



**Seyani Brothers & Company (K) Limited v ACME Apartments
Limited (Civil Case 322 of 2016 & 127 of 2017 (Consolidated))
[2021] KEHC 343 (KLR) (Commercial and Tax) (3 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 322 OF 2016 & 127 OF 2017 (CONSOLIDATED)**

**DAS MAJANJA, J
DECEMBER 3, 2021**

BETWEEN

SEYANI BROTHERS & COMPANY (K) LIMITED PLAINTIFF

AND

ACME APARTMENTS LIMITED DEFENDANT

RULING

1. By an agreement dated 8th October 2012 (“the Agreement”), the Defendant engaged the Plaintiff to erect and complete works with regard to construction, erection and completion of 3 apartment blocks comprising of 18 apartments (“the Project”) and ancillary services on the property known as LR No. 205/83 Riverside Lane at a contract sum of KES 431,529,942.50.
2. After the Defendant completed and handed over of the Project to the Plaintiff, the Defendant alleged that the Plaintiff was in breach of the terms of the Agreement for failing to pay it the final account sum of KES 128,122,937.44 inclusive of interest in respect of Certificate Nos 15 and 16, which claim formed the basis of the suit filed on 9th August 2016. The Plaintiff also filed a Notice of Motion on 15th September 2016 seeking inter alia judgment against Defendant as prayed in its Plaintiff.
3. In its response, the Defendant filed a Notice of Motion on 19th September 2016 blaming the Project’s Architect and Quantity Surveyor; Deepak Krishna T/A Team 2 Architects and Bashir Hajee T/A Harold Fenwick & Associates respectively whom it accused of fraudulently colluding with the Plaintiff to overstate the Project costs and pressed for the dispute to be referred to arbitration in respect of Clause 45 of the Agreement. The Defendant was of the view that a meeting to discuss and verify the costs of the Project as advanced by the Project stakeholders would have amicably resolved the matter.



4. The Court allowed the Defendant's application by the ruling dated 11th August 2017, and referred the matter to arbitration in accordance with Clause 45 of the Agreement and in the interim were stayed these proceeding pending arbitration.
5. After some inactivity for about two years, the parties informed the court that together with the Architect and Quantity Surveyor, they had recorded a Consent dated 18th June 2019 which the court adopted on 18th July 2019 ("the Consent Order") stating as follows:
 1. Parties acknowledge that the subject matter of the disputes in Nairobi High Court Commercial & Admiralty Case No. 322 of 2016: Seyani Brothers & Company Limited vs ACME Apartments Limited and Nairobi Commercial & Admiralty Case No. 127 of 2017: ACME Apartments Limited vs Deepak Krishna T/A Team 2 Architects 8: Bashir Hajee T/A Harold Fenwick 8: Associates relate to Final Account Certificate No. 16 dated 6th February 2016 in respect of the development on LR No. 205/863 Riverside Lane, Nairobi (hereinafter referred to as ACME Apartments).
 2. That all parties to the cases, namely ACME Apartments Limited, Seyani Brothers & Company Limited, Deepak Krishna T/A Team 2 Architects & Bashir Hajee T/A Harold Fenwick & Associates, shall whether by themselves and/or their representatives prepare and exchange within seven (7) days from the date hereof a list of all items that are disputed in the Final Account Certificate No.16 dated 6th February 2016.
 3. That within ten (10) days from the date of receipt of the list of disputed items in the Final Account Certificate No. 16 dated 6th February 2016 by all parties as stated in Paragraph 2 above, all parties shall whether by themselves, and/or appointed representatives jointly conduct a desk review of all the disputed items with a view to settling any disputed items that can be resolved through a desk review of the documentation. For disputed items that remain contentious, an agreed upon joint List of Disputed Items in the Final Account Certificate No.16 dated 6th February 2016 shall be prepared.
 4. There shall be conducted a Joint re-measurement and verification of the development on LR No. 205/83 Riverside Lane Nairobi (hereinafter referred to as ACME Apartments) against the joint List of Disputed Items in the Final Account Certificate No. 16 dated 6th February 2016 within fourteen (14) days from the date of the agreement on the Joint List of Disputed Items and consequently, accounts shall be taken to ascertain the actual amount that ought to be certified in the Final Account Certificate No. 16 dated 6th February 2016 in respect of the subject property.
 5. That proceedings in Nairobi High Court Commercial & Admiralty Case No. 322 of 2016: Seyani Brothers 8: Company Limited vs ACME Apartments Limited and Nairobi Commercial & Admiralty Case No. 127 of 2017: ACME Apartments Limited vs Deepak Krishna T/A Team 2 Architects & Bashir Hajee T/A Harold Fenwick & Associates be and are hereby stayed pending the outcome of the aforesaid process where after an agreed upon Final Account shall be filed in both cases within ten (10) days from the date of the joint re-measurement and verification exercise.
 6. Parties undertake that they shall be bound by the agreed upon Joint Final Account which shall be regarded to be prepared in accordance with Clause 34.20 of the Building Contract.



