



Sawe & 134 others v Rono & 3 others (Miscellaneous Civil Application 31 of 2019) [2025] KEHC 12828 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12828 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 31 OF 2019
JRA WANANDA, J
SEPTEMBER 19, 2025**

BETWEEN

RICHARD KIPTUM SAWE & 134 OTHERS & 134 OTHERS APPLICANT

AND

BENJAMIN RONO & 3 OTHERS & 3 OTHERS RESPONDENT

RULING

1. This Ruling determines 3 separate Applications which by the orders of this Court made on 17/07/2024, were consolidated as they are all related.
2. I captured the background of this matter in my Ruling dated 26/04/2024 in which I declined 2 Applications filed on behalf of the Plaintiffs, and which basically sought leave to file References out of time to challenge taxation of costs conducted by the Deputy Registrar of this Court pursuant to an order that awarded costs to the Respondents after the Plaintiffs withdrew the suit. In the said Ruling, this is how I put it:

“2. The background of this matter is that by the Notice of Motion filed on 31/01/2019 through Messrs Melly & Co. Advocates, the 135 Applicants (for ease of reference, hereinafter referred as “the Plaintiffs”), suing as members of the 4th Respondent, Sirikwa Squatters Self-Help Group, sought orders that the Respondents (for ease of reference, hereinafter referred as “the Respondents”) be compelled to release to the interim officials, the Group’s books of accounts and that once the books of accounts are so released, the interim office be mandated to call for a general election. On the basis that the Application was not opposed, Hon. Lady Justice H. Omondi (as she then was) by her Ruling delivered on 14/08/2019, allowed the Application as prayed.



- “3. On 6/09/2019, through Messrs Arusei & Co. Advocates, the 1st-3rd Respondents filed an Application seeking the setting aside of the orders made in the said Ruling. Among the grounds preferred was that the Application leading to the Ruling had never been served upon the Respondents. The Application seeking setting aside was then canvassed and fixed for Ruling for 29/05/2020. However, 2 days before the scheduled date for the Ruling, vide a Notice filed through Messrs Miyianda & Co. Advocates and adopted on 29/05/2020, the Plaintiffs withdrew these proceedings in entirety. By the further orders made vide the Ruling delivered on 17/12/2020, the Respondents were awarded costs of the proceedings. The Respondents then filed their Bill of Costs and which was then, by the Ruling delivered on 30/08/2022 by the Deputy Registrar, Hon. R. Onkoba, taxed and awarded at the sum of Kshs 12,064,355/-.
- “4. On 28/09/2022, through Messrs Miyianda & Co. Advocates, the Plaintiffs filed an Application by way of Notice of Motion faulting the quantum of costs awarded by the Deputy Registrar’s (taxing master) and therefore sought a Review of the Ruling. The Application was heard by Hon. Justice E. Ogola who by his Ruling delivered on 29/11/2022 dismissed the Application.”

3. I gather that upon delivery of my said Ruling, and with it, lifting of any interim orders that may have been in force, the Respondents swiftly moved to execute the Decree by attaching the assets of some of the Plaintiffs. This is what has now triggered the instant 3 Applications.
4. The 1st Application is the Notice of Motion dated 30/05/2024 filed through Messrs Z.K. Yego Law Offices Advocates, on behalf of one Matthew Kipkoech Chepkieny’g, presumably the party listed in the Originating Summons herein as the 29th Plaintiff, and in which the remaining prayers are as follows:
- (v) An order declaring the execution unlawful and cancelling the purported notice of proclamation of attachment of movable property dated 9th May 2024 served upon the Respondent/Applicant and an order that the auctioneers’ costs be borne by the Respondents.
 - (vi) An order that the Certificate of Taxation issued by the Deputy Registrar against the Applicant be set aside
 - (vii) That the Applicant’s name be struck off this suit.
 - (viii) That the warrants of attachment of property and notification of sale be set aside and/or lifted unconditionally.
 - (ix) Costs of this Application be provided for.
5. The Application is supported by the Affidavit sworn by the Applicant in which he deponed that he is the Director of the Respondent/Applicant. It is however not clear which Respondent/Applicant he is referring to as, to my knowledge, there is no company involved in this matter. This description appears to be a typographical error. Be that as it may, he deponed that he was never served with Court processes nor was he made aware of these proceedings and as such, he could not have instructed the firm of Melly & Co. Advocates, nor any other law firm to file the suit on his behalf neither did he authorize the 1st Respondent to lodge the suit on his behalf.
6. He deponed that the Court record bears him witness that he never executed any letter of authority in favour of any of the Plaintiff to act on his behalf, and as such, he was improperly and illegally joined



