



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELC CASE NO. 23 OF 2021

PETER NJUGUNA GITAU.....PLAINTIFF/RESPONDENT

VERSUS

DANIEL KIPRONO KIPTUM.....1ST DEFENDANT/RESPONDENT

BYRON KIPNG'ETICH CHOGE.....2ND DEFENDANT/APPLICANT

EVA CHEPKURUI CHEROGON.....3RD DEFENDANT/RESPONDENT

NOREEN SHARIFF.....4TH DEFENDANT/RESPONDENT

RULING

INTRODUCTION

1. This ruling is in respect of the 2nd Defendant/Applicant's Notice of Motion application dated 18th October 2021. The said application is expressed to be brought under Section 1A, 1B, 3, 3A, 6, 7 and 12 of the Civil Procedure Act, Order 4 Rule 1, 1(F), Order 8 Rule 5, Order 10, and Order 51 Rule 1 of the Civil Procedure Rules.

2. The application seeks the following orders:

1. Spent

2. Spent

3. THAT this Honourable Court to (sic) strike out the Plaintiff's/Respondent's suit for instituting a suit as against a deceased person as the 3rd Defendant/Respondent.

4. THAT this Honourable Court to (sic) strike out the Plaintiff's/Respondent's suit for being a duplicity of suit (sic) namely NAKURU ELC 256 OF 2018, NAKURU ELC 266 OF 2018, NAKURU ELC 267 OF 2018 and NAKURU ELC 265 OF 2018 which are all pending hearing and determination before this Honorable court, the Environment and Land Court at Nakuru as it involves the same subject matters over ownership. (SIC)

5. THAT this Honourable Court to (SIC) strike out and/or transfer the Plaintiff's/Respondent's suit to the subordinate court since the Plaintiff's/Respondent's claim is for a sum of Kshs. 19,000,000/= whose pecuniary jurisdiction (sic) lies within the jurisdiction of the lower court.

6. THAT costs of this application be provided for.

3. The application is based on the grounds on its face and supported by the affidavit sworn by Byron Kipng'etich Choge (the 2nd Defendant/Applicant) sworn on 18th October 2021.

FACTUAL BACKGROUND.

4. This suit was commenced vide a Complaint dated 1st March 2021 and filed on 3rd March 2021.

5. The Plaintiff seeks the following orders:

a. An order for specific performance to compel the Defendants to fulfill their part of the agreements dated 11th October 2011 and 2nd December 2011.

b. In the alternative an order for refund of Kshs. 19,700,000/= with interest at court rate from the date of payment.

c. General damages.

d. Costs of the suit.

e. Any other relief this Honorable court may deem fit to grant.

6. The suit against the 3rd Defendant/Respondent was withdrawn vide a notice of withdrawal dated 2nd June, 2021 and filed on 3rd June, 2021.

7. Request for judgment was filed against the 1st, 2nd and 4th defendants on 3rd May, 2021.

8. The 2nd Defendant's Advocate filed a notice of appointment of an advocate on 28th June, 2020.

9. The 1st and 4th Defendants/Respondents were served with the application but did not file any response.

THE 2ND DEFENDANT/APPLICANT'S CONTENTION

10. The 2nd Defendant/Applicant contends that the Plaintiff/Respondent filed the present suit seeking orders of specific performance in respect of four parcels of land known as Nakuru Municipality Block 5/144, Nakuru Municipality Block 5/147, Nakuru Municipality Block 5/149 and Nakuru Municipality Block 5/150 and in the alternative an order for refund, general damages and costs jointly and severally against the Defendants/Respondents.

11. It is his contention that this matter was fixed for hearing of the main suit on 19th October, 2021 and yet the same was not ready for hearing as there was material non-disclosure and it therefore ought to have been mentioned before the Deputy Registrar for compliance first.

12. The 2nd Defendant/Applicant further contends that he is advised by his advocates on record that the Plaintiff/Respondent's suit is procedurally defective and should be struck out with costs.

