Mwangula v Mansfield & 4 others (Environment & Land Case 177 of 2011) [2023] KEELC 18414 (KLR) (7 March 2023) (Ruling)

Neutral citation: [2023] KEELC 18414 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 177 OF 2011

LL NAIKUNI, J

MARCH 7, 2023

BETWEEN

ALI SWALEH MWANGULA ..... APPLICANT

AND

CYRIL MANSFIELD ..... 1ST DEFENDANT

MAVULI LIMITED ..... 2ND DEFENDANT

OMICRON RESOURCES LIMITED ..... 3RD DEFENDANT

CAR & GENERAL (KENYA) LIMITED ..... 4TH DEFENDANT

GIRO COMMERCIAL BANK LIMITED ..... 5TH DEFENDANT

RULING

I. Introduction

1. Before the Honorable Court for its determination is a ruling from a Notice of Motion application dated 13th April 2022 filed by the Plaintiff/Applicant herein, Ali Swaleh Mwangula. It was brought to Court under the provisions of Articles 40, 47 & 50 of *the Constitution* of Kenya, 2010, Sections 1A, 1B, 3, 3A of the *Civil Procedure Act*, Cap. 21 and order 12 rule 7 of the *Civil Procedure Rules,* 2010 thereof.

II. The Plaintiff/Applicant's case

2. The Plaintiff/Applicant sought for the following orders.
    a. Spent.
    b. Spent.
    c. That this Honorable Court do issue an order reinstating the Plaintiff's/Applicant's suit.

d. That the Honorable Court be pleased to set aside its orders of 7th March 2018 dismissing the Plaintiff/Applicant's suit for non - attendance.

e. That the honorable court be pleased to give the necessary directions for the hearing of the suit.

f. That the costs of this application be bore by the Defendants/Respondents herein.

g. That the Plaintiff/Applicant be granted leave to Amend the Plaint dated 5th July 2006 in accordance with the draft amended Plaint annexed to this application.

h. That the costs of this application be in the cause.

3. The application is based on the grounds, testimonial facts and averment made out under the 18 Paragraphed Supporting Affidavit sworn by Ali Swaleh Mwangula and dated 13th April, 2022 together with four (4) annextures marked as "ASM – 1 to 4" respectively. He stated being an adult male of sound mind and the Plaintiff/Applicant herein thus duly authorized and competent to swear its affidavit thereof. He informed Court that on 21st October, 2010, the Resident Magistrate Court in Kwale adapted the findings of Msambweni Land Dispute No. 13 of 2010 vide its Judgement which rightly decreed that he was the owner of all that parcel of land known as Land Reference numbers Kwale/ Diani Beach Block/202 (Hereinafter referred to as "The Suit Land") - (Annexed and marked as "ASM – 1" is an extract of proceedings and Judgment).

4. According to him, in the year 2011 he filed a suit at the High Court by way of Originating Summon claiming the suit land through the Doctrine of Land Adverse Possession over it as provided for by law. On 30th July 2013, he informed court that the Honorable Court delivered its Judgement in his favour whereby it Court found that he had acquired title to the suit land by way of adverse possession (Annexed and marked as "ASM – 2" is a copy of Court Order).

5. Pursuant to this, he became the registered proprietor of the suit land and was issued with a title deed and which he held todate. (Annexed and marked as "ASM – 3" was the copy of the title).

6. The Plaintiff/Applicant contended that his previous Advocate on record never informed him that there were subsequent proceedings leading to the revival of the suit after the Judgement and the third parties brought in as Defendants setting aside the aforestated Judgement that had been issued in his favour by this Court on 30th July 2013. It was upon perusal of the Court file that, he was informed and found out that a hearing date was set on 7th March 2018 and the suit was dismissed for non-attendance of the Plaintiff/Applicant. He held that his non – attendance as attributed to the failure and inadvertence of his then Counsel to inform him of the hearing date.

7. The Plaintiff/Applicant deponed that his previous Counsel never informed of the hearing date and the fact that there had been a revival of the his suit as all along he had known that this Honorable Court had issued Judgement in his favour.

