self-claimed Director and its Edge Lock Security, Collindale Security and goons militia, had in blatant disobedience of the court orders entered into the suit properties and committed acts of waste, paralyzed business operations and evicted the Defendants. There had been no assistant accorded to them despite the orders of status quo having been served upon the OCS Naivasha Police Station and the OCPD Naivasha Police Division and despite the matter having been reported to the police vide OB No. 10/29/02/2024.
  6. That on 5<sup>th</sup> March 2024, the Plaintiff and its militia had destroyed the sign posts to the hotel and barred the Defendants' customers from accessing the said hotel. That on the on 6<sup>th</sup> March, 2024 the Defendants' family members and employees had been evicted from the suit properties in blatant breach of the status quo orders.
  7. He further deponed that the Plaintiff's militia and goons had also destroyed houses, assaulted the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' guards, wherein they had taken over control of the main gate and completely paralyzed the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants' operations thereby occasioning them to suffer heavy financial losses.
  8. In response and in opposition to the said Application, the Plaintiff vide its Replying Affidavit dated 15<sup>th</sup> March, 2024 sworn by its Director one Gitonga Mwangi Muriithi, deponed that the 4<sup>th</sup> Defendant was not a Director, official nor employee of the 1<sup>st</sup> Defendant and had no capacity to swear an Affidavit on its behalf and on behalf of and 2<sup>nd</sup> and 5<sup>th</sup> Defendants therefore the Application as pertains them was incompetent and should be struck out.
  9. That the instant Application was an abuse of the court process, frivolous, vexatious, and mischievous, a side show that was meant to derail the speedy hearing of the present matte as scheduled.
  10. That the 4<sup>th</sup> Defendant had a penchant for filing multiple which had ended up crowding the court file and clouding the issues for determination. That on 7<sup>th</sup> December 2023, Justice Ombwayo had in his wisdom done away with all the applications including contempt, amendment, injunctions and setting



aside in order to fast track the hearing of the main suit wherein he had set hearing dates for the 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> April, 2024. That this application was similar to previous applications wherein the 4<sup>th</sup> Defendant was dragging the court and all parties back to the position that the learned Judge had been avoiding.

11. That prayers 2, 3, 4 and 5 sought for injunction disguised as a contempt of court proceedings the issue on injunctive orders having been determined by the court. That further, prayer 10 of the instant Application sought orders against entities that had not been cited in the Application thus amounting to condemning them unheard.
12. That the adoption of the Contempt of Court mechanisms in handling disputes should be a matter of last resort and ought to be utilized in very limited circumstances. That the status quo orders that had been issued on 7<sup>th</sup> December, 2023 was to the effect that there would not be eviction and accordingly, nobody had been evicted and there had been no subdivision of the suit properties since the Defendants had not demonstrated any such acts by the him or the Plaintiff.
13. He also deponed that the 4<sup>th</sup> Applicant had organized and paid a group of thugs to murder him wherein he had reported the same to the Director of Criminal Investigations who apprehended the 4<sup>th</sup> Defendant who was to be arraigned in court on the charges of conspiracy to commit murder hence the instant Application was an attempt by the said 4<sup>th</sup> Defendant to fight off the impending criminal charges by using the instant proceedings and the orders sought to deceive and deflect the criminal court and the relevant authorities with a view of having his actions sanitized by the court.
14. That the conditional order of stay of execution issued in Nairobi ELC 901 of 2014 had lapsed after the estate of Francis Iganjo Mutahi failed to comply with order 1(c) which had required them to avail comprehensive statements of accounts thus the default clause 1(d) had crystalized and as such the stay orders were no longer in force.
15. That the Defendants had not demonstrated an iota of his culpability on the the standard of proof required in contempt of court proceedings and therefore the application should not be allowed. That the application was muddled by the Defendants' non-disclosure, deceit and mischief wherein the undisputed fact was that the Plaintiff was the registered owner of the suit properties.
16. That the Defendants and the estate of Francis Iganjo Mutahi in which the Defendants belonged occupied less than 1/3 of the premises based on its alleged 1/3 shareholding in the Plaintiff wherein at all material times, the Plaintiff had staff including guards to secure the portions that were unoccupied including buildings, plants, trees and other materials to protect the same from third parties in light of the vastness of the suit premises which measured 232 acres. No
17. The Plaintiff Director denied any harassment by the staff from Edgelock security or any hindrance to visitors, workers, or legitimate activities from taking place. That no eviction had taken place and neither was there any evidence by the 4<sup>th</sup> Defendant to that effect. That there were no so-called militia or goons deployed on the suit land save for Edgelock and Collindale security guards who have been on the ground prior to the issuance of orders of status quo. That subsequently, it was not true that he had interfered with the Defendants' occupation of the suit properties or violated the status quo orders as had been alleged.
18. That he and the Plaintiff had no problem with the 4<sup>th</sup> and 5<sup>th</sup> Defendant's continued occupation on the suit properties provided that they ceased their acts of hooliganism. That on 14<sup>th</sup> March, 2024 the 4<sup>th</sup> and 5<sup>th</sup> Defendants had gone to the suit properties accompanied with more than 20 hired goons wherein the 4<sup>th</sup> Defendant had issued threats to the guards and staff to the effect that he was the absolute owner of the suit properties hence they should vacate with immediate effect. That in the evening of



