



Laboso v Abonyo (Being Sued in His Capacity as an Administrator of the Estate of Joyce Cherono Laboso) & 4 others; Itibo Limited (Affected Party) (Civil Case E002 of 2021 & E002A of 2022 (Consolidated)) [2023] KEHC 24467 (KLR) (19 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL CASE E002 OF 2021 & E002A OF 2022 (CONSOLIDATED)**

**RL KORIR, J
OCTOBER 19, 2023**

BETWEEN

JUDY CHEPTOO LABOSO PLAINTIFF

AND

EDWIN ABONYO (BEING SUED IN HIS CAPACITY AS AN ADMINISTRATOR OF THE ESTATE OF JOYCE CHERONO LABOSO) 1ST DEFENDANT

MARY CHEPKIRUI LABOSO 2ND DEFENDANT

KALEEN AHAMED MOKTHAR AHAMED 3RD DEFENDANT

STANBIC BANK KENYA LTD 4TH DEFENDANT

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

AND

ITIBO LIMITED AFFECTED PARTY

RULING

1. This is a Ruling in respect to two Applications being Chamber Summons dated 10th March 2021 in Bomet High Court Civil Case Number 2A of 2022 and the Notice of Motion Application dated 10th March 2021 in Bomet High Court Civil Case Number E002 of 2021.
2. In Bomet High Court Civil Case Number 2A of 2022, the Applicant (Judy Laboso) sought orders to restrain Stanbic Bank from foreclosing on two properties namely KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45. It was her case That the aforementioned properties were trust properties and were presented as security



for USD 3,524,000, a loan advanced by the bank to Itibo Limited. That the same was done without her knowledge.

3. In Bomet High Court Civil Case Number E002 of 2021, Judy Laboso also sought orders restrain Stanbic Bank from foreclosing on KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/28 over the same loan described in paragraph 2 above.
4. On 7th March 2023, this court directed That the two files be consolidated with Bomet High Court Civil Case Number E002 OF 2021 being the lead file.
5. I shall consider the two Applications separately in the succeeding paragraphs.

Chamber Summons dated 10th March 2021.

6. Judy Laboso (Applicant) through the Chamber Summons dated 10th March 2021 sought the following Orders:-

- I. Spent.
- II. Spent.
- III. Spent.
- IV. That a declaration do issue That the 1st Defendant, being a Trustee over all those properties known as Title Numbers KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 was in breach of trust by secretly offering the trust properties as security for a loan advanced to Itibo Limited by the 2nd Defendant, without the knowledge and consent of the Plaintiff, being a beneficiary, hence the loan facility was illegally obtained.
- V. That a declaration do issue That the 1st Defendant, being a trustee over all those properties known as Title Numbers KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 was in breach of trust by having the Titles registered without showing the Plaintiff's beneficial interests thereon.
- VI. That an order issue, directed to the 3rd Defendant ordering him to rectify the Register of Titles in respect to Title Numbers KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 to reflect the beneficial interest as detailed in the Certificate of Confirmation of rant issued to the 1st Defendant in the estate of Rebecca Chebet Laboso (HC Succession No. 46 of 2014) on 4th November 2015.
- VII. That a declaration do issue That the 2nd Defendant never conducted its due diligence properly on Title Numbers KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 before accepting to create a Charge and advancing the loan otherwise it could have discovered the Plaintiff's beneficial interest.
- VIII. That a declaration do issue That the 2nd Defendant having failed to conduct its diligence properly, coupled with the fact That Title



Numbers KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 are trust properties to which the Plaintiff as a beneficiary did not consent to the Charge being created over the said properties, the 2nd Defendant is not entitled to exercise its power of sale over the said properties to recover the loan advanced to Itibo Limited.

IX. That an order to issue, directed to the 3rd Defendant ordering him to remove the encumbrance in Title Numbers KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 as a result of the Charge created over the said properties by the 2nd Defendant.

X. That the costs of this Application be borne by the Defendants.

7. The Application was based on Order 37 Rules 1, 2 and 12, Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B and 63(e) of the *Civil Procedure Act*. It was supported by the grounds on the face of the Application and further by the Supporting Affidavit sworn by Judy Cheptoo Laboso on 10th March 2021.

The Applicant's Case.

8. It was the Applicant's case That Itibo estate was their ancestral home and it was given Title Number KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1. That the said ancestral land was later subdivided into KERICHO/KAPLETUNDO/CHEMAGELL BLOCK 1/28, KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 without her knowledge. It was her further case That Mary Laboso and her late sister Joyce Laboso were the administrators of the estate of their late mother, Rebecca Chebet Laboso and That they held the land in trust for the other beneficiaries.

9. The Applicant stated That apart from secretly sub dividing their ancestral home without her knowledge as a beneficiary, Mary Laboso (2nd Respondent) and Joyce Laboso registered the referenced properties in their names without including her beneficial interest in the said Titles. That she became aware of the subdivisions when the 2nd Respondent sent her a Statutory Notice from Stanbic Bank (4th Respondent) with the bank's intention to exercise its power of sale over the properties.

10. It was the Applicant's case That the three Titles emanated from the Title to their ancestral home and were used to secure a loan of USD 3,542,000 to Itibo Limited (hereinafter referred to as the company) without her knowledge. That the bank only advanced USD 322,395. It was her further case That she stood to suffer irreparably as a beneficiary because the value of the charged properties was over USD 4,000,000 yet what the bank purported to recover was USD 428,207.98.