- to a suit he knew nothing about. He averred that a notification of attachment and sale of his property was issued, namely, cattle, timber and the motor vehicle registration number Toyota KCP 354Q, that pursuant thereto, agents from the 4th Respondent violently impounded the motor vehicle resulting into loss of several items, and that he is prejudiced as he depends on the vehicle for mobility and income.
7. The 2nd Application is the Notice of Motion dated 3/06/2024 through Messrs D.K. Korir & Co. Advocates on behalf of one Emily Jepngetich Sang, presumably the party listed in the Originating Summons as the 52nd Plaintiff. The pending prayers in the Application are the following:
- (iii) That this Honourable Court be and is hereby pleased to grant an order of injunction restraining the 1st, 2nd, 3rd, 4th and 5th Respondents, whether by themselves, their agents, servants and/or anyone acting on their behalf from harassing the Applicant, trespassing into the Applicant's home, proclaiming, attaching, selling, disposing off, alienating or in any other manner dealing with the Applicant's goods and properties.
- (iv) That the costs of and incidental to this Application be borne by the Respondents.
8. The Application is supported by the Affidavit sworn by the Applicant in which she deponed that she has never participated in these proceedings in any capacity, that neither of the names ascribed to the 4th or 52nd Applicants indicate her correctly. She exhibited a copy of her National Identity Card. She then contended that she has never given any authority to the Plaintiff to swear Affidavits on her behalf or to represent her in this matter, and that she has never been a member of Sirikwa Squatters Self-Help Group. She deponed further that auctioneers entered into her home with warrants of attachment to execute the decree herein but since she has never participated in the case, she cannot be bound by orders arising therefrom.
9. The 3rd Application is the undated Notice of Motion filed in Court on 17/07/2024 through Messrs Ngigi Mbugua & Co. Advocates on behalf of one Sammy Kipkemboi, presumably the party listed in the Originating Summons as the 28th Plaintiff. It bears a word-by-word replica of the prayers made in the 2nd Application above, which I will not therefore recite.
10. The Application is supported by the Affidavit sworn by the Applicant in which he, too, deponed that he has never participated in these proceedings in any capacity. She, too, exhibited a copy of his National Identity Card, and contended that there exists a register of the members of Sirikwa Squatters Self-Help Group, a copy which he also exhibited, and pointed out that his name does not appear as one of the subscribers. The rest of the contents of his Affidavit are in the same terms as the Affidavit sworn in support of the 2nd Application above.

Replying Affidavits

11. Through Messrs Arusei & Co., the 1st-3rd Respondents, filed respective Replying Affidavits to the 3 Applications, all sworn by the 1st Respondent, Benjamin Chepn'gotie Ronoh.
12. In Opposition to the 1st Application, the one dated 30/05/2024 filed through Messrs Z.K. Yego Law Offices Advocates, on behalf of one Matthew Kipkoech Chepkiyen'g, presumably the 29th Plaintiff, the 1st Respondent swore a Replying Affidavit on 19/06/2024. In the Affidavit, he deponed that he is the Chairman of the 4th Respondent, Sirikwa Squatters Self Help Group and contended that the Application is a non-starter as it seeks an order of temporary injunction at this stage yet the provision of law invoked, Order 40 Rule 1 and 2 presupposes the existence of a suit yet there is no existing suit herein, the Plaintiffs having withdrawn the Miscellaneous Application long time ago. He also averred that the Application has been filed by a law firm that has not complied with Order 9 Rule 9 of the Civil Procedure Rules. He contended that the issues raised were already determined in the two Rulings



herein, first by Hon. Justice E. Ogola on 29/11/2022 and later, by myself on 26/04/2024, thus fully exhausted and any party aggrieved ought to move to the Court of Appeal.

