



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ogutu v Cabinet Secretary, Ministry of Lands & Physical Planning &  
9 others; Natembeya & 2 others (Third party) (Environment & Land  
Petition 7 of 2021) [2022] KEELC 2680 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2680 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ENVIRONMENT & LAND PETITION 7 OF 2021**  
**FO NYAGAKA, J**  
**JULY 7, 2022**

**BETWEEN**

**WILFRED OGUTU ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 1<sup>ST</sup> RESPONDENT**  
**CABINET SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF  
NATIONAL GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**  
**INSPECTOR GENERAL OF POLICE ..... 4<sup>TH</sup> RESPONDENT**  
**DIRECTOR OF LANDS SETTLEMENT & ADJUDICATION 5<sup>TH</sup> RESPONDENT**  
**REGIONAL COMMISSIONER, RIFT VALLEY REGION ..... 6<sup>TH</sup> RESPONDENT**  
**COUNTY COMMISSIONER, TRANS-NZOIA ..... 7<sup>TH</sup> RESPONDENT**  
**LANDS, SETTLEMENT & ADJUDICATION OFFICER, TRANS-NZOIA  
COUNTY ..... 8<sup>TH</sup> RESPONDENT**  
**COUNTY POLICE COMMANDER ..... 9<sup>TH</sup> RESPONDENT**  
**DEPUTY COUNTY COMMISSIONER ENDEBESS SUB-COUNTY .... 10<sup>TH</sup>  
RESPONDENT**

**AND**

**GEORGE NATEMBEYA ..... THIRD PARTY**  
**SAMSON OJUANG ..... THIRD PARTY**  
**CRECENSIA ATIENO NYANGA ..... THIRD PARTY**



## RULING

### Introduction

1. In the Holy Bible, for those who believe in it, is a verse that, in my view, ably describes the Applicant herein. In it, in the Book of Jeremiah 17: 9, it is written, “The heart is deceitful above all things, and desperately wicked: who can know it?” As I give the summary of the events and circumstances leading to the Ruling herein, it will become increasingly clear why this Court formed the opinion stated above.
2. It is sad, indeed very sad, that an individual purporting to have earned the trust of innocent people and therefore representing them as a group can, in the name of the very people, deliberately and openly lie to them and intend to lie successfully to the Court. The Petitioner herein claims to be a representative of justice and truth, and a champion of the rights of the down trodden in the area the people he claims to represent hail from, that is to say, Chepchoina Scheme in Endebess of Trans Nzoia County.
3. He, the Applicant, should stand reminded that this Court is citadel of justice and truth. It expects litigants to give it the truth and nothing but the truth to rely on and is duty bound to deliver justice to all and sundry equally. Independence, impartiality, integrity, propriety, equality, competence and diligence shall always guide it, even as justice continues to be the shield and defender of our nation. The people of Kenya, who are well meaning to the nation, expect nothing short of that, and this Court shall not let them down. Lies can never be entertained by this Court. Lies have cause many a matter to be sacrificed at the altar of justice unfairly and this Court is nor prepared to add this one to that heap.
4. Having said as much above, before me is an Applicant who seems to be consistent in lying and misleading the Court. Below, in a narrative format, are the reasons for this view.
5. On 20/04/2022, the Applicant moved this Court under certificate of urgency for the Application dated 07/04/2022. The same day, upon considering the Application ex parte in the Chamber, the Court gave a number of Directions on the Application. Some were conditional, others were not.
6. In one of the Directions, the Court ordered, in one of the conditions, that the Applicant deposits in Court within Seven (7) days a sum of Kshs. 100,000/= (One Hundred Thousand) only, as security for costs, before service of the Application, failure of which the Application stood dismissed. The inter-partes hearing of the Application was fixed for 23/05/2022 at 9.30 am.
7. When the Application came up for hearing, the Applicant stated that he had never received the written Directions of the Court. The Court reminded him that the practice of the Court is that Directions once given are typed, signed and sent via email to the parties’ email used by them when filing the documents. He stated that he always checked in his email but had never seen them. He then stated that that was why he had not complied with the condition of depositing security. This prompted the Court to confirm with the Registry whether indeed it failed to notify the Applicant of the Directions of issued.
8. The Registry confirmed, by way of an email print-out, that indeed it dispatched to the Applicant the Directions on 24/05/2022 at 2.04 pm to the Applicant’s email that he used for filing the Application. When the Applicant realized that he had been cornered by that proof, he apologized promptly to the Court for misleading it. The Court accepted the apology and cautioned him against repeat of conduct in the future. This was the first time the Applicant mislead the Court. The second and others shall be explained after analyzing the instant Application.