11. The Applicant stated That she was a shareholder of the company and had no knowledge when the loan was advanced to it and for what purpose. That they never passed any resolution to borrow money. She further stated That the company did not benefit from the said loan as the 2nd Respondent and Joyce Laboso took the loan for their own benefit.

12. It was the Applicant's case That the 2nd Respondent and Joyce Laboso as trustees bore the responsibility of honesty and accountability to the beneficiaries of the estate of their late mother. That they were guilty of flagrant breach of trust.



13. I have gone through the Applicant's Further Affidavit dated 21st July 2021 and it makes reference to the Bank's (4th Respondent) Replying Affidavit sworn by Amos Mugambi on 10th June 2021. I have carefully gone through the court record and the referenced Replying Affidavit is not in the court file.

The Applicant's Further Affidavit

14. The Applicant stated That KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 were not registered with the words "as a trustee" as envisaged under Section 66 of the Land Registration and That the 2nd Respondent and the Chief Land Registrar (5th Respondent) were in breach of the trust created in Succession Cause No. 46 of 2014. That the 2nd Respondent committed fraud by not having the registration include the words "as a trustee" and That one could not pass a good title to a property That had been obtained fraudulently. She further stated That the Charge created by the bank could not be valid in the circumstances.
15. It was the Applicant's case That she lived on the subdivided land together with the 2nd Respondent and their brother David Kipkoech. That she stood to suffer irreparably as she has not known any other home since her childhood and if the property was sold, she would have nowhere else to go.
16. The Applicant stated That the bank did not conduct a physical search or inspection on the property as they would have found That the property in question was trust property.
17. It was the Applicant's case That the bank's interests could not defeat her interest as a beneficiary where it was clear That the trust was breached by the 2nd Respondent who committed fraud by transferring the trust property to herself.

The 4th Defendant's Supplementary Affidavit.

18. In response to the Applicant's Further Affidavit dated 21st July 2021, the 4th Defendant/bank stated That it sent a valuer who prepared a Valuation Report. That the Report was consistent with the Certificate of Official Searches in respect of the suit properties which did not reveal the Applicant's interest in the suit properties.
19. It was the bank's case That after having been satisfied That the suit properties were free from any encumbrance, they proceeded to register the Debenture and Charge instruments dated 27th July 2017 and thereafter advanced the loan to the company.
20. The bank stated That the due diligence as contemplated by the law was done by obtaining a Certificate of Official Search in respect of a subject property. That the Applicant's allegations of its negligence were malicious, vexatious and misleading.

Applicant's Written Submissions

21. The Applicant submitted That she had demonstrated a prima facie case in the matter. That she had demonstrated That a trust had been created under Succession Cause No. 46 of 2014 and That the 2nd Respondent and Joyce Laboso were the trustees and That together with her brother David Kipkoech, they were the beneficiaries of the said trust. The Applicant further submitted That KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 had been offered as security for a loan without their consent.
22. It was the Applicant's submission That the three titles emanated from KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1 and That KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/28 was registered in the name of the company and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK



- 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 were registered in the names of the 2nd Respondent and Joyce Laboso.
23. The Applicant submitted That her legal rights had been infringed upon by the Respondents as the suit property had been offered as collateral without her consent as a beneficiary. That the 2nd Respondent breached her duty as a trustee by having the suit property registered in her name without the words “as trust” as envisaged under Section 66 of the *Land Registration Act*. She relied on *Stephens & 6 others vs Stephens & 2 others* (1987) eKLR.
 24. It was the Applicant’s submission That the 4th Respondent (Stanbic Bank) was guilty of negligence thereby aiding the breach of trust. That they did not conduct their due diligence on the suit property. It was her further submission That the liability of a stranger to a breach of trust was determined by the twin principles of “dishonest assistance” and “knowing receipt”.
 25. The Applicant submitted That the 2nd Respondent could not benefit from fraud. She relied on *Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others* (2015) eKLR.
 26. It was the Applicant’s submission That unless the 4th Respondent was restrained, the suit property would be sold and she would suffer irreparably as the property was her only home.
 27. The Applicant submitted That having met the first two requirements for grant of an interlocutory injunction, the court did not have to delve into the issue of balance of convenience. That in any event, the balance of convenience tilted in her favour.

The 4th Respondent’s Written Submissions.

28. It was the 4th Respondent’s (Stanbic Bank) submission That the Applicant failed to prove That she had established a prima facie case. That its decision to serve the 2nd Respondent with a 40 day Statutory Notice dated 1st February 2021 was not a basis for the grant of an interlocutory injunction.
29. The 4th Respondent submitted That the company had repeatedly defaulted by failing to pay the contractual monthly instalments and That the loan account remained in arrears. That it then issued the company with the 90 day Statutory Notice dated 24th October 2019 and in response to the said Notice, the company wanted to restructure the term loan, a request which they accepted.
30. It was the 4th Respondent’s submission That the company failed to make the payment but availed a Sale Agreement indicating a proposed sale of the company and That the proceeds of the sale would be used to clear the loan balance. That they did not receive any payment as agreed.
31. The 4th Respondent submitted That there was no dispute over the amount owed to them by the company. That as a consequence of the company’s default, it had the right to proceed with the exercise of its statutory power of sale. It relied on HCCC No. 3125 of 1995 *John P.O Mutere & another vs Kenya Commercial Bank and Maltex Commercial Supplies Limited & another vs Euro Bank Limited* (in liquidation) HCCC Number 82 of 2006.
32. It was the 4th Respondent’s submission That it conducted its due diligence over the suit properties by conducting a thorough evaluation and thereafter created the Charge instruments dated 27th July 2017. That at the execution of the Facility Letter dated 14th March 2017, the company produced an extract of Minutes of a meeting of its Board of Directors approving and authorizing the execution of the Facility Letter. It was its further submission That the company’s directors swore an oath to indemnify it against any harm, actions, proceedings, claims and demands which may be brought against it.