13. He also contends that this suit is not ripe for hearing as the 3rd Defendant/Respondent passed away sometime in June 2019 and therefore this suit has been instituted against a dead person and should be amended before this matter is allowed to proceed.

14. The 2nd Defendant/Applicant further contends that the Plaintiff/Respondent should regularize the pleadings as provided for under Order 8 of the Civil Procedure Rules and that he is advised by his Advocates on record that there is no judgment against the 1st and 4th Defendants'/Respondents' as they never entered appearance despite the Plaintiff/Respondent alleging that they were served with the pleadings.

15. He contends that the Plaintiff/Respondent is guilty of duplicity of suits because there are four other related matters filed by the Ethics and Anti-Corruption Commission (EACC) challenging the ownership of the suit properties and therefore this suit should be dismissed for duplicity.

16. The 2nd Defendant/Applicant contends that the pending suits are NAKURU ELC 256 OF 2018, NAKURU ELC 266 OF 2018 which were both fixed for hearing on 15th November, 2021, NAKURU ELC 267 OF 2018 which was fixed for hearing on the 17th November, 2021 and Nakuru ELC 265 of 2018 which was fixed for hearing on 16th November, 2021. It is his contention that the properties that form the subject matter in the suits are NAKURU MUNICIPALITY BLOCK 5/144, NAKURU MUNICIPALITY BLOCK 5/147, NAKURU MUNICIPALITY BLOCK 5/149 and NAKURU MUNICIPALITY BLOCK 5/150, and that the Plaintiff is claiming ownership of them.

17. He also contends that the present suit should be stayed pending the hearing and determination of the four suits and the Plaintiff/Respondent joined in those suits as an Interested Party and/or Defendant as there is a possibility that this Honorable Court will arrive at a conflicting decision.

18. He contends further that Section 6 of the Civil Procedure Act cap 21 prohibits courts from proceeding with the trial of any suit in which the matter in issue is substantially in issue in a previously instituted suit between the same parties, litigating under the same title where the suit is pending in the same court.

19. The 2nd Defendant/Applicant contends that if the pleadings remain as present then they offend the mandatory provisions of Order 4, Rule 1, 1(f) of the Civil Procedure Rules, 2010.

20. He further contends that the Plaintiff/Respondent's suit is bad in law and should be struck out or transferred to the subordinate court since the Plaintiff/Respondent's claim is for a sum of Kshs. 19,700,000/= which falls within the pecuniary jurisdiction of the subordinate court.

21. He also contends that unless the present application is allowed, the suit will proceed against the deceased 3rd Defendant/Respondent in total disregard to the four pending matters.

22. He ended his disposition by stating that this application is brought promptly and in good faith and that this court has the power and discretion to grant the orders sought.

PLAINTIFF/RESPONDENT'S RESPONSE

23. In response to the application, the Plaintiff/Respondent Peter Njuguna Gitau filed a Replying Affidavit sworn on 1st November, 2021.

24. He deposes that the fact that he had sued Eva Chepkurui Cherogon who by the time of the institution of this suit was dead does not render the suit against the 1st, 2nd and 4th Defendant's incompetent.

25. He deposes further that misjoinder or non-joinder of parties cannot defeat his suit and that the suit against the 3rd Defendant was withdrawn on 28th June, 2021 in the presence of the 2nd Defendant/Applicant's counsel and so it was mischievous for the 2nd Defendant to frustrate the hearing on the grounds of the death of the 3rd Defendant.

26. He also deposes that the other suits filed by the Ethics and Anti-Corruption Commission which are Nakuru ELC 256 of 2018, Nakuru ELC 267 of 2018 and Nakuru ELC 265 of 2018 were commenced under the Assets Recoveries Act challenging the alienation of the four parcels of land from public land to private land and sold to him by the late J.M Choge as private land.

27. According to the Plaintiff/Respondent, he is at risk of losing more than Kshs. 19,700,000/= that he had paid as part of the purchase price to the Defendants who are incapable of honoring the terms of the sale agreement and not in a position to pass a good title to him given the proceedings pending in court challenging the alienation of the suit properties.

