



**Nyakul & 2 others v Resident Magistrate, Court 4 & 2 others; Chesang (Suing on his and on behalf of the Members of AIC Narok Town Church) (Interested Party) (Judicial Review E005 of 2025) [2025] KEHC 10446 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10446 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
JUDICIAL REVIEW E005 OF 2025**

**CM KARIUKI, J**

**JULY 17, 2025**

**IN THE MATTER OF ARTICLES 22(3) & 165 (6) OF THE CONSTITUTION OF KENYA**

**2010**

**AND**

**IN THE MATTER OF SECTIONS 4(1), 7 & 11 (1)(H) OF THE FAIR ADMINISTRATIVE  
ACTION ACT (CAP. 7L)**

**AND**

**IN THE MATTER OF RULE 11 OF THE FAIR ADMINISTRATIVE ACTION RULES, 2024**

**AND**

**IN THE MATTER OF SECTIONS 17 & 18 OF THE CIVIL PROCEDURE ACT**

**AND**

**IN THE MATTER OF THE ORDER ISSUED IN NAROK MCCC/E120/2025**

**BETWEEN**

**SAMWEL NYAKUL ..... 1<sup>ST</sup> APPLICANT**

**TIMOTHY KETERE ..... 2<sup>ND</sup> APPLICANT**

**TUMANKA MULINKA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**RESIDENT MAGISTRATE, COURT 4 ..... 1<sup>ST</sup> RESPONDENT**

**RESIDENT MAGISTRATE COURT 5 ..... 2<sup>ND</sup> RESPONDENT**

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

**AND**



**TOROITICH CHESANG (SUING ON HIS AND ON BEHALF OF THE MEMBERS OF AIC NAROK TOWN CHURCH) ..... INTERESTED PARTY**

**RULING**

**Background and Brief Facts**

1. The Interested Parties are members of AIC Narok Town Church and are engaged in a dispute with the Applicants over the management of church affairs. Despite efforts to resolve the matter internally and through courts [including MCCC E292 of 2024 and MCCC E120 of 2025], the Applicants unilaterally closed the church on 27th April 2025 and locked out the congregation. This led the Interested Parties to worship outside the church gate in insecure and uncomfortable conditions.
2. Following the Applicants' judicial review application [JR E005 of 2025], which led to stay orders affecting MCCC E120 of 2025 and orders issued on 25th June 2025 barring the Interested Parties from accessing the church, the Interested Parties filed the current application dated 26th June 2025 seeking, inter alia:
  - i. Spent.
  - ii. That this Honourable Court be pleased to order the Interested parties/Applicants be enjoined in this suit as interested parties.
  - iii. That pending hearing and determination of this Application, this Honourable Court be pleased to stay orders of 25th June 2025 on the applicants' notice of motion dated 19<sup>th</sup> June 2025.
  - iv. Pending hearing and determination of this Application, this Honourable Court be pleased to vacate, discharge, and or set aside the orders of 25th June 2025. on the applicant's notice of motion dated 19<sup>th</sup> June 2025.
  - v. That pending the hearing and determination of this application, this Honourable court be pleased to direct the Applicants to immediately and unconditionally remove the padlocks and any other obstructions placed on the doors and gates of AIC Narok Town Church.
  - vi. That the Officer Commanding Station [OCS], Narok Police Station, to enforce and ensure compliance with these orders.
  - vii. That the costs of this application be provided for.
3. The application is brought pursuant to section 1A,1B,3,3A, of the [Civil Procedure Act](#) & Order 51 Rule 1 of the Civil Procedure Rules.
4. The application is premised on the following key grounds: The Interested Parties are members of AIC Narok Town Church and were not enjoined in the judicial review despite being initiators of the suit [MCCC/E120/2025]. The Applicants misrepresented to the court that the Interested Parties were properly enjoined. Ex parte orders issued on 25th June 2025 were obtained through deceit and deliberate non-disclosure.
5. The Applicants locked the church premises with the help of the police, barring access to worshippers since 27th April 2025. The Interested Parties had filed MCCC/E020/2025 to seek redress but were unfairly excluded from the subsequent judicial review proceedings. The Applicants have used the court process to shift positions and manipulate outcomes to the detriment of the Interested Parties. The



court process has been used as a tool of oppression, contrary to the principles of justice, equity, and fair hearing. The orders obtained ex parte continue to cause spiritual harm, loss of access, and alienation of congregants.

