



**Agricultural Development Corporation v Makawa & 159 others;
Khaemba & another (Interested Parties) (Environment & Land Case
40 of 2019) [2023] KEELC 672 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 672 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 40 OF 2019
FO NYAGAKA, J
FEBRUARY 8, 2023**

BETWEEN

AGRICULTURAL DEVELOPMENT CORPORATION PLAINTIFF

AND

DANIEL WANGILA MAKAWA & 159 OTHERS DEFENDANT

AND

DANIEL SIMIYU KHAEMBA INTERESTED PARTY

MARGARET NASAMBU CHAKALI INTERESTED PARTY

RULING

1. The 22nd and 32nd defendants and the (proposed) interested parties moved this court through a notice of motion dated June 10, 2022. It was brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya and order 1 rule 10(2), and 51 rule 1 of the *Civil Procedure Rules*, and article 50 (1) and 35(2) of the *Constitution of Kenya, 2010*. It was filed on June 10, 2022. The applicants sought therein the following orders:-
 1. That the orders made closing the defence case be set aside and the defendants be accorded an opportunity to give evidence in this case.
 2. That Daniel Simiyu Khaemba and Margaret Nasambu Chakali be granted leave to be enjoined in this suit as Interested Parties.
 3. That costs of this application be in the cause.
2. The Application was supported by the Affidavit of Fredrick Makokha and Margaret Nasambu Chakali and a number of grounds which are summarized hereafter. First, that the 22nd and 32nd Defendants



and the Interested Parties were registered owners of parcel LR No 6106/4 forming part of the subject matter herein; they had been in occupation of the suit land from time immemorial; it was important that they be granted opportunity to defend the claim and be enjoined in the suit to ventilate their issues; no prejudice would be suffered by either party if the orders were granted; the application was brought promptly, and the court had powers to grant the orders sought therein.

3. The Applicants, through an Affidavit sworn jointly by Fredrick Makokha and Margaret Nasambu Chakali on June 10, 2022 deponed that they jointly together with the 32nd Defendant and 1st Interested Party own land parcel LR No 6106/4. They annexed and marked FM1 a copy of Official Search. They deponed that the 22nd and 32nd Defendants were not informed of the hearing of the instant case when it came up for hearing. Their deposition was that their fathers used to work on the suit land in question for a “white man” known as Brooksbank who in turn gave it to his son, one Stanley Hardly. In 1958 Stanley Herdly gave their fathers the land and they had been residing on the land while following up with the registration since they had signed the initial papers. That the land was finally registered in their joint names when the registration was completed by the Lands Office.
4. They deponed that from time to time they had been having issues over the land, with the Plaintiff and the issues had been ventilated with the Chief’s office, with the office permitting them to occupy and use the land. They annexed and marked as FM 2 copies of letters from the said office.
5. It was deponed further that the 22nd and 32nd Defendants were surprised that the Plaintiff sued them while knowing that the land was theirs together with the Interested Parties. They then deponed that it was vital that the case be reopened and they be permitted to ventilate their case and the interested parties be enjoined in the suit. The two Defendants/Applicants deponed that they learnt of their case being closed when they visited the law offices of Ms Wabomba on June 8, 2022 to know the position of their case.
6. They depose further that when they inquired further from the said Advocate, he informed them that he was no longer willing to act for them and they instructed the current Advocates to come on record. They then prayed that their co-owners be enjoined as interested parties to defendant their proprietary interests. They then prayed that the case be reopened and the interested parties be allowed to file their statements and documents. They deponed that their participation in the proceedings would enable the court to determine the matters in controversy. They swore that they be permitted to participate in the proceedings.
7. The Application was opposed strongly. Dr Maurice Cherogony filed a Replying Affidavit on behalf of the Plaintiff. It was sworn on June 28, 2022. He deponed that he was the Regional Manager of the Plaintiff Corporation and was familiar with the facts of the case. He swore further that the Application was meant to delay the conclusion of the matter expeditiously.
8. He stated further that the Application being urged by the 22nd and 32nd Defendants was filed by Advocates who were not properly on record since all the Defendants were represented by Ms. Wabomba Masinde & Associates. He stated further that there was no explanation why the Defendants’ Advocates never attended Court on the hearing date.
9. The deponent stated further that land parcel LR No 6106/4 was registered in the name of the 2nd Plaintiff herein, namely, Lands Limited since March 28, 1969. He annexed and marked as MC1 a copy of the title. He then stated that the 2nd Defendant had never transferred land parcel LR No 6106/4 to any person nor ceded any occupation thereof to anyone.