13. He deponed that the Applicant is indeed the 29th Plaintiff herein and that the Plaintiffs challenged the taxation of costs twice before this Court and lost, that the Applicant did not raise any issue at the stage of proclamation and that the Application is therefore an afterthought. He urged further that the Applicant has not tabled any evidence to demonstrate that he is a stranger to the suit, and that the issues raised by the Applicant can only be addressed in a substantive suit. According to him, the Applicant should sue the Advocate and co-Plaintiffs who joined him in the suit. He also pointed out that among the annexures filed with the Miscellaneous Application herein, is a list of handwritten names of the Plaintiffs wherein they indicated their names, identity card numbers, mobile phone numbers and signatures, and that the Applicant being of the signatories, cannot now feign ignorance of the case.
14. In Opposition to the 2nd Application, the one dated 3/06/2024 filed through Messrs D.K. Korir & Co. Advocates on behalf of Emily Jepngetich Sang, the 1st Respondent swore a Replying Affidavit on 16/07/2024. In the Affidavit, he deponed that none of the Applicant's assets was proclaimed or attached to warrant the Application. He however deponed that he believes the Applicant is the 52nd Plaintiff and that she only left out her maiden name. He added that when the Applicant indicated to the Auctioneers that she was not the "Emily Sang" listed as a co-Plaintiff, the Auctioneers left and never returned. He deponed further that the Respondents do not intend to attach any property whose owner's identity is in question.
15. In Opposition to the 3rd Application, the undated one filed in Court on 17/07/2024 through Messrs Ngigi Mbugua & Co. Advocates on behalf of Sammy Kipkemboi, presumably the 28th Plaintiff, the 1st Respondent swore a Replying Affidavit on 20/09/2024. In the Affidavit, the 1st Respondent deponed that the Applicant is indeed the 28th Plaintiff in this matter as captured in the list of members and corroborated by the copy the identity card exhibited by the Applicant. He pointed out that his current Advocates, Messrs Ngigi Mbugua & Co. Advocates is the same law firm that represented the Plaintiffs by filing the Application dated 24/01/2023 whereof the Plaintiffs sought the setting aside of the orders on costs.

Supplementary Affidavit

16. In further support to the 1st Application, the one dated 30/05/2024 filed through Messrs Z.K. Yego Law Offices Advocates, the said Matthew Kipkoech Chepkiyen'g, the party listed in the Originating Summons as the 29th Plaintiff, with leave of the Court, swore a Supplementary Affidavit on 18/07/2024. In the Affidavit, he deponed that the signature appearing on the list filed by the Plaintiffs at the time of filing this matter, is not his as alleged, and is a forgery. He deponed that, in any event, the list could have been prepared for any event whatsoever, as it does not indicate that it is a list of the persons who gave their authority for the suit to be filed. According to him therefore, the list is an unverified document. He stated that in any event, the 1st Plaintiff, Richard Kiptum Sawe, who purportedly instituted the suit recorded a statement at the Eldoret Police Station on 4/08/2024 admitting not having been instructed to institute the suit on the Applicant's behalf.

Further Affidavit

17. In response to the Supplementary Affidavit above, the 1st Respondent swore a Further Affidavit on 14/10/2024. There however does not seem to be any evidence of leave sought or obtained for filing of the Affidavit and it is thus liable to be expunged from the record. Nonetheless, I will admit it as the matters raised by Matthew Kipkoech Chepkiyen'g, alleging forgery of his signature and the recording of a statement at the police station were new matters irregularly introduced at that late stage.



18. In the Further Affidavit therefore, the 1st Respondent pointed out that the Applicant never raised the issue of forgery earlier. Regarding the statement exhibited by the Applicant and alleged to have been recorded by the 1st Plaintiff at the police station, the 1st Respondent deponed that there is no way to prove that the statement is genuine, and that in any event, it is the said Richard Kiptum Sawe who is better placed to explain how he procured the Applicant's name and identity card number. According to the 1st Respondent, the issue is one to be tussled by the Applicant and Richard Kiptum Sawe in a separate litigation. He then pointed out that the Applicants have filed a separate case, namely Eldoret High Court Civil Case No. 18 of 2020, against the Respondents, which is still pending in Court and in which the Applicant has not challenged the inclusion of his name as a co-Plaintiff. On the allegation of forgery of the signature, he contended that the same can only be determined by forensic document expert evidence, which the Applicant has not pursued, and that the Applicant ought to have filed a substantive suit in which the issue can be tested by way of cross-examination.