28. It is his view that since the other four pending suits have been instituted by a government agency challenging the legality of alienation and not ownership then the provisions of Section 6 of the Civil Procedure Act do not apply.

29. He also deposes that nothing stops the defendants from refunding him the money received as purchase price and that the 2nd Defendant/Applicant has not demonstrated any prejudice he is likely to suffer if this court hears the matter instead of transferring it to the lower court.

30. He deposes further that the 2nd Defendant/Applicant's allegation that the amount sought is only Kshs. 19,700,000/= is inaccurate because the principal sum is Kshs. 19,700,000/= and that he is also seeking interest on the principal sum as well as damages as compensation which total amount will be more than the monetary jurisdiction of the magistrate's court.

31. It is also his view that he stands to lose if at the conclusion of this matter this court finds that this suit ought to have been handled at the subordinate court as his costs will be based on Schedule 7 of the Advocates Remuneration Order while the Defendants if successful will be paid costs based on Schedule 6 of the Advocates Remuneration Order.

32. He finally deposes that this application is only meant to frustrate and delay the conclusion of this matter.

ISSUES FOR DETERMINATION

33. The 2nd Defendant/Applicant filed his submissions on 17th January, 2022 while the Plaintiff/Respondent filed his submissions on 26th January, 2022.

34. The 2nd Defendant/Applicant has identified the following issues for determination:

- a. Whether the suit before this Honorable Court is a duplicity of suits already filed namely: NAKURU ELC NO. 256 OF 2018, NAKURU ELC NO. 266 OF 2018, NAKURU ELC 267 OF 2018 and NAKURU ELC NO. 265 OF 2018.
- b. Whether this Honorable Court has pecuniary jurisdiction to handle this matter.
- c. Whether the Plaintiff/Respondent herein should amend/regularize his pleadings.
- d. Whether the 2nd Defendant/Applicant deserves the orders sought.

35. The Plaintiff/Respondent has identified the following issues for determination:

- a. Whether this court can strike out the Plaintiff's suit for instituting a suit against the 3rd Defendant who is deceased.

b. Whether this Honorable court ought to strike out the Plaintiff's suit for being a duplicity of suit, namely: Nakuru ELC 256 of 2018, Nakuru ELC 266 of 2018, Nakuru ELC 267 of 2018 and Nakuru ELC 265 of 2018 which are all pending hearing and determination before this Honorable Court.

c. Whether this Honorable court ought to strike out the suit and/or transfer the Plaintiff's suit to the subordinate court since the claim is for a sum of Kshs. 19,700,000/= whose pecuniary jurisdiction is within the jurisdiction of the lower court.

36. After perusal of the Application, the affidavit in support, submissions filed in respect of this Application, my considered view is that the issues for determination are:

A. Whether this suit should be dismissed and/or struck out for:

i. Being similar to other suits already filed.

ii. For being a suit instituted against a deceased person.

iii. For offending provisions of Order 4 rule 1 1(f) of the Civil Procedure Rules.

B. Whether section 7 of the Civil Procedure Act, Order 8 and Order 10 of the Civil Procedure Rules 2010 are relevant to this application.

C. Whether this suit i.e Nakuru ELC No. EO23 of 2021 should be stayed.

D. Whether this suit should be transferred to the subordinate court.

E. Who should pay costs for this application?

ANALYSIS AND DETERMINATION

37. I have taken into consideration the submissions filed by the parties and judicial decisions cited.

A. Whether this suit should be struck out

38. The 2nd Defendant/Applicant has expressed to bring this application under several provisions of the law. Within his application, he has also cited numerous legal provisions with the hope of obtaining orders of dismissal or striking out of this suit. It is incumbent upon this court to interrogate each legal provision and either affirm or negate its relevance.

39. The 2nd Defendant/Applicant has, apart from the provisions of the law, also listed various grounds for striking out or dismissing the suit of the Plaintiff.