8. The Plaintiff/Applicant averred that his previous Advocate whom he came to learn filed an application to cease acting for him never communicated this to him on the progress of the suit and he never had any issue and that he knew all along that the suit herein was concluded and Judgement entered in his favour. As recent as March, 2021, he paid for the land rent over the suit land.

9. The Plaintiff /Applicant claimed that he only came to be aware of the dismissal on 15th March 2022 when he perused the court file. He urged court not to visit the mistake of his previous counsel on him and accord him an opportunity to hear him afresh on the genesis of the suit land and he would prove to Court that indeed he acquired title to land through land adverse possession. He also claimed that he had been dealing with the suit land as any registered proprietor would, including payment of

land rent on 15th March 2022 (Marked and as "ASM – 4"). He pleaded that should he be given an opportunity to have the matter proceed to full hearing, he would manage to demonstrate to Court the factual history of the suit land the same having been previously determined by Msabweni Land Tribunal and the Resident Magistrate Court at Kwale. He claimed the dismissal of the suit had led him to being vulnerable to being evicted by the Defendants. He deponed that his suit raised triable issues which ought to be determined by this Court. He pleaded with Court to set aside the orders of 7th March 2018 as they were prejudicial and hear the suit on its merit.

III. Submissions

10. On 4th May, 2022, while all parties were present in Court, they were directed to have the Notice of Motion application dated 13th April, 2022 be disposed off by way of written submission. Pursuant to that, the Plaintiff/Applicant complied and the Court reserved a date for delivering of the ruling accordingly.

A. The Written Submission by the Plaintiff/Applicant

11. On 15th June, 2022, the Learned Counsel for the Plaintiff/Applicant, the Law firm of Messrs. Chege & Sang Company Advocates filed their written submissions dated 27th May, 2022 in support of the application. Mr. Sang Advocates in addition to the facts deponed in the affidavit in support of the application commenced the submission by stating that the suit by the Plaintiff/Applicant raised triable issues that ought to be determined by this Honorable Court.

12. The Learned Counsel submitted that the provision of Section 3A of the *Civil Procedure Act*, Cap. 21 granted the Court with inherent powers to make orders as may be necessary for the ends of justice to be met. Further, that the provision of order 51 rule 15 of the *Civil Procedure Rules,* 2010 empowered Court to set aside orders issued "ex – parte". He argued that the Court's discretionary power should, however, be exercised judiciously, with the overriding objective of ensuring that Justice was done to all parties. To buttress his point he cited the famous case of "Mbogo & Another – Versus – Shah EALR 1908" whereby the discretion to set aside an ex – parte order of the nature of a dismissal order was intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error.

13. Additionally, the Learned Counsel submitted that a party ought not be completely locked out of the seat of justice on account of mistake. To buttress on this point, he relied on the case of: "*Belinda Murai & others – Versus - Amoi Wainaina* (1978) whereby the Court set out the approach to be adopted when dealing with the question as to whether or not a party should be completely locked out of the seat of justice on account of mistake by holding that:-

> " The door of justice is not closed because a mistake has been made by a lawyer of experience who ought to know better. The court may not condone it but it ought certainly to do whatever is necessary to rectify it the interest of justice so dictate. It is known that Courts of Justice themselves make mistake which is politely referred to as erring in their interpretation of laws and adoption of a legal point of view which Courts of appeal sometimes overrule....."
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> The Learned Counsel further cited the case of "Phillip Chemwolo & Another – Versus – Augustine Kubede (1982 – 88) KAR 103" where Apollo JA held:-
>
> " Blunder will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard

on merit. I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The Court as is often said exists for the purposes of deciding the rights of the parties and not the purpose of imposing discipline".

To wrap up on this issue, the Learned Counsel cited the case of "John Nahashon Mwangi – Versus – Kenya Finances Bank Limited (in liquidation) (2015) eKLR where Court stated as follows:-

