



**Musanga v Access Bank (Kenya) PLC & 2 others (Civil Appeal
E145 of 2024) [2024] KEHC 14378 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E145 OF 2024
E OMINDE, J
NOVEMBER 20, 2024**

BETWEEN

FLORENCE KHAYANGA MUSANGA APPELLANT

AND

ACCESS BANK (KENYA) PLC 1ST RESPONDENT

ISAAC K LAGAT T/A KOLATO AUCTIONEERS 2ND RESPONDENT

IRENE CHEPCHUMBA 3RD RESPONDENT

RULING

1. The Appellant/Applicant filed a Notice of Motion dated 23/7/2024, the Appellant/Applicant seeks orders that;
 1. Spent.
 2. Spent.
 3. That the Respondents be restrained from transferring or alienating or evicting the Appellant from the land parcel known as Uasin Gishu/Kimumu Scheme/1655 pending the hearing and determination of this appeal.
 4. That the costs of the motion abide the outcome of the appeal.
2. The Application is premised on the following grounds:
 - a. That the Appellant's appeal raises grounds that constitute a prima facie case with a probability of success.
 - b. That the appeal is not frivolous.
 - c. That irreparable harm will arise and damages would not be an adequate remedy.



- d. That if in doubt the balance of convenience would tilt in maintaining the status quo or assumption of the lesser peril.
3. The Application is also supported by the Affidavit sworn by Florence Khayanga Musanga, the Appellant/Applicant sworn on 23rd July 2024.
 4. The Application was opposed by the 1st and 2nd Respondents by way of a Replying Affidavit dated 22/08/2024 and sworn by Valence Mmuka who described himself in the said Affidavit as the 1st Respondent's Acting Head of Legal. Ay paragraph 3 thereof, the deponent states that the 2nd Respondent is the 1st Respondent's agent and has authorized the 1st Respondent to swear the Replying Affidavit on their behalf.
 5. On 30th July 2024, the 1st and 2nd Respondents filed a Preliminary Objection challenging the Appellant's suit and Application on grounds inter alia that the suit was res judicata. Further, the Respondents challenged the jurisdiction of this Court to entertain the appellant's suit, and the orders sought in the Application dated 23rd July 2024 on the ground that there is a similar appeal pending before this Court and that therefore, this matter is sub judice.
 6. On 18th September 2024, the Applicant filed a Preliminary Objection challenging the Replying Affidavit sworn by the Respondents on the grounds that the Affidavit has been sworn in contravention of Order 1 Rule 13(2) of the Civil Procedure Rules 2010 and that the Affidavit contravenes Order 19 Rule 3 of the Civil Procedure Rules.
 7. The Court directed that the Preliminary Objections be heard first, and that they would be canvassed by way of written submissions. Parties filed their respective submissions with. 1st and 2nd Respondents filed their submissions dated on 23rd September 2024. The Appellant/Applicant filed theirs dated 28th October 2024. Seeing as the Respondent's Preliminary Objection was filed 1st, I will summarise their submissions first and then get to the Applicant's submissions.

The Respondent's Submissions

8. Counsel submitted that it is not disputed that the Appellant filed a similar application based on similar fact and cause of action against the same parties herein in Eldoret High Court Civil Case Number E212 of 2023 Florence Khayanga v Access bank Plc and Another wherein the Applicant sought the following prayers;

That an injunction do issue restraining the respondents whether by themselves, their servants and/or agents from advertising, selling and/or transferring or evicting the appellant from occupation, and user of the land parcel known as Uasin Gishu/Kimumu Scheme/1655 pending the hearing and determination of this appeal.
9. That on 8th February 2024, the Hon Mr Justice Reuben Nyakundi delivered a Ruling where it found the Application unmerited and dismissed the same. That the Applicant has neither preferred an appeal against that Ruling nor reviewed the same and that this being a decision of a competent Court, it is binding upon the parties.
10. Further, that the orders sought in the Application dated 2nd November 2023 were inter alia;

That the respondents be restrained from transferring or alienating or evicting the appellant from the land parcel known as Uasin Gishu/Kimumu Scheme/1655 pending the hearing and determination of this appeal.