33. The 4th Respondent submitted That the 2nd Respondent handed over to them the original Titles of the suit properties for the purpose of creating a Charge and the documents indicated That the suit properties were registered in the joint names of Joyce Laboso (deceased) and Mary Laboso.
34. It was the 4th Respondent's submission That it retained the services of a qualified and professional land valuer who inspected the suit properties and prepared a Valuation Report and That the Report was consistent with the Certificates of Official Searches in respect of the suit properties.
35. The 4th Respondent submitted That the facilities advanced to the company were clear and beyond reproach and That they acted on representations and warranties given by the company's directors. The 4th Respondent further submitted That it had no sight of the Certificate of Confirmation of Grant and That it was unaware of the Applicant's interest in the suit properties.
36. It was the 4th Respondent's submission That allegations of fraud ought to be pleaded and proved and That they could not be determined at an interlocutory stage. That the Applicant failed to produce any evidence of fraud against it. It was their further submission That they were an innocent Chargee for value without notice of the Applicant's alleged interest and That it should not be barred from exercising its statutory power of sale.
37. The 4th Respondent submitted That the Applicant would not suffer irreparable harm if the Application was not allowed and That without prejudice, the sale of the suit properties was not imminent. That the Applicant still had ample time to regularize the loan account if she was interested in redeeming the suit properties. It relied on *M'mbwani M'njau vs K-Rep Bank Ltd & 2 others* (2013) eKLR.
38. It was the 4th Respondent's submission That the Applicant having failed to meet the first two tests, the balance of convenience tilted in its favour. It further submitted That any injunctive orders would adversely affect its legitimate quest to exercise its power of sale.
39. I have gone through the Chamber Summons dated 10th March 2021 and I have noted That there was no prayer for my determination at this stage. The Applicant prayed for a stay of the 4th Defendant's (Stanbic Bank) Statutory Notice of Intention to Exercise its Power of Sale dated 1st February 2021 and an order restraining the bank from exercising any of its statutory rights for the recovery of the loan facility secured by KERICHO/KAPLETUNDO/ CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45. Both prayers as sought, were to be in force until this Chamber Summons Application was heard and determined.
40. I have gone through the court record and I have noted That the aforementioned prayers were granted by Ongerij J. on 19th April 2021. I must note That there were no prayers for stay of the bank's Statutory Notice dated 1st February 2021 and an injunction restraining the bank from exercising its power of sale pending the hearing and determination of the suit. In my view, the parties erroneously submitted on prayers That did not exist in the Application.
41. The prayers That remained were declaratory orders and orders That were directed to the 5th Respondent (Chief Land Registrar). In regards to declaratory orders, the Court of Appeal in *Attorney General vs Bala* (Civil Appeal 223 of 2017) [2023] KECA 117 (KLR) (3 February 2023) (Judgment) described declaratory orders as:-

“.....A declaratory order meant a ruling That was explanatory in purpose; it was designed to clarify what before was uncertain or doubtful. A declaratory order constituted a declaration of rights between parties to a dispute and was binding as to both present and future rights. Declaratory judgments were typically sought as a means of preventing a



dispute by removing legal uncertainty as to the applicable law and the rights and obligations of the parties.

A declaratory judgment was very limited in its powers. All it could do was clarify a legal relationship or state of affairs by stating the court's opinion of it. In other words, it stated the court's authoritative opinion regarding the exact nature of the legal matter without requiring the parties to do anything.....”

42. Declaratory orders by their very nature can only be made once a court has conducted a trial and it is premature at this stage to seek for such orders. The same applies to prayers 6 and 9 of the Chamber Summons Application which were directed to the Land Registrar to rectify the Titles and remove any encumbrances in KERICHO/KAPLETUNDO/ CHEMAGEL BLOCK 1/44 and KERICHO/ KAPLETUNDO/CHEMAGEL BLOCK 1/45.
43. In the final analysis, the prayers sought by the Applicant were premature and could only be granted or denied once the suit has been heard. Accordingly, the Chamber Summons dated 10th March 2021 is dismissed.

Notice of Motion Application dated 13th March 2021

44. Through an Amended Notice of Motion dated 13th April 2021, Judy Laboso (Applicant) sought the following Orders:-
 - I. Spent.
 - II. Spent.
 - III. Spent
 - IV. That pending the inter-partes hearing and determination of the suit herein, the Honourable Court do grant a stay of the 4th Defendant's notice to Exercise its Power of Sale over the suit property known as KERICHO/KAPLETUNDO/ CHEMAGEL BLOCK 1/28 dated 1st February 2021.
 - V. That in the alternative, pending the hearing and determination of the suit herein, a prohibitory injunction do issue restraining the 4th Defendant/ Respondent whether by itself, its employees, servants, agents, assigns or any other person acting on its instructions from selling, taking possession of, transferring or otherwise in any manner whatsoever dealing with the suit property herein.
 - VI. That the Honourable Court be pleased to grant the Applicant leave to proceed with this suit as a derivative suit.
 - VII. That the court be at liberty to make such further orders as it deems fit to preserve the ancestral property herein.
 - VIII. That costs be in the cause.
45. The Application was based on Sections 1A, 1B and 63(e) of the *Civil Procedure Act*, Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, sections 238 and 239 of the *Companies Act*, 2015. It was supported by the grounds on the face of the Application and further by the Supporting Affidavit sworn by Judy Cheptoo Laboso on 10th March 2021.