7. Consequent upon agreement on the Final Account as aforesaid, the Contractor and the Project Consultants shall thereafter be entitled to settlement of any sums due in accordance with the Building Contract.
 8. In the event that the parties are unable to agree on any matter/aspect, the parties shall prepare a report indicating the point(s) of agreement, and those in dispute, which report may help in narrowing/defining the actual points of dispute.
 9. Parties commit to undertake all processes herein in good faith with a view to establishing the truth without prejudice to parties' respective points of claim or defence in the stated pending cases should the dispute return to Court unresolved.
6. Thereafter, as the joint verification and re-measurement process was ongoing and the final report pending, the parties informed the court there were efforts of mediation and negotiations also ongoing with a view of reaching a settlement. However, it appears that the settlement talks broke down as the parties filed applications and counter-applications for the court's determination. The Plaintiff has filed two applications dated 15th March 2021 and 28th May 2021 respectively while the Defendant filed one application dated 16th May 2021. All the applications were canvassed by way of written submissions with the parties advancing their respective positions.

The Plaintiff's Applications

7. The Plaintiff's application dated 15th March 2021 is made, inter alia, under Order 13 Rule 2, Order 39 Rule 5, Order 51 Rule 1 of the *Civil Procedure Rules* ("the Rules") and sections 1A, 1B, 3A, 63 (b) and (e) of the *Civil Procedure Act* and seeks the following orders:
 1. THAT pending hearing and determination of this application with regard to Prayers 5, 6 and 7 and or the suit and or directions by the Court, the Honourable Court be pleased to order the Defendant to deposit in Court and or in an interest earning joint account and or in the alternative furnish such sufficient security to satisfy the Plaintiff's claim and costs particularized as hereunder:
 - a) Outstanding sum due in the final accounts - Kshs. 111,598,247
 - b) Plaintiff's/Contractor's claims
(interest on delayed payments) - Kshs. 30,979,101
 - c) Party and party costs (instruction fees)
and getting up fees - Kshs. 3,124,877.30
Total - Kshs. 145,702,225.30
 2. THAT pending compliance of the Order under 2 above, the Honourable Court be pleased to make an order directing the Chief Land Registrar to register a prohibitory order over the below named LAND Reference Number 205/83 IR No. 111775:
 - (i) Apartment No. B1 registered in Vol D1 Folio 127/1927 File MMXIV.
 - (ii) Apartment No. B2 registered in Vol D1 Folio 127/1928 File MMXIV.
 - (iii) Apartment No. B3 registered in Vol D1 Folio 127/1929 File MMXIV.
 - (iv) Apartment No. B4 registered in Vol D1 Folio 127/1930 File MMXIV.
 - (v) Apartment No. B5 registered in Vol D1 Folio 127/1931 File MMXIV.



(vi) Apartment No. C6 registered in Vol D1 Folio 127/1938 File MMXIV.

and upon compliance the Order herein be lifted.

