REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 22 OF 2015

JACKSON EKIM OMAIDO.....PLAINTIFF

VERSUS

LUCIA NGAIRA OMUNGA.....1ST DEFENDANT

ROSELYNE OMUNGA.....2ND DEFENDANT

CLARA ANDABWA.....3RD DEFENDANT

NELSON MAKOKHA.....4THDEFENDANT

JOHN OKWAROI.....5TH DEFENDANT

STANLEY EKOINE JUMA.....6THDEFENDANT

GEORGE WAFULA..... 7THDEFENDANT

KENNEDY MUMBWANI.....8TH DEFENDANT

BONIFACE NYONGESA.....9THDEFENDANT

ALFRED CHAMAKETI.....10THDEFENDANT

NAMBUCHA KIRIKACHA.....11TH DEFENDANT

ALEXANDER IMONI.....12THDEFENDANT

RULING

1. The **1st, 4th, 5th and 6th Defendants** have jointly brought the present Application dated **01/02/2021.** The Application invokes the provisions of **Section 1A, 1B & 3A** of the **Civil Procedure Act, Order 22 Rule 21, Order 12 Rule 7** and **Order 51 Rule 1** seeking the following reliefs:

a. Spent

b. Spent

c. THAT the judgment delivered o 18/01/2021 be set aside and all the consequential Orders and the matter be heard on merit.

d. THAT this Honorable Court be pleased to Order that this suit proceed for hearing afresh as a defended case.

e. THAT costs of the Application be provided for.

2. The Application is supported by the grounds on the face of the Application and by further Affidavit of **Lucia Ngaira Omunga,** the 1st Defendant herein stating that the Applicants shall suffer irreparable damage if the judgment remains in force and is executed; that the Applicants were not informed by their previous Advocates of the hearing date and they did not attend and consequently the Applicants' case was marked as closed; that a litigant ought not to bear the consequences of the Advocate's default; that the Defence raises triable issues which should go to trial for adjudication; that the Respondent can reasonably be compensated by way of damages for any delay; that it will be unjust and indeed a miscarriage of justice to deny the Applicants who have expressed the desire to be heard the opportunity of prosecuting the case; that it will be in the interest of justice, equity and fair play when the matter herein is set down for hearing.

3. In her affidavit, the 1st Defendant contends that she has authority to swear the affidavit on behalf of the other Applicants and reiterates the grounds at the bottom of the application. She also states that the right to a hearing is well protected in our Constitution and is also the cornerstone of the rule of law; that justice is better served when both parties to a dispute are accorded an opportunity to be heard on merit to enable each of the parties to ventilate their issues; that it is in the interest of justice, equity and fair play that the matter is heard on merit and judgment be entered on merit and that the Application has not been filed with undue delay.