The Applicant's Case.

46. It was the Applicant's case That she was a minority shareholder of the company where she held 12 shares. That together with her deceased sister (Joyce Cheron Laboso) and her brother (David Kipkoech Langat) they incorporated the company to run as a family business. It was her further case That the company was the registered owner of KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/28.
47. The Applicant stated That on 3rd March 2021, the 2nd Respondent sent her a Notice dated 1st February 2021 from Stanbic Bank indicating its intention to exercise its power of sale over the company's property to recover a loan balance of USD 428,207. That the other properties That the bank intended to sell were KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45.
48. It is the Applicant's case That she had no knowledge of any resolution or Minutes passed by the company to borrow or charge the said properties. That from the documents she was given by the bank, she discovered That the properties were charged to a loan of USD 3,524,000 but the bank only disbursed USD 322,395. It was her further case That there were serious irregularities surrounding the Charge and money lent. That there was no company seal affixed to the Charge document and That there was no Letter of Offer That led to the preparation of the Charge.
49. The Applicant stated That the 2nd Respondent was a beneficiary of the illegal transactions as she authorized the use of Titles KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 which she held in trust for the beneficiaries of the estate of their mother.
50. It was the Applicant's case That the loan was never utilized for the benefit of the company. That the loan was squandered by the Respondents in satisfaction of their own needs and in breach of the company's Memorandum and Articles of Association.
51. The Applicant stated That the 4th Respondent did not conduct due diligence and negligently advanced the loan to her deceased sister, the 2nd and 3rd Respondents without requiring the production of Minutes That authorized them to borrow on behalf of the company. The Applicant further stated That the 4th Respondent should not be allowed to benefit from its own mistakes by selling the company's property.
52. It was the Applicant's case That the shares of the company were to be held by the surviving children of her late mother but her deceased sister introduced other shareholders who were of Indian origin without her knowledge. That she knew of the Indian shareholders through a CR 12. It was her further case That when she later did a search on the status of the company, the name of the 3rd Respondent and 4 other shareholders/directors had been removed from the Company records and That there were no Minutes or resolutions passed to That effect. That she read fraud in That the 3rd Respondent illegally signed for a loan and had his name and the other shareholders of Indian origin removed thereafter.

4th Respondent's Reply.

53. Through a Replying Affidavit dated 24th March 2021, the 4th Respondent stated the company was its customer and it submitted its Memorandum and Articles of Association dated 21st July 2015, Certificate of Incorporation of even date, their Annual Returns dated 20th August 2015, CR12 dated 26th August 2015, letter dated 18th January 2016 together with the extracts of the Minutes of the Board Meeting dated 7th January 2016 approving and authorizing the opening of an account with them.



54. It was the 4th Respondent's case That in 2017 at the company's instance and pursuant to a Facility Letter dated 14th March 2017, it agreed to advance the company an Overdraft facility to the limit of Kshs 40,000,000/= to finance its working capital together with Letters of Credit Facility/Vehicle and Asset Facility in the sum of USD 3,113,000 to finance the importation of two tea processing machinery and for the purchase of other machinery and assets for its business.
55. The 4th Respondent stated That the company was required to present extracts of Minutes of a Board of Directors meeting approving and authorizing the execution of the Facility Letter as a condition precedent to granting the said Facility. That the Minutes of the board meeting held on 14th March 2017 were presented to it and they were compliant with Article 19 of the Articles of Association. The 4th Respondent further stated That pursuant to the presentation of the Minutes, the Facility Letter was duly executed on behalf of the company by the 1st, 2nd and 3rd Respondents together with Ramasamy Velmuragan and David Kipkoech Langat who executed a joint Guarantee and Indemnity to secure the Facility.
56. It was the 4th Respondent's case That the Facility Letter dated 14th March 2017 was amended by the Letter of Amendment dated 17th July 2017 which was executed by the 1st and 3rd Respondents together with Ramasamy Velmuragan and David Kipkoech Langat. That the company also produced Minutes of a board meeting held on 18th July 2017 approving and authorizing the execution of the said Letter of Amendment and which resolution formed part of the Facility Letter.
57. The 4th Respondent stated That the Facilities were in addition to the company's directors' joint Guarantee and Indemnity secured by a Debenture dated 27th July 2017, two separate first ranking Legal Charges both dated 27th July 2017 over the suit property and the properties known as KERICHO/ KAPLETUNDO/ CHEMAGEL BLOCK 1/44 and 45 registered in the joint names of the 1st and 2nd Respondents and the Deed of Guarantee and Indemnities by the 1st, 2nd and 3rd Respondents. That the said Debenture and Charges were duly registered in favour of the 4th Respondent to secure the sum of USD 3,524,000.
58. It was the 4th Respondent's case That a condition in the Facility Letter dated 14th March 2017 was That the company was to contribute USD 1,919,000 which was to be capitalized by 31st December 2017. That the company did not prove its contribution and consequently the sum of USD 3,524,000 was not disbursed. That as a result, at the company's request, it agreed to restructure the said Facilities into a Term Loan of USD 322,395 pursuant to the Term Loan Letter dated 6th November 2018. It was its further case That the Term Loan Letter was executed by the 1st and 3rd Respondents together with Ramasamy Velmuragan and David Kipkoech Langat who also executed a joint Guarantee and Indemnity to secure the Facility.
59. The 4th Respondent stated That the company presented extracts of Minutes of the board meeting held on 8th November 2018 and a letter dated 9th November 2018 approving and authorizing the execution of the said Letter and which resolution formed part of the Term Loan Letter.
60. It was the 4th Respondent's case That it was not aware of any internal wrangles between the shareholders or directors of the company at the time of the creation of the security. It was its further case That failure by the company to affix its seal on the Charge did not make it invalid in light of section 37 of the *Companies Act*.
61. The 4th Respondent stated That sometime in the year 2019, the company defaulted in paying the contractual monthly instalments and as a result, it begun the process of realizing the security through issuance of the 90 day Statutory Notice dated 24th October 2019. That when the company received