3. THAT the Honourable Court be pleased to adopt findings of the joint measurement and verification report dated 18th day of January, 2021 filed herewith and give further directions pursuant to Clause 8 of the Consent Order dated 18th June, 2019 and adapted by the Court on 18th July, 2019.
4. THAT the costs for this application abide by the outcome of the suit.
8. The application is supported by the affidavit of Hirji Khimji Seyani, a director of the Plaintiff, sworn on 15th March 2021. It is opposed by the Defendant through the Grounds of Opposition dated 21st May 2021, the Notice of Preliminary Objection dated 28th May 2021 and the Replying Affidavit of Bupendra I. Patel, a director of the Defendant, sworn on 21st May 2021.
9. The thrust of this application is that pursuant to the Consent Order, the parties mutually carried out a joint re-measurement verification exercise of the Project and appended their hands and signatures on the report delineating the outcome of the exercise, which outcome has apparently vindicated the Plaintiff's claim as due and payable by the Defendant. The Plaintiff avers that subsequent to the joint re-measurement and verification exercise being carried out and the report being adapted by the technical team, the Defendant has refused to participate in the remaining exercise to agree on the summaries for Final Accounts and amendment of Certificate No. 16 (if any). The Plaintiff submits that the Defendant is in breach of Clause 6 and 7 of the Consent Order. The Plaintiff contends that based on the fact that the report on the joint re-measurement and verification exercise corroborates its claim, it is in the interest of justice that the Court gives urgent directions on the prosecution of the remainder of its claim.
10. The Plaintiff also accuses the Defendant of defeating claims by creditors by fraudulently transferring the subject apartments of the Project to a related Company known as Acme Elegant Apartments. The Plaintiff states that it is not aware of any assets owned by the Defendant within which it can lay claim to if its claim is upheld and it is therefore in the interest of justice that the Defendant be ordered to furnish security equivalent to the Plaintiff's claim and costs and or in the alternative a prohibitory order do issue to bar any further transactions over the parcels irregularly transferred to the said Acme Elegant Apartments Limited.
11. The Plaintiff's second application is filed under section 100 of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and primarily seeks to amend and correct typographical errors on the application dated 15th March 2021.

The Defendant's Reply

12. The Defendant assails the competence of the Plaintiff's application dated 15th March 2021. It submits that under the Consent Order, proceedings in the suit were stayed and that no substantive proceedings can be undertaken while the stay order is still in place. It argues that the order of stay will only lapse upon the filing in Court in both suits of an agreed Final Account as per Clause 5 of the Consent Order or the filing in Court of a report prepared by all the parties indicating the point(s) of agreement and those in dispute in the event of a disagreement as per Clause 8 the Consent Order or further order of the Court setting aside the Consent Order upon an application based on such grounds as mistake, fraud, undue influence, illegality or any other that would entitle the Court to set aside a contract.



13. The Defendant states that by the Plaintiff's own admission in its application and deposition, the ordered joint re-measurement and verification process is not complete. The Defendant urges the court to take note that compliance with and implementation of the Consent Order is at the stage where the parties are to convene a meeting to receive, consider, verify and approve, with or without adjustments or amendments the findings or reports of the technical team constituted by the Parties on 24th July 2019 with specific and recorded intention. The Defendant thus accuses the Plaintiff of irregularly and deceptively filing documents in court as if they are final accounts.
14. The Defendant argues that the only right or opportunity any party has in the two stayed court cases is to apply/seek directions or orders in facilitation or furtherance and not frustration or premature termination, of the Consent Order for its proper implementation or compliance therewith as the Defendant has done by its application dated 16th May 2021.
15. The Defendant's submits that the Plaintiff's Notice of Motion dated 13th September 2016 was dismissed on merits by the ruling dated 11th August 2017 hence the Plaintiff's Notice of Motion dated 15th March 2021 constructively seeking summary judgment is res judicata as the Court held that the Defendant's defence dated 12th February 2019 raised bona fide triable issues. As regards the orders of attachment of various properties sought by the Plaintiff, the Defendant submits that it has proved in its deposition that the properties belong to third parties who are not parties to this suit.
16. The Defendant contends that it is upon the incomplete joint re-measurement and verification process in breach of the express terms of the Consent Order that the Plaintiff has, without any right or basis in law, awarded itself the Judgment costs and interest of KES 145,702, 225.30, including costs it has assessed itself at KES 3,124,877.30, hence wants the Defendant condemned unheard to deposit the said amount which is a clear abuse of court process.
17. The Defendant urges that it is in the interests of justice that the Plaintiff's Notice of Motion dated 15th March 2021 be struck out or stayed in order to pave way for the parties to complete the joint re-measurement and verification of the Project in compliance with the Consent Order