> "The Fundamental principles of Justice are enshrined in the entire Constitution and specifically in Article 159 and couples with Article 50 on the right to be heard and the constitutional desire to serve substantive justice to all the parties constitutes the defined principles which should guide the Court in making a decision on such matter of reinstatement of a suit which has been dismissed by Court. These principles were enunciated in a mastery fashion by Courts in a legion of decisions which I need not multiply except to state that; Courts should sparingly dismiss suits for want of prosecution for dismissal is a draconian act which drives away the Plaintiff/Applicant in an arbitrary manner from the seat of Judgement. Such acts are comparable only to the proverbial "Sword of the Damocles" which should draw blood where it is absolutely necessary. The same test will apply in an application to reinstate a suit and a Court of law should consider whether there are reasonable grounds to reinstate such suit of course after considering the prejudice that the Defendant would suffer if the suit was reinstated against the prejudice the Plaintiff/Applicant will suffer if the suit is not reinstated"

In conclusion, the Learned Counsel referring the Honorable Court to the case of "Joseph Kinyua – Versus – G. O Ombachi (2019) averred that dismissing a suit was a draconian order that drives away the litigant from the seat of justice and he urged the Honorable Court to reinstate his suit to be heard on merit.

14. It is instructive to note that the Respondents never filed any responses to the application nor written or make oral submissions to oppose the application. In the given circumstances, the Honorable Court has been compelled to proceed on making a determination on the issues of the subject matter raised from the application purely on its own merits.

III. Analysis & Determination

15. I have keenly considered the Notice of Motion application dated 13th April, 2022, the written submissions and the myriad of authorities cited by the Plaintiff/Applicant, the appropriate and relevant provisions of *the Constitution* of Kenya, 2010 and the statures. On its own merit, for the Honorable Court to reach an informed, reasonable and fair decision in the subject matter, it has framed the following three (3) issues for its determination. These are:-

    a. Whether the Notice of Motion application dated 13th April, 2022 by the Plaintiff/Applicant has any merit or not.

    b. Whether the court should set aside the orders issued on 7th March 2018 dismissing this suit on account of nonattendance and/or non-compliance with court orders and proceed to hear it on merit.

    c. Who will bear the Costs of the application.

    ISSUE No. a). Whether the Notice of Motion application dated 13th April, 2022 by the Plaintiff/Applicant has any merit or not.

A brief history of the matter

16. Prior to the Court causing any analysis to the framed issues herein and taking the scope, nature, the notable and explicit character of the Plaintiff/Applicant, intricacies of the matter at the behest and chagrin of the Plaintiff/Applicant, its imperative that the Court provides brief facts of the case. From the filed pleadings herein, on 24th June, 2011 the Plaintiff/Applicant filed a suit before this Court in form of Originating Summons. In a nutshell he claimed having lived on the suit land continuously and uninterruptedly for over 12 years and hence was entitled to it through the Doctrine of Land Adverse possession. The land was registered in the names of one Cyril Mansfied, the Defendant herein. Despite of service and with the leave of Court, having been effected through substituted means under order 5 rule 17 of the *Civil Procedure Rules,* 2010 and obtained leave by publishing an advertisement carried out in one of the local daily – "The daily Nation" newspaper of 29th October, 2012 the Defendant neither entered appearance nor filed any Defence under the provision of Orders 6 and 7 of the Civil Procedure Rules.. On 11th July, 2013 the matter proceeded for formal proof hearing and on 30th July 2013, finding that the suit was unopposed, the late Justice S.N Mukunya J delivered a Judgement to the effect that Ali Swaleh Mwangala, the Plaintiff/Applicant had acquired by way of adverse possession the parcel of land - L.R Kwale/ Diani Beach Block 202 and directed he be registered as the proprietor by the Registrar of Titles.

17. On 11th November 2015, Mavuli Limited and Omicron Resources Limited filed an application seeking to set aside the Judgement dated 30th July 2013 and its consequential orders issued on 12th August 2013 and prayed for the court's leave to file defence to the suit. The firm of Wambo & Company advocates was on record for the Plaintiff/Applicant and even filed submissions to oppose the application on 19th February 2016. On 28th April 2016, Justice A. Omollo J ruled on the application, where the court noted that the Plaintiff/Applicant was given an opportunity to file his response but failed to do so. The Honorable Court ordered that Mavuli Limited and Omicron Resources Limited be joined as 2nd and 3rd Defendants, as well as Car & General (K) Limited and Giro Commercial Bank Limited (they had made a similar application dated 17th February 2016 as the 4th and 5th Defendants herein. Resultantly, the Court also set aside the Judgement entered on 30th July 2013 and directed that the suit to be heard on merit. The Plaintiff/Applicant was directed to amend his Originating Summons and the Defendants file their defences.