Hearing of the Applications

19. The 3 Applications were then canvassed by way of written Submissions. The respective Submissions filed were as follows:

Party	Alleged Description	Advocate	Date of Submissions
Mathew Kipkoech Chepkiyeng	29 th Plaintiff	Z.K. Yego Law offices	8/11/2024
Emily Jepngetich Sang	52 nd Plaintiff	D.K. Korir & Associates	22/10/2024
Sammy Kipkemboi	28 th Plaintiff	Ngigi Mbugua & Co.	16/12/2024

Submissions on behalf of the 29th Plaintiff (Filed through Z.K. Yego Law Offices)

20. Counsel for Mathew Kipkoech Chepkiyeng cited Order 1 Rule 13(1) and (2) and Order 4 Rule 4 of the Civil Procedure Rules, and submitted that the said provisions are couched in mandatory terms to the effect that in the event one wishes to file a representative suit, it is necessary to obtain the written consent of all the parties to be represented, and that the Court must therefore ascertain that all the Plaintiffs gave authority to the 1st Plaintiff to institute the suit on their behalf. He cited the case of *Ndungu Mugoya & 473 Others v Stephen Wangombe & 9 Others* [2005] eKLR. He then basically reiterated and repeated matters already deponed in his client's Affidavits, including the allegation that the 1st Plaintiff recorded a statement at the police station, in which he admitted that he did not have authority from Mathew Kipkoech Chepkiyeng to file the suit on his behalf. He also cited the case of *Magenia & 4 Others (suing for themselves and on behalf of 132 other Claimants) v Njuca Consolidated Company Limited* [2023] KEELRC 2746 (KLR), and urged that the Certificate of Taxation should also be set aside.

Submissions on behalf of the alleged 52nd Plaintiff (Filed by D.K. Korir & Associates)

21. Counsel for Emily Jepngetich Sang cited the case of *Giella Cassman Brown & Co. Ltd* (1973) E.A., and the case of *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR, and submitted that the Applicant has demonstrated a prima facie case as she has presented sufficient evidence to show that the Respondents have infringed on her rights so as to call for an explanation. In demonstrating



this, Counsel repeated the matters already deponed in his client’s Supporting Affidavit. He further submitted that the Applicant has demonstrated that she will suffer “irreparable loss” that cannot be compensated in damages. He cited the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR, and also submitted that the “balance of convenience” also tilts in favour of granting the orders. He submitted that the Respondents have, in their Replying Affidavit, made an application to cross-examine the Applicant on her identity. He cited Order 19 Rule 2 of the Civil Procedure Rules, and contended that the Respondents ought to have filed a notice to cross-examine detailing the substance thereof, and that, in any event, a prayer for cross-examination on an Affidavit should be based on “exceptional circumstances” which the Respondents have not demonstrated.

Submissions on behalf of the 28th Plaintiff (Filed through Ngigi Mbugua & Co.)

22. Counsel for Sammy Kipkemboi basically reiterated the matters already urged above, including referring to the same authorities. The Submissions are more or less a replica of the version filed through Messrs Z.K. Yego & Co. and I will not therefore recite the rest.

1st, 2nd and 3rd Respondents’ Submissions (Filed through Arusei & Co.)