the Notice, it acknowledged the outstanding amount and undertook to pay Kshs 15,000,000/= by 23rd March 2020. The 4th Respondent stated That no payment was received by 23rd March 2020 but the company still expressed its determination to regularize the loan account and presented to it an Agreement for Sale dated 14th September 2020 where the company was to be sold to Helec Builders Limited and the proceeds of the sale would be used to clear its outstanding liabilities with the 4th Respondent.

62. It was the 4th Respondent's case That no payment was received and they instructed their advocates to issue the company with a 40 days Redemption Notice. It was the 4th Respondent's claim That the Applicant's claim lay with the 1st, 2nd and 3rd Respondents. That having satisfied itself That the company complied with the requirements for the grant of the Facility, it was entitled to recover the sums owed to it. It was its further case That the company was still indebted to it and That the present Application was malicious and was aimed at delaying the process of realization of the security.
63. The 1st and 3rd Respondents have not entered appearance in this matter. The 2nd Respondent entered appearance but did not file a response to the present Application.
64. On 19th September 2022, I directed the Application be heard by way of written submissions.

The Applicant's Written Submissions.

65. The Applicant submitted That she has met the conditions for the grant of leave to continue the filed suit as a derivative suit. That in deciding whether or not to grant such leave, the court must satisfy itself whether there was a prima facie case on the causes of action set out in section 238 (3) of the Company's Act and That the court should put into consideration the statutory provisions and factors That would ordinarily guide judicial discretion, albeit in the realm of derivative action. She relied on *Mohamedin Mohamed & another vs Ibrahim Ismail & another (2021) eKLR*.
66. On the issue of proving a prima facie case on the causes of action set out in section 238(3) of the Company's Act, the Applicant submitted That the suit had been brought against the directors of the company whose actions were in default to the Memorandum and Articles of Association and were further in breach of the duty and trust owed to other shareholders by borrowing in the name of the company without any board meeting being convened to pass such a resolution and further by using the said money for their own self-gratification and not for the benefit of the company.
67. The Applicant submitted That there was evidence That the 4th Respondent did not conduct due diligence before issuing the loan. That it should have asked for Minutes instead of relying on the extracts of the Minutes and That it should have visited the suit property in order to establish its position. The Applicant further submitted That the 4th Respondent seemed to rely on the *Turquand* rule where the general position was That a third party dealing with a company is not bound to ensure That all internal regulations of the company have been complied with.
68. It was her submission That the *Turquand* rule had some exceptions and one was That anyone dealing with a company was deemed to have notice of its public documents. That the 4th Respondent stated That it only received the extracts of Minutes. It was her further submission That the 4th Respondent should have taken an extra step and asked for the Minutes themselves. That the position of further inquiry was stated in *Habiba Mohamed Al-Amin & 2 others vs Standard Chartered Bank of Kenya Limited & 8 others (2020) eKLR*.
69. The Applicant submitted That the 4th Respondent did not inquire for a resolution or authority from the company authorizing her deceased sister and the 3rd Respondent to sign documents on behalf of the company. That since there were no Minutes out of which the resolution was extracted, the purported



- Charge was null and void. The Applicant further submitted That the 4th Respondent could not benefit from the company's property as no one could pass a good Title where fraud was proved.
70. On the second issue That the court considers when granting leave for derivative suits, the Applicant relied on the principles set out in *Isaiah Waweru Ngumi & 2 others vs Muturi Ndung'u* (2016) eKLR. She submitted That the particulars of fraud and negligence were enumerated in paragraphs 15 and 16 of the Complaint and further in the Supporting Affidavit. She further submitted That she had demonstrated the breach of duty and trust by the 1st, 2nd and 3rd Respondents as they acted fraudulently to obtain money without any authority and worse still That they used the money for their own benefit and not for the company.
71. It was the Applicant's submission That the 1st, 2nd and 3rd Respondents have not controverted the facts as laid out in the Supporting Affidavit. It was the Applicant's further submission That she had made a demand to the Respondents and they were reluctant to address the concerns which necessitated the suit herein. That the present suit had been brought in good faith and for the benefit of the company.
72. The Applicant submitted That she satisfied the conditions for the grant of an interlocutory injunction as set out in *Giella vs Cassman Brown & Co. Ltd* (1973) EA 358 and *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others*.
73. It was her submission That from the material placed on record, she had established a prima facie case. That she had demonstrated That the Respondents were in breach of duty and acted fraudulently against the Affected Party. It was her further submission That there was no meeting convened to pass the resolution to take the purported loan.
74. The Applicant submitted That the company was likely to suffer as its property would be sold for a loan That was not used for its benefit. That without prejudice, the 4th Respondent could not be allowed to benefit from a transaction resulting from fraud as was the case herein.
75. It was the Applicant's submission That the balance of convenience tilted in her favour. That if the 4th Respondent was left to exercise its power of sale, the company stood to lose irreparably. It was her further submission That the suit property should be preserved until the suit is heard and determined.
76. It was the Applicant's final submission That she had met the requirements for the grant of leave to file a derivative suit and further she had met the requirements for the issuance of an interlocutory injunction.