6. Toroitich Chesang, on behalf of AIC Narok Town Church members, swore an affidavit on 26th June 2025, supporting the application. The applicant contends that the Interested Parties were never served or included in the Judicial Review file but were adversely affected by its orders. The Applicants falsely stated that Toroitich Chesang had already been included as an Interested Party. The church premises were locked without notice on 27th April 2025, prompting the Interested Parties to file MCCC/E020/2025.
7. During proceedings in the lower court, the Interested Parties duly served applications, filed responses, and submissions. Unbeknownst to them, the Applicants filed Judicial Review proceedings on 30th May 2025, followed by another motion on 19th June 2025, both allegedly without serving the Interested Parties. When ex parte orders were issued on 4th June and later on 25th June 2025, the Interested Parties only learned of them through informal means [WhatsApp message].
8. The Applicants then used the orders to padlock the church again, despite prior peaceful worship and ongoing attempts to resolve the conflict. Chesang contests the Affidavit of Service filed by the Applicants, alleging it is false and fabricated. The affidavit attaches over 14 exhibits [TC-1 to TC-14], including court orders, applications, emails, WhatsApp messages, and photographs of the locked premises and worship activities.
9. The Interested Parties assert that they have been denied access to justice, excluded from proceedings, and subjected to oppressive conduct. They urge the Court to intervene, set aside the ex-parte orders, enjoin them properly, and restore their right to worship.

## 10. The response

11. In response to the Interested Party's application dated 26th June 2025, Dr. Rev. Bishop Samwel Nyukul, the Bishop of AIC Southern Region, swore a replying affidavit on behalf of himself and two other church officials—Timothy Ketele and Tumanka Mulinka. He asserts that they are the legitimate leaders of the African Inland Church [AIC] Narok Town Church and that they lawfully initiated Judicial Review proceedings to challenge what they describe as irregular and ultra vires orders issued by the Magistrates' Court in Narok MCCC/E120/2025.
12. The Bishop avers that the High Court certified their Judicial Review application as urgent on 4th June 2025 and issued directions requiring that the application be served on all parties, including the Interested Party. In compliance with these directions, the applicants' advocate served the Interested Party through email on 10th June 2025 using the address provided by the Interested Party's own advocate. An affidavit of service and email printout were filed in court as evidence of proper service.
13. Despite this, the Interested Party failed to enter appearance, respond to the application, or participate in proceedings. The Bishop claims that the Interested Party deliberately ignored the process and then attempted to mislead the court by claiming they were not served. Instead of pursuing lawful channels, the Interested Party allegedly took matters into their own hands by forcibly breaking into the church premises on 15th June 2025, replacing padlocks, and removing closure notices. These actions, the Bishop describes, were unlawful, violent, and showed complete disregard for ongoing court processes.
14. Following these events, the Applicants filed another application dated 19th June 2025 seeking a temporary injunction to restrain the Interested Party from interfering with the church premises. The



application was duly served, but again, the Interested Party failed to appear in court. Consequently, on 25th June 2025, the court granted interim injunctive orders and directed the police to enforce them.

15. The Bishop maintains that all actions by the Applicants have been lawful, peaceful, and consistent with the court's directions. He emphasizes that the orders issued do not limit the right to worship but are merely intended to preserve peace and protect church property pending the resolution of disputes. He attached a letter from the AIC National Leadership supporting the temporary closure of the church as a conflict de-escalation measure.
16. He concludes by accusing the Interested Party of abusing the court process, approaching the court with unclean hands, and fabricating allegations of non-service in an attempt to frustrate lawful proceedings. He urges the court to dismiss the Interested Party's application to prevent further disruption and safeguard the integrity of the judicial process.