The Defendant's Application

18. The Defendant's application is made under section 1A, 1B and 3A of the [Civil Procedure Act](#), section 3(2) of the [Judicature Act](#) and Order 20 of the Rules seeking the following orders THAT:
 1. The Plaintiff's Notice of Motion dated 15th March 2021 be and is hereby stayed to pave way for the proper and final completion/conclusion of the pending joint re-measurement and verification exercise of the development on LR. No. 205/83, Riverside Lane, Nairobi in accordance/compliance with the Consent Order dated 18th June 2019 made herein and adopted by the Court on 18th July 2019.
 2. The Plaintiff be and is hereby directed and/or ordered to disclose and furnish to the Defendant the under-listed documents for use in, and completion of the joint re-measurement and verification exercise in accordance with the Consent Order aforesaid.
 - (a) Complete set of initial Nairobi City County Approved Architectural/Structural Drawings including the details of all the beams, columns, foundation/bases and suspended slabs for Acme Apartments ("the project") as specified below:-
 - (i) Reinforced Concrete ('RC') foundation/base detail for Block A, B & C
 - (ii) RC Columns detail for Block A, B & C



- (iii) RC Beams detail for Block A & B
 - (iv) RC Roof Beam detail for Block A, B & C
 - (v) 7th floor RC slab detail for Block A, B & C
 - (vi) 6th floor RC slab detail for Block A, B & C
 - (vii) 1st to 5th Floor RC Slab typical detail for Block A, B & C
 - (viii) RC staircase detail for Block A, B & C
- (b) Complete set of the initial steel Bar-bending Schedules prepared by the Project Structural Engineer that were used for preparation of the Bills of Quantities for use at the Tender stage of the Project.
 - (c) The complete set of Nairobi City County Approved Amended Architectural and Structural Drawings, if any.
 - (d) Records of Drawings, requests for instructions or action (RFA's/RFI's), Minutes and Site Instructions given by the Project Architects, Quantity Surveyor, Structural Engineer or any other relevant person in respect of any changes or variations made on the project.
 - (e) Applications for any extensions of time by the Plaintiff as the Main Contractor, if any.
 - (f) Extensions of time granted by the Project Architect to the Plaintiff, if any.
 - (g) The Plaintiff's Application for the Final Account/Valuation.
 - (h) Certified copies of all the insurance policies for the project.
 - (i) Photographs of progress of implementation of the project
3. Costs of the application be provided for
19. The application is supported by the grounds set out on its face and the supporting affidavit of Bupendra I. Patel sworn on 16th May 2021. It is opposed by the Plaintiff through the Grounds of Opposition dated 27th May 2021.
20. The Defendant contends that the main issue in these proceedings is Certificate No. 16. It states that the dispute on the accuracy or otherwise and the rectification of the Final Account/Valuation can only be resolved if all the material facts and documents are disclosed by the Project Architect, Quantity Surveyor, Structural Engineer and the Plaintiff who kept and used the records in respect of the Project but who have colluded to withhold the records from the Defendant and made it difficult for the Final Account/Valuation to be rectified.
21. The Defendant avers that the parties recorded the Consent Order by which they bound themselves to undertake joint re-measurement and verification hence it was necessary for the Plaintiff as the Project Main Contractor, and the various Project Consultants to disclose and avail all the relevant documents necessary for the desk review of documentation as part of the joint re-measurement and verification exercise as specified in Clause 3 of the Consent Order. The Defendant states that since it has not received the demanded documents, it is finding it difficult to finalize the re-measurement and verification exercise. It further states that the Plaintiff is in collusion with the Project Architect, Quantity Surveyor and Structural Engineer have withheld the Project documents which are reasonably expected to be in their possession by virtue of their positions and that by withholding the details



or documents, they have frustrated the proper implementation of the Consent Order particularly the finalization of the joint re-measurement and verification process as the Defendant is being asked to approve various contradictory summaries without having access to the Project records. The Defendant urges that the Plaintiff should not be permitted to renege on its commitments under the Consent Order by withholding documents crucial to the joint re-measurement and verification exercise otherwise the Plaintiff may continue to breach or frustrate the implementation of the Consent Order.

22. The Defendant submits that it is in the interests of justice that the Plaintiff be compelled to furnish the Defendant with all necessary documents particularly those listed in Prayer 1 and which had been sought from the very beginning of the joint exercise aforesaid so that the factual position of the Project and accuracy of the Final Account/Valuation may be established as intended by the parties in the Consent Order.