10. The Respondent deponed that the Applicants had neither annexed a copy of the title nor any transfer executed in their favour or any evidence of any consideration paid in respect of the parcel of land and it was clear that failure to annex those documents was because such did not exist.
11. The Respondent then annexed and marked MC2 which was a self-explanatory advertisement in the newspaper of June 10, 2019 which invited all persons claiming interest in the land, other than the individuals named in the suit, to apply to court within 21 days to be enjoined and the Applicants never did so. He then deponed that the applicants did not apply to be enjoined and it was three years since the institution of this case that the Applicants were moving this Court, clearly a delaying tactic.
12. The Applicants filed a Supplementary Affidavit on September 29, 2022. It was jointly sworn by Fredrick Makokha and Margaret Nasambu Chakali on September 27, 2022. They deponed that they were intent on finalising this matter. The 22nd and 32nd Defendants then deponed that they were unaware of the instant proceedings until they visited their Advocate on June 8, 2022 and it was not their making that they failed to attend Court.
13. They deponed that they were the joint owners of the parcel of land known as Japata Farm which was registered as LR No 6106/4. They annexed and marked as FM1 a copy of the title to the parcel of land in issue. They stated that they were not able to get the newspaper hence the Interested Parties could not have been aware of the case against them. They swore praying for the reopening of the Defence case and the joinder of the proposed interested parties.

Submissions

14. The Applicants and the Respondents filed submissions on September 29, 2022 and 21/11/2022 respectively. In their submissions, the Applicants argued that they were not informed of the hearing date by their then advocates on record. Also, they submitted that the Interested Parties were not aware of the suit until they were informed by the 22nd and 32nd Defendants. They argued that they would be prejudiced if the ordered prayed for could not be granted yet they have been in occupation of the parcel of land in question since time immemorial and they are registered owners thereof. They submitted that they only came to learn of the events of 08/03/2022 on 08/06/2022 when they visited the advocates' offices. They relied on article 159 of the *Constitution*, calling on this Court to look beyond technicalities. They cited Order 1 Rule 10 on the submission about addition of parties to the suit. They relied on the case of *King'ori v Chege & 2 others* (2002) 2KLR 243 regarding who ought to be enjoined in a suit. They also relied on the case of *Civicon Limited v Kivuwatt Limitt & 2 others* (2015) eKLR about joinder of parties under Order 1 Rule 10(2) of the *Civil Procedure Rules*, and *Tang Gas Distributors Ltd v Said & others* (2014) EA 448. They urged the Court to allow the application.
15. The Respondents on the other hand submitted but did not submit on the point of whether or not the Applicants' prayer on setting aside was merited. But they submitted that the application did not have applicants. It was submitted that Daniel Simiyu Khaemba and Margaret Nasambu Chakali were shown as Interested Parties in the application yet the application was one seeking to enjoin them. They then submitted how the applicants were shown in the body of the application as the 22nd Defendant and 2nd Interested party. They then described the applicants as they were shown in the application vis-à-vis their position in the pleadings.
16. On August 9, 2021 this Court directed that Land Case No Kitale ELC No 47 of 2020 (Fredrick Makokha Mungushio & 1098 others v Lands Ltd (OS) be consolidated with this suit. They submitted further that Fredrick Makoha was the 1st Plaintiff in suit No Kitale ELC No 47 of 2020 while Daniel Simiyu Khaemba was the 247th Plaintiff in that case. They said that for that reason he should not