## The Application

9. The purported Application before me is a bundle of papers titled “Notice of Motion” (for the purpose of this Ruling I will still refer to the bundle as the Application). It is dated 23/05/2022. It was brought by the Petitioner on 28/05/2022, although it purported to be filed on 24/05/2022. I will explain the trickery involved in the purported filing of the Application when I analyze the first issue for determination herein below.
10. The Application was anchored on a number of provisions, namely, Sections 3, 3A, 1A, 1B and 63 (c) and (e) of the Civil Procedure Act and Order 3 Rule 5 and Order 22 Rule 25 of the Civil Procedure Rules, 2010 and what was referred to as “all other enabling provisions of law.” In it, the Applicant sought the following reliefs:
  - a. There be an order for stay of execution of payment of security for costs pending appeal.
  - b. Orders in (a) above do operate till the substantive suit is heard and determined.
  - c. There be an order granting leave of the Court for joinder of several causes of action in the same suit restraining the Respondents and the Third Parties herein whether by themselves, agents, associates, employees, servants, assigns and/ or any other person(s) claiming through them from carrying out Physical Planning of Market Centres in ADC Chepchiona Phases II and III SFT Scheme until meaningful public participation exercise is carried out to sensitize the local communities under the provisions of empowering laws and pending the hearing and determination of this suit to finality.
  - d. Costs of this application be in the cause.
  - e. Any other relief deemed fit, jus (sic) and expedient to grant by the Court.
11. The Application was premised on twenty-six (26) grounds given on its face. It was supported by the Affidavit of, one Wilfred Ogutu, the Petitioner. The Affidavit was sworn on 23/05/2022. It basically reproduced the grounds in support of the Application. I will thus not reproduce their contents.
12. According to the Petitioner, the Application had been filed timeously. He maintained that he was dissatisfied with the court’s order imposing him to furnish security for costs hence the Appeal in the court of Appeal. He maintained that he was well within his Constitutional rights to challenge the court’s discretion. He challenged the court’s order directing him to furnish security and dismissed them as unjustifiable, unlawful, illegal, unprocedural and ambiguous. As a consequence, his appeal was merited with high chances of success. The grounds by and large continued to challenge the trial court’s decision as grounds in support of his appeal. He added that cases should not be constricted to legal technicalities as that will defeat the very purpose and interest of justice. Finally, he submitted that it was in the interest of justice that the orders sought be granted.

## The Response

13. The Application was opposed by the 3<sup>rd</sup> third party by way of grounds of opposition filed on 21/06/2022. It was stated that the Application was bad in law, a non-starter, misconceived, poorly drafted, incurably defective and unsustainable. That the Applicant had not complied with the court’s directions on 22/04/2022 thus undeserving of the orders sought. She further maintained that the Application was res judicata and that the 3<sup>rd</sup> third party, did not act in her own capacity and could not thus be enjoined in these proceedings. She asked this court to dismiss the Application with costs. No other party presented Responses thereto.



## Submissions

14. This Court directed the parties to file submissions. As at the time of writing this ruling, no party had filed their requisite submissions.