#### **17. Further affidavit.**

18. Toroitich Chesang, on behalf of himself and fellow members of AIC Narok Town Church, filed a further affidavit responding to the contents of the replying affidavit sworn by Bishop Dr. Rev. Samwel Nyukul. Chesang strongly disputes the claim that the Judicial Review application and subsequent court documents were ever properly served on the Interested Party or their advocate.
19. He insists that the service alleged by the Applicants is a fabrication, particularly pointing out that the affidavit of service lacks credibility and the email extracts attached are false and misleading. Despite a formal request for the documents on 6th June 2025, the Interested Party's advocate received no response, a fact which undermines the Applicants' assertion of proper service within the stipulated timelines.
20. Chesang argues that the Judicial Review application was lodged in bad faith to derail the hearing and determination of MCCC E120 of 2025 and to deliberately sideline the Interested Parties, who were never enjoined despite being directly affected. He maintains that the Applicants' failure to enjoin them was strategic and prejudicial.
21. He refutes the narrative that the Interested Parties broke into the church, stressing that they are legitimate members with full rights to access the premises. The closure of the church on 27th April 2025 was done without notice or justification, causing distress and shame to congregants who have since been forced to worship outside the gate under tents—a situation he deems damaging to the church's image and community spirit.
22. Chesang further disputes the authenticity of the Applicant's claim that the Application dated 19th June 2025 was served on their advocate, reiterating that no such service took place. He intends to summon the process server [an advocate of the High Court] for cross-examination over the disputed affidavit of service.
23. He adds that on 25th June 2025, the Interested Party's advocate was present in court for two other High Court matters, arguing that it would be illogical for her to ignore this case if she had been aware of it. He states that the only document ever received by their advocate was the court order issued on 25th June 2025, which was shared via WhatsApp, not the application itself.
24. Chesang also challenges the purported letter from the AIC national leadership justifying the church's closure, asserting it was merely a personal move by the Applicants to impose their will on the church community.



25. He concludes by reaffirming the Interested Parties' commitment to peace and church property preservation, describing allegations of destruction as baseless. He urges the court to grant the prayers sought in the application dated 26th June 2025 in the interest of justice and fairness.

## **26. Directions of the court**

27. On 4th June 2025, this Honourable Court, upon perusal of the Notice of Motion dated 30th May 2025 filed under certificate of urgency, together with the supporting affidavits, certified the application as urgent and directed that it be heard on a priority basis.
28. The Court ordered that the application be served upon the Respondents and all interested persons within seven [7] days of the said order. The Applicants were granted five [5] days from the date of service to file any further affidavits and submissions, and the Respondents were accorded a similar period to respond.
29. The matter was scheduled for inter partes hearing on 26th June 2025, for the purposes of highlighting submissions or setting a date for ruling.
30. Pending the hearing and determination of the application, the Court issued interim orders staying all proceedings, including the delivery of any ruling, in Narok MCCC E120 of 2025.
31. The issue of costs was reserved for determination at the conclusion of the application.
32. Subsequently, on 25th June 2025, the matter came up for directions before Honourable Justice Charles Kariuki with respect to the Notice of Motion dated 19th June 2025. Learned counsel Mr. Muchiri and Mr. Tuya appeared on behalf of the Applicants. There was no appearance by either the Respondents or the Interested Party.
33. Upon hearing counsel for the Applicants, the Court issued interim orders in the following terms:
34. Pending the hearing and determination of the Notice of Motion inter partes, a temporary order of injunction was granted restraining the Interested Parties, their agents, servants, or any other persons acting under their authority from breaking into, damaging property, or interfering with the orderly affairs within the precincts of AIC Narok Town Church.
35. That the Officer Commanding Station [OCS], Narok Police Station, was directed to enforce and ensure compliance with the said orders.
36. The matter was then scheduled for highlighting of submissions on 17th September 2025.
37. Upon perusal of the subsequent Application dated 26th June 2025 and its supporting affidavit, and in light of its urgency, the Court directed that the same be served upon all parties and fixed the matter for directions on 30th June 2025.
38. On 30th June 2025, the Court directed that the Application dated 26th June 2025 be canvassed by way of written submissions. Submissions were filed by the Interested Parties and the Applicants. The Respondents, however, did not file any submissions.

## **A. Submissions by the Interested Parties**

39. The Interested Parties submitted that they were never served with either the Judicial Review Application No. E005 of 2025, dated 30th May 2025, or the subsequent Notice of Motion dated 19th June 2025. Despite this, the Court issued ex parte orders on 25th June 2025, which adversely affected