4. The Application is opposed. In the Plaintiff's very detailed Grounds of Opposition dated **22/02/2021** and filed on **23/02/2021**, it is stated that the Application contravenes the express provisions of **Order 5 Rule 1(1)** and **Order 6 Rule 1** of the **Civil Procedure Rules** and should be dismissed with costs; **Order 12 Rule 7** is inapplicable as the 4th, 5th& 6th Defendants have neither entered Appearance in this matter nor filed their Defence as required by law and have not made any application to be allowed to file their Defences out of time; that the firm of Kraido & Company Advocates has never been on record for the 3rd, 4th, 5th and 6th Defendants in order for it to give authority to the firm of Jason Kimani & Company Advocates to represent the 3rd, 4th, 5th and 6th Defendants; the 1st Defendant does not have authority to swear an Affidavit on behalf of the 4th, 5th and 6th Defendants who have never participated in this matter and hence the supporting Affidavit to the Application dated **1/2/2021** is defective and should be struck out; the Applicants have come to court with unclean hands hence they cannot benefit from the discretion of the court. In this regard, states the respondent, the 1st Defendant purports to swear the Affidavit on her behalf and on behalf of the 4th, 5th and 6th Defendants and claims that her said Defendants were never informed of the hearing date by their previous advocates when it is on record that the 4th, 5th and 6th Defendants have had no previous advocates and have never entered appearance in this matter; it is therefore not true that their previous advocates did not inform them of the hearing date as alleged in **paragraph 4** of the supporting affidavit as they have had no previous advocate; that the conduct of the Defendants precludes them from enjoying the discretion of the court; that the 1st Defendant has always had an advocate on record being the firm of Kraido & Company Advocates; that the said firm was in court when the matter proceeded for hearing; the 1st defendant therefore participated fully, closed case and filed submissions; it is therefore not true that the 1st Defendant was not aware of the hearing date; the Application dated **1/2/2021** is *res judicata*, the Defendants having filed a similar Application on **23/7/2019** which was dismissed by the Court; that they have now come to court with a similar Application being the present one, albeit in a different language; that the Application dated **1/2/2021** does not meet the threshold for setting aside judgment as required by **Order 10 Rule 11** and under **Order 12 Rule 7** of the **Civil Procedure Rules** and case law; that the Application dated **23/7/2019** contravenes the express provisions or **Sections 1A** and **159 (2)** of the **Constitution** which requires that disputes be solved expeditiously and without due regard to technicalities; that the Defendants/Applicants have delayed this matter since the **2015**; that they have been filing Application after Application in order to frustrate the Plaintiff; that litigation should come to an end and no amount of damages can compensate one for delayed justice; that the Defendants have not advanced any valid reason to enable this Honorable Court to exercise its discretion in their favor; that there is no miscarriage of justice if this Application is dismissed as all parties were given time to present their cases and that it is in the interest of justice that the Application dated **1/2/2021** be dismissed with costs.

5. The Plaintiff further filed a Replying Affidavit sworn on **25/02/2021** and filed on **03/03/2021**. The Grounds of Opposition filed were reiterated in the Replying Affidavit. He further added that the 3rd Defendant passed away on **24/12/2018** and therefore there is no way she could have instructed the Advocates to act for her; that the 3rd Defendant having died three years ago, the case against her has abated; that the case against the 3rd Defendant was actually withdrawn at the time of the hearing of the Plaintiff's case; that the case against the 4th to 12th Defendants proceeded by way of formal proof judgment despite having been served with summons to enter appearance; that to the extent that the 4th, 5th and 6th Defendants have neither entered Appearance in this matter nor filed their defence as required by law, **Order 12 rule 7** is inapplicable as the said order applies to non-attendance of parties during hearing when the party had previously attended; that the 3rd, 4th, 5th and 6th Defendants have never entered appearance in this matter and hence lack audience; that the application is misconceived and an abuse of the process of the court as the 4th, 5th and 6th Defendants have not given any valid reasons why they never entered appearance and filed their defences; that the 1st Defendant does not have authority to swear an affidavit on behalf of the others who have never participated in this matter and cannot swear an affidavit on their behalf who have no audience; that the Applicants are intentionally misleading this court in order to get undeserved court orders; that the Applicants have come to this court with unclean hands.

6. In supplementing their assertions, the Applicants filed an Affidavit sworn on **03/03/2021** and filed on **04/03/2021.** The Applicants aver that the application is meritorious; that the 3rd Defendant is indeed deceased having passed away on **16/10/2020** and not **24/12/2018** as alleged; that they were never informed of the hearing date; that the 4th, 5th and 6th Defendants filed Memoranda of Appearances on **27/02/2015** and statements of defence on diverse dates by the firm of Kraido & Company Advocates and attached the same as annexures; that no interlocutory judgment is on record; that **Order 12 Rule 7** is properly invoked since the matter was determined *ex parte* for non-attendance of the Defendants occasioned by the negligence of our erstwhile Advocates on record; that the firm has never filed an application to cease acting for the defendants and that the Applicants further deny all allegations of delay, unclean hands and *res judicata*.