40. I note that the words striking out and dismissing the suit have been used interchangeably. I am reminded that though these words are often used interchangeably by litigants, they do not have the same meaning. It is upon the court to understand the context in which they have been used.

41. In Enock Kirao Muhanji Vs Hamid Abdalla Mbarak [2013] eKLR

“The words “dismissed” and struck out” are terms of art and are not supposed to be used interchangeably in a Ruling or Judgment. However, more often than not, the terms are used interchangeably by the litigants and the courts. It is therefore incumbent that when the court is called upon, like in this case, to determine whether a party can file a fresh suit after the first one has been dismissed or struck court, the court should look at the circumstances of each case to arrive at a decision...”

42. In the present application, my deduction is that the 2nd Defendant/Applicant is hoping that once this Honourable court issues the orders of striking out or dismissal, the Plaintiff shall be barred from approaching this court over the issues raised in his plaint.

43. The first ground advanced for striking out or dismissal is that this suit is similar to others already filed. The suits listed as being similar are Nakuru ELC 256 of 2018, Nakuru ELC 266 of 2018, Nakuru ELC 267 of 2018 and Nakuru ELC 265 of 2018.

44. All these suits are instituted by the Ethics and Anti- Corruption Commission against various Defendants. The common thread is that all the suits seek declaratory orders that:

i. Issuance of lease over the parcels of land and subsequent transfers to the various Defendants is null and void.

ii. That the registration of leases and all entries subsequent thereto be cancelled.

iii. That the registration of one, some or all of the Defendants as the lessee be cancelled.

iv. A permanent injunction against some or all of the Defendants from charging, transferring, leasing, wasting, entering, developing, subdividing. Occupying and or in any manner dealing with the said parcels. (Emphasis is mine).

45. The Plaintiff herein is not a party to the said suits. I note, however that the orders he is seeking are for specific performance; an order compelling the Defendants herein to complete the agreement. Essentially transfer the suit parcels to him or in the alternative, refund the purchase price.

46. To this extent, I am not persuaded that the suits are similar. They may relate to the same parcels of land but the orders sought and the parties are different. I decline to issue an order for dismissal or striking out on this first ground

47. The second ground advanced for striking out/ dismissal is that this suit is instituted against a deceased person-the 3rd Defendant. While it is true, that a suit against a deceased person is a nullity from its inception, the suit as against the 3rd Defendant was withdrawn vide a notice of withdrawal dated 2nd June, 2021 and filed on 3rd June, 2021. In any event, the 3rd Defendant is a co-administrator and the death of a co-administrator does not affect the continuity of a suit.

48. In **Viktar Maina Ngunjiri & 4 others Vs Attorney General & 6 others [2018] eKLR** the Leared Judge referred to the Indian Case of **Pratap Chand Mehta Vs Chrisna Devi Mehta AIR 1988 Delhi 267** in which the court while citing another decision observed as follows,

“if a suit is filed against a dead person then it is a nullity and we cannot join any legal representative; you cannot even join any other party, because, it is just as if no suit had been filed. On the other hand, if a suit has been filed against a number of persons one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void but the court has to strike out the name of the party who has been wrongly joined. If the case has been instituted against a dead person and that person happened to be the only person then the proceedings are a nullity and even Order 1 Rule 10 or Order 6 Rule 17 cannot be availed of to bring about amendment.”

49. Consequently, this second ground for dismissal/striking out this suit as advanced by the 2nd Defendant/Applicant also fails.

50. The third ground for striking out/ dismissing is that it offends the provisions of Order 4 rule 1 1(f). **Order 4 rule 1(1)(f) provides that:**

1(1) The plaint shall contain the following particulars-

(f) An averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the Plaintiff and the Defendant over the same subject matter and that the cause of action relates to the Plaintiff named in the Plaint.

51. The side note to Order 4 Rule 1 reads; “Particulars of Plaintiff”. Paragraph 14 of the Plaintiff contains an averment that there is no previous or pending case against the parties. The 2nd Defendant/Applicant might not believe in the truth of this averment but it is an averment nevertheless and therefore complies with the provision as to particulars of a Plaintiff. I decline to strike out/ dismiss this suit on this ground.