4th Respondent's Written Submissions.

77. The 4th Respondent submitted That there was proper authorization of the borrowing by the company. That it was dealing with the directors of the company who were its legal representatives and were duly authorized by a board resolution. It further submitted That as a third party to the company, it acted on the assumption That the Minutes and Board resolutions availed to it were regular. That in any event, the Applicant did not contend That the directors who authorized the loan facilities were not members of the Board of the company.
78. It was the 4th Respondent's submission That it was not alive to any internal wrangles between the directors of the company at the time of the creation of the security. That the court should be cognizant of the well-known principle That persons dealing with corporate entities must be insulated from any internal shortcomings of a company. It relied on *East Africa Safari Air Limited vs Anthony Ambaka Kegode and another* (2011) eKLR which quoted the case of *Royal British bank vs Turquand* (1856) 6 E. & B. 327. It was its further submission That the 4th Defendant's negligence in not requiring production of the Minutes authorizing the company to borrow was false and misleading.



79. On whether an injunction should be granted, the 4th Respondent submitted That the Applicant had not established a prima facie case with a probability of success. That further, the Applicant had not demonstrated any irreparable injury That would be occasioned to her if the injunction orders were not granted.
80. It was the 4th Respondent's submission That having satisfied itself That the company complied with the requirements for the grant of the loan facilities and upon execution of the security documents, it granted colossal sums of money as a loan to the company and the Facility remained unpaid to date. That the sale of the suit property as a result of the default and the exercise of statutory power of sale under the Debenture and Charge documents did not infringe on the Applicant's rights.
81. The 4th Respondent submitted That by offering the suit property as security for a loan made the suit property a commodity for sale when the company defaulted on the repayment. It relied on Andrew Muriuki Wanjohi vs Equity Building Society Ltd & 2 others (2006) eKLR.
82. The 4th Respondent submitted That it could not be restrained from exercising its power of sale when the loan remained unpaid. It relied on Mrao Ltd vs First American Bank of Kenya Ltd & 2 others (2003) eKLR. That the default of payment by the company was not a disputed issue. The 4th Respondent further submitted That the present Application was only aimed at delaying it from enjoying the fruits of the realization of the suit property and That any injunctive orders would affect its legitimate quest to recover the outstanding loan.
83. I have gone through and considered the Amended Notice of Motion dated 13th April 2021, the 4th Respondent's Replying Affidavit dated 24th March 2021, the Applicant's Written Submissions dated 24th April 2023 and the 4th Respondent's Written Submissions dated 10th November 2022 and I sieve two issues for my determination:-
- i. Whether the Applicant has met the conditions for the grant of an interlocutory injunction
 - ii. Whether the Applicant merits the grant of leave for the suit to proceed as a derivative suit.

Whether the Applicant has met the conditions for the grant of an interlocutory injunction

84. The principles guiding the grant of interlocutory injunction are now well settled. Those principles were set out in Nguruman Limited vs. Jan Bonde Nielsen & 2 Others (2014) eKLR where the Court of Appeal stated That:-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) ally any doubts as to (b) by showing That the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established That all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected



to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case That alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied That the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at That stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.....”

85. Similarly in Esso Kenya Limited. vs. Mark Makwata Okiya (1992) eKLR, the Court of Appeal held That:-

“The principles underlining the granting or refusal of injunction are well settled in several decisions of the court. Where an injunction is granted, it will preserve or maintain the status quo of the subject matter pending the determination of the main issue before the court. The merits or demerits of granting injunction orders deserve greater consideration. The court should avoid granting orders which have not been asked for in the application before it or determine issues in the suit before the actual hearing. In cases where an award of damages could be adequate compensation, an injunction should not be granted. In Halsbury's Laws of England 4th Ed Vol 24 Para 953 it is stated:

On an application for an injunction in aid of a plaintiff's alleged right, the court will usually wish to consider whether the case is so clear and free from objection on equitable grounds That it ought to interfere to preserve property without waiting for the right to be finally established. This depends upon a variety of circumstances, and it is impossible to lay down any general rule on the subject by which the court ought in all cases to be regulated, but in no case will the court grant an interlocutory injunction as of course...

.....The court ought to look at the allegations in the affidavits by the plaintiff and the defendant and weigh them whether there is a possibility of the plaintiff succeeding or whether there is a possibility of quantifying damages. Only in cases of doubt court will proceed on the basis of the balance of convenience while being aware That formal evidence will be adduced at the hearing...The principle underlying injunctions is That the status quo should be maintained so That if at the hearing the applicant obtains judgement in his favour the respondent will have been prevented in the meantime from dealing with the property in such a way as to make the judgement nugatory...As it is settled law That where the remedy sought can be compensated by an award of damages then the equitable relief of injunction is not available.”