18. On 2nd June 2016, the Law firm of Messrs. Wambo Muyala & Company advocates filed an amended Originating Summons on behalf of the Applicant, pursuant to the orders of this Court issued on 28th April 2016. On 1st July 2016, Honorable Wasike, the Court's Deputy Registrar as per the Court's direction and orders of 28th April, 2016, conducted a site visit on the suit land. In the report, it was noted that Mr. Muyala appeared for the Plaintiff/Applicant and that the Plaintiff/Applicant was also present in person during the site visit.

19. On 12th October 2017, the Law firm of Messrs. John Bwire & Associates filed a Notice of Change of Advocates dated 11th October 2017 taking over the matter on behalf of the Plaintiff/Applicant and which fact they informed the Court and the Respondents that the Law firm of Messrs. Wambo Muyala & Company Advocates were no longer on record for the Plaintiff/Applicant.

20. On 7th March 2018 when the matter came up for hearing before Justice C.K Yano J, in the presence of Mr. Bwire Advocate for the Plaintiff/Applicant, Mr. Njuguna for the 2nd Defendant, Mr. Kago for the 3rd Defendant and Mr. Khanna for the 4th and 5th Defendants the Court ordered that the suit be dismissed with costs to the Defendants and that the registration of the suit land in the Plaintiff's/ Applicant's name be cancelled.

21. On 31st August 2018, the Law firm of Messrs. John Bwire & Associates made an application dated 29th August 2018 seeking to cease acting for the Plaintiff/Applicant on the account of lack of communication with and instructions from the Plaintiff/Applicant. The application was never heard and the matter remained inactive until this application was filed before Court.

22. From the Court's record it is clear that the Plaintiff/Applicant was still and well represented. This fact is also clear and plain that he has had proper representation on several Court attendance sessions. On 29th November 2016, it is on record that when the matter was listed for Pre – trial conference pursuant to the provision of Order 11 of the Civil procedure on case management, the Plaintiff/Applicant was represented in court by Mr. Muyala Advocate. The court proceeded to confirm the matter ready for hearing. The case was fixed for hearing for 8th May 2017. Similarly, when the matter came up for hearing on 8th May 2017 and 24th May 2017 The Plaintiff/Applicant was also represented by Mr. Muyala Advocate.

23. On 12th October 2017, Mr. Bwire Advocate appeared for the Plaintiff/Applicant and sought leave of Court to file a further witness statement and supplementary list of documents within 14 days from that date. This was after he addressed court that the Plaintiff/Applicant had instructed him on 10th October 2017. The court provided its directions whereupon, the Plaintiff/Applicant was granted leave to file further witness statement and supplementary list of documents within 14 days and ordered to pay costs to the Counsels for the 2nd and 3rd Respondents.

24. On 7th March 2018, when the matter came up for hearing, Mr. Bwire Advocate applied for adjournment. He informed Court that he could not proceed. He explained to court that he had had a meeting with the Plaintiff /Applicant the previous day and they had planned to meet on the hearing date. Unfortunately, the Plaintiff/Applicant contracted an asthma attack and thus could not attend Court. The Learned Counsel Njuguna for the 2nd Respondent objected to the application for adjournment and urged court to dismiss the suit since the Plaintiff/Applicant had not complied with the orders and directions of court given on 12th October 2017. Likewise, the Learned Counsel Mr. Kago for the 3rd Respondent opposed the application for adjournment and supported the position taken by Mr. Njuguna. He argued that there was no medical evidence indicating that the Plaintiff/Applicant had been sick to the extent of not attending court. Equally, the Learned Counsel Mr. Khanna for the 4th and 5th Respondents opposed the application for adjournment and supported the position taken by both Mr. Njuguna and Mr. Kago. He argued that there was no medical evidence to support the claim that the Plaintiff/Applicant suffered an asthma attack and further he contended that the Plaintiff/Applicant had not complied with the orders to pay adjournment costs.