## Analysis and Determination

15. I have anxiously considered the Application, the Affidavits filed in support of and opposition to the Motion. I have also made due analysis of the oral submissions by the parties. I have carefully looked at the law relied on. I am of the opinion that the following the issues for determination:
  - a. Whether the Application is competent and properly before Court
  - b. Whether, if the answer to the above is in the affirmative, the Application is merited
  - c. What orders should issue
  - d. Who to bear the costs of the Application
16. In delving into the merits of the Application, I start by determining the first issue, which is whether the Application is competent and properly before Court. I must state at this juncture that it is important to begin with an analysis of this issue because its outcome will give the basis for this Court to either down its tools immediately or empower it to consider the Application further. I do so by giving a brief outlay of occurrences in this file in relation to the Application and proceedings prior to writing the instant ruling.
17. On 23/05/2022 the Petitioner filed an Application dated 20/05/2022. Upon assessment, he remitted the sum of Kshs. 1500/=. That was vide receipt number FSCU-0016987 which was based on an Invoice No. EZFYDWUC. To date he has never prosecuted the Application or indicated what it was meant for.
18. On the same date, the 23/05/2022, the Petition came up for the hearing of the Application dated 20/04/2022. The Court directed that the Applicant complies with the condition of depositing security for costs as directed before. By the order of 23/05/2022, the Court extended the time for compliance to 24/05/2022 at 4.00 pm.
19. He once again, when recalled on 29/04/2022, failed to comply with the order. Instead, he filed a Notice of Appeal on the following date, that is to say on 24/05/2022 and applied for the proceedings the same date. He paid Kshs. 1450/= vide receipt No. FSCU-0017045 given at 5:15 pm, following issuance of Invoice No. EZFCWJ3A of 24/05/2022 at 11:56 am. The Notice of Appeal was stamped by the Registry on 24/05/2022. It is important to give the details of this information here so that they form the foundation as to whether the Applicant ever paid for the instant Application or at all.
20. It appears that after some days the Applicant recalled that he did not seek stay the execution of the orders of this Court made on 23/05/2022. He devised a scheme or trick to mislead the Court and paint a picture that he had filed the instant Application on time and actually paid for it. The Court must carefully consider the record and make a finding whether or not the Application was paid for. In my view, if it is found that the Application was never paid for, it would not only be improperly before me but would qualify to be a scheme to defraud the Judiciary or public of money.
21. If the Applicant's actions in relation to the instant Application occurred during the days prior to those of technology reign and use, the Applicant would have easily run away with his trickery. But thanks to technology and faithful servants of the people of Kenya: his scheme was unearthed.



22. Thus, as stated in paragraph 13 above, instead the Petitioner purported to file the Application dated 23/05/2022. The existence of the Application was known when, on 06/06/2022, the Petitioner purported to serve it on the learned Counsel in Court on that date for the hearing of the Application dated 07/04/2022. I now deal with the analysis and determination of the purported Application.
23. I hold the view that the document I have before was a purported Application because it was never filed in Court formally. The Applicant actually emailed it to Court on 28/05/2022 (a Saturday) but did not specify why he did that: he neither applied for its assessment nor requested that it be placed on the Court file (since it bore a Court stamp). He emailed it at 6:32 PM. The Application or document emailed to Court bore the Court stamp of 24/05/2022. But from the record, it was not paid on the date it was stamped since that could not be done on a non-existent Application. He did not pay on 28/05/2022 or soon thereafter in order to formally make it duly and properly filed in Court. Again, it would not be possible that the Court registry would receive the document on the date it was emailed. The earliest possible working day was 30/05/2022 when it should have been paid for, if assessed.
24. The only possible explanation as to how document emailed by the Petitioner on 28/05/2022 would bear a Court stamp of an earlier date (24/03/2022) is that the Petitioner must have edited a document filed earlier in Court, and stamped the 24/05/2022. That action would tally with the Petitioner's conduct as he explained himself in Court on 05/07/2022, as summarized in paragraphs 19, 27 and 39 below. In arriving at that finding, the Court uses the similar fact evidence rule as provided for in Section 15 of the *Evidence Act*, Chapter 80 of the Laws of Kenya.
25. Instead of filing the instant Application on the date he brought it to Court, the Applicant decided to edit the documents he had earlier filed and paid for. They were received by the Registry on 24/05/2022. The top page of the documents bore the Court stamp of that date. Thus, the Applicant having edited the top page of the instant Application to retain the date of 24/05/2022 then made it part of a complete set of the instant Application. This was a design to make the Court and the other litigants to believe that the instant Application was duly paid for and received on 24/05/2022 yet that was untrue. He then emailed the document, bearing the date stamp of 24/05/2022 to the Registry, using his usual email, ogutu@gmail.com. He did this on 28/05/2022 at 6:32 pm. This was evidenced by the email print-out placed by the Registry staff in the file. The Registry staff, believing that the Application had been duly paid for and received only printed and placed it in the Court file.
26. When the Application dated 07/04/2022 came up for hearing, the Applicant claimed in Court that he has also duly filed the instant Application and served the other parties. The learned State Counsel present in Court not only objected to the allegation of service but also raised queries on the payment for the same. The Court fixed the two Applications for hearing on 04/07/2022 and directed the Applicant to serve them on all parties.
27. When the Application came up for inter partes hearing on 04/07/2022, the Court sought to know how the Application may have been filed since there was evidence of it being duly paid for, and given that it was emailed to Court four (4) days after the Court stamp it bore on its face.
28. As evidence of filing of the Application, the Petitioner swore and filed what he termed as a "Supplementary Affidavit". It was sworn by him on 04/07/2022. At paragraph 3 he stated as follows, "I filed an Application dated 23/5/2022 and paid for the same on 24/05/2022 through M-PESA transaction QE06JGKP14 of Kshs. 1450/=, paid to Kitale Law Courts Revenue A/C No. EZFCWJ3A at 5.30 pm and received payment receipt for this case. The annexed and marked WO1 is a copy of the receipt and order summary dated 25/05/2022."