- be enjoined in the instant suit. They submitted on a number of points which were to show that the authenticity of the title annexed as FM1 was highly questionable.
17. Their submission was that the enjoinder of Margaret Nasambu would be unnecessary because her three partners were already parties in the suit mentioned. They prayed that the application herein be dismissed.
 18. I considered the Application, the facts thereto in form of Affidavit evidence, the law, case law relied on and the submissions by the parties. I am of the view that three issues lie before me for determination:
 - a. Whether orders closing the Defence case should be set aside.
 - b. Whether the Proposed Interested Parties should be enjoined, and if so, in what capacity.
 - c. What orders to issue and who to bear the costs of the Application.
 19. I have considered the Respondents' submissions as to the form of the Application., that is to say, whether there are applicants or not, whether the persons named as interested parties have are indeed interested parties or ought to be joined first to the suit in order to be known as such, and the issue of the Application being supported by an affidavit of the 22nd Defendant and 2nd Interested Party. I think this is a matter of form and not substance. I am of the view that by virtue of article 159(2)(d) of the [Constitution](#) it would be fair to decide this application on merits.
 20. Additionally, I have considered the point and argument that the proposed party by name Daniel Simiyu Khaemba is already a party, No 247 in Kitale ELC Land Case No. 47 of 2020 (OS) which is consolidated with the instant suit. I am of the view that it does not prejudice to add the said party to the instant case, if the issues touching his interest are not well articulated in the consolidated suit. Additionally, leaving out the 1st proposed applicant in the entire proceedings because her partners are already enjoined in the suits would amount to denying her the right to be heard, particularly, in case she has her own witnesses and unique evidence to adduce in support of her case.
 21. That said, the Applicants cited various provisions of law as the basis their application. These were, Sections 1A, 1B and 3A of the [Civil Procedure Act](#), and Order 1 Rule 10(2), and 51 rule 1 of the [Civil Procedure Rules](#) and articles 50 (1) and 35(2) of the [Constitution of Kenya](#). I will comment on their relevance as the beginning point of my ruling herein.
 22. Section 1A is on the objective of the [Act](#) (of Civil Procedure) which is the facilitation of just, expeditious, proportionate and affordable resolution of disputes. I think it is obvious that that is the reason the Applicants brought the Application citing the provision. Section 1B is about the duty of the Court, which is, to dispense justice in a most efficient and timely manner employing even the use of technology to achieve that. This Court is willing and has been able to do that. Section 3A is on the inherent powers of the Court to make any orders as would be necessary to make the ends of justice met and avoid abuse of its process. Order 50 Rule 1 of the Civil Procedure Rules is about the form of the Application, that is to say, a Notice of Motion, which is the correct one herein, and the hearing thereof to be in open Court, which practice is now provided for as virtual and generally accepted to be representative of open Court sessions. Article 50(1) of the [Constitution](#) is about Fair hearing of disputes, which has been interpreted to include civil hearings and it encompasses among others, granting parties and opportunity to present their cases. This, the Court shall consider shortly whether it is merited. Article 35(2) is about the right of access to information and specifically on correction or deletion of untrue or misleading information about one. On this last provision, I have no idea what the Applicants intended to achieve by relying on it: they neither sought deletion of a record or information or correction thereof for that matter.



23. I have been left to consider order 1 rule 10(2) of the *Civil Procedure Rules* which was cited. I will discuss it while considering the second issue I identified because that it where it is applicable in. For now, I have to start with the first issue. Suffice it to say that the provision reads as follows:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

(a) Whether Orders closing the Defence case should be set aside

24. The Applicants did not cite the relevant provision under which they moved this Court for the prayer leading to the issue I have framed as above. That notwithstanding, the procedure and law regarding hearing and consequences of non-attendance is Order 12 of the *Civil Procedure Rules, 2010*. The relevant provision, for purposes of this case is Rule 2 which is about the situation where the Plaintiff attends Court but the Defendant fails to do so at the appointed hearing. In such circumstances, if the Court is satisfied that the hearing notice was duly served on the defendant and in good time, it may proceed ex parte.
25. The record of March 8, 2022 shows that the hearing of that date proceeded after the Court had satisfied itself that the Defendants were fully aware of the same. This was because on 3/2/2022, the Plaintiff’s and the Defendants’ learned counsel were present in Court and after an adjournment was sought, the March 8, 2022 hearing date was fixed by consent of both.
26. What is to follow then is for the Court to consider the effect of proceeding ex parte where a defendant is deemed to be duly notified of the hearing and fails to attend Court. Order 12 Rule 7 of the *Civil Procedure Rules* provides that “Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.” In this case, judgment has not been entered on that account but there is an order closing the Defendants’ case, and the 22nd and 32nd Defendants have moved the Court to set aside the order.
27. In deciding whether to or not to allow an application for setting aside an order closing the case due to non-attendance of a Defendant this court retains wide discretion to do so, as provided by law. However, the discretion has to be exercised judiciously. This was stated in the case of *Shah v Mbogo* (1979) EA 116 which was quoted with approval in the case of *John Mukuba Mburu v Charles Mwenga Mburu* (2019) eKLR. In it the Court held as follows:
- “.....this discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designated to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the cause of justice.”
28. Also, the case of *Racheal Njango Mwangi (Suing as Personal Representative of the Estate of Mwangi Kabaiku) v Hannah Wanjiru Kiniti & another* [2021] eKLR explains further hence I will cite it here for further reading.
29. For this Court to exercise its discretion in favour of the Applicants, they ought satisfy it there is sufficient cause or reason to warrant the granting of the setting aside order and accord the Defendants opportunity to present their evidence as they have prayed. The phrase Sufficient Cause was defined by



the Supreme Court of India in *Parimal v Veena*, as cited with approval in the case of *Wachira Karani v Bildad Wachira* (2016) eKLR. In the case, the said Supreme Court stated that:-

“sufficient cause” is an expression which has been used in large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, “sufficient cause” means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been “not acting diligently” or “remaining inactive.” However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously”

The court in the above case added that while deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgment impugned before it. The test to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called for hearing. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application. Thus, the defendant must demonstrate that he was prevented from attending court by a sufficient cause.”