11. That both Applications are couched in similar fashion, seeking orders to stop the Respondents from transferring or evicting the Applicant from the suit land. That it is further not in dispute that the suit property has already been sold through public auction and the third Respondent obtained proprietary right.
12. Counsel then laid out the issues that it considered to be for the determination of the Court as follows;
 - a. Whether pursuant to Section 7 of the Civil Procedure Act, the Appellant's Application is res judicata
 - b. Whether the Appellant can sustain a suit against the 3rd Respondent
13. On the issue of res judicata, Counsel cited Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya and the Black's law Dictionary 10th Edition defines "res judicata" as:

"An issue that has been definitely settled by judicial decision...the three essentials are(1) an earlier decision on the issue, (2) a final determination on the merits and (3) the Involvement of same parties, or parties in privity with the original parties..."
14. Counsel cited the case of C.K. Bett Traders Limited & 2 others v Kennedy Mwangi & another [2021] eKLR, where the Court stated as follows;

"The provision is on the fundamental doctrine that there should be an end of litigation. The doctrine of res judicata may be pleaded by way of estoppel so that where a judgment has been given future and further proceedings are estopped. The rationale for the doctrine of res judicata exists to protect public interest so that a party should not endlessly be dragged into litigation over the same issue or subject matter that has otherwise been conclusively determined by a Court of competent jurisdiction."
15. Counsel therefore submitted that the injunctive orders sought by the appellant seeking to restrain the Respondents from further dealing in the property have already been competently determined to finality by Courts of competent jurisdiction between the same parties, litigating under same titles, and the issue has been heard and finally determined.
16. In particular Counsel submitted that the Appellant filed a similar Application dated 25/07/2023 between the same parties, litigating under the same titles herein which Application was found unmerited vide the Magistrate Court's ruling delivered on 17/10/2023.
17. That subsequently, the Appellant filed an Appeal against the said ruling being Eldoret High Court Civil Appeal No. E212 of 2023 and similarly, the said appeal was substantively determined against the Respondents herein (sic) and that the High Court in Eldoret Civil Appeal No. E212 of 2023 found the Appellant's Application seeking similar injunctive orders as unmerited and dismissed the same with costs through a ruling delivered on 8/02/2024.
18. That therefore, on the issue of injunctive reliefs sought by the Appellant, this Honourable Court lacks jurisdiction as the same is res judicata having been decided by a Court of competent jurisdiction vide the ruling delivered by the High Court on 8/02/2024.
19. Counsel cited the case of Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 Others [1996] eKLR, where the Court found on a matter before it that the Court in an earlier Application ruled that the Application before it was Res Judicata as the issue of injunction had been twice rejected both by the High Court and the Court of Appeal on merits and that the Ruling by the High Court



had not been appealed against. The Court further emphasized that the same Application having been finally determined "thrice by the High Court and twice by the Court of Appeal", it could not be resuscitated by another Application.

20. Counsel added that the Court of Appeal further stated in the above cited matter that:

"That is to say, there must be an end to Applications of similar nature that is to further, under principles of Res judicata apply to Applications within the suit. If that was not the intention, we can imagine that the Courts could and would be dismissed. There must be an end to interlocutory Applications as much as there ought to be an end to litigation. It is this precise problem that Section 89 of or Civil Procedure Act caters for."

21. In the same vein, Counsel submitted that there must be an end to litigation and the Appellant should not abuse the Court process through this Application, where she seeks to have a second bite at the cherry, that the Appellant's Application for injunction has been rejected thrice, twice by the trial Court and once by the High Court, therefore, the Appellant's attempt to resuscitate the injunction Applications must be rejected and that this Honourable Court lacks the jurisdiction to grant any of the orders sought and that the Appellant's suit and Applications are bad in law and abuse of the Court process.

22. In regard to whether the Appellant can sustain a suit as against the third Respondent, Counsel cited Section 99 of the Land Act 2012 and added that the said provision clearly provides that the 3rd Respondent herein is not answerable to the Appellant; therefore, the Appellant cannot sustain a suit as against her, that the 3rd Respondent has proprietary rights over the property and neither the Appellant nor the Bank have any interest at this stage.

23. In support of this submission, Counsel cited Order 1 rule 10(2) Civil Procedure Rules 2010, which provides as follows:

The Court may at any stage of the proceedings either upon or without the Application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or defendant, be struck out...

24. Counsel further submitted that this Court has a duty to allow the 1st Defendant to complete its obligations under the sale by public auction and as was observed in the case of *Stephen Kibowen v Agricultural Finance Corporation* [2015] eKLR that:

33. The sale by chargee must be regarded as any other sale of property. The effect of any sale is to transfer property to the purchaser, and this is no different with regard to a sale by chargee. In ordinary sales of property, the sale is embodied in a sale agreement which sets out the obligations of the seller and purchaser. The general obligation of a purchaser is to pay the purchase price as agreed, whereas the general obligation of a seller, is to transfer the property to the purchaser. It is the same in a sale by chargee. The purchaser's duty is to pay the purchase price whereas the duty of the chargee is to transfer the property to the purchaser. In auction sales, there is usually the Memorandum of Sale which acts as the sale agreement. Once the purchaser pays the purchase price, a Certificate of Sale, which is akin to a certificate of completion, is ordinarily issued. This signals that the purchaser has complied with his obligation and all that is awaited is the transfer of the property by the seller.