86. I concur with the sentiments of Odunga J. (as he then was) in JM v SMK & 4 others (2022) eKLR, where he stated That:-

“Therefore, though at an interlocutory stage the Court is not required and indeed forbidden to purport to decide with finality the various relevant “facts” urged by the parties, the remedy being an equitable one, the Court will decline to exercise its discretion if the supplicant to relief is shown to be guilty of conduct which does not meet the approval of the Court of equity. Injunction being an equitable remedy, the court is enjoined to look at the conduct of the supplicant for the injunctive orders, the surrounding circumstances whether the orders sought are likely to affect the interests of non-parties to the suit, the issue whether an



undertaking as to damages has been given as well as the conduct of the Respondent whether or not he has acted with impunity. The Court is also, by virtue of section 1A(2) of the *Civil Procedure Act*, enjoined to give effect to the overriding objective as provided under section 1A(1) of the said Act in exercising the powers conferred upon it under the *Civil Procedure Act* or in the interpretation of any of its provisions. One of the aims of the said objective as interpreted by the Court of Appeal is the need to ensure equality of arms, the principle of proportionality and the need to treat all the parties coming to court on equal footing.”

87. In defining what a prima facie case is, the Court of Appeal in *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* (2003) eKLR, stated That:-

“So what is a prima facie case? I would say That in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude That there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

88. Similarly in *Nguruman Limited* (supra), the Court of Appeal held That:-

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage That may result from the invasion. We reiterate That in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All That the court is to see is That on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show That he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of That prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than That the Court takes the view That on the face of it the applicant’s case is more likely than not to ultimately succeed.”

89. Guided by the aforementioned authorities, my work at this stage is to determine if the Applicant has a prima facie case against the Respondents and to determine if her rights were infringed upon by the actions of the Respondents. I have gone through the Applicant’s supporting affidavit and she has raised weighty issues against the Respondents That would require a rebuttal or an explanation from them. As I noted earlier in this Ruling, the only response to the present Application is from the 4th Respondent.

90. The Applicant’s main contention with the 4th Respondent is its alleged negligence and fraud in issuing the loan to the company which is the affected party. Going by the elaborate response contained in the 4th Respondent’s Replying Affidavit dated 24th March 2021, this is a matter That would require a trial for it to be fully determined. It is my finding therefore That the Applicant has proven That she has a prima facie case against the 4th Respondent and thus satisfied the first condition for the grant of an interlocutory injunction.

91. The other condition That the Applicant should demonstrate is the irreparable injury she would suffer if the injunction is not granted. In other words, if the remedy sought can be compensated by an award of damages and if the Respondent is capable of paying, then the equitable relief of injunction



is not available. The Court of Appeal in *Nguruman Limited* (supra) stated the following in regards to irreparable injury: -

“On the second factor, That the applicant must establish That he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury...there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; That is injury That is actual, substantial and demonstrable; injury That cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature That monetary compensation, of whatever amount, will never be adequate remedy.”

92. In demonstrating the irreparable injury she would suffer, the Applicant stated That the bank intended to sell KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/28, KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45. The Applicant further stated That the 1st and 2nd Respondents who held the aforementioned parcels of land in trust, went ahead and registered KERICHO/KAPLETUNDO/ CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 in their names and charged them to the bank without her knowledge.

93. The Applicant stated That she lived on the charged land together with her brother and That there was a real prospect of them being thrown out should the bank exercise its power of sale. She further stated That the charged land was their ancestral home and it was the only home she had known since birth. Without going into too much detail, I am satisfied That the Applicant would suffer grave injury if the charged land was sold by the bank. It is my finding That she has satisfied the second condition for the grant of an interlocutory injunction.

94. On the issue of balance of convenience, I associate myself with the decision of Ombwayo J. in *Pius Kipchirchir Kogo vs. Frank Kimeli Tenai* (2018) eKLR where he held:-

“The meaning of balance of convenience in favor of the plaintiff is That if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than That which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show That the inconvenience caused to them would be greater than That which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have to show That the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

95. Similarly in the case of *Paul Gitonga Wanjau vs Gathuthis Tea Factor Company Ltd & 2 others* (2016) eKLR, *Mativo J.* (as he then was) stated That:-

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was



granted and he should ultimately turn out to be right and That which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

96. I am also persuaded by Ojwang J. (as he then was) in *Amir Suleiman vs Amboseli Resort Limited* (2004) eKLR where he held That:-

“The court, in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

97. Having found That the Applicant demonstrated the irreparable injury she would suffer, the balance of convenience tilts in her favour. In my view, there is a lower risk in granting orders of temporary injunction than not granting them and in any event, the bank can still exercise its power of sale if they win the case.

98. In the final analysis, the Applicant has satisfied all the conditions precedent for an award of an interlocutory injunction.

Whether the Applicant merits the grant of leave for the suit to proceed as a derivative suit.

99. The Applicant sought leave of this court for her to proceed with the main suit as a derivative suit. The law on derivative suits is provided for under section 238 of the *Companies Act*. It states That:-

(1) In this Part, "derivative claim" means proceedings by a member of a company—

(a) in respect of a cause of action vested in the company;
and

(b) seeking relief on behalf of the company.