- 14<sup>th</sup> March, 2024, the 5<sup>th</sup> Defendant daughter had then proceeded to the second gate within the suit properties and using a huge rock had attacked one of the Plaintiff's guard, one Barasa Lebeneiyo by knocking him on his back wherein she had also attempting to run him over with a car which incidents had been reported at Karagita Police Post and the victim had been issued with a P3 form.
19. That from the foregoing, it could be inferred that the only reason why the 4<sup>th</sup> and 5<sup>th</sup> Defendants were pushing for the instant orders was to enable them suppress the Plaintiff hence it was in the interest of justice that the instant Application be declined.
  20. In retort, the Defendants filed their Further Affidavit dated 21<sup>st</sup> March, 2024 sworn by Anthony Waititu Ignjo, the 4<sup>th</sup> Defendant herein who deponed that he had been duly authorized by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants as per the authority attached and marked as AW1.
  21. He explained that the various Applications that he had made in the instant matter had been necessitated by the blatant disobedience of express court orders by the Plaintiff and its self-imposed Director s. That the Plaintiff had never been in occupation and or possession of the suit properties as had been pleaded in ELC 901 of 2014. That indeed it had been the Plaintiff who had hired goons and militia to evict the Defendants from the suit properties. That it had only been upon the filing of a counter claim on adverse possession that the Plaintiff had installed guards and militia in a bid to proof possession and defeat the counterclaim.
  22. That the annexed photographs clearly showed evidence of interference with the court orders, eviction and malicious damage to properties that had been carried out by the Plaintiff. That the Plaintiff had fabricated the complaint of conspiracy to commit murder in a bid to use the criminal process to evict the Defendants. That pursuant to the Plaintiff and its goons evicting the Defendants, they had invaded the Nature Camp and stolen goods worth a sum of Kshs. 8,898,559/= as per the attached inventory marked AW4. That the Plaintiff had further brought skinny herd of cattle into the suit properties which had started roaming all over thus interfering with the Defendants' businesses and operations.
  23. He further deponed that on the 17<sup>th</sup> March, 2024, the Plaintiff's goons had attacked his daughter and broken her car's side mirror. He denied either bringing third parties to the suit property or deploying Mugiki sect goons as had been alleged by the Plaintiff. That instead, it had been the Plaintiff's goons who had invaded the suit properties and attacked their security guards despite the existence of status quo orders. That the Plaintiff's agents had expressly disowned court orders stating that the police were on their side and that they would carry out illegal eviction and murder despite the court order. He denied knowledge of Bernard Sankale or that he had assaulted him.
  24. He opined that for the peace to prevail, the Plaintiff and its goons vacate the suit properties. That it had been the Plaintiff who had failed to sign the account opening forms to enable compliance with the court's order, failed to respond to their Advocates letters, paralyzed their business and stolen all their records. That it was only after the court had expressly directed the OCS Naivasha Police Station to ensure status quo was maintained that they had been able to access the suit properties on 14<sup>th</sup> April, 2024.
  25. That at all times during the hearing of Nairobi ELC 901 of 2014, status quo orders had been in force and there had not been an order authorizing the Plaintiff to install guards and or goons on the suit properties and that it was not logical to have parallel guards with different interests on the same property as confrontation would be inevitable. That the orders sought herein be issued to uphold the dignity of the court.
  26. The Defendants also filed a Supplementary Affidavit dated 25<sup>th</sup> April, 2024 sworn by Anthony Waitutu Iganjo, the 4<sup>th</sup> Defendant herein, who deponed that the purported Plaintiff's Director known as



- Gitonga Mwangi Muriithi had changed the Kenya Power Meter numbers and influenced the supplier to disconnect their power connection despite court orders of status quo. That further, the Plaintiff had started clearing bushes and tilling the suit land and had also vandalized and dismantled the Applicant's mill.
27. That unless the said Gitonga Mwangi Muriithi was jailed for open and blatant contempt of court orders, the Defendants would continue to suffer disrepute since the Plaintiff had also taken possession of the 4<sup>th</sup> Defendant's house wherein he had started renovations.
  28. In a rejoinder, the Plaintiff filed a Further Affidavit dated 26<sup>th</sup> April, 2024 sworn by Gitonga Mwangi Muriithi, the Plaintiff's Director who deponed that the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants had not raised any issue of contempt of court as they (save for the 2<sup>nd</sup> Defendant who left the premises years ago) continued conducting their businesses unrestricted by the Plaintiff or any other person. That the allegations that the Plaintiff had never been in possession of the suit properties was misleading and further that the alleged eviction of the Defendants was imaginary since the Plaintiff had not hired any goons or militia to evict them being that none of the other Defendants other than the 5<sup>th</sup> Defendant had made a formal complaint that they were being harassed hence the 4<sup>th</sup> Defendant was only using their names to push his personal malicious agenda.
  29. That the Deputy Registrar's site visit report had indicated that business was being carried out on the suit properties as usual by the Defendants. He reiterated that the Plaintiff had employed guards on the suit premises way before the Defendants had filed a counterclaim for Adverse Possession in December, 2023 and that the said guards were already on the suit properties when the status quo orders had been issued on 7<sup>th</sup> December, 2023.
  30. He maintained that his complaint regarding the conspiracy by the 4<sup>th</sup> Defendant to assassinate him was legitimate and was pending action. He denied that allegation that the Plaintiff had evicted the 4<sup>th</sup> Defendant from the Nature Camp which was still intact with equipment and tools as it had been confirmed by the Deputy Registrar during the site visit. That in any case, theft was within the realm of criminal law hence the Defendants should pursue a criminal complaint in that regard. That further, the 4<sup>th</sup> and 5<sup>th</sup> Defendants had been removing items from the suit properties from time to time hence it could not be ruled out that the items alleged to be missing had been taken away by themselves.
  31. That neither he nor the Plaintiff could purge what they had not violated hence the demand that the Plaintiff pays a sum of Kshs. 8,898,559/= was a get rich quick scheme designed by the 4<sup>th</sup> Defendant to distort money from a helpless party. That if at all the 4<sup>th</sup> Defendant's claim for compensation was legitimate, then he should file a civil claim before the right civil court where the issues of liability and quantum if any would be addressed extensively and exhaustively. He denied that neither he nor the Plaintiff had brought the alleged herd of cattle on the suit properties and that he was not in control over everybody who was operating within the suit properties hence he could not be liable for everyone and every activity that was carried out on the suit properties. He reiterated that the Plaintiff had not hired any goons or attacked the 4<sup>th</sup> Defendant's security guards.
  32. He explained that Kenya Power Bill that had been annexed therein was not in the 4<sup>th</sup> Defendant's resort, his residential quarter or the 5<sup>th</sup> Defendant's residential quarter or any of the premises in the hands of the Defendants but was in respect of a house that was within the suit properties which had been both disused, unoccupied, vandalized and in a totally dilapidated state. That on 2<sup>nd</sup> October, 2023 in the company of others including the 4<sup>th</sup> and 5<sup>th</sup> Defendants, they had toured the house wherein he had applied for KPLC meter in his name because the electric supply had been necessary for repair works to commence. That all the works had however halted when the 5<sup>th</sup> Defendant became confrontational.