52. In **Yaya Towers Limited Vs Trade Bank Limited (In Liquidation) (Civil Appeal No. 35 of 2000)** the court expressed itself thus:

A Plaintiff (Defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the Defendant (Plaintiff) can demonstrate shortly and conclusively that the Plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved. (Emphasis is mine)

53. Similarly, in **D.T. Dobie & Company Kenya Limited Vs Joseph Mbaria Muchina & Another [1980] eKLR**, Madan JA, stated:

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.

54. I am not persuaded that the grounds for striking out/ dismissal of the present suit as set out in the preceding paragraphs is merited and I decline to do so.

B. Whether section 7 of the Civil Procedure Act, Order 8 and Order 10 of the Civil Procedure Rules 2010 are relevant in this application.

55. **Section 7** of the Civil Procedure Act makes provision for the legal doctrine of Res judicata. It is my considered view that it has no bearing on the present suit or application.

56. The 2nd Defendant/Applicant demands that the proceedings be regularized by the Plaintiff/Respondent in accordance with the provisions of **Order 8** of the Civil Procedure Rules. Order 8 makes provision for amendment of pleadings. It is neither in the Courts place, nor the 2nd

Defendant/Applicant's to dictate the manner in which the Plaintiff should prosecute its claim including but not limited to amendment of pleadings. I am not convinced that this provision of the law has any effect or bearing on the present suit.

57. **Order 10** of the Civil Procedure rules also has no bearing on the present application. It provides for consequence of non, appearance, default of defence and failure to serve. The 2nd Defendant/Applicant is in court because he was served by the Plaintiff.

C. Whether this suit i.e. Nakuru ELC No. 23 of 2021 should be stayed.

58. The 2nd Defendant/Applicant has made reference to **Section 6 of the Civil Procedure Act**, stating that it is the basis for seeking orders of stay. It is worded thus:

Stay of suits

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or

any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

Explanation. —The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

59. The above section is a bar to parallel prosecution of cases in two fora of equal jurisdiction.

60. I have perused the Plaints in Nakuru ELC 256 of 2018, Nakuru ELC 266 of 2018, Nakuru ELC 267 of 2018 and Nakuru ELC 265 of 2018. The subject matter of the disputes in those suits are outlined below:

i. 267 of 2018Nakuru Municipality Block 5/147

ii. 266 of 2018..... Nakuru Municipality Block 5/149

iii. 265 of 2018..... Nakuru Municipality Block 5/144

iv. 256 of 2018..... Nakuru Municipality Block 5/150

61. In the present suit, the Plaintiff is claiming beneficial interest in all these parcels of land and is seeking orders of specific performance to compel the Defendants to fulfill their agreements for the sale and transfer of the suit parcels to the Plaintiff or in the alternative, an order for refund of Kshs. 19, 700,000 with interest from the date of payment.

62. *Halsbury's Law of England, 4th Edition. Vol. 37* pages 330 and 332, sheds more light on stay of proceedings and states thus:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will not be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The Applicant for a stay on this ground must show not merely that the Plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

63. In *Republic Vs Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR* Where the Court aptly pronounced itself on the subject of *sub judice* as follows;

“Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

64. While it is true that the Plaintiff herein is not a party to the suits previously filed, he is claiming beneficial interest in the suit parcels on account of a sale to him by the administrators of the estate of Jim Choge. There is every likelihood that if this suit proceeds, there shall be **conflicting decisions over the ownership of the suits parcels. The Plaintiff seeks orders of specific performance to assert his rights over the suit parcels. This arises out of two sale agreements entered into by him and the administrators of the estate of one Jim Choge. The suits previously filed by the Ethics and Anti- corruption Commission are seeking, among others, an order of cancellation of the titles issued to the defendants for the reason that the suit parcels are for public utility.**

65. Section 3A of the Civil Procedure Act provides as follows;

“Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court”

It is trite law that section 3A is applicable by the Courts where there is a vacuum. Section 3A of the Civil Procedure Act relates to the wide powers of the Court to exercise its discretion to the end of justice between the parties.

