



**Mbaraka & 8 others v Kenya Electricity Transmission Company Limited & 2 others;  
The Governor of the County Government of Tana River & another (Interested  
Parties) (Petition 9 of 2021) [2023] KEELC 16370 (KLR) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16370 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
PETITION 9 OF 2021  
MAO ODENY, J  
MARCH 14, 2023**

**BETWEEN**

**SAID BUYA MBARAKA ..... 1<sup>ST</sup> PETITIONER  
IBRAHIM KALKACHO NOKO ..... 2<sup>ND</sup> PETITIONER  
ABDULLA BODOLE NOKO ..... 3<sup>RD</sup> PETITIONER  
MAULID BASHORA SAID ..... 4<sup>TH</sup> PETITIONER  
SAIDI MOHAMED MADUBI ..... 5<sup>TH</sup> PETITIONER  
SAID KOFA MOHAMED ..... 6<sup>TH</sup> PETITIONER  
ISACK LANGO GUYO ..... 7<sup>TH</sup> PETITIONER  
IDIDY OMAR JUMA ..... 8<sup>TH</sup> PETITIONER  
WAKOLE SHONGOLO MOHAMED ..... 9<sup>TH</sup> PETITIONER**

**AND**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED .... 1<sup>ST</sup>  
RESPONDENT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT  
COUNTY GOVERNMENT OF TANA RIVER ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**THE GOVERNOR OF THE COUNTY GOVERNMENT OF TANA  
RIVER ..... INTERESTED PARTY  
ABDI MOGO ..... INTERESTED PARTY**



## RULING

1. This ruling is in respect of a Notice of Preliminary Objection dated 3<sup>rd</sup> February 2022 and a Notice of Motion dated 15<sup>th</sup> October 2021, by the 1<sup>st</sup> Interested Party seeking the following orders; -
  - a. Spent
  - b. Spent
  - c. That this Honourable court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> Respondent herein by themselves, their agents, and/or servants from paying out any monies arising out of the compensation for limited loss of land use in relation to the acquisition of a wayleave for the construction of the Garsen-Hola-Bura- Garissa transmission line by the 1<sup>st</sup> respondent amounting to ksh 171, 394,662.71 as outlined in the purported Consent Order dated 27<sup>th</sup> July 2021 to the petitioners or their advocates pending the hearing and determination of this application.
  - d. That this Honourable court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> Respondent herein by themselves, their agents, and/or servants from paying out any monies arising out of the compensation for limited loss of land use in relation to the acquisition of a wayleave for the construction of the Garsen-Hola-Bura- Garissa transmission line by the 1<sup>st</sup> respondent amounting to ksh 171, 394,662.71 as outlined in the purported Consent Order dated 27<sup>th</sup> July 2021 to the petitioners or their advocates pending the hearing and determination of this petition.
  - e. That this Honourable court be pleased to set aside and/or review the Consent Order dated 27<sup>th</sup> July 2021 and direct that any monies arising out of the compensation for limited loss of land use in relation to the acquisition of a wayleave for the construction of the Garsen- Hola-Bura- Garissa line by the 1<sup>st</sup> respondent amounting to ksh 171,394,662.71 be deposited into a Special Interest Earning account to be opened and held by the 3<sup>rd</sup> Respondent or as directed by the Honourable court pending hearing and determination of the petition.
  - f. That costs of this application be provided for.
2. The Petitioners filed a Notice of Preliminary Objection dated 3<sup>rd</sup> February 2022 whereby the issue of joinder of the proposed 1<sup>st</sup> Interested Party was allowed by consent save for the issue whether the application sought is a clear contravention of Article 176 and Article 179 of *the Constitution* and Section 6 of the *County Government Act* no 17 of 2012.

### 1<sup>st</sup> Interested Party's Submissions

3. The 1<sup>st</sup> Interested Party relied on the grounds on the face of the application and the supporting Affidavit of Hon. Dhadho Gaddae Godhana the Governor of Tana River County who deponed that sometime in June 2021, the firm of Osur & Company Advocates were instructed by the 3<sup>rd</sup> Respondent to represent the County's interests after the 3<sup>rd</sup> Respondent was served with a petition dated 24<sup>th</sup> May 2021.
4. Counsel for the Applicant identified the following issues for determination: -