33. That he was not aware of any tilling of land or existence of and dismantling of any mill as had been alleged and that Plaintiff had not taken over the 4<sup>th</sup> Defendant's house since at 17<sup>th</sup> April, 2024 during the site visit, the 4<sup>th</sup> Defendant had still been in occupation of his residential quarters. That further, the lorry in the photographs annexed as AW IV of the Supplementary Affidavit belonged to Jane Gathoni Kanyotu who had been repairing areas (other than the 4<sup>th</sup> Defendant's residential quarters) that she had been utilizing after it had been destroyed by rains.
34. He reiterated that the status quo orders had been to the effect that no party was to be evicted from the suit properties until the hearing and determination of the suit hence any action other than eviction of any party from the suit properties was not a breach of the said status quo order. He thus reiterated that the instant Application was devoid of merit and had only served the purpose of derailing the hearing dates that had been scheduled herein.
35. The 3<sup>rd</sup> Defendant on the other hand supported the present Application via their Further Affidavit dated 16<sup>th</sup> April, 2024 sworn by Elizabeth Wangui Karungai, a personal representative of the estate of the late John Nyamu on her own behalf and on behalf of her co-personal representative Caroline Wacheru Karungai wherein she deponed that the late John Nyamu was her husband.
36. That on 30<sup>th</sup> September 2019 the court had stayed the instant suit pending the hearing and determination of the Nairobi ELC Case No. 901 of 2014 wherein parties had been directed to continue observing the status quo. That whereas all the Defendants herein had been in possession of the suit properties at the time that the status quo orders had been issued, the Plaintiff had not been in possession of the said suit properties.
37. That the proceedings in Nairobi ELC Case No. 901 of 2014 were now a subject of Appeal before the Court of Appeal wherein orders had been issued staying execution of the decree thereon pending the hearing and determination of the Appeal and which orders were still in force. That the Plaintiff had revived the instant suit wherein the court being aware of its conduct had issued status quo orders and clarified that no party should be evicted from the suit properties pending the hearing and determination of the instant suit.
38. That nonetheless, the Plaintiff through one Gitonga Muriithi had purported to take possession of the suit property by purporting to impose his own security guards to guard the suit properties contrary to the status quo orders and thus being a threat to the already existing security arrangements that had been put in place by the Defendants. That thereafter, sometime in March 2024, the Plaintiff had restrained her caretaker from accessing the suit properties and was only allowed into the premises after the court attendance on 12<sup>th</sup> March, 2024.
39. That further, the Plaintiff had through the alleged guards and goons invaded the 3<sup>rd</sup> Defendant's premises and caused destruction occasioning loss and damage to the said premises hence she could no longer walk freely to her premises because of the said imposed security guards who had taken part in the looting and destruction of her property. That the acts of the Plaintiff through the purported Director s were contrary to the orders of the court hence the said Plaintiff could not seek the court's intervention on the one hand and on the other hand breach the orders of the same court. That accordingly, the Plaintiff should be cited for contempt of the court orders and be denied audience of the court until the contempt is purged.
40. The second Application dated 25<sup>th</sup> April, 2024 on the other hand is a Notice of Motion brought by the Proposes 6<sup>th</sup> Defendant pursuant to the provisions of Sections 1A & B and 3A of the *Civil Procedure Act*, Order 1 Rule 10(2) of the Civil Procedure Rules and all enabling provisions of the law where the Proposed 6<sup>th</sup> Defendant sought that he be joined as the 6<sup>th</sup> Defendant and allowed to file pleadings and



any other necessary documents in the ongoing proceedings herein. He also sought for the costs of the Application.