29. The Court studied and scrutinized both the ‘Supplementary Affidavit’ and the annexed receipt for payment therefor. It found that the deponent actually misled it or lied on oath regarding the payment for the Application for there was none. The invoice, receipt and payments he referred to were not only indicative of payment for both the Notice of Appeal and the Proceedings, as detailed in paragraph 13 of this Ruling.
30. Therefore, the deponent stated on oath facts which were contrary to the truth as the records show that the copy of the receipt and invoice whose details he referred to were for a completely different service and on a different date than when the Application was emailed to or received by the Court. Clearly, the actions of the Applicant not in accordance with the law. They do not make the Application before me properly so.
31. In regard to the service of the Application on the other proposed Third Parties other than the 2<sup>nd</sup>, on 04/07/2022 the Court asked the Applicant to prove that he indeed had served the parties. The Applicant filed an Affidavit of Service purportedly sworn by one Raphael Nyongesa Simiyu on 28/06/2022. It was purported to be sworn by the said process. However, on 05/07/2022, the Process Server came to Court to clarify as to the service. He testified about the service and was cross-examined on it. He disowned the Affidavit. He stated that he never authored the same nor had he ever met the Petitioner between 24/05/2022 and 04/07/2022 in the evening. He also stated that he had never drew any Affidavit of Service in relation to the said service except the one sworn on 05/07/2022 and failed the same date.
32. In it, the deponent stated that he received the Application on 24/05/2022 from the Petitioner with instructions to effect service. He looked at the names of the parties on the face of the Application. Having noted that they were high political figures he feared for his safety and decided not to serve personally but through the G4S Courier Services. By that time, the documents had been sent by G4S the previous date. So, he made the Affidavit of Service that he did non 05/07/2022.
33. Having disowned the Affidavit of Service on oath, the Court wished to get to the bottom of the matter and the truthfulness of the document. Thus, it summoned the Petitioner who had filed the Affidavit, to state on oath the origin and author of the purported Affidavit. He too testified orally on the same date. He stated that he took one previous Affidavit sworn by the Process Server, edited it and then filed it. Hence it was an absolutely a false document. This was clearly criminal conduct in nature.
34. It was further clear about the Affidavit that the ‘deponent’ did not annex a copy of the current year, 2022, Process Server’s licence. Also, to it, the deponent did not attach any copies of the receipts to evidence the fact that the Application was actually sent to the parties via the G4S Courier Services on 23/06/2022 at paragraph 3. At Paragraph 2 it was deponed that the Applications were received by the Process Server on 24/06/2022 and served though the G4S.
35. Since the Affidavit did not bear documentary support of the depositions in it, the Court placed the file aside to enable the Petitioner to avail the said Raphael Nyongesa Simiyu to elaborate on the issue or give the G4S Courier receipts to show to the Court that indeed the same was served. The Petitioner stated that the receipts together with the one for payment for the Application dated 23/05/2022 were at home in his house. The Court adjourned the Petition for two (2) hours to enable him to obtain the receipts. Since the receipts were not in the Court file, their absence causing doubt, the Court required that upon being availed, they be placed formally in the Court through the filing an Affidavit and annexing them to it.
36. The Petitioner returned to Court to report that the G4S receipts were seized and taken away from him by a General Service Police officer, one Tom Anyange, at the General Service Unit centre, when



he went to serve the Application. This sounded even more untrue than before in comparison with his earlier statement that they were in the house or at home. In any event, there was no need to serve the Applications again if he had done so earlier. Again, the Petitioner is not a qualified or authorized person to effect service hence it was not acceptable that he could effect service and in the process lose the documents.