66. The Plaintiff might not have been aware of the fact of these previous suits, he now is and has the opportunity to explore options available to him.

67. I am inclined to stay this suit pending the hearing and determination of Nakuru ELC 256 of 2018, Nakuru ELC 266 of 2018, Nakuru ELC 267 of 2018 and Nakuru ELC 265 of 2018.

D. Whether this suit should be transferred to the Subordinate court.

68. The 2nd Defendant applicant is relying on the provision of section 12 of the Civil Procedure Act in support of this proposition.

69. Section 12 provides that for place of suing and states that a suit is to be instituted where the subject matter is situated and that this is subject to pecuniary and other limitations as is provided by law.

70. It is his contention that this suit should be struck out or transferred to the subordinate court because the claim is for Kshs. 19,700,000 which falls within the pecuniary jurisdiction of the subordinate courts.

71. The Plaintiff/Respondent, in his response states that this court has jurisdiction because interest on the principal sum, general damages and costs of the suit have to be factored in.

72. I must mention that section 13 of the Environment and Land Court Act states that this court has original and Appellate jurisdiction to hear and determine all disputes (Emphasis is mine) in accordance with Article 162(2) (b) of the Constitution of Kenya 2010 and the provisions of this Act or any other law applicable in Kenya relating to environment and Land.

73. Pecuniary jurisdiction is subject to this overall jurisdiction as set out in section 13 of the Environment and Land Court Act and Article 162(2)b of the Constitution of Kenya 2010.

74. Section 9 of the Magistrates court Act No. 26 of 2015 confers jurisdiction to the Magistrates Courts to hear and determine land disputes in exercise of jurisdiction conferred upon it by section 26 of the Environment and Land Court Act and is subject to the pecuniary limits under section 7 of the Magistrates court Act. This pecuniary jurisdiction is between a minimum of Kshs. 5 million and a maximum of 20 million.

75. Section 11 of the Civil Procedure Act provides that Every suit shall be instituted in the court of the lowest grade competent to try it. This, in my view is administrative, and not intended to act as bar to courts hearing disputes.

76. The parties could by consent have a suit transferred to the subordinate court, a Defendant could apply to have a suit transferred for valid reasons given, the court may or on its own motion have a suit transferred to the subordinate court for speedy dispensation of justice but not due to lack or want of jurisdiction.

77. Consequently, this prayer has no legal basis and is declined. In any event, and as already explained, the 2nd Defendant/Applicant has not factored in interest on Kshs. 19.7 million, general damages and cost of the suit. That will, no doubt, exceed 20 million should the Plaintiff have judgement entered in his favour.

E. Who should bear costs of this application?

78. The 2nd Defendant/ Applicant has only succeeded on one limb of his application.

79. The general rule is that costs shall follow the event. This is provided for in section 27 of the Civil Procedure Act (Cap. 21). A successful party shall ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. This was the holding in **Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd [1967] EA 287.**

DISPOSITION.

80. In conclusion, therefore, It is in the interest of justice that I invoke the inherent powers of the court and grant an order of stay of this suit

pending the hearing and determination of Nakuru ELC 256 of 2018, Nakuru ELC 266 of 2018, Nakuru ELC 267 of 2018 and Nakuru ELC 265 of 2018.

81. The Upshot of the foregoing is that the Notice of Motion Application dated 8th November, 2021 is partially allowed with no order as to costs.

82. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 3RD DAY OF MARCH, 2022

L. A. OMOLLO

JUDGE

In the presence of :

Mr. Isiji for 2nd Defendant/Applicant

Miss Marucha for Mr. Ndubi for Plaintiff/Respondent

No appearance for the 1st Defendant/Respondent

No appearance for the 4th Defendant/Respondent

Court Assistant; Jeniffer