41. The Application was supported by the grounds therein and a Supporting Affidavit of an even date sworn by Willy Kihara Njoki Kanyotu, the proposed 6<sup>th</sup> Defendant herein who deponed that he had been in possession of 30 acres of the suit properties wherein he had been conducting farming activities and that the Deputy Registrar's site visit report had confirmed the same.
42. That he had also been running and operating a restaurant, bar and a nature camp on another portion of the suit properties since the year 2012 in partnership with the 4<sup>th</sup> Defendant herein hence had a claim and an identifiable interest in the instant matter. That the Plaintiff having hired goons on 14<sup>th</sup> March, 2024 who had invaded the suit properties in breach and contempt of the court's orders and destroyed and stole their property worth over Kshs. 8,898,559/=, he needed to be enjoined in the instant matter in order to litigate and advocate for his interest on the suit properties in addition to claiming for damaged properties and damages for trespass.
43. That further, the Plaintiff had threatened to evict him from the portion of the suit properties that he had been farming hence it was only fair and just that he be enjoined in the instant matter to enable him protect his interests as he was an integral party that would assist the court in reaching a just and fair decision.
44. The Plaintiff opposed the Proposed 6<sup>th</sup> Defendant's Application vide its Replying Affidavit dated 10<sup>th</sup> April, 2024 sworn by Gitonga Mwangi Muriithi, a Director of the Plaintiff who deponed that the same was dishonest, deceitful, made in bad faith, made by non-disclosure of material facts, mischievous and filed with ulterior motives thus undeserving of the orders sought. He explained that the Applicant was a beneficiary of the estate of James Kanyotu who had prior to his death been a Director and a shareholder of the Plaintiff holding 50% of all issued shares and that the proposed 6<sup>th</sup> Defendant would pursuant to the Partial Confirmed Grant obtain a portion of the shares which were held by the said James Kanyotu (Deceased) in the Plaintiff. That subsequently, it was baffling how the proposed 6<sup>th</sup> Defendant who was a beneficiary of a portion of the 50% shares held by James Kanyotu (Deceased) in the Plaintiff which owned 100% of the suit properties could turn around to be joined to a case in order to claim adverse possession of the same land that he had already been bequeathed by way of inheritance. That instead, the proposed 6<sup>th</sup> Defendant had chosen not to disclose the foregoing in the instant Application.
45. That further, in Nairobi ELC 901 of 2014 where the proposed 6<sup>th</sup> Defendant had unsuccessfully sought to be enjoined on the basis of being the deceased James Kanyotu's son, he did not mention that he had been a partner with the 4<sup>th</sup> Defendant herein and in any event, as recently as January, 2024, the 4<sup>th</sup> Defendant had been the sole proprietor of the business known as Lake Naivasha Nature Park. That moreover, the exhibit that the proposed 6<sup>th</sup> Defendant had annexed as WKNK 1 on whose basis he was seeking to be joined to the suit herein was not a business registration certificate but a certificate of registration of change of particulars. That an inquiry at the Business Registration Service had showed that the proposed 6<sup>th</sup> Defendant had only been added as a new partner with effect from 15<sup>th</sup> January, 2024 thus the allegations that he had been running the Nature Camp business was a perjury made under oath thus he should not be granted audience in the instant application.
46. He deponed that the filing of the instant application was a connivance with the 4<sup>th</sup> Defendant in yet another attempt to have the main suit held at bay and prevent the trial from taking place. He explained that Nairobi ELC 901 of 2014 had been ruled in favour of the Plaintiff hence the interest of the proposed 6<sup>th</sup> Defendant was well safeguarded with that success and he did not need to be enjoined in order for the Plaintiff's interest to be protected. That in any case, there had been no demonstration



of the value that the proposed 6<sup>th</sup> Defendant's presence as a Defendant would add in the instant proceedings or in promoting justice thus the instant Application lacked merit.

47. He further deponed that the Partial Certificate of Confirmation of Grant having not been set aside, the only interest that the proposed 6<sup>th</sup> Defendant had was in respect of the shares of James Kanyotu which were not the subject matter of the instant proceedings. That it was thus in the interest of justice that the instant application be declined.
48. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants supported the Proposed 6<sup>th</sup> Defendant's Application while the 3<sup>rd</sup> Defendant did not participate in the said Application.
49. The two Applications were canvassed by way of written submissions which I shall summarize as hereinunder.

#### **1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' Submissions**

50. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants in support of their Application dated 6<sup>th</sup> March, 2024 framed three issues for determination as follows:
  - i. Whether the Plaintiff/Respondent is in contempt.
  - ii. Whether the orders sought should be granted.
  - iii. Who should bear the costs of the application?
51. On the first issue for determination as to whether the Plaintiff was in contempt, reliance was placed on the definition of Contempt of court from the Black's Law Dictionary, 9<sup>th</sup> Edition as well as the purpose of an order of status quo orders as had been held in a combination of decisions in the case of Republic Vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, TSS Spinning & Weaving; Company Ltd v Nic Bank Limited & another [2020] eKLR and Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR to submit that the court had been clear that the status quo be maintained on the suit properties and that the Plaintiff had not indicated that it had not understood the said order or what it had meant. That in the instant case, the status quo meant that the Defendants herein could access the suit properties as they had been doing before and continue with their business without any interference but the Plaintiff had disobeyed the said orders since its agents had even threatened to murder the Defendants while the instant matter was pending in court.
52. They submitted that it had been the Plaintiff's lawlessness that had caused the Defendants to file the instant Application and that apart from preserving the substratum of the subject matter, the status quo order also acted as a case management strategy wherein the court was keen to prevent prejudice between the parties to a matter pending the hearing and determination of the main suit. Reliance was placed in a combination of decisions in the case of Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR and Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR. Further reliance was placed on the elements of civil Contempt as listed by the authors of the book Contempt in Modern New Zealand to submit that the Plaintiff had ridiculed the court by acting in a manner that demonstrated that it had no respect for the law or the court.
53. On the punishment for contempt of the court orders, they placed reliance on the provisions of Order 40 Rule 3 of the Civil Procedure Rules, 2010 to submit that the Plaintiff and its purported Director having been in contempt of the court orders of status quo, should be ordered to purge the contempt



by compensating the Defendants the damage and/or loss that had been incurred amounting to a sum of Kshs. 8,898,559/=.

54. On the second issue for determination as to whether the orders sought should be granted, their submission was hinged on a combination of decisions in the case of James Njoro Kibutiri v Kenya Shell Ltd [1981] eKLR and Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR to submit that if the contempt by the Plaintiff, its agents, servant and/or militia was allowed without any consequences, the Defendants stood to suffer irreparable harm in addition to the substratum of the suit being lost. That further, the threats on the Defendants' lives may be actualized by the said Plaintiff's goons since the Plaintiff's illegal scheme was to frustrate the Defendants' counter claim on adverse possession.
55. With regards to the costs of the Application, reliance was placed on the provisions of Section 27 of the *Civil Procedure Act* and the decided case of Republic vs Rosemary Wairimu Munene (exparte applicant) Ihururu Dairy Farmers Cooperative Society Ltd (2014) eKLR to the effect that costs follow event.
56. In conclusion, they submitted that an act of contempt of the court constitutes an affront to the judicial authority thus the court must vindicate its authority uphold honorable conduct among parties. That subsequently, the Plaintiff should learn its lesson that court orders are meant to be observed by all regardless of the position that they hold or their status in the society. They thus prayed that the orders sought in the Application dated 6<sup>th</sup> March, 2024 be granted.