37. Thus, the Court directed that Petitioner avail the said Process Server, Mr. Raphael Nyongesa Simiyu on 05/07/2022 to confirm to the Court on oath about the service and the truthfulness of the allegations, before the Court could make a ruling thereon.
38. Mr. Raphael Nyongesa Simiyu attended Court as duly required. He stated on oath that on the material date he had, in the company of the Petitioner, served the documents on 23/06/2022 on all the proposed Third Parties through the G4S Service. He stated that he did so through and to the address given him by the Petitioner, and that was P. O. Box 11, Kitale. His further testimony was that since he had not been paid fees, he handed over the payment receipts to the Petitioner. Since then, he did not meet the Petitioner until the 04/07/2022 evening when the Petitioner sought him out, wanting him to file an Affidavit of Service.
39. He then stated further that he went to the Courier Service office whereat he obtained copies of the duplicate receipts. He drew and swore an Affidavit of Service on 05/07/2022 to which he annexed the copies he obtained. He stated that he went to the Courier Service office to obtain copies of the receipts because the Petitioner informed him that he had lost the originals to someone who snatched them from him.
40. Upon being cross-examined by the learned State Counsel he stated that he did not know the proposed Third Parties personally. Further, he did not attempt personal service on them or even come to Court to ask for and order for substituted service. His testimony was that he was asked by the Applicant to serve through the G4S courier service.
41. The Process Server attached to his Affidavit sworn on 05/07/2022, copies of the receipts evidencing dispatch of the documents and copies of documents showing tracking of the consignments. He admitted too that he did not address any of the proposed Third Parties personally the consignments or letters. He stated that it was the Petitioner who gave him the address of service he used for the dispatch of the documents.
42. Whereas the Process Server was bold enough to state all the above as being the true position of things, a careful analysis of the annexures to his Affidavit revealed otherwise. The first copy of the document annexed whose title was “Docket Tracking” and “Track Your Waybill” showed that the two consignments on the face thereof were sent out on 13/06/2022 and delivered on 14/04/2022. Its accompanying Waybill on the next page or copy titled “G4S Shipment Waybill” showed that the shipment was made on 13/06/2022 and received on 14/06/2022. Similarly, the third copy which was titled as the first one bore three consignments all sent out on 13/06/2022 and received on 14/06/2022. The Accompanying copy titled as “G4S Shipment Waybill” also confirmed that the dates for dispatch and delivery were 13/06/2022 and 14/06/2022 respectively. Thus, the documents did not support both the oral testimony and the deposition of the Process Server.
43. In regard to the purported Affidavit of Service alleged to be sworn by the Process Server, one Raphael Nyongesa Simiyu, on 28/06/2022, denounced it. He stated that he neither authored nor signed it. He pointed out that the signature thereon did not resemble his usual one. In any event, he stated that he had not met the Petitioner from 24/06/2022 up to the evening of 04/07/2022. He then stated that he drew only one Affidavit, sworn on 05/07/2022, on which he had testified.



44. What followed the testimony of the Process Server, by way of oral testimony of the Petitioner, was extremely dramatic, unbelievable and akin to a scene from a movie. When the Petitioner was called upon to state on oath the source and authorship of the Affidavit of Service purportedly sworn on 28/06/2022 since he was the one who filed it the previous day, he gave a graphic account of how he craftly 'drew' and purported to have it sworn before filing it.
45. While on oath, after giving the usual introductory information, the Petitioner gave a detailed account of how he edited a previous Affidavit of Service made by the said Raphael Nyongesa Simiyu in order to come up with the said Affidavit. He stated on oath that he made up or authored the Affidavit to show that Mr. Raphael Nyongesa Simiyu made it. He stated that he did so because he tried finding Mr. Simiyu to draw one and swear but did not. His testimony was that he did not forge Mr. Simiyu's signature but that he only decided to look for a previous Affidavit of Service, edit it and copy the edited part and paste it on the contents that which he intended to and did file in Court. Asked how he got the said document to be commissioned by one Mr. Bororio Advocate, he stated that he did not commission it before the Advocate. Rather, he stated that he "lifted" the Commissioner's previous stamping and signature on a previous Affidavit and pasted it on the document he filed in Court. He stated that he was necessitated to do so owing to the exigencies of the matter and time constraint. Thus, he stated that he edited the whole document to suit what he wanted.
46. In the course of the testimony, the Petitioner beseeched the Court to understand that he was a layman, and the Petition was of great public importance and a "high profile case." He stated that sometimes they (he) finds it difficult to comply with the Court's directions on timelines hence he has to resort to self-help mechanisms as "methods of bridging the shortcomings" that arise. He admitted that he lied to the Court the previous day about the truthfulness and authorship of the purported Affidavit of Service.
47. The Petitioner was cross-examined by the learned State counsel. He stated that the Process Server neither prepared the Affidavit nor instructed him to make it. He stated also that the Process Server did not know that he (the Petitioner) had prepared it. He agreed that drawing of an Affidavit of Service was the preserve of persons duly authorized by law to effect service and draw.
48. It is time people who move to Court to peddle lies therein were deterred completely by punishment therefor from engaging in such conduct. Courts are not premises or institutions where lies should be dragged into planted, propagated and nurtured in. When persons take an oath to say the truth, it should be so, and if they break the oath, the Courts should not close their ears to such conduct. Actually, it is contemptuous of one to swear to tell the Court the truth only to put forth lies. Innocent people have there before suffered in the hands of justice that has been obtained through lies. That should not be let to continue to be.
49. When the Court retired to consider the instant Application, it found that the Application was only a mere print-out but bearing no Registry stamp in its original state yet it appeared by way of a print-out as a document duly received in Court on 24/05/2022. There was no accompanying receipt to support the fact of payment for the Application because there was no payment anyway. The Court recalled and confirmed from the record that part of the submissions made on 23/05/2022 by the learned State Counsel for the Respondents was about the Applications served on the office being 'suspicious' in the sense that they may not have been filed since they were not accompanied by copies of the official receipts evidencing payment therefor.
50. This Court is at pains as it wonders and imagines what the mind of the Petitioner was when he decided to attempt to defraud the Judiciary. If the Petitioner could attempt to defraud the public, more so