7. I note that the Plaintiff filed a Supplementary Affidavit on **09/03/2021**. In light of this, the Applicants submitted that no leave was sought by the said party to file the said pleading. A perusal of the court file reveals that indeed no such directions were issued in terms of filing the Affidavit. No further leave was sought to have the same as deemed properly on record. I find that the said Affidavit is improperly on record. I therefore exercise my discretion and I hereby expunge the same and I shall not consider the said Affidavit in my ruling. I am guided by the Court of Appeal in **Assets Recovery Agency v Charity Wangui Gethi & 3 others [2020] eKLR** where the Court held:

> **"We may also add that exercise of favourable discretion is not pegged on the gravity of the matter, or public interest alone and compliance with the law and the attendant rules and regulations cuts across the board and applies equally to all matters**

before the court."

8. Pursuant to the Court's directions issued on **23/2/2021**, parties were directed to dispose of the Application by way of written submissions. The Applicants filed theirs on **22/03/2021** and the same are dated **18/03/2021**. The Plaintiff's submissions dated **11/03/2021** were filed on **12/03/2021.**

9. According to the Applicants, under **Order 12 Rule 7** of the **Civil Procedure Rules**, the Court may set aside or vary the judgment or Order upon such terms as may be just where judgment has been entered under this order. The Applicants submit that judgment was entered in their absence and they did not participate in the hearing. That they were never informed of the judgment date and hence were not in attendance on the hearing date. Consequently, their cases were marked as closed and judgment was entered in favor of the Plaintiff. The Applicants cite the provisions of **Article 50 (1)** of the Constitution for the proposition that parties have the right to be heard with disputes resolved and decided in a fair and public hearing and further is buttressed by **Article 25 (e) and Article 159** of the Constitution. The Applicants submit that the failure by their Advocate to inform them of the hearing date and subsequent consequence should not be visited upon them. They further submit that the Application has been lodged without undue delay having been filed **14 days** after the judgment was entered. The Applicants further submit that the statements of defences and memoranda of Appearance were filed as evidenced in the Supplementary Affidavit. It is further submitted that the firm of Kraido & Company were lawfully on record for the Applicants and consented to the present firm acting on behalf of the Applicants. For reason of want of form as the Defences were drafted in the nature of witness statements, the Applicants beseech this Court to grant the parties leave to file statement of Defences in their proper form as no injustice will be occasioned to the Plaintiff who will be given an opportunity to file his response to the Defences. The Applicants further submit that the Plaintiff erroneously produced documents not in their original form and should be ordered to reopen his case for cross-examination. The parties submit that no Defences were struck out and that leave should be granted to the 6th Defendant to file its statement of defence.

10. The Plaintiff in his submissions asserts that the Application offends the provisions of **Order 5 Rule 1 and Order 6 Rule 1** of the Civil Procedure Rules. Their submission is that the parties, save for the 1st Defendant, have never entered appearance and thus lack audience. Consequently, the Plaintiff submits that only **Order 10 Rule 11** is applicable herein. The Plaintiff further submits that the interlocutory judgment entered on **19/2/2019** against the 4th, 5th and 6th Defendants has never been set aside; that with no application to set aside the judgment, the Application should fail. The Plaintiff further states that the Application under **Order 12 Rule 7** is inapplicable as against the 1st Defendant who was represented by Counsel and who also lacks authority to swear affidavits on behalf of parties who did not participate in the proceedings; that the 3rd and 10th Defendants passed on hence the applicants have come to this court with unclean hands. Finally, the Plaintiff contends that the Applicants were given ample time to come on record and defend these proceedings but failed to do so. As such, state the respondents, no miscarriage of justice is occasioned if the orders sought are denied.

11 I have considered the Application and respective Affidavits of parties herein. I have also considered the Grounds of Opposition and further respective written submissions by parties. I now wish to address the Application as hereunder.