#### **Plaintiff's Submissions.**

57. The Plaintiff vide its submissions dated 19<sup>th</sup> June 2024 summarized the factual background of the matter before framing three issues for determination to wit;
  - i. Whether the present Application ha been made in good faith.
  - ii. Whether citation for contempt of Court is appropriate in the circumstances.
  - iii. Whether the Plaintiff's Director is in contempt of court.
  - iv. What orders are appropriate in the circumstances?
58. On the first issue for determination, the Plaintiff submitted that in light of the Decree in Nairobi ELC 901 of 2014, the Defendants were aware that their time on the suit properties was limited hence the instant Application which was filed 1 month before the scheduled hearing had been meant to derail and delay the trial since the 4<sup>th</sup> and 5<sup>th</sup> Defendants stood to gain most if the matter did not proceed to full trial soon as they were on the suit properties making money from farming and businesses that they were conducting therein. That further, the instant application had been meant to deflect the criminal charges against the 4<sup>th</sup> Defendant who was being investigated for the offence of conspiracy to murder Gitonga Mwangi Muriithi, the Plaintiff's Director wherein the said 4<sup>th</sup> Defendant had been arrested and charged in Naivasha Criminal case No. E404 of 2024, Republic v Anthony Waititu Waiganjo. That the present Application had also been an escapist route from the Decree that had been issued in Nairobi ELC 901 of 2014 which had required the members of the estate of Francs Iganjo Mutahi (including the Applicants) to vacate the suit properties within 120 days from 21<sup>st</sup> September, 2023 hence as long as the Applicants could prolong the life of the status quo orders, they were able to keep the said Nairobi Decree at bay.
59. Its submission was that the present application was a disguised claim for injunction and liquidated damages since the prayers sought therein were mostly about injunction, absolute access to the suit properties and payment of compensation disguised as an act of purging contempt. That the 4<sup>th</sup> and



- 5<sup>th</sup> Defendants being unhappy that the status quo orders of 7<sup>th</sup> December, 2023 did not exclude the Plaintiff's staff and security guard from the suit properties, they were now asking the court for absolute access and injunction against the Plaintiff which would enable them to have possession of the entire suit properties yet they had initially only claimed 1/3 of the suit properties. That the Defendants had also approached the court with unclean hands since whereas the 4<sup>th</sup> Defendant had been the aggressor, he was now approaching the court and pretending to be the victim.
60. On the second issue for determination as to whether citation for contempt of court had been appropriate in the circumstances, the Plaintiff while placing reliance on the decided case of Salome Munubi & 3 others v Muhammad Swazuri & 2 others; Emmanuel Busera (Interested Party); Kabale Tache Arero (Contemnor) [2019] eKLR where the court had cited the Court of Appeal case of Mutitika v Baharini Farm Limited [1985] KLR 229, 234. submitted in the negative to the effect that the Contempt jurisdiction of court should not be the first port of call. That further, the 4<sup>th</sup> Defendant lacked the authority of the rest of the Defendants to make the Application or swear the Supporting Affidavit since none of the 3 Defendants had granted him such authority and especially the 1<sup>st</sup> Defendant which was a limited liability company had not been shown to have passed a resolution allowing the 4<sup>th</sup> Defendant who was neither its Director, shareholder nor employee to file the instant Application.
61. That the Defendants were also guilty of deceit and material non-disclosure and especially the 4<sup>th</sup> and 5<sup>th</sup> Defendants who had initially maintained that they had been claiming a 1/3 of the suit properties but were now claiming the entire suit properties. That further, the orders that had been sought against non-parties, that is Edge Lock and Collindale Security Guard Limited could not be allowed as that would mean that they were condemned unheard and without notice.
62. On the third issue for determination as to whether the Plaintiff's Director was in contempt of court, reliance was placed in the decided case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR on the ingredients of Contempt to reiterate that the status quo orders that had been issued on 7<sup>th</sup> December, 2023 had been clear that there was to be no eviction. That the Defendants had not been evicted from the suit properties as had been confirmed by the site visit report by the Deputy Registrar which had indicated that the 4<sup>th</sup> and 5<sup>th</sup> Defendants were still in possession of the suit properties carrying out activities therein as usual. That the Deputy Registrar's visit could not ascertain whether the alleged breakages had been caused by Gitonga Mwangi Muriithi and that the Plaintiff could not be blamed for burglary if any that may have taken place in the suit properties. That in any event, the said allegations could not constitute contempt of court since the status quo orders had been to the effect that there would be no eviction. That the 3<sup>rd</sup> Defendant had long abandoned the occupation of the suit properties thus her reply and sentiments should be disregarded.
63. That the Plaintiff being the registered proprietor of the suit premises and a Decree holder in Nairobi ELC 901 of 2014 to that effect, it had every right to protect and secure the parts of the suit premises unoccupied by the Defendants which was more than 2/3 of the 232 acres premises and that doing so did not amount to eviction of anybody neither was it a subdivision of the suit properties nor contravened any court order thus the instant Application lacked merit.
64. That the threshold of proving contempt of court being higher than a balance of probabilities, the Defendants had failed to meet the same since they had just made sweeping statements against the Plaintiff's Director Gitonga Mwangi Muriithi without any evidence to back up the same.
65. On the fourth issue for determination as to the appropriate orders, it submitted that having found that the Plaintiff and its Director were not in contempt, the natural step was to dismiss the instant



application with costs and direct the parties who had not complied with pretrial procedures to do so to pave way for the full hearing.

