



**Gachara v Kihoro & 2 others (Environment and Land Case Civil Suit 520 of 2007) [2023] KEELC 21456 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21456 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 520 OF 2007**

**JO MBOYA, J  
NOVEMBER 9, 2023**

**BETWEEN**

**SAMUEL KIGATHI GACHARA ..... PLAINTIFF**

**AND**

**CHARLES WANDUTO KIHORO ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES GATHEE MUHORO ..... 2<sup>ND</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**Introduction and Background**

1. The 1<sup>st</sup> Defendant/Applicant herein has approached the Honourable court vide the Application dated the 14<sup>th</sup> August 2023; and in respect of which same has sought for the following reliefs: [verbatim].
  - i. ....Spent.
  - ii. There be a stay of execution of the Judgment and Decree of this Honorable Court pending the hearing and determination of this Application Inter-Partes.
  - iii. There (sic) be a state of Execution of the Judgment and Decree of this Honorable Court pending the hearing and determination of Nairobi Civil Appeal Number 75 of 2020.
  - iv. That Costs of this Application abide in the appeal
2. That the instant Application is premised on the grounds which have been enumerated in the body thereof. Further and in addition, the Application is supported by the affidavit sworn by the Applicant and which affidavit is sworn on the 14<sup>th</sup> August 2023.



3. Instructively, upon being served with the subject Application, the Plaintiff/Respondent filed a Replying Affidavit sworn on the 6<sup>th</sup> November 2023; and in respect of which, same has annexed various documents, inter-alia, a copy of the Ruling rendered by the Court of Appeal and pertaining to a previous Application for stay of execution of the Judgment and Decree, which was issued by this Honorable court, albeit differently constituted.
4. Additionally, the Plaintiff/Respondent has further contended that though the 1<sup>st</sup> Defendant/Applicant was knowledgeable of and privy to the delivery of the Ruling by the Honorable Court of Appeal, same concealed and/or better still, hid the information from the court, with a view to defrauding/ defiling the cause of Justice.
5. On the other hand, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Respondents neither filed Grounds of opposition nor Replying affidavit. Suffice it to point out, that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants therefore did not factually not oppose the subject Application.
6. First forward, the instant Application came up for hearing on the 9<sup>th</sup> November 2023; whereupon the advocate for the respective Parties covenanted to canvass and dispose of the Application by way of oral submissions.
7. Consequently and in this regard, the Application under reference, was duly disposed of vide oral submissions;

### **Parties' Submissions:**

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

8. The Applicant herein adopted the grounds contained at the foot of the Application and similarly, reiterated the averments contained in the body of the Supporting affidavit sworn on the 14<sup>th</sup> August 2023.
9. Furthermore, Learned counsel for the Applicant thereafter raised, canvassed and highlighted three [3] salient issues for determination by the Honourable court.
10. Firstly, Learned counsel for the Applicant submitted that the Plaintiff/Respondent herein has since filed the Party and Party bill of costs for purposes of taxation; and that the said bill of costs is currently scheduled for taxation before the Deputy Registrar of the court.
11. Additionally, Learned counsel for the Applicant has submitted that once the bill of costs is taxed, the Deputy Registrar shall issue the requisite Certificate of Taxation and thereafter the Plaintiff/Respondent, who is said to be the Decree Holder, shall most likely commence the process of execution as against the Applicant.
12. Arising from the foregoing, Learned counsel for the Applicant has thus contended that the process of execution shall occasion Substantial loss and prejudice to the Applicant herein and thus, there is a sufficient basis to warrant the grant of the orders of stay.
13. Secondly, Learned counsel for the Applicant has also submitted that the 1<sup>st</sup> Defendant developed the suit property and that in the event that no orders of stay are granted, then there is a likelihood that the Applicant's developments would be affected.
14. Lastly, Learned counsel for the Applicant has submitted that even though the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules, 2010; stipulates the necessity to provide Security for (sic) costs; same however did not procure instructions pertaining to the nature of security, if any, to be provided.



15. Furthermore, Learned counsel contended that if the question of security is imperative, then the court should afford her (counsel) some latitude to procure and obtain instructions as concerns provisions of security.
16. Notwithstanding the foregoing, Learned counsel for the Applicant submitted that the Applicant has established and demonstrated the requisite ingredients, to warrant the grant of the orders of stay of execution, in the manner sought at the foot of the Application beforehand.