Chronological Background

12. Parties herein are vacillating in terms of the sequence of events in this matter. I thus take it upon myself to chronologically and with precision set out the sequential events most relative to the parties herein for avoidance of any doubt before delving into the merits of the Application. Having perused the court record, I note the following:

a. The 1st Defendant entered appearance on **12/03/2015** through the firm of **Kraido & Company Advocates**. Upon payment of the requisite fees, the Memorandum of Appearance dated **10/03/2021** was filed. A copy of the receipt is on record.

b. The 4th, 5th & 6th Defendants entered appearance on **27/03/2015** and upon payment of fees, the Memorandum of Appearance dated **27/03/2015** was filed. A copy of the receipt is on record. The same was filed by the firm of **Kraido & Company Advocates**.

c. The 1st Defendant's Statement of Defence filed on **31/03/2015** is dated **31/03/2015**. A copy of the receipt is on record. The same is filed by the firm of **Kraido & Company Advocates**.

d. When the matter was in court on **19/02/2019**, the suit against the 2nd and 10th Defendants was withdrawn. Counsel for the Plaintiff sought judgment to be entered against the 3rd - 9th & 11th and 12th Defendants. The Court entered interlocutory judgment in the suit, directing that it to proceeds to a formal proof hearing. The Plaintiff testified on the said date. The same was however adjourned to enable the witness produce original documents.

e. On **18/03/2019**, **Kraido** appeared in court on record for **the Defendants**. On request that the matter proceeds *de novo*, the Plaintiff testified afresh. On the same day, documents were produced by consent. The matter was adjourned to **07/05/2019**.

f. The 4th & 5th Defendant's Statement of Defence filed on **06/05/2019** is dated **30/04/2019**. A copy of the receipt is on record. The same is filed by the firm of **Kraido & Company Advocates**.

g. On **07/05/2019**, the Court noted that the Defences filed by the 3rd, 4th, and 5th Defendants were filed without leave of the Court and were consequently struck out. Defence hearing was set for **17/07/2019** as the Plaintiff closed his case.

h. On **23/07/2019**, the Defendants save the 1st, filed an Application to set aside interlocutory judgment through the firm of **Kraido & Company Advocates**. In the further Affidavit thereto, a draft joint statement of Defence was annexed. The same was opposed.

i. The Court's ruling was delivered on **03/10/2019**. The Court found that no interlocutory judgment was entered against the 3rd - 9th,

11th - 12th Defendants on the alleged date; the Court made no determination on leave to file Defences as the first prayer was found incompetent. The Application was struck out with no orders as to costs.

j. On **27/02/2020**, the suit was adjourned at the instance of the Defendants who stated that the 3rd Defendant was unwell and the 1st Defendant was taking care of the party.

k. On **19/11/2020**, the Defendants' Counsel prayed that the file be placed aside to enable the 1st Defendant to come and testify. Counsel for the Defendants closed the case as the 1st Defendant was unreachable. The Defendants' cases were closed.

l. The submissions on behalf of the Defendants in respect to the entire suit were filed on **23/12/2020** by the firm of **Kraido & Company Advocates** at the behest of the parties.

13. From the above facts, there is unshakeable confirmation that the firm of Kraido & Company Advocates were on record for the parties who are applicants in the present Application. No Notice of Change of Advocate or Notice to Act in person is on record. It is further confirmed that save for the 1st Defendant, there are no Statements of Defence on record for the 4th, 5th, and 6th Defendants.

14. I further note that the Application is not *res judicata* for the reason that the Application that is made reference to sought to set aside interlocutory judgment and leave to file a joint Statement of Defence distinct from the present application which seeks to set aside the judgment and that the suit proceeds for hearing afresh as a defended cause. I now proceed to delve into the merits of the Application as follows.