25. That The Honourable Court further held that:

The chargee has a duty to transfer the property to the purchaser or transfer the same to the person assigned by the purchaser. The chargee has no option but to transfer the property. His Interest over the property is extinguished upon conclusion of the sale. He cannot unilaterally cancel the sale agreement for he is bound by the contract of sale made with the purchaser.

The Appellant's/Applicant's Submissions

26. Counsel premised his submissions on the definition of a Preliminary Objection as defined in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 and the Supreme Court decision in the case of *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* (2015) eKLR, wherein the Court made the following observations;

"... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection-against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits."

27. Counsel submits that in this matter the Appellant/Applicant is contesting the validity of the Replying Affidavit which constitutes the factual basis upon which the preliminary objection is predicated on vide her supplementary affidavit and also a preliminary objection taken up and that this is already a confirmation that the facts of the case are in issue.

28. On the issue of whether this Application is res judicata and subjudice as has been averred by the Respondents, Counsel submitted that courts held these as not being proper issues to be taken up as a preliminary objection. Counsel invited the Court to be guided by the authority in *Henry Wanyama Khaemba v Standard Chartered Bank Ltd & Another* (2014) eKLR, in which Justice Gikonyo held;

That re-statement of the limited scope of a Preliminary Objection brings me to the point where I hold that the Preliminary Objection by the 1st Defendant is not a true Preliminary Objection in the sense of the law. The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1st Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of the jurisdiction on preliminary objection. Court of laws have always had a well-founded quarrel with parties who resort to raising preliminary objections improperly".

29. Counsel urged that the pendency of another appeal is a matter to be investigated by the Court and that the same cannot constitute a matter for a preliminary objection. He relied on the case of *Oraro v Mbajja* [2005] eKLR in which Justice J.B. Ojwang J (as he then was) held thus;

"I think the principle is abundantly clear. A preliminary objection, correctly understood is now well identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter



of legal principle, a true preliminary objection which the Court should allow to proceed. I am in agreement...that where a Court needs to investigate facts, a matter cannot be raised as a preliminary point."

30. Counsel submitted that the 1st and 2nd Respondents have no mandate to apply that the 3rd Respondent to be struck out from the appeal as they lack the locus standi to do so and that the 3rd Respondent has her advocate who ought to move the Court on her behalf.

31. Counsel submitted that it ought to be appreciated that the Appellant is entitled to pursue a claim in the Court however implausible and improbable. In this regard, he relied on the case of Yaya [Tours Limited v Trade Bank Limited \(in liquidation\), Civil Appeal No. 35 of 2020](#) in which the Court of Appeal held;

"A plaintiff is entitled to pursue a claim in our Courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of Court, it must be allowed to proceed to trial."

32. Counsel added that 1st and 2nd Respondents have raised the issue of Section 99 of the [Land Act, 2012](#) in their submissions. According to Counsel that the matter cannot be raised as a preliminary objection since Sub-section 3 therein provides for the exceptions to the protection accorded to the purchaser as follows;

A person to whom this Section applies is protected even if at any time before the completion of the sale, the person has actual notice that there has not been a default by the chargor, or that a notice has been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which that person has actual or constructive notice."

33. Counsel maintained that fraud, dishonest conduct together with actual and constructive notice are matter that ought to be decided by way of evidence at the trial and in this matter the Appellant has raised germane matters for consideration as against the 3 Respondents and which ought to be addressed by the Court without any bar on res-judicata arising based on the process of the 14/12/2023. These are:-

- c. Whether the chargee could exercise the power of sale without a forced sale valuation carried out which was not more than 12 months old as required by rule 11 (b) (x) of the Auctioneers Rules, 1997 as the last valuation was that of 5th July, 2021 and reference can be made to paragraph 26 (c) of the Respondents depositions at page 37 of the replying affidavit.
- d. Whether an instruction letter was issued to an auctioneer with the current forced value before the sale of the 14th December, 2023 took place?
- e. Whether the auctioneer based on new instructions served a notification of sale and redemption notice?
- f. Who were the bidders and their particulars at the auction of 14th December, 2023 and where was it held?
- g. Where is the memorandum of sale that was signed on 14th December, 2023 in accordance with rule 18 (3) of the Auctioneers Rules, 1997?