23. On his part, Counsel for the 1st, 2nd and 3rd Respondents reiterated his observation that the instant Applications have been filed after the Plaintiffs’ two earlier Applications seeking to set aside the taxation of costs were both dismissed. Regarding the prayers for “injunctions” made in the Applications, he also reiterated that the relief of “injunction” is not available, there being no existing suit. He too, cited the case of *Mrao v First American* (supra), and also the case of *Kenya Commercial Finance Company Ltd v Afraha Education Society* [2001] 1 EA 86. He thus submitted that no prima facie case has been established and with it, the remaining two limbs recognized under *Giella v Cassman Brown* (supra), cannot be addressed, as each of the conditions must be satisfied sequentially. According to him therefore, the prayers for “injunction” “have no legs to stand on”. He then repeated arguments already advanced before, and on the issue of need for existence of a suit in applications for “injunctions”, he also cited the case of *Kisawuzi vs DFCU Bank Ltd* [2016] 1 EALR. The rest of the submissions are basically repetitions buttressed with several authorities on the same issues, save that Counsel also cited the maxim that “equity aids the vigilant and not the indolent”, the concept of *Res Judicata* in light of dismissal of the earlier Applications, and also the concept of this Court being *functus officio*. On the issue of cross-examination of Emily Jepngetich Sang to establish her true identity, Counsel refuted the argument that no basis for ordering for the same has been established.

Determination

24. The one broad issue for determination by all the 3 Applications, looked at together is simply “whether this Court should shield or exclude the Applicants from being targeted for execution of the Certificate of Costs issued herein.”
25. The one thread running through all the 3 Applications is that the Applicants are strangers to this suit as they were joined as co-Plaintiffs without their knowledge, consent or authority. They all claim to have only learnt of the existence of this suit and their purported involvement when Auctioneers landed at their respective homes with a view to executing the order of costs awarded against the Plaintiffs in this case. While for Emily Jepngetich Sang and Sammy Kemboi, no asset of theirs seems to have eventually been proclaimed or attached, Mathew Kipkoech Chepkeyieng was not as lucky. In his case, his motor vehicle was attached and taken away ready to be auctioned, before the Court issued interim orders of stay.



26. Regarding the 1st Application, the Notice of Motion dated 30/05/2024 filed through Messrs Z.K. Yego Law Offices Advocates, on behalf of Matthew Kipkoech Chepkiyen'g, there is no serious dispute that indeed he is the party listed in the Originating Summons herein as the 29th Plaintiff. Although the Respondents have argued that the said law firm is improperly on record having come into the matter after its termination, without leave of the Court, and thus in breach of the provisions of Order 9 Rule 9 of the Civil Procedure Rules, I digress. My digression is because the Applicant's case is that he is a stranger to this suit as has never participated in this case, and therefore, if any Advocate has purported to act for him previously, then such representation was without his knowledge, authority or consent. In the circumstances, I do not think it will be justifiable to subject him to the provisions of Order 9 Rule 9 aforesaid.
27. Regarding all the 3 Applications, the Respondents have also argued that the Applications "have no grounds to stand on" as they contain prayers for "injunction" or "temporary injunction" yet there is no substantive suit in existence as presupposed under Order 40 Rules 1 and 2 of the Civil Procedure Rules, this action having been long withdrawn.
28. In answering this issue, in respect to the Application filed through Z.K. Yego Law Offices Advocates, while the above argument is correct in law, it is also a fact that the prayers for "temporary injunction" contained in prayers (2) and (3) thereof were only interim in nature pending hearing of the Application. Since the Application has now been canvassed inter partes, the prayers for "temporary injunction" are now clearly spent and overtaken, and thus are no longer in issue. The Respondents' argument therefore, though correct in law, has no effect on the remaining substantive prayers.
29. Further, although all the 3 Applications contain prayers for orders of "injunction", only the Application filed through D.K. Korir & Co. has expressly invoked Order 40 Rules 1 and 2 aforesaid, and Counsel also proceeded to submit on the principles enunciated in the case of *Giella v Cassman Brown* (supra), which however are totally inapplicable in this case. The Application filed through Z.K. Yego Law Officers and by Ngigi Mbugua & Co. have not cited Order 40. Further, as identified above, there really is no dispute that what the Applicants simply want is to be shielded or excluded from being targeted for execution of the Certificate of Costs issued in this matter. This is obviously apparent to all, and even the Respondents Submissions attest. To this extent, it has not been demonstrated that the mere use of the word "injunction" in the Applications has in any way prejudiced the Respondents, or that the Respondents have in any way been misled on what orders the Applicants are really seeking.
30. I also note that the Applications filed through Ngigi Mbugua & Co. and by D.K. Korir & Co. have also invoked Order 42 Rule 6. This is clearly wrong since that provision deals only with orders of "stay of execution pending Appeal", which is not the case herein.
31. In my view, there being no express provision under the Civil Procedure Rules that addresses the situation that the Applicants find themselves in, recourse can be perfectly made to the provisions of Section 3A of the *Civil Procedure Act*, which gives the Courts the inherent powers "to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court". Noting that all the Applications have indeed, also invoked Section 3A aforesaid, I find no serious fault with the Applications despite their wrong inclusion of the prayers for "injunction", and also invoking provisions of law that are obviously inapplicable hereto.
32. I agree that in appropriate circumstances, the irregularity of including prayers for "injunction" in the absence of an existing substantive suit may lead to outright striking out of the Applications, but since decisions are to be made on a case-to-case basis, and each case is to be determined on its own facts, under the circumstances of this case, I find no reason to strike out the Applications.