(1) <u>Whether the Application meets the threshold for setting aside judgment delivered on 10/01/2021</u>

15. The Applicants have invoked the provisions of **Order 12 Rule 7** of the **Civil Procedure Rules 2010**. Under the heading 'hearing and consequences for non-attendance', the provision reads as hereunder:

"Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just"

16. The Applicants further cite **Order 22 Rule 21** which reads as follows:

"(1)The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason for the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the court may examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result."

17. Having perused the wording of **Order 22 Rule 21**, I find that the same does not assist the Application whose nature is to set aside the judgment and have the suit prosecuted a fresh.

18. The Court has under **Order 12 Rule 7** powers to set aside judgment upon such conditions as may be just. The Applicants have invoked this provision stating that they never participated in the hearing of the matter; that their Advocate failed to inform them of the hearing and consequently failed to proceed.

19. As stated earlier herein, the matter proceeded for hearing of the Plaintiff's case on **18/03/2019**. The matter was adjourned to give the Defendants an opportunity to ventilate their case. On **07/05/2019**, the Court struck out the Defences of the 4th and 5th Defendants who had filed them without leave. This was not regularized by their Counsel. The hearing of the Defence case proceeded on **19/11/2020** where Counsel for the Defendants, stated that he could not reach the 1st Defendant and thus proceeded to close their cases and filed written submissions on the suit.

20. The Court entered judgment in favor of the Plaintiff on **18/01/2021.** In its judgment, the Court notes in paragraph **7** that when the matter came up for hearing on **19/11/2020**, the 1st Defendant was not in court and her Counsel opted to close her case without any evidence. The rest of the Defendants were not in court and did not testify in the suit. The Court in its judgment noted at **paragraph 8** that the Defendants elected not to produce any evidence in this matter.

21. This Court points out that judgment was entered against all the Defendants on the merits of the case. No judgment was entered pursuant to the provisions of **Order 12** which connotes that judgment is entered in the absence of a party. As deciphered, the firm of Kraido & Company Advocates continually remained on record for the 1st, 4th, 5th and 6th Defendants. They were therefore in Court represented by Counsel during the hearing on **19/11/2020** and cannot renege on these facts. I therefore find that the said provision cannot aid the Applicants herein.

22. According to the depositions of the Applicants, the Advocate did not notify them of the hearing of the matter hence they were not aware. The record of the court evinces that the 1st Defendant was unreachable while no explanation was given on the whereabouts of the others.

23. The evidence of the Applicants is that it was their erstwhile Advocates' mistake for not informing them of the hearing. They submit that because of their Advocates' failure to inform them of the progress of the matter, they did not attend Court. In the circumstances, the mistake of an Advocate should not be visited upon the client. I hold the view that there are avenues addressing professional negligence. The Applicants cannot ride on this to have the Application allowed. In **Et Monks & Company Ltd vs. Evans [1985] KLR 584** the court stated as follows:-

> **"Whether or not the application should be allowed is a matter for the discretion of the judge who must exercise it, of course, judicially. Each turns on its own facts and circumstances...If an action is dismissed for want of prosecution the plaintiff has certain options if it is not his fault."**

24. The facts and circumstances of the present Application compel me to hold that the Applicants are not interested in the case. It is upon them to establish the position in the matter and ensure that their issues are dealt with at the earliest time possible. I am not satisfied that they are deserving of orders to set aside the judgment. Be that as it may, the said Application has no legs to stand as judgment was entered after the Defendants closed their case in the presence of their Counsel.

(2) <u>Whether the suit ought to be heard afresh</u>

25. Since the order to set aside judgment fails, I find that the order to have the suit heard afresh automatically fails; this as it was dependent on the success of the first prayer.

(3) <u>Procedural technicalities</u>

26. A cursory perusal of the Application before this Court reveals that some of the provisions of statutes were not complied with in the instant application. This Court deems it fit that the same is discussed as they have a consequential effect on the outcome of the Application.