- h. Where is the evidence of the sh. 100,000 (One Hundred Thousand) banker's cheque made by the 3rd Respondent to obtain a bid number in accordance with condition 3 of the newspaper advertisement relied on by the 1st Respondent?
 - i. Where is the evidence of the payment of the 25% deposit at the fall of the hammer by the 3rd Respondent on 14th December, 2023?
 - j. Where is the evidence of payment of the balance of the purchase price within 90 days which is a fundamental condition of sale under No.4 of the advertisement?
34. Counsel maintained that this matter is not res judicata and he implored the Court to be guided by the authority in Michael Kimutai Ronoh & 2 Others v Consolidated Bank of Kenya Ltd. Eldoret ELC. No. 292 of 2014 in which Justice Sila Munyao held;

"The only issue in my view which has not been decided before is whether the sales of 14th July, 2014 and 11t August, 2014 are proper and whether they should be allowed to stand. All other matters in my view are res judicata. The plaintiffs have taken issue with the sale and in their prayers they want it declared null and of no consequence. They have alleged that the said sales were irregular on the various reasons given in the supporting and supplementary affidavits.

The following issues are open in my view for determination

- 1. Whether there was advertisement of property as contemplated by the law.
 - 2. Whether there was actual sale of property by public auction.
 - 3. Whether a memorandum of sale was executed and if so where and when and where such memorandum of sale was executed
 - 4. Whether there is any defect in the memorandum of sale, and if any, the effects of such defects.
 - 5. Whether the purchasers made deposits of 25% of the purchase price at the time of the sale.
 - 6. Whether the sale of the property should be upheld.
 - 7. When the right of redemption extinguished.
 - 8. Whether in the circumstance in this case, the right to redemption extinguished."
35. Counsel submitted that indeed the Application is not res-judicata for the reason that in the Lower Court the Appellant challenges the validity of the alleged sale of the Appellant's property on the 14/12/2023, the issue of the validity of the sale of the property on 14/12/2023 was not addressed by the High Court in Eldoret Civil Appeal No. E212 of 2023 by the Hon. Justice Reuben Nyakundi as at the time the decision was delivered on the 8/02/2024, that the 1st Respondent did not raise it or disclose to the Court, that the 1st Respondent did not bring to the attention of the Court that it had advertised the property for sale on 14/12/2023 and sold it to the 3rd Respondent who was again the same person who had been declared the highest bidder under the auction that aborted earlier on.
36. Counsel maintained that res judicata cannot apply to a matter that was not before the Court for determination as between the parties and that by the action of the 1st Respondent acknowledging



that no sale took place on the 16/06/2023 as it cancelled the same based on irregularities and again advertised the same for the 13/11/2023 which was declared a public holiday it entitles the Appellant to challenge any process that occurred thereafter as the 1st Respondent suppressed information from the Court that it advertised the property for sale on 14/12/2023 and which matter is not res judicata.

37. Counsel submitted that the Application by the Appellant before this Court stands unopposed by the 2nd and 3rd Respondents to date, that the 1st Respondent cannot swear to contested facts which ought to be addressed by the auctioneer in person and the alleged purchaser as they are matters only within their knowledge and the affidavit ought to be struck out for being in breach of Order 1 rule 13 (2) of the Civil Procedure Rules, 2010 as no signed authority has been filed by the said Respondents. The same is provided for 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 gluing it and shall be filed in the case.”

38. According to Counsel, 1st Respondent by deponing to matters within the knowledge of the 2nd and 3rd Respondents, without leave of the Court and without indicating the sources of the information and the grounds thereof it is in violation of Order 19 Rule 3 (1) of the Civil Procedure Rules, 2010 which provides;

“Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove:

Provided that in interlocutory proceedings, or by leave of the Court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.”

39. In the end, Counsel maintained that that the onus of proof is upon the 2nd and 3rd Respondents to demonstrate that there was a valid sale of the property and the 1st Respondent cannot depose to the said matter as by dint of Section 112 of the Evidence Act, Cap. 80 as it relates to matters not within their own knowledge. The said Section provides as follows;

“In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

Determination

40. I have read the considered the Preliminary Objections and the submissions filed and in my considered opinion, my determination on the 1st and 2nd Respondent’s Objection will determine whether a determination of the Applicant’s Objection is necessary. In this regard, it is my view that the 1st issue for determination is



Whether the Applicant's suit and Application is res judicata and sub judice

41. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

42. The rule on res judicata is laid out in Section 7 of the *Civil Procedure Act* CAP 21 Laws of Kenya as follows;

Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

43. In this case, the prayers that the Applicant seeks as already laid out in herein above are as follows;

That the Respondents be restrained from transferring or alienating or evicting the Appellant from the land parcel known as Uasin Gishu/Kimumu Scheme/1655 pending the hearing and determination of this appeal.