- them, barring them from accessing or interfering with the church premises. They contend that these orders were obtained without their knowledge, participation, or the opportunity to be heard.
40. They assert that although the Court had directed on 4th June 2025 that all interested persons be served within 7 days, the Applicants failed to serve them or their advocates. They argue that the affidavit of service relied upon by the Applicants, sworn by Daniel K. Kihara, only refers to service upon the 1st, 2nd, and 3rd Respondents, and makes no mention of the Interested Parties. Further, they contend that the email extract annexed to the Replying Affidavit purporting to show service is fabricated. They argue that their advocate had even requested service of the pleadings via email on 6th June 2025 but received no response.
  41. They rely on the case of *Yooshin Engineering Corporation v AIA Architects Ltd* [Civil Appeal E074 of 2022] [2023] KECA 872 [KLR], where the Court of Appeal held that where service was not effected, and orders were improperly or prematurely granted, the resultant judgment or order is irregular and must be set aside as of right, regardless of whether the affected party has a defence.
  42. The Interested Parties maintain that they are essential to these proceedings as they are the initiators of MCCC E120 of 2025, which is the very matter stayed by the Judicial Review Application. They argue that they meet the criteria of an "interested party" as defined in *Black's Law Dictionary* [9th Edition] as someone with a recognizable stake in a matter, and as articulated by the Court in *Communications Commission of Kenya & 4 Others v Royal Media Services Ltd & 7 Others* [2014] eKLR, which held that an interested party is one who will be affected by the Court's decision and whose interests may not be adequately protected unless they participate in the proceedings.
  43. On the merits, the Interested Parties argue that the injunction was obtained through material non-disclosure and misrepresentation. They cite *Kenleb Cons Ltd v New Gatitu Service Station Ltd* [1990] eKLR, where the court emphasized that an applicant seeking injunctive relief must make full and frank disclosure of all material facts.
  44. They argue that the ex parte orders of 25th June 2025, which barred them from entering their church, have resulted in a violation of their constitutionally protected freedom of religion and worship, as guaranteed under Article 32 of the *Constitution* of Kenya, 2010. The Interested Parties state that the orders have caused unnecessary hardship by forcing them and their children to worship outside the church compound in unsafe conditions.
  45. The Interested Parties invoke Order 40 Rule 7 of the *Civil Procedure Rules*, 2010, which permits the court to discharge, vary or set aside injunctive orders on application by any party dissatisfied with them. They further rely on Order 10 Rule 11, which empowers the court to set aside default judgments or any consequential orders where justice demands.
  46. They urge the Court to find that the injunction is being misused not to preserve the status quo, but rather to frustrate their right to access the church and participate in its affairs. They also rely on the authority of *Mureithi Charles & Another v Jacob Atina Nyagesuka* [2022] eKLR, where the court stated that the discretion to set aside ex parte judgment is intended to avoid injustice and hardship caused by inadvertence or excusable mistake, not to reward intentional misconduct.
  47. Lastly, the Interested Parties argue that even assuming proper service had occurred, the injunction no longer serves a protective purpose and has instead become a tool for oppression. They cite *Suleiman Said Shabbal v Independent Electoral and Boundaries Commission & 3 Others* [2014], where the Supreme Court emphasized that interim orders must not be issued lightly, especially where they may result in irreparable harm to one party.



48. In conclusion, the Interested Parties urge the Court to: Enjoin them in the proceedings; Stay, vacate, or set aside the ex parte orders of 25th June 2025; Direct the reopening of the church premises; And allow them to continue worshipping as the substantive issues are being determined.

#### 49. Submissions by the 1st, 2nd, and 3rd Applicants.

50. The Applicants oppose the Interested Party's application dated 26th June 2025, which seeks to be enjoined in the proceedings and to have the Court's orders issued on 25th June 2025 stayed, vacated, or set aside. They also seek access to the AIC Narok Town Church by removal of padlocks and obstructions.
51. The Applicants begin by recounting the procedural history: they initiated Judicial Review Application No. E005 of 2025 to challenge the orders issued on 15th May 2025 in Narok MCCC/E120/2025 by Hon. Ngayo, which they argue were ultra vires and issued without jurisdiction. The Court certified the matter as urgent on 30th May 2025 and directed service upon the Respondents and interested persons within seven days.
52. The Applicants contend that service was properly effected on the Interested Party via email on 10th June 2025, in compliance with the Court's order and upon request by the Interested Party's advocate. They rely on Order 5 Rule 22B of the *Civil Procedure Rules*, which allows for service by electronic means and deems it effected when a delivery receipt is received. An affidavit of service, accompanied by an email printout addressed to emadvocates23@gmail.com, was filed, confirming compliance with these provisions.
53. To rebut the Interested Party's allegations of non-service and fabrication, the Applicants invoke Sections 107 and 108 of the *Evidence Act*, emphasizing that the burden of proof lies on the party alleging non-service. They maintain that the Interested Party failed to seek cross-examination of the process server or to demonstrate the alleged fabrication.
54. They cite *Shadrack Arap Baiywo v Bodi Bach* [1987] eKLR, which affirms the presumption of regular service upon production of a process server's affidavit. Further reliance is placed on *re MWO [Minor]* [2021] eKLR, where the court held that parties disputing service should summon the process server for cross-examination.
55. The Applicants argue that the Interested Party has not satisfied the legal test for setting aside ex parte orders under Order 12 Rule 7 and Order 51 Rule 15 of the *Civil Procedure Rules*. They rely on *James Kanyita Nderitu v Marios Philotas Ghika & Another* [2016] eKLR, distinguishing between irregular and regular default judgments, asserting that the orders here were regular, since proper service was effected.
56. They further argue that the Interested Party's application is brought too late, despite having known of the Judicial Review proceedings by 6th June 2025 and being served on 10th June 2025. They cite *Patel v EA Cargo Handling Services Ltd* [1974] EA 75, emphasizing that discretion to set aside ex parte orders must be exercised judiciously and not to reward indolence or tactical delay.
57. In addressing whether sufficient cause has been demonstrated for setting aside the orders, the Applicants rely on *Philip Ongom v Catherine Nyero Owota* [2003] KALR, *Esther Wamaitba Njibia v Safaricom Ltd* [2014] eKLR, and *Wachira Karani v Bildad Wachira* [2016] eKLR, all of which define sufficient cause as conduct that is not negligent, evasive, or strategically dilatory.
58. The Applicants deny any prejudice to the Interested Party. They argue that the ex parte orders were necessary to protect church property and maintain peace following violent confrontations and