66. In respect to the Proposed 6<sup>th</sup> Defendant's application dated 25<sup>th</sup> April, 2024, the Plaintiff opposed the same and placed reliance in the decided case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)* on the principles governing the application for joinder.
67. As to whether the Application had been made with honesty, the Plaintiff submitted in the negative to the effect that the proposed 6<sup>th</sup> Defendant had failed to disclose material facts as it had demonstrated in its Replying Affidavit including being a beneficiary of the estate of James Kanyuto who was a shareholder in the Plaintiff and that he had made a similar unsuccessful application for joinder in Nairobi ELC 901 of 2014. Reliance was placed in the decided case of *Elizabeth Nyambura Njuguna & another (suing as the Legal representatives of Njuguna Mwaura Mbogo) v E. K. Banks Limited & 2 others; Edward Kings Onyancha Maina (Interested Party) [2019] eKLR - Civil Appeal (Application) 404 of 2017* where the court of appeal had dismissed an application for joinder by a shareholder of a company after the said company's application for joinder had been rejected in the trial court.
68. It reiterated that contrary to the proposed 6<sup>th</sup> Defendant's allegation of being a business partner of the 4<sup>th</sup> Defendant, he had joined the 4<sup>th</sup> Defendant's business on 15<sup>th</sup> January, 2024, 3 months to the filing of the instant Application and that as at the time that Nairobi ELC 901 of 2014 was determined, the proposed 6<sup>th</sup> Defendant had neither been in occupation of the suit properties or currently in occupation. That moreover, the Plaintiff had in the instant suit sued the illegal occupants of the suit properties but had not sued the proposed 6<sup>th</sup> Defendant since he had not been and was not in occupation of the same. That in any case, he had not demonstrated the year that he had entered the suit properties for the first time to enable him claim adverse possession and that he could make the said claim in separate suit. He thus reiterated that the Application herein was part of the scheme employed by the 4<sup>th</sup> Defendant to connive with the proposed 6<sup>th</sup> Defendant to delay the hearing of the instant matter.
69. His further submission was that the proposed 6<sup>th</sup> Defendant had not demonstrated the value that he would add in the instant proceedings since his case had not been revealed. Reliance was placed on the decision in the case of *Attorney General v Kenya Bureau of Standards & another [2018] eKLR* to submit that the instant joinder was intended to convolute issues since his claim over Naivasha Nature Camp was already being handled by the 4<sup>th</sup> Defendant and nothing had prevented him from filing a solo claim against his father's company, the Plaintiff herein and that to ride on a suit where no one had sued him would further convolute issues. He thus urged the court to find that there was nothing useful that the proposed 6<sup>th</sup> Defendant would bring into the instant proceedings that had not been brought out by other parties. That the proposed 6<sup>th</sup> Defendant's stake was also not apparent.
70. Lastly that the proposed 6<sup>th</sup> Defendant had not demonstrated any prejudice that he was likely to suffer were the instant application disallowed.

### **3<sup>rd</sup> Defendant's Submissions.**

71. The 3<sup>rd</sup> Defendant vide their submissions dated 11<sup>th</sup> June, 2024 in support of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants' application dated 6<sup>th</sup> March, 2024, summarized the factual background of the matter with regards to how the suit herein had been instituted and the events that had occurred thereafter leading to the issuance of the status quo orders for which the Plaintiff was in contempt of.



72. They submitted that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants had given an account of the manner in which the Plaintiffs alleged Director, one Gitonga Mwangi Muriithi and his hired guards and militia had trespassed into the suit property and caused wanton destruction of the property thus in disobedience of the court order.
73. On the court's jurisdiction to punish for contempt of court, their submission was hinged on the provisions of order 40 rule 3(1) of the Civil Procedure Rules to submit that the court had jurisdiction to hear and determine the Application dated 6<sup>th</sup> March, 2024.
74. As to whether the Defendants had proved their allegation against the Plaintiff, reliance was placed in the decided case of *Mutua v Mwangi (Civil Case E025 of 2021)* [2023] KEHC 23700 (KLR) (16 October 2023) (Ruling) - Civil Case E025 of 2021, to submit in the affirmative. That the status quo orders had been clear and unambiguous yet the Plaintiff's Director one Gitonga Mwangi Muriithi and persons acting under him and through him had purported to enter the suit properties and impose the security guards on the premises who had ended up causing destruction of the 3<sup>rd</sup> Defendant's goods as had been averred in their Further Affidavit. They placed further reliance on the decision in the case of *Koilel & 2 others v Koilel & another (Civil Appeal E002 of 2021)* [2022] KEHC 10288 (KLR) (30 June 2022) (Judgment) - Civil Appeal E002 of 2021 to urge the court to find that the Plaintiff's Director had been intentional and deliberate thus the Plaintiff had willfully and intentionally defied the court's orders despite having had knowledge of the same.
75. On the consequences of contempt of court, they submitted that the court had jurisdiction to punish the contemnors since they had neither made any attempt to purge the contempt nor had they shown any remorse for their illegal acts hence they should be punished as the court deemed fit and be condemned to bear the costs of the instant application.