33. On the substantive issues, in respect to the Applications filed through Messrs Z.K. Yego Law Offices Advocates, and the one filed through Messrs Ngigi Mbugua & Co. Advocates, the Respondents have referred to the list attached to the Affidavit filed in support of the Originating Summons filed by the Plaintiffs when the suit was instituted, and argued that the list is sufficient proof that the Applicants indeed authorized the 1st Plaintiff to include the Applicants as co-Plaintiffs. I have looked at the said list and noted that it contains names of a total of 136 persons, complete with their identity card numbers, mobile phone numbers and signatures, and the names of said Sammy Kemboi and Matthew Kipkoech Chepkuyeng appear therein at numbers 28 and 29, respectively. There is also no dispute that the same names appear in the Originating Summons as Plaintiffs number 28 and 29. The Affidavit sworn by the 1st Plaintiff, Richard Kiptum Sawe, in support of the Originating Summons does not however clearly describe what the list, as attached, was meant to address. In my understanding however, the list seems to have been exhibited to demonstrate the identity of the members who supported the Resolution reached by the 1st Plaintiff's faction to remove the 1st, 2nd and 3rd Respondents as officials of the entity described as "Sirikwa Squatters Self-Help Group", the 4th Respondent herein, and replace them with others. Nowhere in the Supporting Affidavit did the 1st Plaintiff depone that the list was to also act as proof of authority given to him to file the suit on the behalf of the rest of the Plaintiffs, and no Resolution to that effect was exhibited. There is therefore no written or express proof that Sammy Kemboi and Matthew Kipkoech Chepkuyeng or any other Plaintiff for that matter, authorized the 1st Plaintiff to include them in the suit as co-Plaintiffs, and the list referred to above cannot at all be interpreted as qualifying as such authority.
34. Although there is no written or express proof that Sammy Kemboi and Matthew Kipkoech Chepkuyeng or any other Plaintiff, authorized the 1st Plaintiff to include them in the suit as co-Plaintiffs, the Applicants can still be bound and found liable to pay the awarded costs of the suit if it can be demonstrated that their conduct and surrounding circumstances demonstrates that they have since ratified the filing of the suit, or have always been aware of the suit, and/or their joinder as co-Plaintiffs and thus, that presumably, the 1st Plaintiff had their ostensible blessings to join them as co-Plaintiffs, and/or to continue with the suit as presented to the Court, absence of written proof notwithstanding.
35. In this case, I have doubts on the claim that the said Mathew Kipkoech Chepkuyeng and Sammy Kipkemboi have not been aware of the existence of this suit. This is because the cases involving Sirikwa Squatters Self-Help Group relating to their occupation of the parcel of land loosely referred to as "Lonrho" land in Eldoret, and with it, factional battles within the Group over control of its management, have for the last few years been commonplace at the Eldoret High Court. In the cases, the entity described as Sirikwa Squatters Group, or a name close to that, has always litigated as a group comprising a very large number of Plaintiffs, or Applicants or Defendants or Respondents. As a result, the Courtrooms are always full to the brim whenever the cases were in Court. The cases have even found their way to the Court of Appeal and even further, to the Supreme Court. Since the two Applicants have not disputed their membership of the Group as indeed confirmed by the inclusion of their identity card numbers and mobile phone numbers in the list referred to above, and since the cases having always elicited wide attention, I doubt that the Applicants would truly not be aware of this particular one, and/or the fact that they had been joined as co-Plaintiffs therein.
36. There also is the valid argument that the same Plaintiffs herein have also filed another suit, namely, Eldoret High Court Civil Case No. 18 of 2020, against the same Respondents, and which they filed in the same manner as the current suit, but in which the Applicants have not disowned their inclusion as co-Plaintiffs.