44. The Applicants did not dispute, as submitted by the Respondent that the prayers that they had sought in the Application dated Eldoret High Court Civil Case Number E212 of 2023 *Florence Khayanga v Access bank Plc and Another* before the Hon Mr. Justice Nyakundi were the following;

That an injunction do issue restraining the respondents whether by themselves, their servants and/or agents from advertising, selling and/or transferring or evicting the appellant from occupation, and user of the land parcel known as Uasin Gishu/Kimumu Scheme/1655 pending the hearing and determination of this appeal.

45. Further, the Applicants do not dispute that the Application before the Hon Mr Justice Nyakundi was between the same parties, litigating under the same titles over the same subject matter as in the instant Application. It is also not in dispute that the previous Application was dismissed for want of merit and it has also not been denied that the Hon Judge had the requisite jurisdiction to handle the matter. It is also not denied that that Ruling was in respect of an interlocutory injunction and that the main suit in that matter is still pending hearing.

46. In considering the prayers sought in the instant Application side by side with the prayers sought in the application dated 2nd November 2023, it is clear to me that the import of the orders sought in



both Applications is the same and which is: that the Respondent be restrained from dispossessing the Applicant of the same said suit property in howsoever manner.

47. It should be noted that no matter the depositions made in their Affidavits sworn in support of an Application, ultimately if a court finds in favour of an Applicant, it is the main prayers sought in an Application and the Suit that the Court will grant hence the trite provision of law that parties are bound by their own pleadings.
48. In this regard, I note from the affidavits and the submissions filed that the Applicant in an attempt to distinguish the instant Application from the Application dated 2nd November 2023 has by way of a Supplementary Affidavit dated 18th September 2024 made depositions with regard to the issues she states she is specifically seeking that this Court makes a determination on in the instant Application which in her view were not determined in the Ruling delivered by the Hon Mr Justice Nyakundi.
49. Having addressed my mind to the issues raised in the said Affidavit, it is apparent to me that they are matters of fact that would call for the parties adducing evidence and producing documents in support of the allegations therein made.
50. Given that at the interlocutory stage of any suit the Court does not delve into the merits and/or demerits of any case before it but only make its decision on a prima facie basis, what the Applicant is relying on in seeking that the Court finds that this Application is distinguishable from the Application dated 2nd November 2023 are as I have already pointed out are matters of fact that belong to the realm of the hearing of the main suit.
51. The said hearing is yet to proceed for reasons that the said suit, as submitted by Counsel for the Respondent, which submission is also not denied, is still before the Hon Mr. Justice Nyakundi pending hearing and determination the Hon Judge having heard the interlocutory Application that was therein filed and dismissed it for want of merit.
52. Further to the above, as at the time of filing this instant Application, the Applicant must have been very clear in her mind as to what intervention she wanted the Court to make on her behalf and she had every opportunity to say so. Having then proceeded to craft her prayers as above summarised, it then means, and the Court can safely presume that the prayers as drawn is that which she is seeking from the Court.
53. In this regard, I do agree with the submissions by Counsel for the Respondents that both Applications are couched in similar fashion, seeking orders to stop the same Respondents from transferring or evicting the Applicant from the very same suit land.
54. Given the above, I have no difficulty at all in finding that the present Application is both res judicata and sub judice. Res judicata for reasons that a similar application by the same applicant against the same respondent over the same subject matter seeking similar orders were already decided by the Hon Mr. Justice Reuben Nyakundi vide his Ruling delivered on 8th February 2024 and sub judice because the main suit in Eldoret High Court Civil Case Number E212 of 2023 Florence Khayanga v Access bank Plc and Another is yet to be heard and determined.
55. As I had already stated above, my finding on the Objection raised by the Respondents would determine whether there is any need to deliberate on the Objection raised by the Applicants and having found in favour of the Respondents, I need not delve into the Applicant's objection.
56. The upshot then is that I find the present Application as well as the suit upon which it is premised not only to be mischievous and an abuse of the Court process but also scandalous and without merit. I therefore strike out both the Application and the main Suit with costs to the respondents.



READ DATED AND SIGNED AT ELDORET ON 20TH NOVEMBER 2024.

E. OMINDE

JUDGE