**b. Plaintiff's/Respondent's Submissions:**

17. The Plaintiff/Respondent herein adopted and reiterated the contents of the Replying affidavit sworn on the 6<sup>th</sup> November 2023; and thereafter proceeded to and highlighted five [5] salient issues for due consideration by the Honourable court.
18. First and foremost, Learned counsel for the Respondents has submitted that upon the delivery of the Judgment and the consequential Decree by this court, albeit differently constituted, the Applicant herein proceeded to and filed a Notice of Appeal to the Honorable Court of Appeal and thus evidencing his intention to appeal the Judgment herein.
19. Furthermore, Learned counsel for the Respondent has also contended that other than the Notice of Appeal, the Applicant herein also filed an Application for stay of Execution before the Court of Appeal pursuant to the provisions of Rule 5(2) (b) of the Court of Appeal Rules.
20. On the other hand, counsel has submitted that the said Application before the Court of Appeal was heard and disposed of vide Ruling rendered on the 21<sup>st</sup> October 2022, whereupon the Application for stay of execution pending the hearing of Appeal, was dismissed.
21. Owing to the foregoing, Learned counsel for the Respondent has therefore submitted that to the extent that a previous Application for stay of execution pending the hearing and determination of the appeal has since been heard by the Court of Appeal; this court is therefore divested of Jurisdiction to entertain the current Application.
22. Secondly, Learned counsel for the Respondent has also submitted that the filing of the current Application whilst being knowledgeable of the terms of the Ruling of the Court of Appeal, amounts to and constitutes an abuse of the Due process of the court.
23. Thirdly, Learned counsel for the Respondent has submitted that the Applicant herein has neither demonstrated nor established that Substantial loss shall arise and/or accrue, if the orders of stay are not granted.
24. Further and at any rate, Learned counsel has submitted that up to and including the time for filing of the current Application, the Party and Party bill of costs, has not been taxed and hence no execution can be commenced, either has contended or at all.
25. Consequently and in the premises, Learned counsel for the Respondent has therefore contended that the subject Application has been made and/or mounted in vacuum and thus same is bad in law.
26. Fourthly, Learned counsel for the Respondent has submitted that even if the Bill of costs has been taxed (which is not the case), such taxation shall only give rise to a monetary award, which is definite and hence payable in monetary terms.



27. To this end, Learned counsel for the Respondent has submitted that where a loss is quantifiable/ ascertainable in monetary terms and thus payable, such a loss cannot be contended to constitute substantial loss or at all.
28. Lastly, learned counsel for the Respondent has submitted that the Applicant herein was aware of and privy to the Ruling of the Court of Appeal, which was rendered on the 21<sup>st</sup> October 2022, but failed to disclose the said Ruling to the court.
29. In this respect, Learned counsel for the Respondent has therefore submitted that the Applicant was guilty of non-disclosure and concealment of material facts, which non-disclosure should deprive the Applicant of the benefit of Equitable discretion.
30. In a nutshell, Learned counsel for the Respondent, has thus implored the court to find and hold that the Application beforehand, other than being misconceived and legally untenable, same also constitutes an abuse of the Due process of the court.

**c. 2<sup>nd</sup> Defendant's/ Respondent's Submissions:**

31. Though the 2<sup>nd</sup> Defendant neither filed Grounds of opposition nor Replying affidavit, same however attended court and participated in the hearing of the subject Application.
32. Additionally, Learned counsel for the named Respondent intimated to the court that same was supporting the Application and in this regard, Learned counsel proceeded to and reiterated the contents/averments contained in the body of the supporting affidavit.
33. Finally, Learned counsel for the 2<sup>nd</sup> Defendant/Respondent thereafter impressed upon the Honourable court to find and hold that the subject Application was/ is meritorious and thus ought to be allowed.

**Issues For Determination**

34. Having reviewed the Application beforehand and the Response thereto and upon consideration of the oral submissions ventilated by and on behalf of the Parties; the following issues do emerge and are thus worthy of determination;
  - i. Whether the subject Application is barred and/or prohibited by the Doctrine of Res-Judicata and by extension; the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.
  - ii. Whether the instant Application constitutes and/or amounts to an abuse of the Due process of the court.
  - iii. Whether the Applicant has established and demonstrated the existence of Substantial Loss, or otherwise.
  - iv. Whether the Application has been mounted with unreasonable and inordinate delay; which has not been accounted for.