37. However, regarding Matthew Kiplagat, the above observation can only amount to speculation since there is no cogent or express evidence that he authorized the 1st Plaintiff to include him as a co-Plaintiff or that his conduct shows that he subsequently ratified the filing of the suit, or allowed his inclusion as a co-Plaintiff to continue. What has therefore saved him in this matter is the fact that at the time of filing the suit, the 1st Plaintiff did not file any authorities or Resolutions or Affidavits from him permitting the 1st Plaintiff to include him as a co-Plaintiff or act on his behalf. It is not really a case of Order 4 Rule 4 of the Civil Procedure Rules as argued by the Respondents since this was not really a representative suit where one or a few Plaintiffs filed a suit on behalf of others not joined. Rather this was a case where all the 135 alleged Claimants were all joined as individual Plaintiffs. The applicable provision was therefore Order 1 Rule 13(1) and (2) which the Respondents also referred to though, and which is premised as follows:

- “(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, 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.
- (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”

38. Unfortunately, the suit was withdrawn before the Court could determine whether Order 1 Rule 13 above was complied with by the 1st Plaintiff who had sworn the Supporting Affidavit to the Originating Summons that commenced the action. For this reason, and in the absence of cogent evidence that Matthew Kiplagat authorized his inclusion as a co-Plaintiff, or subsequently ratified the filing of the suit, I find that the benefit of doubt should favour him.

39. My view is that the damage that may be committed by allowing the execution of a decree against a person who may very well not have been knowingly or with his consent joined in the suit far outweighs the damage that may arise by not allowing the Respondents to execute the decree against a person whom it is not clear whether he was knowingly joined as a co-Plaintiff. For this reason, the Matthew Kiplagat, will inevitably escape execution.

40. In respect to Sammy Kemboi, however, I find that there is sufficient evidence that his conduct demonstrates that he was all aware of this suit and his inclusion as a co-Plaintiff, or that he subsequently ratified the continuance of the suit. I say so because he is represented by the firm of Ngigi Mbugua & Co. Advocates which has been involved in this matter before. For instance, the same law firm filed the Notice of Motion dated 26/01/2023 seeking enlargement of time to file a Reference out of time to challenge the taxation of costs made by the Deputy Registrar of this Court, which Application I dismissed by my said Ruling dated 26/04/2024. Since there were two Applications seeking basically the same orders but filed through different law firms, I made the following observation at paragraph 27 thereof:

- “27. The first issue that has disturbed my mind is the fact both the two Applications have been filed by the same Plaintiffs herein yet the Applications seek basically the same Reliefs. Neither of the Advocates’ firms has alleged that it is acting for only part or some of the 135 Plaintiffs which therefore means that each of the two law firms is representing all the same 135 Plaintiffs. It has not been explained why the two law firms have each filed separate Applications. There is, of course, nothing wrong with a party being represented by multiple



Advocates' firms in the same matter but in such circumstances, the Advocates must act in unison and as one unit. The practice is even that one Advocates' law firm would be appointed to act as the lead firm. We cannot have several Advocates acting for the same parties in the same matter and each one filing its own separate Applications." [Emphasis mine]