disruption attributed to the Interested Party. They cite a letter from the AIC Presiding Bishop supporting the temporary closure of the church pending reconciliation. They contend that the closure is temporary and intended to preserve the sanctity of worship, not to suppress religious rights.

59. In response to the constitutional argument on freedom of worship under Article 32 of the *Constitution*, the Applicants submit that this right is not absolute and may be limited pursuant to Article 24. They rely on the authority of *Absolom Ndungo & 26 Others v Attorney General & 2 Others* [2013] KEHC 3460 [KLR], where the Court held that freedom of worship, when exercised within an association such as a church, is subject to the internal rules of that institution.
60. They submit that the Interested Party's actions, including breaking church padlocks and disrupting congregational order, are inconsistent with the spirit of reconciliation and have contributed to the turmoil that led to the closure.
61. Regarding the prayer for joinder, the Applicants argue that the Interested Party has already participated in the proceedings and styled itself as such, thus the prayer is superfluous and spent. They note that the Interested Party did not file any reply to the Judicial Review Application nor seek leave to be joined earlier, thus exhibiting strategic delay.
62. On the question of costs, they submit that costs should follow the event under Section 27[1] of the *Civil Procedure Act*, and that the Interested Party's delay and conduct justify an award of costs against them. They cite *Cecilia Karuru Nganga v Barclays Bank & Another* [2016] eKLR to support the discretionary nature of cost awards and the need to consider party conduct.
63. In conclusion, the Applicants urge the Court to find that: Service was duly effected; The Interested Party failed to act diligently or in good faith; No sufficient cause has been shown for setting aside the ex parte orders; The Interested Party's rights under Article 32 have not been violated beyond permissible limitation under Article 24; and The application is an abuse of process, and the Interested Party should bear the costs.

#### **64. Analysis and determination.**

65. The Court has carefully considered the Notice of Motion Application dated 26th June 2025, the supporting affidavit, the written submissions by the Interested Party and the Applicants, and the applicable law and authorities.
66. From the pleadings and submissions, the following three main issues arise for determination:
  - I. Whether the Interested Party was properly served with the pleadings and court orders.
  - II. Whether the orders issued on 25th June 2025 should be stayed or set aside.
  - III. Whether the Interested Party is entitled to be formally enjoined in the proceedings.

#### **I. Whether the Interested Party Was Properly Served**

67. The Interested Party has contended that they were not served with the Judicial Review Application, or the Notice of Motion dated 19th June 2025 and that the orders issued on 25th June 2025 were therefore irregularly obtained ex parte. The Applicants, on the other hand, assert that service was properly effected via email on 10th June 2025 and again on 24th June 2025, and they have filed an affidavit of service to that effect, annexing the relevant email delivery receipts.
68. Under Order 5 Rule 22B of the *Civil Procedure Rules*, 2010, service through electronic mail is valid, provided it is sent to the recipient's last confirmed and used email address and accompanied by a



delivery receipt. The affidavit of service on record indicates that the Interested Party's advocate, whose email address is not in dispute, was served electronically.