#### **Proposed 6<sup>th</sup> Defendant's Submissions.**

76. The Proposed 6<sup>th</sup> Defendant via his submissions dated 31<sup>st</sup> May, 2024 in support of his Application dated 25<sup>th</sup> April, 2024 placed reliance on the provisions of Order 1 of the Civil Procedure Rules and the decided case of *Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR on the guiding principles for joinder of parties to urge the court to apply the said principles in the instant case. That it had been confirmed that he was farming on 30 acres portion of the suit properties in addition to being the 4<sup>th</sup> Defendant's business partner on an establishment known as Lake Naivasha Nature Camps operating within the suit properties. That subsequently, he was a necessary and proper party to the instant suit and that as he had indicated in his supporting Affidavit, the Plaintiff had in the process of evicting the Defendants, stolen and destroyed properties worth 8,000,000/= under the Lake Naivasha Natures Camp that he jointly owned with the 4<sup>th</sup> Defendant hence there was a relief flowing from the proposed 6<sup>th</sup> Defendant to the Plaintiff. He thus submitted that any ultimate orders or decree from the court could not be enforced without his presence as the same would affect his interest.
77. That further, he was a necessary part to the suit to enable the court effectively and completely adjudicate upon and settle all the questions involved therein since together with the 4<sup>th</sup> Defendant, they were seeking to recover the aforementioned damages through a Counter-claim to be filed by him were the instant application allowed. That the Plaintiff had lodged and maintained the instant suit illegally since the instructing person, one Gitonga Mwangi Muriithi was not a legally appointed Director of the Plaintiff and therefore the suit was instituted by a party without capacity, which evidence he sought to adduce. He thus submitted that he had met the requirement to be enjoined as a Defendant in the instant suit.



78. That the Plaintiff had not demonstrated how his joinder would be prejudicial to it or to any other party in the suit. He placed reliance in the Gladys Nduku Nthuki case (Supra) to submit that having met all the requirements necessary to be joined in the suit, that the court allows his application.

### **Determination**

79. I have considered the Application dated the 6<sup>th</sup> March 2024, the law, the submissions and the authorities herein cited wherein the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' complaint is that pursuant to an order of the court issued on 7<sup>th</sup> December, 2023 directing parties in this matter to maintain status quo, on the 29<sup>th</sup> January, 2024, 5<sup>th</sup> March, 2024 and 6<sup>th</sup> March 2024 while the status quo orders were still in force, the Plaintiff's self-claimed Director one Gitonga Mwangi Muriithi and their agents known as Edge Locks Security and Collindale Security and some militia goons had in blatant disobedience of the court orders entered into the suit properties, destroyed houses, assaulted the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' guards, wherein they had taken over control of the main gate and completely paralyzed the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants' operations thereby occasioning them to suffer heavy financial losses and even evicted the Defendants from the suit property.
80. The allegation was denied by the Plaintiff and its Director who deponed that on the contrary, it had been the 4<sup>th</sup> Defendant herein who had been in contempt of the court orders by encroaching on the portions of the land occupied by the Plaintiff and bringing third parties including one Willy Kihara Njoki to take up the said encroached portions. That indeed on several occasions, the 4<sup>th</sup> Defendant had deployed the outlawed Mungiki sect goons to assault and maim the Plaintiff's guards at the premises wherein reports had been made to the police at the Naivasha Police Station under OB 16/31/10/2023 and OB 6/8/12/23 at Karagita Police Post. That during one of its forceful actions they had injured one Benard Sankale. That their misconduct had been documented by Edgelock security in an incident where the 4<sup>th</sup> Defendant who was armed with a fire arm had threatened the Plaintiff's guards to leave the premises within a specified period failure to which they may be shot. That the 5<sup>th</sup> Defendant had also threatened to open fire with a gun on the Plaintiff's staff on the suit properties.
81. The Black's Law Dictionary (Ninth Edition) defines contempt of Court as:-  
“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
82. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows:-  
“In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.”
83. Section 5(1) of the *Judicature Act* which provided that:  
“The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Court s.”



84. Section 29 of the Environment and Land Court is clear to the effect that;
- Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both “
85. It is an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005 that in order to succeed in civil contempt proceedings, the Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.
86. From the sworn affidavits, and submissions by the respective parties’ Counsel on record, the applicable law and the decided cases law, the following issues stand out for determination:-
- i. Whether the Plaintiff herein was served with or was made aware of the order of 7<sup>th</sup> December, 2023.
  - ii. Whether there was any valid Court order issued by this Court on the 7<sup>th</sup> December, 2023.
  - iii. Whether the Plaintiff and its Director are guilty of contempt of Court order issued on 7<sup>th</sup> December, 2023.
87. On the first issue as to whether the Plaintiff and its Director were served with or was made aware of the order of 7<sup>th</sup> December 2023, in the case of Kenya Tourist Development Corporation vs. Kenya National Capital Corporation & Another, Nairobi High Court Civil Case No. 6776 of 1992, it was held that the knowledge of an order supersedes personal service. On this line of argument, there is no contestation that parties herein were aware of the orders that they maintain the status quo pending the hearing and determination of this matter. This issue shall thus rest.
88. On the second issue for determination as to whether there was any valid order issued by the Court on the 7<sup>th</sup> December 2023, I find that on the date in question, the court had directed as follows;
- “ the Defendant be at liberty to amend defense and serve further witness statements and documents within 30 days.
- The Plaintiff to amend plaint and file and serve further witness statements and documents within 30 the days of service
- Mention on 19/2/2024.
- Hearing on 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> April 2024.
- In the meantime status quo be maintained, there be no party to be evicted from the suit property until the hearing and determination of the suit.
- The DR to visit the suit property and do a status report before the mention date. All pending applications are abandoned.
- The DR to issue notice to all parties for this site visit and all parties to attend.”
89. The Plaintiff/Respondent in his response has not disputed that indeed there had been a valid order issued by the Court but its argument was that the order for status quo was only limited to there being no eviction of parties (Defendants) from the suit property. I therefore find that indeed the said order of the 7<sup>th</sup> December 2023 was a valid order.



90. On the last issue as to whether the Plaintiff/Respondent brazenly disobeyed the order of the Court, having considered allegations of parties against each other, on the 3<sup>rd</sup> April 2024, the court directed its Deputy Registrar to visit the suit property and thereafter file a status report.

91. Indeed the suit premises was visited on the 24<sup>th</sup> April 2024 wherein the Deputy Registrar of the court had noted as follows;

“The visit was done through walking around the vast property with focus being at the residence occupied by Ms. Ann Wanjiru Iganjo, Mr. Anthony Waititu, bar and restaurant, cottages, kitchen, swimming pool, goat shed.