- a. Whether a Court of law should sanitize an illegality and allow orders that contravene the Constitution of Kenya and statute to prevail;
  - b. Whether a County Governor can be joined in an existing suit where the County Government is already a party;
  - c. Whether there was presence of misrepresentation, fraud, coercion, fraud or collusion in execution of the consent order.
  - d. Whether the Prayers sought by the Proposed Interested Party are spent
5. On the first issue as to whether a court of law should sanitize an illegality and allow orders that contravene the Constitution and statute to prevail, counsel submitted that the Petition involves Public Interest litigation affecting more than 300,000 members of different communities within 11 locations namely Ndera, Kalkacha, Chifiri, Bura, Hosingo/Hirimani, Chwele, Dukanotu, Sala, Mororo, Madogo and Saka traversing more than 1748.93 acres of unregistered Community land under the 3<sup>rd</sup> Respondent by virtue of Article 63 (3) of the Constitution of Kenya, 2010 and Section 6(1) of the Community Land Act.
  6. Counsel gave a brief background to the case and stated that in July 2021, parties prepared a draft consent which would compromise this matter by payment of compensation sum of ksh 171,394,662.71/- for limited loss of land use, the compensatory sum being the cumulative value of land in areas traversed by the Garsen-Hola-Bura-Garissa Transmission Line under construction by the 1<sup>st</sup> Respondent.
  7. It was counsel's submission that pursuant to the Consent Agreement, the sums would be paid into the 3<sup>rd</sup> Respondent's Account as required under Section 6 of the Community Land Act to be held in trust for the Community and to be released as compensation upon registration of the suit parcels of land and that the 3<sup>rd</sup> Respondent would then transfer the amount and the interests earned to the communities as prescribed by law.
  8. Mr. Orende for the 1<sup>st</sup> Interested Party submitted that the Petitioners' advocate facilitated the execution of a Consent Order to all the parties in the matter for execution and return to him for further filing in Court, further that the Petitioners' Advocate urged the 3<sup>rd</sup> Respondent's Advocate who had the conduct of the matter that he would attend Court on his behalf for purposes of adoption of the same as a Judgment of the Court as it had already been executed by the parties of which proposition was agreeable to the 3<sup>rd</sup> Respondent's advocate.
  9. Counsel stated that unknown to the 3<sup>rd</sup> Respondent, the Petitioner's Advocate fraudulently and illegally changed the 1<sup>st</sup> and 2<sup>nd</sup> pages of the draft Consent dated 27<sup>th</sup> July 2021 at the ELC Court sitting in Mombasa where counsel further stated that the Petitioners' advocate falsely misrepresented to the Court that there was a Consent that the compensation sum of ksh 171,394,662.71/- being deposited into his firm's Account held at Kenya Commercial Bank, a fact that he knew was illegal.
  10. Counsel stated that currently partial sums cannot be accounted for after being deposited by the 1<sup>st</sup> Respondent into the Petitioner's Advocates Accounts in the name Jamal Bake & Associates Advocates, Account Number xxxx held at Kenya Commercial Bank Limited.
  11. Mr. Orende submitted that the above facts are corroborated by the 1<sup>st</sup> Respondent's Replying Affidavit sworn by mr Muthoka on 8<sup>th</sup> March 2022, where he deponed that the works have been currently stopped as ksh 102,836,797.00/- that was disbursed by the 1<sup>st</sup> Respondent has not been fully received by members of the community; that the Petitioner's Advocate misrepresented to the 1<sup>st</sup> Respondent