## Analysis and Determination

### **Issue Number 1 Whether the subject Application is barred and/or prohibited by the Doctrine of Res-Judicata and by extension; the provisions of Section 7 of the Civil Procedure Act, Chapter 21 Laws of Kenya.**

35. The Plaintiff/Respondent herein contended that upon the delivery of the Judgment in respect of the instant matter, the 1<sup>st</sup> Defendant/Applicant herein (sic) felt aggrieved and thereafter proceeded to and lodged a Notice of Appeal, expressing his desire to challenge the Judgment and consequential decree emanating from this court.
36. Furthermore, the Plaintiff/Respondent has contended that other than the Notice of Appeal, which was filed, the Applicant herein also mounted an Application pursuant to Rule 5(2) (b) of the Court of Appeal Rules and wherein the Applicant sought to procure an order of stay of execution pending the hearing and determination of the appeal before the Court of Appeal.
37. Similarly, the Plaintiff/Respondent has intimated to the court that the Application for stay of execution, which was filed by the Applicant herein was thereafter heard and ultimately disposed of vide Ruling rendered on the 21<sup>st</sup> October 2022. For coherence, the Respondent has contended that the said application was dismissed. Furthermore, a copy of the Ruling of the Court of Appeal was also availed.
38. Suffice it to point out that despite having been served with the Replying affidavit by the Plaintiff/Respondent, wherein the averments about the existence of a previous application for stay were made; the Applicant herein did not controvert same, either by way of a Further affidavit or otherwise.
39. At any rate, it is also imperative to underscore that learned counsel for the Applicant also refused and/or declined to address the issue about the existence of the Ruling of the Court of Appeal, which dismissed a previous Application for stay of execution pending the hearing and determination of an appeal to the Court of Appeal.
40. Nevertheless, on my own I have perused and examined the ruling of the court of appeal, rendered on the 21<sup>st</sup> October 2022; and wherein the Court of Appeal dismissed the Application for stay of execution on, inter-alia, the ground that the Applicant herein did not satisfy the requisite grounds to warrant the grant of an order of stay of execution.
41. To my mind, once the Court of Appeal entertains and adjudicates upon an application for stay of execution of the Judgment and decree of the Superior court, an Applicant who has failed to procure a positive order therefrom, cannot by any chance thereafter revert to the Superior court and seek to obtain an order of stay of execution.
42. Notably, the Honorable Court of Appeal is a Superior court of competent Jurisdiction for purposes of entertaining and adjudicating upon an Application for stay of execution pending the hearing and determination of an appeal by dint of Rule 5(2) (b) of the Court of Appeal Rules, which inter-alia, vest the Court of Appeal original Jurisdiction to entertain such an Application.
43. Suffice to point out that once the Court of Appeal has entertained and adjudicated upon an Application for stay of execution, then a subsequent Application for stay of execution, [ like the one herein] whether mounted before the superior court or otherwise, becomes Res-Judicata and must therefore fail.



44. To this extent, I come to the conclusion that the instant Application, which was admittedly filed on the face of the Ruling of the Court of Appeal, is certainly prohibited by the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.

45. To buttress the foregoing position of the law, it is appropriate to take cognizance of the holding of the Court of Appeal in the case of Kenya Commercial Bank Limited versus Benjoh Amalgamated Limited [2017] eKLR, where the court observed and stated as hereunder;

“To our mind, there is no better case in which the Court ought to invoke the doctrine of constructive res judicata than in the present appeals. Constructive res judicata is broader and encompasses all the issues in a dispute which, a party employing due diligence ought to have raised for consideration. To allow Benjoh to relitigate, re-agitate and re-canvass any issues, no matter how crafted or the legal ingenuity and sophistry employed and in spite of the plethora of cases already conclusively determined by competent courts on the question of accounts, would be tantamount to throwing mud on the doctrine of res judicata and allow a travesty of justice to be committed to a party. The specific issue the respondent raises of rendering true and proper accounts to a customer’s accounts, has been or could have been raised before the High Court in the previous suits.”

46. Furthermore, the import and tenor of the Doctrine of Res-Judicata, was also highlighted and elaborated upon in the case of Independent Electoral & Boundaries Commission versus Maina Kiai & 5 Others (2017) eKLR, where the Honourable Court of Appeal held thus;

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”

47. Nourished by the trite and hackneyed observations, nay, holding by the Court of Appeal in terms of the decisions (supra), there is no gainsaying that the current Application mounted by and on behalf of the Applicant is contrary to and in contravention of the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.

48. Simply put, the subject Application is barred and prohibited by the Doctrine of Res-Judicata and must therefore fail.

**Issue Number 2 Whether the instant Application constitutes and/or amounts to an abuse of the Due process of the court.**

49. Other than the question of Res-Judicata, which has been discussed and amplified in the preceding paragraphs, it is also puzzling and startling that the Applicant herein had the brevity of filing a second Application for stay of execution of the Judgment and decree, albeit on the face of a Ruling by the Court of Appeal.