25. Based on these facts, the Court then considered the application for adjournment by the Learned Counsel Mr. Bwire for the Plaintiff/Applicant on the basis of the inability for the Plaintiff/Applicant to attend Court due to his health condition. Resultantly, the Court concurred that indeed the Plaintiff/Applicant had failed to comply with the orders given on 12th October 2017 and that there was no medical evidence presented before court in form of a medical report to support the Plaintiff's/Applicant's medical condition. The Honorable Court further ruled that the suit herein was fairly old having been filed in the year 2011 and found that there was no good reason given to warrant an adjournment, to an Plaintiff/Applicant who had not complied with earlier orders from court. The court disallowed the application and directed parties to proceed with the hearing.

26. When court directed parties to proceed with hearing, Mr. Khanna prayed for the suit to be dismissed under Order 12 Rule 3 of the Civil Procedure Rules, 2010 since the Plaintiff/Applicant was absent. Mr. Njuguna on the other hand, prayed for the cancellation of the Certificate of title deed being held in the names of Plaintiff/Applicant. Mr. Bwire Advocate held that taking that his client had not been

present in court, he had nothing to submit on to court, He left the whole matter to court to decide. The court ruled that the suit was dismissed on account of account of non - attendance and/or non-compliance of its orders issued earlier on diverse dates of the Plaintiff/Applicant and further ordered the registration of the Plaintiff/Applicant as the proprietor of the suit land to be cancelled.

> Issued No. (b) Whether the court should set aside the orders issued on 7th March 2018 dismissing this suit by the Plaintiff on account of non-attendance and/or non-compliance with court orders issued earlier.

27. Under this sub-heading the honorable Court is highly influenced by the facts and the legal reasoning made out herein above From the detailed analysis of the chronological events in this matter, I am of the view and its plain and clear that the Plaintiff/Applicant is rather deceitful, dishonest and disrespectful of the due process of the Court. In his affidavit in support of the instant application, he deponed that his previous advocate on record did not inform him of any subsequent proceedings that led to the revival of the suit after Judgment was entered in his favor. This is far from the truth. It is total misrepresentation of facts to mislead Court and all and sundry. From the court records, it is evident that the Law firm of Messrs. Wambo & Company Advocates had always been on record for the Plaintiff/Applicant when the Respondents made an application to have them enjoined in the suit. Indeed, it's a fact and arising from the joiner of parties, that the Plaintiff/Applicant went as far as amending his Originating Summons and filed it on 2nd June 2016 and the affidavit in support of it has been sworn by none other than the Plaintiff/Applicant himself. It is instructive to note that the Plaintiff/Applicant had always been well aware of the events in this matter, to the extent of even physically attending a site visit that was conducted on 1st July 2016 by Honorable Wasike, the Court's Deputy Registrar as per the orders of court issued on 28th April 2016. Certainly, the Plaintiff/Applicant is not moving Court with any clean hands at all. On the contrary, he deliberately wishes to completely confuse and mismanage the Court's rightful thinking at his own personal benefit. It is unacceptable.

28. Be that as it may, the principles upon which the court will exercise its discretion to reinstate or not a suit dismissed for non - attendance were set out in the case of "*Ivita – Versus - Kyumbu* [1984] KLR 441, where it was held that:

> " The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff/Applicant and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay or even that the plaintiff/Applicant will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff/Applicant before the court will exercise its discretion in his favor and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the plaintiff's/Applicant's excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time."

29. This application seeking reinstatement of the suit was filed on 13th April 2022, which is four (4) years after the suit was dismissed. For whatever its worth, the application is caught up by laches. A delay of over four (4) years not only unreasonable, unfair but inordinate and ought to be explained to the satisfaction of court. Delay is a question of facts and the Plaintiff/Applicant has not placed any empirical evidence before court to demonstrate that the delay was beyond his control and that he did all he could to file the application within reasonable time.