Both Ann Wanjiru and Anthony Waititu stated that at the time of the visit, they were occupying the properties but for 10 days they were not able to live in their residences.

There is a signage at the entrance and CCTV mounted as you get in with dozens of security guards in uniform written Kamuta Farm.

On the issue of the alleged damages visited upon the properties, the response Directors of Kamuta Farm was twofold, they were not involved or not aware of the damages because in the absence of proof of how the places looked before then it would be impossible to tell and ascertain the veracity.

On the issue of the goats which were said to have been carted away, the Plaintiff led the team to a goat shed which it was alleged that they were moved to a new location by Mr. Anthony Waititu who responded that the goats shown do not belong to him.

The visit proceeded by way of pictorials and the ground rules set was that the parties will submit on the pictorials at the hearing of the application.”

92. I have considered the pictures herein attached on the report, the orders herein issued and the fact that the Defendants are on the suit land wherein nobody has been evicted and I find that the Defendant / Applicants have not discharged the onus placed on them in an application such as this one seeking that the Plaintiff be found in contempt of court orders.

93. It is further to be noted that the Applicants sought contempt orders to be issued against persons who were not parties in this suit.

94. The standard of proof in cases of contempt of Court is well established. In the case of Mutitika vs Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

95. Contempt proceedings are of a criminal nature and involve, if proved, loss of liberty. The Applicants were therefore tasked to endeavor to prove all facts relied on by way of evidence beyond reasonable doubt. It is not like any other ordinary matter.



96. The Supreme Court of Kenya in Republic vs. Ahmad Abolfathi Mohammed & Another [2018] eKLR held that;

“The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged Contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”

97. In the end, I find that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant/Applicants have not proved to the required standard that the Plaintiff /Respondent as cited was in brazen disobedience of the Court order issued by this Court on 7<sup>th</sup> December 2023.

98. On the second limb of the application the applicants had also sought that one Gitonga Mwangi Muriithi, the Plaintiff its servants, militia, employees, security guards and or anybody claiming under them be restrained from interfering with their occupation of the said parcel of land pending the hearing and determination of the instant suit. I find that this limb had been compromised with the impugned orders of status quo and the matter rests at that. In the end, I decline to grant the contempt order sought by the Applicants and proceed to dismiss the notice of Motion dated the 6<sup>th</sup> March 2024 with costs’

99. On the second application in which the proposed intended 6<sup>th</sup> Defendant sought to be joined to the suit, I have considered this application, its opposition, the submissions and authorities cited as well as the law.

100. The proposed intended 6<sup>th</sup> Defendant’s argument in support of his application was to the effect that he had been in possession of 30 acres of the suit properties wherein he had been conducting farming activities. That he had also been running and operating a restaurant, bar and a nature camp on another portion of the suit properties since the year 2012 in partnership with the 4<sup>th</sup> Defendant herein hence he had a claim and an identifiable interest in the instant matter. He annexed WKNK 1 to his application which annexure I agree with the Plaintiff was not a business registration certificate but a certificate of registration of change of particulars.

101. In opposition to the application, the Plaintiff deponed that the application was dishonest, deceitful, made in bad faith, made by non-disclosure of material facts, mischievous and filed with ulterior motives. That the proposed intended 6<sup>th</sup> Defendant was a beneficiary of the estate of James Kanyotu who was prior to his death a Director and a shareholder of the Plaintiff holding 50% of all issued shares and therefore he could not turn around to be joined to a case in order to claim adverse possession of the same land that he had already been bequeathed by way of inheritance.

102. The issue for determination is whether the Applicant has certified the legal requirement for being joined as a party to proceedings.

103. The Legislative framework on the issue of joinder of parties to a suit is spelt out in Order 1 of the Civil Procedures Rules. Order 1 Rule 10 provides a framework for substitution and addition of parties to a suit. Under Order 1 Rule 10(2), the same provides that:

“The court may at any stage of proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined whether as Plaintiff or Defendant, be struck out and the name of any person who ought to have been joined either as Plaintiff or Defendant or whose



presence before the court may be necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit to be added.( my emphasis)”

104. In addition to the above guiding principles, the Court of Appeal in *Meme vs. Republic* (2004) KLR 637 set out circumstances which would warrant grant of leave to join a party to wit:-
- i. Whether the presence of the party will result in the complete settlement of all the questions involved in the proceedings;
  - ii. Whether the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
  - iii. Whether the joinder will prevent a likely course of proliferated litigation.”
105. In *Central Kenya Ltd vs Trust Bank Ltd & 5 others* [2000] eKLR, the Court of Appeal held that;
- “The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”
106. Having considered all the circumstances in the present case, I find that a party cannot be added to a suit to introduce a new cause of action or to alter the nature of the suit, but must be a party or parties who are necessary to *the constitution* of the suit without whom no decree can be passed. It should be a party or parties against whom a right or some relief is sought or who, although no relief may be claimed against, but whose presence would be necessary to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit.
107. Indeed whereas there is nothing inherently objectionable in a person being joined to a pending suit, it is doubtful in the present instance that the joining of the intended 6<sup>th</sup> Defendant to the suit would transform the suit into one in which he can then become a principal claimant and seek substantive reliefs keeping in mind that “WKNK 1” on whose basis he was seeking to be joined to the suit herein was not a business registration certificate but a certificate of registration of change of particulars coupled with the said, the intended 6<sup>th</sup> Defendant’s application was not supported by the site visit made by the Deputy Registrar on the 24<sup>th</sup> April 2024.
108. I therefore find that joinder of the proposed intended 6<sup>th</sup> Defendant to the suit herein is not necessary for the effectual and complete adjudication of all the questions involved in the suit and proceed to dismiss his application dated 25 April 2024 with costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 11<sup>TH</sup> DAY OF JULY 2024.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