50. To my mind, a Party, the Applicant herein not excepted, is required to use the due process of the court in good faith and in pursuit of lawful and legitimate cause. For good measure, the due process of the



court should be invoked with a view to adjudicating upon genuine disputes and/or complaints; but not otherwise.

51. Furthermore, where a Party has since invoked the Jurisdiction of a Superior court, which is higher in ranking than the Court of first instance, then such a Party cannot after failing in the “Higher court” revert to the “Lower court”, with a view to circumventing the orders which were issued by the Higher court.
52. Similarly, whenever an Applicant approaches a court of law and of equity, for purposes of pertaining of and/or benefiting from equitable discretion, it behooves such an Applicant to place before the court all the materials attendant to and arising from the particular dispute in question, irrespective of whether such material are against the Applicant. Simply put, this is the Rule of frank and full disclosure, otherwise, variously described as the Doctrine of Uberima-Fides.
53. Be that as it may, it is worth noting that though the Applicant herein was knowledgeable of and privy to the fact that the Court of Appeal had dismissed his Application for stay of execution pending appeal, same however, chose to conceal the particular issue from the court, perhaps with the view of benefiting from such concealment.
54. Fortunately though, the Applicant’s appetite to conceal the Ruling of the Court of Appeal was short-lived, when the Respondent indeed brought the terms of the said Ruling to the attention of the court.
55. Surely, it is incumbent upon litigants and in particular their legal counsel, to utilize the court process towards vindicating just causes and not for purposes of abuse and/or endeavor to achieve/perpetuate ulterior motives, including defeating lawful processes, merely for convenience.
56. Without belaboring the point, it suffices to state and observe that the conduct of the Applicant herein and that of her legal counsel, namely, of filing a second Application for stay of execution whilst knowing of the outcome of a similar matter before the Court of Appeal; constitutes and amounts to an abuse of the Due process of the court.
57. To buttress the foregoing analysis, it suffices to adopt and reiterate the holding of the court in the case of Satya Bharna Gandhi versus Director of Public Prosecutions & 3 others [2018] eKLR, where the court held thus;

“22. The concept of abuse of court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.[12]

23. The situation that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations:-

- (a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.



- (b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.
- (d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.
- (e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.[13]
- (f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
- (g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.
- (h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent.[14]

24. In the words of Oputa J.SC (as he then was)[15] abuse of judicial process is:-

“A term generally applied to a proceeding which is wanting in bona fides and is frivolous vexations and oppressive. In his words abuse of process can also mean abuse of legal procedure or improper use of the legal process.”

25. Justice Niki Tobi JSC observed:-[16]

“that abuse of court process create a factual scenario where appellants are pursuing the same matter by two court process. In other words, the appellants by the two court process were involved in some gamble a game of chance to get the best in the judicial process.”

58. Arising from the foregoing, I have also come to the conclusion that the instant Application by and on behalf of the Applicant, truly fits within the prescription of what amounts to and constitutes an abuse of the Due process of the court.

**Issue Number 3 Whether the Applicant has established and demonstrated the existence of Substantial loss.**

59. According to the Applicant herein, the Plaintiff/Respondent has since filed the Party and Party bill of costs and which is pending taxation before the learned Deputy Registrar.



60. Additionally, the Applicant has contended that upon the taxation of the bill of costs, the learned Deputy Registrar shall venture forward and issue a Certificate of Taxation; which would thereafter be subject of execution proceedings.
61. Additionally, Learned counsel for the Applicant contended that if the execution proceedings, anchored on the Certificate of taxation, are not stayed, then the Applicant herein will suffer Substantial loss.
62. If I understand the Applicant's counsel well, same seems to suggest that the mere fact of execution of the Certificate of taxation, shall ipso facto, constitute substantial loss and thus, the necessity to grant the Order of Stay of Execution.
63. However, in my humble view, Substantial loss, in its various nuances/perspectives denotes such a loss that is not quantifiable and/or ascertainable in monetary terms and in any event, such a loss that may have debilitating effects on the Applicant, unless same is averted.
64. Be that as it may, in respect of the instant matter, what the Applicant is complaining about is the execution proceedings, which are likely to be taken upon the taxation of the Bill of costs.
65. Nevertheless, I am afraid that what is at stake is recovery of costs, which are ordinarily quantified and ascertained in monetary terms and not otherwise. Consequently and to the extent that costs are computed in monetary terms, it then means that if the Applicant was to succeed in the appeal, then the costs, if any, that shall have been paid at the foot of the certificate of taxation, shall become recoverable.
66. Conversely, I did not hear the Applicant herein to contend that the Plaintiff/Respondent, who is the decree holder, is a person of straw and therefore incapable of refunding, the costs or any portion thereof, should the appeal before the Court of Appeal be successful.
67. Surely, who ever desires to procure an order of stay of Execution pending the hearing and determination of the Appeal must place before the Honourable court evidence of Substantial loss, absent which, no such order can issue and/or be granted.
68. In any event, it is not lost on this court that Substantial loss must be expressly pleaded and adverted to and thereafter Evidence availed. For the avoidance of doubt, Substantial loss cannot be inferred, speculated upon and/or implied, either in the manner the Applicant herein imagined, or otherwise.
69. Before departing from the Issue of Substantial loss, it suffices to adopt and reiterate the famous words/dictum in the case of Kenya Shell versus Benjamin Karuga Kibiru & Another (1986)eKLR, where the Court of Appeal stated thus;