- that the 3<sup>rd</sup> Respondent had consented to the funds being disbursed to the Petitioner's advocate, and under Paragraph 14, the 1<sup>st</sup> Respondent avers that they shall be seeking for ksh 102,836,797.00/- already paid into the Petitioner's Advocate's Account to be accounted for.
12. Counsel relied on Article 63 (3) of *the Constitution* of Kenya, 2010, which stipulates that any unregistered Community land is held in trust by the County Government on behalf of the Communities. Further that Article 63 (4) provides that Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively. The role of County governments is also provided for in respect of Community land governance.
  13. Counsel also cited the provisions of Section 2 and Section 109 of the *Public Finance and Management Act*, 2015 which considers the funds as County Government Revenue which ought to be deposited into a County Public Fund established for a specific purpose.
  14. Similarly, counsel stated that ksh 68,557,865.71/- is yet to be released from the 1<sup>st</sup> Respondent to the Petitioners and that the monies previously released can also not be accounted for.
  15. On the issue as to whether a County Governor can be joined in an existing suit where the County Government is already a Party, this issue is spent as there was a consent allowing joinder.
  16. On the issue whether there was misrepresentation, fraud, coercion, fraud or collusion in execution of the Consent Order, counsel relied on the case of *Esther Targok Ayabei & another v Kibenjo Njuguna & another* [2019] eKLR restated the case of *Wasike v Wamboko* (1988) KLR 429, on setting aside consent orders/judgment which can be challenged on grounds that it was obtained by fraud or mistake or misrepresentation or any other reason which would persuade a court to vary or set aside the consent decree.
  17. Mr. Orende submitted that the Applicant has demonstrated the fraud and misrepresentation at Paragraph 12 of the Applicant's Supporting Affidavit sworn on 15th October 2021 and that the same allegations have been stated by the 1<sup>st</sup> Respondent under paragraph 10 of the Replying Affidavit sworn by Johnson Muthoka on 8<sup>th</sup> March 2022.
  18. Further that under Paragraph 27 of the Petitioners' replying affidavit where they have stated that the Consent Order was adopted in Court in presence of counsel for all parties yet the advocate is quite aware that the Consent was minuted in Mombasa ELC Court after he filed a Consent and a Certificate of Urgency.
  19. Similarly, that under Paragraph 28, the Petitioners are still making reference to a Replying Affidavit by the 1<sup>st</sup> Respondent that was withdrawn on 17<sup>th</sup> February 2022 in Court in the presence of all the parties. That ksh 68,557,865.71/- is still outstanding but the Petitioners want to give the impression that the amount was paid in full hence nothing to litigate which is not the position.
  20. Counsel therefore submitted that this being a public interest litigation it would be of utmost significance for the interests of the 300,000 members of the public to be looked into and ensure that the balance of the compensation sum is deposited with the County Government and not the Petitioners further that it goes against the realms of *the Constitution* and is contra-statute.

### **1<sup>st</sup> Respondent's Submissions**

21. Counsel for the 1<sup>st</sup> Respondent gave a brief background to the case and stated that the Parties herein entered a consent dated 27<sup>th</sup> July 2021 compromising the suit upon payment of compensation of



- the sum of ksh 171,394,662.71/- by the 1<sup>st</sup> Respondent into the Petitioner's account for onward transmission to the affected communities.
22. It was counsel's submission that the 1<sup>st</sup> Respondent paid into the Petitioner's advocates account 60% of the compensation sum leaving a balance of about ksh 68,557,865.00/- which funds were disbursed after the Petitioner's advocates gave an irrevocable undertaking dated 16<sup>th</sup> September 2021 that the sums would be utilized for payments to the affected communities and that they would indemnify KETRACO from any suits by third parties that may arise from payment of the compensation into their accounts.
  23. That the 1<sup>st</sup> Respondent has only partially complied with the consent order and has not fully disbursed the compensation.
  24. On the preliminary objection counsel relied on the cases of *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR and *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 at 700 and submitted that the issues raised in the Preliminary Objection are not points of law hence should be dismissed.
  25. Mr. Rambo agreed with the Applicant on the issue of joinder as an Interested Party in his capacity as Governor as the dispute before this court is a public interest dispute affecting more than 300,000 community members within Tana River County. That the Governor being the Chief Accounting Officer of the 3<sup>rd</sup> Respondent with respect to public funds has a right to be joined in the proceedings to ventilate any issues he may have, to enable the court to arrive at a just determination or resolution of the matter and relied on the case of *Governor of Kericho County v Kenya Tea Development Agency & 30 others Ex-Parte Ktda Management Services Limited* [2016] eKLR.
  26. On the issue as to whether the court is functus officio, counsel relied on the *Raila Odinga* Case (*supra*) where the doctrine of functus officio where the court stated that the doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality and that a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.
  27. Counsel therefore submitted that the court has not performed all its duties with respect to the case as it still has an oversight on implementation of the consent which revolves around disbursement of public funds to various community members and further that a report on the disbursements of the said funds has been submitted for the consent order to be perfected.
  28. Mr. Rambo further submitted that Section 80 of the *Civil Procedure Act*, the court is not estopped from allowing an aggrieved party or person not party to the proceedings to set aside or review a consent order or judgment of the court on sufficient grounds.
  29. Counsel therefore submitted that the grounds raised by the Interested Party are sufficient and meets the threshold to warrant review or setting aside of the consent order and relied on the cases of *Presbyterian Foundation v Charles Ndungu & 3 others* [2016] eKLR and *Board of Governor Changamwe Secondary School v Commissioner of Lands & 2 others* [2015] eKLR where the court held that an Interested Party is entitled to make an application for setting aside or review even though it was never a party to the consent.