Analysis and Determination

23. I have gone through the pleadings and submissions of the parties. Resolution of their applications turn to the interpretation, implementation and compliance of the Consent Order. According to the Plaintiff, the Consent Order is largely spent as the joint re-measurement and verification exercise (“the exercise”) is complete and its claim against the Defendant has been confirmed and is now due. Therefore, to protect its claim, the Plaintiff is seeking orders of security and prohibition.
24. On the other hand, the Defendant stated that the said exercise is incomplete for the reasons that the Plaintiff, together with its professionals working on the Project have withheld relevant documents from the Defendant to enable completion of the exercise. Thus, the Defendant seeks compulsion orders against the Plaintiff to enable completion of the exercise and full implementation of the Consent Order.
25. To prove that the exercise is complete, the Plaintiff annexed email correspondences between the parties in its deposition (“HKS -2”). In one email dated 2nd September 2020, counsel for the Defendant, Mr Burton Isindu, states in part “...I have enquired from my client and I am informed that the re-measurement bit is now complete and the compilation of the agreed findings underway. I believe it is from that agreed and compiled data that the accurate final account and/or Report for filing in court should be generated. The report must be circulated to the parties in draft for their approval with or without comments or proposed amendments....Nevertheless, I expect that the technical team(particularly the QS Bashir, QS Kagacha & QS Makone, as experts and representatives of the Parties) to advise us on the remaining steps and whether we will be ready with a report come 16th September 2020” .
26. In another email dated 16th September 2020, Mr. Isindu states in part as follows; “...Yesterday I spoke to Mr. Isaac Makone, QS and Mr Daniel Kagacha, QS (who were authorized by the parties to the dispute to undertake the technical aspects of the exercise, particularly the actual re-measurement/ verification of disputed items) on behalf of the panel of parties. They informed me that they were finalizing the draft report to be presented to the parties for their comments and approval by latest Friday 18th September 2020. At long last, we have the assurance that a draft report of the technical team is about ready

Accordingly, we need to have a clear and logical pathway to the proper conclusion of the exercise in compliance with the Consent Order.... It is important that the experts in the field, especially the Quantity Surveyors, do advice on the proper way the process/exercise should be concluded....”



27. From the emails reproduced above and the others that have been annexed, my finding is that the exercise was conducted and completed and all that the parties were awaiting were the draft and final reports. The Plaintiff has also annexed a Signed Joint Remeasurements for Contentious Report that was signed by the Defendant's representative in the exercise which further buttresses the conclusion that the exercise is complete and what the parties were waiting for is a final summary and account for adoption.
28. In its deposition, the Defendant accuses its authorized representative in the exercise of collusion and acting against the Consent Order and interest of the Defendant. The Defendant also accused the Plaintiff of not providing adequate information for the exercise thus, the exercise was incomplete and frustrated. In the emails between the parties, I do not find any complaint raised by the Defendant about the competence and impartiality of the Defendant's representative in the exercise. I do not find any complaint about lack of documentation by the Defendant to enable it participate in the exercise effectively. As stated, the emails by the Defendant's advocate as communicated by the Defendant tells a different story. According to the Defendant, the exercise was complete and what was being awaited was the report for adoption by the parties and the court.
29. I also note that Defendant has only raised the issue of lack of documents two years after the consent and only did so when confronted with the Plaintiff's application. I therefore find and hold that the Defendant's refusal to recognize or adopt the report of the exercise carried out in conjunction with its representative is unwarranted and unreasonable. If the Defendant had any reservations about the exercise, nothing prevented it from raising the same either directly or through its authorized representative whilst the exercise was ongoing as per Clause 8 of the Consent Order which provides that 'In the event that the parties are unable to agree on any matter/aspect, the parties shall prepare a report indicating the point(s) of agreement, and those in dispute, which report may help in narrowing/defining the actual points of dispute'.
30. No such issue was raised by the Defendant to the parties to enable them prepare a report to help in narrowing/defining the actual points of dispute in respect of the exercise. For the Defendant to now turn around and allege that it was kept in the dark the entire time the exercise was ongoing and that its representative was acting against its interests will be going against the gains made by the parties under the Consent Order. For these reasons, I reject that the Defendant's application dated 16th May 2021 as the joint re-measurement and verification exercise of the Project was conducted by both parties and has been completed.
31. With my findings above, I now turn to whether the Plaintiff is entitled to the orders it seeks in its application dated 15th March 2021. Prayer 1 is on security for its claim which the Plaintiff opines is KES 145,702,225.30 and the same is grounded under Order 39 Rule 5 of the Rules which provides as follows:
5. Where defendant may be called upon to furnish security for production of property [Order 39, rule 5.]
 - (1) Where at any stage of a suit the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him—
 - (a) is about to dispose of the whole or any part of his property;
 - (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified



in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

- (2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.
- (3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

32. In *Edward Lenjo Musamuli v Amesnet Enterprises Limited MLND CA Civil Appeal No. 218 of 2008 [2012] eKLR*, the Court of Appeal cited the decision of *Ndirangu V Abdalla [1984] KLR* page 746 that construed the above Rule under the previous Rules that the Plaintiff is required to show either that the Defendant was about to dispose the whole or any part of his property or was about to remove the whole or part of his property from the local limits of the jurisdiction of the court and that such disposal or removal was with intent to obstruct or delay the execution of any decree that may be passed against it.
33. The Plaintiff contended that the Defendant, with a view to defeating claims by Creditors and more so the Plaintiff, has transferred the apartments that they own on the Project to a related Company known as Acme Elegant Apartments and which action is fraudulent and that the Plaintiff does not know of any assets owned by the Defendant within which it can lay claim on if its claim is upheld and it is therefore in the interest of justice that the Defendant be ordered to furnish security equivalent to the Plaintiff's claim and costs and or in the alternative a prohibitory order do issue to bar any further transactions over the parcels irregularly transferred to Acme Elegant Apartments Limited. On its part, the Defendant stated that the prayer for attachment of properties is untenable as the properties belong to Third Parties who are not party to this suit.
34. I am in agreement with the Defendant that it would not be proper to issue adverse orders against one who is not a party to this suit without giving them a chance to be heard. In any case, even if they were parties to this suit, I still wouldn't issue the said prohibition orders because from the Certificate of Title annexed by the Plaintiff, the registration of the leases to the said Acme Elegant Apartments Limited predated this suit and there is no transaction that was registered during the pendency of this suit so as to demonstrate that the Defendant was intent on obstructing or delaying the execution of any decree that may be passed against it. This prayer of attachment by the Plaintiff therefore fails. It is for the same reason that I decline to grant an order for security as requested by the Plaintiff.
35. On Prayer No. 4, I have already found that the joint measurement and verification exercise is concluded and thus, the exercise's report and findings dated 18th January 2021 is adopted by the court. On directions on Clause 8 of the Consent Order, I opine that the court directs the parties to prepare a report indicating the point(s) of agreement, and those in dispute on the draft Final Account Summary within (30) thirty days of the court's ruling and that failure to do so, the Final Account Summary will be deemed to have been adopted by the parties and the court shall subsequently and similarly adopt it.
36. I also find that do not find that the Defendant will suffer any prejudice if the Plaintiff is allowed to amend and correct typographical errors in its application dated 15th March 2021.

Disposition

37. For these reasons, I urge the court to make the following final orders in respect of the three applications:
 - (a) The Defendant's Notice of Motion dated 16th May 2021 is dismissed with costs to the Plaintiff.



- (b) The Plaintiff's Notice of Motion dated 28th May 2021 is allowed.
- (c) The Notice of Motion dated 15th March 2021 is allowed to the extent that:
 - (i) The Court hereby adopts the findings of the joint measurement and verification report dated 18th day of January, 2021 and filed herewith.**
 - (ii) Pursuant to Clause 8 of the Consent Order dated 18th July 2019, the parties are directed to prepare a report indicating the point(s) of agreement, and those in dispute on the draft Final Account Summary within (30) thirty days of the court's ruling and that failure to do so, the Final Account Summary will be deemed to have been adopted by the parties and the court shall subsequently and similarly adopt it.
 - (iii) The Defendant shall bear the costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER 2021.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.

Mr Bundotich instructed by Kale Maina and Bundotich Advocates for the Plaintiff.

Mr Isindu instructed by Burton Isindu and Company Advocates for the Defendant.