69. The Interested Party disputes the affidavit of service but has neither summoned the process server for cross-examination nor provided any contrary affidavit from their advocate denying receipt. In *Shadrack Arap Baiywo v Bodi Bach* [1987] eKLR, the Court held that an affidavit of service is prima facie evidence of service, and the burden lies on the party disputing it to demonstrate otherwise. Similarly, in *Re MWO [Minor]* [2021] eKLR, the court reiterated the importance of cross-examining a process server if service is to be challenged.
70. Accordingly, the Court finds that the Interested Party was duly served and had notice of the proceedings but failed to act diligently to protect their interests.

## II. Whether the Orders Issued on 25th June 2025 Should Be Set Aside or Stayed

71. The orders in question were issued in the absence of the Respondents and the Interested Party. The law governing setting aside such orders is Order 12 Rule 7 and Order 51 Rule 15 of the *Civil Procedure Rules*. These provisions grant the Court the discretion to set aside or vary orders issued ex parte upon such terms as may be just.
72. In *James Kanyita Nderitu v Marios Philotas Ghika & another* [2016] eKLR, the Court distinguished between regular and irregular ex parte orders. Orders that are regular — i.e., issued after proper service and in accordance with due process — can only be set aside at the discretion of the court, based on whether the defaulting party demonstrates sufficient cause.
73. In the present case, the Court has already found that service was properly effected. The Interested Party, having had knowledge of the matter, failed to file any response or seek joinder prior to the issuance of the orders. Their actions — including forcefully breaking into the church premises — appear to have been undertaken in defiance of the ongoing court process.
74. The Interested Party alleges that the orders restrict their right to worship under Article 32 of the *Constitution*, but such rights are subject to limitation under Article 24, particularly where the exercise of that right would undermine public order, safety, or the rights of others. In *Absolom Ndungo & 26 others v AG & 2 others* [2013] eKLR, the Court affirmed that the freedom of worship is not absolute and must be exercised within the structures and rules of the church as an association.
75. The Applicants have demonstrated, through documentary evidence including a letter from the Presiding Bishop, that the decision to close the church was an internal measure meant to preserve peace and order pending reconciliation. Their application to protect the church property was therefore not without justification.
76. The Interested Party has not demonstrated any substantial loss that would result from the maintenance of the orders. In *Masisi Mwita v Damaris Wanjiku Njeri* [2016] eKLR, the Court held that an applicant seeking to set aside or stay an order must demonstrate sufficient cause and the risk of substantial loss. In this case, no such cause has been shown.
77. This Court is also guided by the equitable maxim that he who comes to equity must come with clean hands. The Interested Party's conduct, including forcibly gaining access to the church and removing padlocks in violation of interim orders, disentitles them from equitable relief. This principle was reiterated in *Caliph Properties Ltd v Barbel Sharma & another* [2015] eKLR and *Rev. Bishop Silas Yego v Minister of State for Provincial Administration* [unreported, cited in Absolom Ndungo].



### III. Whether the Interested Party Should Be Enjoined

78. Although the Interested Party now formally seeks to be enjoined in the proceedings, it is evident from the record that they have participated in the proceedings, filed submissions, and styled themselves as "Interested Parties" throughout. The Applicants also served them as interested persons, pursuant to the directions of the Court.
79. The prayer for joinder, therefore, appears to be moot and merely academic at this stage. Their conduct confirms that they have been de facto parties to the suit. However, for the interest of justice the court hereby enjoins as interested parties to advance their cause.

### IV. on Costs

80. On the issue of costs, Section 27[1] of the *Civil Procedure Act* provides that costs follow the event unless the court directs otherwise. In *Cecilia Karuru Nganga v Barclays Bank & Another* [2016] eKLR, the Court emphasized that costs should also reflect the conduct of parties. The Interested Party's delay, indolence, and disruptive conduct justify an award of costs against them in any event.

### 81. Conclusion and orders

82. In light of the foregoing, the Court finds that:
- I. The Interested Party was properly served.
  - II. The orders issued on 25th June 2025 were regularly and lawfully granted.
  - III. The Interested Party has failed to demonstrate sufficient cause for setting aside the orders.
  - IV. The Interested Party's prayer for the joinder is allowed, though they have already participated in the proceedings.
  - V. Save as stated above, the Interested Party's Application dated 26th June 2025 lacks merit.
  - VI. Accordingly, the Court dismisses the Notice of Motion Application dated 26th June 2025 subject to what is stated above, with costs to the Applicants in any event.
  - VII. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS  
17<sup>TH</sup> DAY OF JULY, 2025**

**CHARLES KARIUKI**

**JUDGE**