41. Having therefore already found that the firm of Ngigi Mbugua & Co. acted for all the 134 Plaintiffs at that time, that would inevitably include Sammy Kemboi who was listed as the Plaintiff No. 28. Being now again on record for Sammy Kemboi, there is no way that his Advocates could have claimed to have acted for all the 134 Plaintiffs at that time, and now turn around and claim that Sammy Kemboi was not one of them. If that were the case, then the said law firm will also be admitting that in the earlier Application, it knowingly and deliberately acted without instructions, and thus knowingly misled this Court. A Court cannot at all countenance such conduct.
42. For the above reason, I find that Sammy Kemboi together with his Advocates, have all along, been aware that he was involved in this matter as the 28th Plaintiff and entertained that fact all along until now. In the absence of any explanation by the Advocates on this issue, I refuse to believe the argument that Sammy Kemboi only became aware of the suit when the Auctioneers moved in. I refuse to accept this pure approbation and reprobation. Sammy Kemboi cannot therefore be allowed to escape execution.
43. Regarding Emily Jepngetich Sang, the Respondents have expressly stated that her identity as being one of the Plaintiffs herein (4th or 52nd Plaintiff) not having been established, they have no intention of executing against her before such identity is established. For this reason, no proclamation or attachment of her property was effected. Indeed, she has exhibited a copy of her identity card, and looking at the list earlier referred to, the identity card number indicated does not anywhere appear in the said list. For this reason, her Application seems premature as no execution against her has crystallized. Should the Respondents and/or their Auctioneers manage to establish her identity and move to execute, then at that stage, she will be at liberty to return to Court for refuge and her Application will, at that stage, be determined substantively. No execution can therefore be effected against her at this stage.
44. The Respondents have in their Replying Affidavit alluded that this Court should conduct a "trial within a trial" to establish the identity of Emily Jepngetich Sang, and/or even summon her for cross-examination. My simple answer to this is that there being no Application before me that that effect, I have no foundation to make such orders.
45. There is also a prayer in the Application filed through Z.K. Yego Law Offices seeking that the Certificate of Taxation be set aside. I do not agree with the Respondents that this prayer is Res Judicata, the issue having already been already determined in earlier Rulings herein. I say so because none of the Rulings dealt with the issue of whether the suit should have been struck out, or whether any consequential orders should be set aside, on the ground that authority to file the suit on behalf of the rest of the Plaintiffs was not obtained. Nonetheless, I cannot set aside the Certificate of Taxation since there is no suit in existence within which to canvass that issue, the suit having been long withdrawn and the order awarding costs having been made in the now withdrawn suit. To that extent, this Court is functus officio. Secondly, it has not been established that all the 134 co-Plaintiffs did not indeed authorize the 1st Plaintiff to file the suit. Only the 3 Applicants have come forward when faced with execution, to allege that they never gave any such authority. Under these circumstances, this prayer must fail.

Final Orders

46. In light of the above findings, I determine the 3 Applications, dated 30/05/2024, 3/06/2024, and the undated one filed on 17/07/2024, respectively, as follows:



- i. Execution of the Certificate of Costs dated 30/08/2022 issued herein, and arising from the Ruling of the same date, against the said Matthew Kipkoech Chepkuyeng, named in the Originating Summons herein as the 29th Plaintiff, including the Warrants of Attachment dated 16/05/2024, or any other date, is hereby barred, stopped and/or prohibited.
- ii. Accordingly, the motor vehicle registration number KCP 354Q seized from the said Matthew Kipkoech Chepkuyeng, in execution of the Certificate of Costs referred to above, is set aside and/or nullified, and the vehicle ordered to now be formally released back to him. If the vehicle had already in the interim been released back to him, upon payment of storage fees made to the Auctioneer in accordance with the interim consent order earlier recorded herein, then Matthew Kipkoech will be at liberty to demand refund thereof.
- iii. Regarding the said Emily Jepngetch Sang, execution of the said Certificate of Costs dated 30/08/2022 issued herein against her, may only be allowed to proceed if the Respondents can positively identify and confirm her as being one of the Plaintiffs named in the said Originating Summons herein whether as the 52nd Plaintiff or any other Plaintiff.
- iv. Regarding the said Sammy Kemboi, named in the Originating Summons herein as the 28th Plaintiff, his prayer seeking an order barring or stopping execution of the said Certificate of Costs against him is declined.
- v. The situation that arose herein having been caused by the 1st Plaintiff, and not by any of the parties involved herein, each party shall bear his/her own costs of the 3 Applications.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF SEPTEMBER 2025

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