where he seeks to obtain justice for himself and the people he represents, how much more from those who are outside of the institution?

51. Since the Applicant has demonstrated to the Court that he is capable of misleading the Court openly, and able to even attempt deny the public of its resources by depriving it of the fees payable on documents filed in this Court, and also even change some documents to suit his hidden intent, this Court wishes not to be drawn into wastage of time and resources without being keen. I therefore direct that henceforth, the Petitioner/ Applicant should not file any other Applications in this file and any other Claim, Suit or Petition this Court without seeking and obtaining prior leave of the Court. As a consequence, I make the following orders:

1. One, a finding that the Application is not even worth to refer to it as an Application as it found itself illegally in the Court record. It constituted mere pieces of paper placed unlawfully in the Court file and served on all parties. It was a design to deny the public, which is represented in this case by the institution of the Judiciary of Kenya, of its money, and expense all the parties who were invited to oppose the same. It is incompetent and improperly before this Court. It was a document intended to vex the Court and have its process abused. It can only find its rightful position in the midst of those expunged from Court records. It is so expunged. The same is hereby expunged from the Court record, with costs to the Respondents who have been occasioned loss by defending it.
2. Two, it was submitted and urged by the learned State Counsel that this Court should recommend to the Inspector General of Police to investigate the Conduct of Petitioner in respect of (a) making a document without authority, and (b) uttering it, (c) lying to the Court, among other actions such also as (d) swearing a false affidavit, (e) defrauding or attempting to defraud the Court. It may well be true that the conduct of the Applicant depicts possible offences having been committed. However, this Court not being an investigative arm of government and not being clothed with jurisdiction to handle criminal cases except in matter of contempt of the Court itself, does not have power to recommend that the Petitioner has or has not committed offences. This Court directs that the Deputy Registrar transmits this Ruling immediately to the learned State Counsel to, if the office of the Attorney-General wishes, to contact the relevant Department of the Police Service to consider the prayer by the learned State Counsel for investigations on the Petitioner's conduct in this matter and decide on the next course of action.
3. Regarding the third issue, that is to say, on who to bear costs, it is undoubtedly clear that the instant Application was not meant to be urged before this Court. The Party, namely one Wilfred Ogutu, who dragged the parties to Court should bear the costs personally and not the other persons he purports to represent since they may not have instructed him to use unlawful means to urge their cause.
4. For purposes of case management, the Petitioner is directed to comply with Order 11 of the Civil Procedure Rules by filing an indexed paginated trial bundle containing the pleadings and properly cross-referenced witness statements and documents within the next twenty-one (21) days, and serve on the Defendant. The Respondents is directed to comply with the said law in a similar manner within twenty-one (21) days of service of the Plaintiffs' bundle and serve. Any party who shall have not complied shall be visited with sanctions as the law provides: these shall be specified on the mention date.



5. In the meantime, the parties should address this Court on 25/07/2022 on whether the entire Petition is res judicata and/ or duplicitous or not in light of the fact that it seeks to stay orders issued in respect of another matter, that is to say, Kitale ELC No. 2 of 2014.

Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE ORALLY AND VIA ELECTRONIC MAIL ON THIS 7<sup>TH</sup> DAY OF JULY, 2022.**

**DR. IUR FRED NYAGAKA**

**JUDGE, ELC, KITALE.**