## 2<sup>nd</sup> Interested Party's Submissions

30. Counsel for the 2<sup>nd</sup> Interested Party submitted that the 1<sup>st</sup> Interested Party cannot seek to set aside the consent order which he was not a party and that the Applicant has not met the threshold for setting aside the consent order.
31. Counsel relied on the cases of *J.M Njenga & Co Advocates v Francis Chege Maina & 5 Others; John Maina & 2 Others (Proposed Interested parties)* [2020] eKLR and *Michael Kibui & 2 Others v Impresa Construzioni Giuseppe Maltauro S.P.A & 2 Others* [2016] eKLR.

## Petitioners' Submissions

32. Counsel for the Petitioners submitted on whether the Proposed Interested Party can seek substantive orders sought in the Application, and stated that the application is an abuse of court process and relied on the cases of *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, where the court held that praying for anything more than seeking leave to be enjoined is putting the cart before the horse. That before leave is granted to a party to be enjoined, one cannot pray other orders apart from leave.
33. Counsel submitted that the proposed Interested Party has sought substantive prayers at the stage of seeking leave which is improperly before this Honorable Court, even in the event that this Honourable Court in hearing both the application and the Preliminary Objection grants the proposed Interested Party leave to be enjoined, the Interested Party still has to file requisite documents to come on record and it cannot be assumed that once leave is granted then the Proposed Interested Party is a party.
34. Counsel further relied on the Supreme Court in *County Assembly of Mandera County v Governor, Mandera County & another* [2020] eKLR, where the Court held that an Intended Interested Party/Applicant lack capacity to seek orders of dismissal of the Reference; and a party yet to be enjoined in a matter lacks the capacity to seek any substantive orders in it and that the prayer aforesaid is premature.
35. Counsel also relied on the case of *Sophy Njiiri v National Bank of Kenya Limited & another; James Mwangi Njiiri (Interested Party)* [2020] eKLR, where the court held that a party cannot join a suit as an Interested Party and seek substantive orders as though it was a principal participant. That if such a party wants to seek substantive reliefs/orders then it can apply to be joined to the suit as either a Plaintiff or Defendant.
36. It was counsel's submission that the Proposed Interested Party seeks to bring new issues for determination being, setting aside the consent order and injunction which have not been introduced by the principal parties herein being the Petitioners and Respondents hence incompetent and should be stuck out with costs.

## Analysis And Determination

37. Parties agreed by consent at the beginning of the hearing of this application to allow joinder of the Proposed Interested Party hence that limb of the application is spent. The Interested Party is therefore part of these proceedings.
38. The issue for determination is whether the Interested Party can apply for setting aside a consent order that he was not party to, whether the Applicant can apply for substantive orders and finally whether the application offends Article 176, 179 of *the Constitution* and Section 6 of the *County Government Act* no 17 of 2012.



39. On the first issue as to whether the Applicant can apply to set aside a consent which he was not party to, in the case of *Presbyterian Foundation v Charles Ndungu & 3 others* (*supra*) the court held that: -

“On my part I do not think a party who is not a party to a consent cannot apply to have it set aside. I am of the view that the provisions of Section 80 of the *Civil Procedure Act*, are wide enough to accommodate such an applicant. It will be observed that Section 80 allows any person aggrieved by a decree or order to apply for a review of the said judgment. A consent culminates in either a judgment or order of the court. Once it becomes an order or judgment of the court, then it brings itself within the bracket of the Section 80 of the *Civil Procedure Act*. I agree, that a consent is similar to a contract, but even then, it cannot be said that nobody, save for the parties to a contract can apply for the cancellation of such contract, or can be sued or seek rights under such contract. Following the principles of principal/agent, a principal can be sued under a contract even where such principal was not the actual party to an agreement which was entered into by his agent.”

40. The consent entered into by the principal parties has an effect of impacting on the Interested Party who has the mandate to govern community land on behalf of the members of the community within its jurisdiction. Section 80 of the *Civil Procedure Act* stipulates that a consent is similar to a contract where only parties to the contract can set it aside. A principal can be sued under a contract where an agent entered into a contract without the principal being a party.

41. The principles for setting aside consent orders were as was held in the case of *Brooke Bond Liebig v Mallya* (1975) EA 266 where Mustafa Ag. VP stated thus;

“The compromise agreement was made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.”

42. It follows that a consent order can be set aside if it can be demonstrated that it was procured through fraud, non-disclosure of material facts or mistake or for a reason which would enable a court set it aside. This is in tandem with the principles of review and setting aside judgments

43. Similarly, in the case of case of *Board of Trustees National Social Security Fund v Micheal Mwalo* [2015] eKLR the court held that;

“The judgment arose from a consent of the parties to the suit. The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.”