30. In the instant case the Applicants contend that their failure to attend Court was not adverted to but their previous advocates let them down: they neither informed them of the hearing nor of the orders of closing the case. They kept quiet until the date when the Applicants went to their offices to inquire of the position of the matter only for them to learn that the case was closed. Further, they state that it was then that the Advocates informed them that they no longer wished to represent them and they have instructed the current advocates on record.
31. While the Respondents argue that the application is a mere delaying tactic and no proper reasons have been advanced for it, I am convinced that the reasons given by the applicants fall under those that can be considered as sufficient cause to make this Court exercise its discretion to warrant the orders sought. I have carefully looked at the record, I find that, by 08/03/2022 when the suit proceeded ex parte, the Applicants were represented by Ms. Wabomba Masinde & Co. Advocates. Then on June 10, 2022 there was a Notice of Appointment of Advocates filed dated same date, together with the instant Application. The Notice was filed by the firm of Ms Lusinde Khayo for the 22nd and 23rd Defendants. Then Ms Oringe Waswa & Co Advocates filed a Notice of Change of Advocates on June 13, 2022, taking over from Wabomba, Masinde & Associates. Then Ms. Lusinde Khayo filed a Notice of Change of Advocates for the 22nd and 32nd Defendants from Oringe Waswa & Co Advocates. It was dated September 27, 2022 and filed on September 29, 2022. All these events seem to me to show that there was an issue of representation of the Applicants, which may have led to the mis-up regarding their attendance in Court.
32. The back and forth between the previous law firms that were representing the 22nd and 32nd Applicants and the current one created an impression to this Court that there was a mistake on the part of learned



counsel in regard to the attendance of the applicants in Court. For this reason, I hold that this is one of the appropriate cases where the mistake of counsel should not be visited on the client. As was held by the Court of Appeal in In *Tana & Athi Rivers Development Authority v Jeremiah Kimigbo Mwakio & 3 others* [2015] eKLR:

“From past decisions of this court, it is without doubt that courts will readily excuse a mistake of counsel if it affords a justiciable, expeditious and holistic disposal of a matter. However, it is to be noted that the exercise of such discretion is by no means automatic. While acknowledging that mistake of counsel should not be visited on a client, it should be remembered that counsel’s duty is not limited to his client; he has a corresponding duty to the court in which he practices and even to the other side.”

33. I find and this is a fit case for this court to exercise its discretion and set aside the order closing the Defence case. But as will be noted in the final orders, that will be conditional.

(b) Whether the proposed interested parties should be enjoined, and if so, in what capacity

34. The Applicants prayed also that the two proposed interested parties be enjoined in the suit. They gave reasons that the two were co-owners of the land parcel LR. No. 6106/4 which formed part of the suit land herein. They annexed and marked as FM1 in the Supporting Affidavit and FM1 in the Further Affidavit, both being copies of the Certificate of Official Search and title to the land respectively. The prayer was opposed, with the Respondents arguing that the Applicants did not explain why the proposed persons did not join in the proceedings yet there was a newspaper advertisement, marked as annexure MC2 to the Replying Affidavit of Dr. Maurice Cherogony, and also that title to the land had not been annexed to the affidavit. But the latter argument was answered by the applicants annexing FM1 in the Further Affidavit. What remains is for this Court to consider the merits of the prayer.

35. Regarding joinder of parties as either interested parties or defendants or parties generally, the law is now clear. In regard to joinder of parties as interested ones, first the Court must consider the stage at which the orders sought have been made. If it is too late in the day, the Court may not be quick to grant the orders: it would be hesitant to do so. Thus, in *Florence Nafula Ayodi & 5 others v Jonathan Ayodi Ligure v John Tabalya Mukite & another; Benson Girenge Kidiavai & 67 others (Applicants/ Intended Interested Parties)* [2021] eKLR, this court held that the proceedings in it must be either be at “the nascent or other stages but must be alive.” Similarly, in *Leonard Kimeu Mwanthi v Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties)* [2021] eKLR, Lady Justice Mbugua J stated,

“A party claiming to be enjoined in proceedings must have an interest in the pending litigation...”

