

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 128 OF 2018

BETWEEN

JOSEPH WANGOMBE THUO.....1ST PLAINTIFF

JANE WANJIRU WANGOMBE.....2ND PLAINTIFF

AND

BANK OF AFRICA LIMITED.....DEFENDANT

RULING NO. 2

The Plaintiffs' application is dated 25th September 2019 seeking to set aside a consent order between the parties dated 24th November 2015 and subsequent sale of the suit property pursuant to the consent is not merited as Kasango J., dealt with similar application and on 13th June 2018 dismissed it. This application is now *res judicata* in so far as it seeks to raise the same issues regarding the consent. The consent likewise cannot be set aside as the grounds for setting aside like fraud, mistake, undue influence have not been proved.

The application is therefore dismissed with costs to the defendant

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JULY 2020.

D. S. MAJANJA

JUDGE

Mr Wawire instructed by Wamae and Allen Advocates for the Defendant.

Muturi Njoroge and Company Advocates for the plaintiffs.