30. I reiterate that the Plaintiff/Applicant has not been truthful to the Court. He claims that his previous advocate filed an application to cease acting and did not communicate to him the process of the suit. From the records, Mr. Bwire Advocate on 7th March 2018 a date that had been fixed for hearing of the Case while seeking an adjournment informed Court that he had spoken with the Plaintiff/Applicant a previous day and that he had been unwell hence could not attend Court. Whom is the Court meant to believe here – the Counsel for the Plaintiff/Applicant or the Plaintiff/Applicant It goes without saying that all officers of the Court owe the Court and the Law allegiance and hence are believable at all costs. Nonetheless, while according the Plaintiff/Applicant the benefit of doubt, the basic issue to ponder here is, had the Plaintiff/Applicant proved to Court that he tried to communicate with his Counsel and failed? Clearly, this is all in the figment of the imagination and concorted mind of the Plaintiff/Applicant as no such evidence has been placed before court. Further if indeed the Plaintiff/Applicant perused the file on 15th March 2022 as he claims he did, he would have found out that the suit was primarily dismissed by Court due to non -compliance of orders issued by court on 12th October 2022 and not simply because he was absent on that day.

31. A litigant is also obligated by law to monitor the activities happening in his file. This should be the case, by regularly calling upon and checking up on the process of the matter as it happens in Court. It is well established that the suit belongs to the Plaintiff/Applicant and not his Counsel. Therefore, it is incumbent upon him to stay alert and periodically inquire once in a while from his advocate on the process of his case. On the contrary, the Plaintiff/Applicant is essentially informing Court that he went to slumber for four (4) years without inquiring on status of his matter, knowing very well that the Respondents had been seeking for such drastic reliefs of Court - the cancellation of his Certificate of Title. Suffice it to say, its on record that Plaintiff/Applicant outrightly failed to comply not only with the orders of this Court but also with the provision of Section 1A (3) of the *Civil Procedure Rule*s which state that:

> A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

32. Suffice it to say, it's on record that on diverse dates this court has issued directions to be adhered with but the Plaintiff/Applicant has opted not to obey any of them. Times without numbers this court has stated that court orders are not a formality nor cosmetic. They have to be obeyed at all costs. Should a party feel aggrieved by it the only amicable option is to available court for the said orders to be either reviewed, discharged or set aside but certainly not to disobey them far from it.

33. For all these reasons hereof, it is my own discretion that there is no way that the application by the Plaintiff/Applicant shall succeed. Indeed, it must fail but without costs to the Defendants/Respondents although they took the trouble in defending it.

Issue No. c). Who will bear the Costs of the application?

34. The issue of Costs is at the discretion of the Court. Costs is the award that a party is granted at the conclusion of the legal action or proceeding in any litigation. The Proviso of Section 27 (1) of the *Civil Procedure Act*, cap 21 holds that Costs follow the events, By the events, it means the result or outcome of the legal action See the Supreme Court case of "*Jasbir Rai Singh – Versus Tarchalan Singh* (2014) eKLR and the Court of Appeal cases of "*Ceclia Karuru – Versus – Barclays Bank of Kenya Limited & Another* (2016) eKLR and *Kenya Sugar Board – Versus – Ndungu Gathini* (2013) eKLR.

35. Although the Plaintiff/Applicant has not been successful in prosecuting his application for the factual and legal reasoning adduced herein, from the surrounding facts and inferences of the matter, and

particularly that the Defendants/Respondents never actively participated in the application herein, its imperative that each party bears their own costs herein.

VI. Conclusion and Disposition

36. After conducting an elaborate analysis to the framed issues herein, notwithstanding all the arguments meted by the Plaintiff/Applicant herein and despite of the application not being opposed, the Honorable Court is not persuaded by the Plaintiff/Applicant's assertion urging Court to exercise its discretion in reinstating his suit. For the reasons already adduced herein, I find that there is no plausible justification why this Honorable Court should set aside the orders issued on 7th March 2018. Consequently, the Court orders:-

    a. That the Notice of Motion application dated 13th April, 2022 by the Plaintiff/Applicant be and is hereby dismissed for lack of merit.

    b. That there shall be a closure of this matter.

    c. That there will be no order as to costs.

It Is So Ordered According.

RULING DELIEVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 7TH MARCH 2023

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JUSTICE HON. MR. L.L NAIKUNI (JUDGE),

ENVIRONMENT & LAND COURT

AT MOMBASA

Ruling delivered in the presence of:

a. M/s. Yumnah, the Court Assistant.

b. Mr. Sang Advocate for the Plaintiff/Applicant.

c. Mr. Mwangi & M/s. Kimani for the 2nd Defendants/Respondents.