27. The present Application as drafted touches on the provisions of **Order 1 Rule 13** and **Order 9 Rule 9.**

28. At **paragraph 2** of the Supporting Affidavit, the 1st Defendant deposes that she has authority to swear Affidavit on behalf of the 4th, 5th and 6th Defendants. **Order 1 Rule 13** provides:

> **(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.**
>
> **(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.**

29. Under **Order 1 Rule 13 (2),** the authority shall be in writing by the party giving it and shall be filed in the case. This provision is couched in mandatory terms.

30. I have perused the Application and note that no authority was attached to the Application granting the 1st applicant power to swear the Affidavit on behalf of the other applicants and for this reason the application ought to fail.

31. The Court further notes that the Application by the Defendants is lodged by the firm of Messrs. Jason Kimani & Company Advocates. I further note that the Defendants have at all times material to this suit been represented by the firm of Kraido & Company Advocates. The Applicants submit that the said firm consented that the present firm do act on their behalf. I will cite the provisions of **Order 9 Rule 9** verbatim:

> **"When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, <u>after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court</u>-**
>
> **a. upon an application with notice to all the parties; or**
>
> **b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be...."**

32. From the above provisions, the incoming advocate must seek leave in the form of an Application or by way of consent executed by the incoming and outgoing parties for the party to participate in the proceedings. I take note that the prayers sought in the application are silent in respect of seeking leave for representation by a different advocate. I also find that there is no consent on record by the incoming and outgoing advocate to allow the said firm to proceed on behalf of the Applicants herein.

33. I find that the provision in couched in mandatory terms. In fact, per **Rule 10**, an application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first. It is therefore inexcusable for any new advocate to lodge any documents without regularizing the record. I associate myself with the sentiments of **Justice Weldon Korir** who while dismissing an Application for failing to abide by the provision held in **S.K. Tarwadi v Veronica Muehlemann [2019] eKLR:**

> **"In my view, the essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until a**

judgement has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away. Indeed Order 9 does not foresee how Rule 9 can be sidestepped hence the enactment of Rule 10 as follows:

"An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first."[1]

34. The enactment of rules is inculcated to ensure that dispensation of justice is upheld. They are hence of necessity to be adhered to. **Article 159** of the **Constitution** in my view was not intended to defeat the intention of the drafters of the Rules. It is to be read concurrently with the Rules to ensure justice is upheld. It is not a panacea to all omissions of statutory requirements in the adversarial enterprise. To continually and indiscriminately excuse parties from procedural obligations will defeat the intention of the Rules. I am in agreement with the decision of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 others [2013] eKLR** in which the court held as follows:

"It ought to be clearly understood that the courts have not belittled the role of procedural rules. It is emphasized that procedural rules are tools designed to facilitate adjudication of disputes; they ensure orderly management of cases. Courts and litigants (and their lawyers) alike are, thus, enjoined to abide strictly by the rules. Parties and lawyers ought to be reminded that the bare invocation of the oxygen principle is not a magic wand that will automatically compel the court to suspend procedural rules. And while the court, in some instances, may allow the liberal application or interpretation of the rules that can only be done in proper cases and under justifiable causes and circumstances. That is why the Constitution and other statutes that promote substantive justice deliberately use the phrase that justice be done without *"undue regard"* to procedural technicalities."

Kiage JA in the same decision holds as follows:

"I am not in the least persuaded that Article 159 of the Constitution and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succour and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.

I have carefully perused the authorities cited for us by Mr. K'oceyo but I do not think, with respect to counsel, that they provide such authority that should cause us to excuse his client's default in the circumstances of this case where no excuse or explanation is offered, and where the appellant still believes himself justified in not effecting service."

35. It is for these reasons that I find that the instant application must fail. Consequently, the Court finds that the application lacks merit and it is hereby dismissed with costs to the Respondents.

36. For the avoidance of doubt, the interim orders which were issued earlier are hereby vacated. The Plaintiff is awarded the costs of the Application.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 3RD DAY OF MAY 2021

MWANGI NJOROGE

JUDGE, ELC, KITALE.