“It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no Evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money.”
70. Arising from the foregoing, my answer to issue number three [3] is to the effect that the Applicant herein has neither established nor demonstrated the existence of Substantial loss, which primarily is the cornerstone to the grant of an order of stay of execution pending Appeal.



**Issue Number 4 Whether the Application has been mounted with unreasonable and inordinate delay which has not been accounted for.**

71. Pertinently, any Applicant who desires to procure and obtain an order of stay of execution pending the hearing and determination of an intended appeal or better still, an appeal before the Court of Appeal, is called upon to satisfy the ingredients alluded to under the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules, 2010.
72. Put differently, it has variously been held that the Jurisdiction of the Superior Court(s) to grant an order of stay of execution pending an Appeal, is circumscribed and/or fettered by three [3] critical ingredients, namely, sufficient cause, substantial loss and the fact that the Application must be mounted without undue/unreasonable delay.
73. Whilst discussing issue number three hereinbefore, this Honourable court has already addressed the significance of Substantial loss in an Application for stay of execution pending the Appeal.
74. However, it is instructive to observe that even where an Applicant is able to demonstrate and establish Substantial loss or satisfy the other ingredients; it is still incumbent upon such an Applicant to mount the Application without undue and inordinate delay.
75. To my mind, where an Application for stay of execution pending Appeal, is mounted with unreasonable and inordinate delay, then the Applicant is divested of the benefits attendant to the discretionary/ Equitable powers of the court.
76. As pertains to the subject matter, it is worthy to recall that the Judgment and the consequential decree which is the subject of the current Application was actually rendered on the 14<sup>th</sup> March 2019; whilst the current Application, was not filed until the 14<sup>th</sup> August 2023.
77. Quite clearly and one need not be Einstein, the reputed Mathematician, to discern that the Application herein has been made after more than 4 years and 5 months, from the date when the impugned Decree was issued.
78. Evidently, the amount of time that was taken prior to and/or before the lodgment of the current Application constitutes inordinate delay which thus negates due diligence, underpinned by the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules, 2010; and essentially the proviso thereto.
79. In a nutshell, it is my finding and holding that the instant Application, which has been mounted with unreasonable and inordinate delay, is similarly defeated by Doctrine of Laches, which abhors inordinate delay, in mounting Court process.

**Final Disposition**

80. Arising from the foregoing discourse, it must have become crystal clear that the Application by and on behalf of the Applicant herein was clearly an attempt to defile the Due process of the court. Consequently and in this respect, the Application herein must be frowned upon and be deprecated by all and sundry.
81. In the premises, I un-hesitantly come to the conclusion that the Application dated the 24<sup>th</sup> August 2023; is not only pre-mature and misconceived; but same constitutes an abuse of the Due process of the Honourable court.



82. In short, the Application (details in terms of the preceding paragraph) be and is hereby Dismissed with costs to the Plaintiff/Respondent only. Further and in any event, the costs of the Application are hereby assessed and certified in the sum of Kes.30, 000/- only, to be borne by the 1<sup>st</sup> Defendant/Applicant.

83. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> NOVEMBER, 2023.**

**OGUTTU MBOYA,**

**JUDGE.**

**In the Presence of:**

**Benson - Court Assistant.**

Mr. S M Chege for the Plaintiff/Respondent.

Ms. Kabailia for the 1<sup>st</sup> Defendant/Applicant.

Mr. Kamwami for the 2<sup>nd</sup> Defendant/Respondent.

Ms. Kerubo [Senior Litigation Counsel] for the 3<sup>rd</sup> Defendant Respondent.