36. In the instant case, the Plaintiff has testified and closed its case. And given that the Defence case has been opened as this Court has found in the previous issue, then the fact of the proceedings is that they are alive, though not at the nascent stage. However, as I understand the Applicants’ application, the two proposed interested parties are alleged co-owners of land parcel number LR 6106/4. Therefore, in my humble view, if their counterparts, namely the 22nd and 32nd Defendants are given chance to present their evidence as has been decided, it would be illogical to close out the proposed interested parties. But the issue is, in what capacity should they be enjoined? The applicants who are defendants prayed for their ‘colleagues’ to be enjoined as interested parties.



37. The law on joinder of parties as interested ones is to be found in Order 1 Rule 10 of the [Civil Procedure Rules](#). The starting point in that provision is that a party may be joined or added to a suit where the Court is of the view that he is a “necessary” one. Sub-Rule 2 provides that:
- “The court may at any stage of the proceedings, either upon or without the application of either party,...order that...the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
38. Regarding joinder of persons as interested parties, I would say that its clear source is a special procedure in Legal Notice No 117 of 2013. It was Gazetted on 28/06/2013 as the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#), (I refer to them as the Mutunga Rules, 2013).
39. In Rule 2 of the Rules an Interested Party is defined. The procedure on how such a party is to be enjoined is provided for in Rule 7. Under Sub-rule 1 of Rule 7 it is provided that: “A person, with leave of the Court, may make an oral or written application to be joined as an interested party.” The provision simply means that a person moves the court. If one chooses to do so, he/she ought to seek leave of the Court first and once granted it, he will be enjoined. In the instant case it is the Applicants doing so on behalf of others.
40. The Supreme Court set out guidance on the requirements for a successful application for joinder as an Interested Party. This was done in the case of [Francis Kariuki Muruatetu & another v Republic & 5 others](#), Petition 15 as consolidated with 16 of 2013 [2016] eKLR. At paragraph 37 the Court stated that the Applicant(s) must show:
- (i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - (ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 - (iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
41. In the instant case, the Applicants argue that their ‘colleagues’ or co-owners are not parties to the suit. What I understand them to mean is that if the Court were to make a finding in the judgment of this case without the proposed interested parties being in it, since they have an identifiable stake in the property which is one of those that are subjects in this case, they would be prejudiced hence it is better they be enjoined in order to have a day in court over their ownership.
42. The specific wording of Order 1 Rule 10(2) has been on paragraphs 20 and 34 above. They provided for the addition of a party whose presence the Court thinks is necessary for the effectual determination of the issues before Court. I have carefully analysed the evidence in form of the annexures FM1 in the Supporting Affidavit and FM1 in the Further Affidavit. I have also considered the Annexure MC1 of the Replying Affidavit. Since annexure MC1 called for any persons who considered it possible that they may be affected by the proceedings and final order of the Court to apply to appear and



defend themselves, and the two proposed interested parties could have joined as such if they did so in compliance with the directions in the annexure, and further since their alleged co-owners are already joined as Defendants 22nd and 32nd, and further that the reliefs sought by the Plaintiff are likely to directly affect the proposed interested parties once determined by the Court, this Court is of the view that the proper capacity for these two is that of Defendants. I therefore find that the application succeeds but that the proposed interested parties should be added to the suit as defendants.

(c) What orders to issue and who to bear the costs of the Application

43. I have found that the Application herein has merits. It therefore succeeds and I allow it as follows:-
- a. That the orders of the court closing the defence case as made on March 8, 2022 are hereby set aside and therefore the Defence case is re- opened, and the Plaintiff's case is hereby re- opened only for purposes of cross-examination and re-examination of the witness whose evidence had been recorded.
 - b. The Defendants, and the two parties directed to be added as Defendants, since they have a similar defence, shall be at liberty to adduce evidence for their respective cases together, after the added Defendants shall have complied with order (c) below.
 - c. The proposed interested parties are hereby ordered to be added Defendants in the suit. The Plaintiff is to amend its Plaint and serve within fourteen (14) days on the two parties added through their Advocates herein, and the two Defendants shall comply with the law regarding the filing of their pleadings and evidence within fifteen (15) days of service as ordered above, in default of which the added parties' pleadings shall stand struck out.
 - d. This matter shall be mentioned virtually on March 16, 2022 for further orders.
 - e. The plaintiffs shall have throw away costs of Kshs 35,000/= to be paid by the Applicants before the mention date.
44. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 8TH
DAY OF FEBRUARY, 2023**

HON. DR. *JUR* FRED NYAGAKA

JUDGE, ELC KITALE