44. The issue in this suit is in respect of compensation for limited loss of land use in relation to the acquisition of a wayleave for the construction of a transmission line traversing Garsen-Hola-Bura-Garissa and it is not disputed that the land is community land.



45. Article 63(2) states as follows

Community land consists of land lawfully registered in the name of groups representatives under the provisions of any law;

land lawfully transferred to a specific community by any process of law;

any other land declared to be community land by an Act of Parliament; and

land that is lawfully held, managed or used by specific communities,

- i. community forests, grazing areas or Shrines
- ii. ancestral lands and lands traditionally occupied by hunter gatherers communities or
- iii. lawfully held as trust land by the county government.

46. Article 63(3) of *the Constitution* provides that any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

subsection (4) provides that Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

47. Pursuant to Article 63(5) of *the Constitution*, Parliament enacted the *Community Land Act* no 27 of 2016 whose preamble states: -

“An Act of Parliament to give effect to Article 63 (5) of *the Constitution*; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes”

48. The role of the County Government in regard to Community land or unregistered community Land is provided for under Section 6 of the *County Government Act*, as follows: -

- 1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.
- 2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.
- 3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.
- 4) Any such monies shall be deposited in a special interest earning account by the county government.
- 5) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.
- 6) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.
- 7) Upon the registration of any unregistered community land in accordance with this Act, the respective registered community shall, assume the management and administrative functions



provided in this Act and the trustee role of the respective county government in relation to the land shall cease.

- 8) A county government shall not sell, dispose, transfer, and convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.
49. The reason for highlighting the role of County governments in unregistered Community land is to situate the current case and clarify the scenario where monies were paid to an Advocates' account contrary to the provisions of the statute.
50. Why did the 1<sup>st</sup> Respondent agree to disburse the money to Advocates account and not the County government's account who has the mandate to open a special interest earning account in trust for the communities. Even though the 1<sup>st</sup> Respondent stated that the Petitioners' advocates had signed an undertaking to indemnify the 1<sup>st</sup> Respondent the procedure followed was not legally and procedurally sound.
51. Similarly, there was a mistake in the consent allowing the Petitioners' advocate to receive the compensation in his account which offends the provisions of Section 2 and Section 109 of the *Public Finance Management Act*. Secondly, there is no mention or proceedings recording the coram in which the said consent was adopted therefore the said consent was irregularly adopted and the court cannot turn a blind eye to such irregularity.
52. On the issue whether a Proposed Interested Party can apply for substantive orders together with the application for leave, it is trite that a party joined as an Interested Party cannot apply for substantive orders as was held in the cases of in *County Assembly of Mandera County v Governor, Mandera County & another* [2020] eKLR and of *Sophy Njiiri v National Bank of Kenya Limited & another; James Mwangi Njiiri (Interested Party)* [2020] eKLR, (*supra*)
53. An Interested Party cannot upstage the owners of the suit, that is the principal parties to introduce new causes of action. The orders sought for injunction by the Interested Party are hanging in the balance as they are not hinged on any pleadings. If the matter was to be heard where would the court place the orders of injunction which are not pleaded in a substantive suit.
54. I am in agreement with counsel for the Petitioners that the Interested Party cannot apply for substantive orders of injunction as seen in the application together with application for leave. However, I am of the view that the Interested Party is within its right to apply for the setting aside of the consent order as per Section 80 of the *Civil Procedure Act* and the cases cited above. I further find that the Interested Party has not offended Articles 176 and 179 of *the constitution* and Section 6 of the *County Governments Act*.
55. The 1<sup>st</sup> Respondent who is the source of the monies for compensation supported the application for setting aside the consent and informed the court that they only paid 60% of the monies leaving a balance of ksh 68,557,865.00/- which they are ready to pay in the special interest earning account of the County government. As earlier stated, this is a matter involving over 300, 000 members of the communities with public interest which has to be safeguarded.
56. I find that the application for setting aside the consent has merit save for the substantive orders for injunction which is disallowed. Parties to regularize and account for the monies which have already been released to the Advocates to the communities and the balance due to from the 1<sup>st</sup> Respondent be paid to the Special interest earning account opened for that specific purpose by the County Government.
57. Each party to bear their own costs.



**DATED, SIGNED AND DELIVERED AT MALINDI THIS 14<sup>TH</sup> DAY OF MARCH, 2023**

**M.A. ODENY**

**JUDGE**

NB: In view of the Public Order no 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