(2) A derivative claim may be brought only—

(a) under this Part; or

(b) in accordance with an order of the Court in proceedings for protection of members against unfair prejudice brought under this Act.

(3) A derivative claim under this Part may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

(4) A derivative claim may be brought against the director or another person, or both.

(5) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.



(6) For the purposes of this Part—

- (a) "director" includes a former director;
- (b) a reference to a member of a company includes a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

100. Before a suit can proceed as a derivative suit, leave must be sought from this court. Section 239(1) of the *Companies Act* provides That:-

In order to continue a derivative claim brought under this Part by a member, the member has to apply to the Court for permission to continue it.

101. The Court of Appeal in *Amin Akberali Manji & 2 Others vs. Altaf Abdulrasul Dadani & Another* (2015) eKLR observed:-

“It is our view That at whatever stage leave is sought, the crucial requirement is for the applicant to establish a prima facie case demonstrating That he has locus standi to institute such action, the company is entitled to the intended relief and That the action falls within any of the exceptions to the rule in *Foss vs. Harbottle*.”

102. The rule in *Foss vs Harbottle* was restated in *Amin Akberali Manji* (supra) thus:-

“.....Again That was established over 160 years ago in *Foss vs. Harbottle* (1843) 67 ER 189 (the *Foss* case), popularly referred to in company law as “the rule in *Foss v. Harbottle*” (the rule). The rule was restated by Jenkins L. J. in the case of *Edwards vs. Halliwell* (1950) All ER 1064 as follows:-

“The rule in *Foss-v-Harbottle*, as I understand it, comes to no more than this. First, the proper Plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is prima facie the company or the association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of That matter for the simple reason That if a mere majority of the members of the company or association is in favour of what has been done, then cadit quaestio; or if the simple majority challenges the transaction, there is no valid reason why the company should not sue.”

103. The exceptions to the rule in *Foss vs Harbottle* were stated in the Court of Appeal case of *Grace Wanjiru Munyinyi & Another vs. Gedion Waweru Githunguri & 5 Others* (2011) eKLR, where the court expressed:-

“.....As stated earlier, in any action in which a wrong is alleged to have been done to a company, the proper claimant is the company itself. This is the rule in *Foss v Harbottle*. But there are four exceptions to That rule which appear in the leading case itself but also in subsequent decisions on the subject. Firstly, where the directors or a shareholding majority use their control of the company to paper over actions which would be ultra vires the company or illegal. Secondly, if some special voting procedure would be necessary under



the Company's constitution or under the [companies Act](#), it would defeat both if they could be sidestepped by ordinary resolutions of a simple majority, and no redress for aggrieved minorities were to be allowed (Edwards v Halliwell [1950] 2 ALL ER 1064. Thirdly, where there is invasion of individual rights, such as voting rights (Pender v Lushington (1877) 6 Ch D 70. Fourthly, where a fraud on the minority is being committed. In all those cases, a "derivative action" could be brought before the court on behalf of the company where the wrongdoer is in control of the company or by the individual shareholder where his personal right is violated."

104. The Applicant attached copies of CR 12's dated 26th August 2015 and 20th January 2021 which indicated That she was a shareholder of Itibo Limited, a company on whose behalf she brought the suit. To That end, she proved That as a director of the company, she had the locus standi to institute a derivative suit.
105. The Applicant also had to prove That the cause of action fell within the exceptions of the Foss vs Harbottle rule. The Applicant brought the suit against fellow directors and claimed That they borrowed money from the 4th Respondent in breach of their duties as per the company's Articles and Memorandum of Association. At a prima facie level, I am satisfied That the cause of action lay within the exceptions of the Foss vs Harbottle rule.
106. In the final analysis, I am satisfied That the Applicant merits the grant of leave to continue the main suit as a derivative suit.
107. Before I make the final Orders, I must state That even though the Applicant did not pray for an interlocutory injunction to restrain the bank from selling KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 pending the hearing and determination of the suit, it is my view That this court should grant the orders in the interest of justice. That is so because upon considering the documents attached by the Applicant, and at a prima facie level, the suit land which was originally KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1 was divided into three parcels namely KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/28, KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45.
108. The loan secured from the bank for USD 3,524,000 to the company was secured by a Charge to the three aforementioned parcels of land. It would be unreasonable to grant an injunction on one parcel of land and leave the other two exposed to their intended sale by the bank thereby defeating the purpose of the injunction. As already stated earlier in this Ruling, the bank can always exercise its power of sale in the event the suit by the Applicant is unsuccessful.
109. In the end, I make the following orders:-
 - I. That pending the hearing and determination of this consolidated suit, the 4th Respondent's Notice to Exercise its Power of Sale over KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/28, KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK 1/45 dated 1st February 2021 is stayed.
 - II. That pending the hearing and determination of this consolidated suit, a prohibitory injunction is issued restraining the 4th Respondent whether by itself, its employees, servants, agents, assigns or any other person acting on its instructions from selling, taking possession of, transferring or otherwise



in any manner whatsoever dealing with KERICHO/KAPLETUNDO/
CHEMAGEL BLOCK 1/28, KERICHO/KAPLETUNDO/CHEMAGEL
BLOCK 1/44 and KERICHO/KAPLETUNDO/CHEMAGEL BLOCK
1/45.

- III. That the Applicant is granted leave to proceed with this consolidated suit as
a derivative suit.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 19TH DAY OF OCTOBER ,
2023.**

.....

R. LAGAT-KORIR

JUDGE

