REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC APPEAL NO. E024 OF 2024

PRISCA NYAOKE.....1ST APPELLANT
KENNEDY ODHIAMBO NYAOKE.....2ND APPELLANT
PETER ODHIAMBO NYAOKE.....3RD APPELLANT
KEPHER ONYANGO NYAOKE.....4TH APPELLANT
DAVID OMONDI NYAOKE.....5TH APPELLANT
GEORGE OTIENONYAOKE.....6TH APPELLANT
ROBERT OUKO NYAOKE.....7TH APPELLANT
ISAAC ALUOCH POLO ALUOCHIER.....8TH APPELLANT

VERSUS

JOASH OMARIBA AYAGA..... RESPONDENT

JUDGMENT

(Being an appeal from the ruling of the Principal Magistrate Hon. Chrispine Noel Chuka Oruo (PM) delivered on the 8th October, 2024 in Rongo ELC No. E032 of 2023)

INTRODUCTION

1. This is an appeal arising from the ruling of Honourable Oruo C.N.C. Principal Magistrate, delivered on 8th October, 2024 in Rongo ELC No. E032 of 2023.

2. The Appellants filed a Memorandum of Appeal dated 17th October, 2024 appealing against the said ruling on the following grounds: -

1. **The Appellants were not given a fair hearing on the issue the subject of the Ruling, being whether or not the 8th Appellant was lawfully representing the 1st to 7th Appellants in the proceedings before the subordinate court, in that rather than the Defence Hearing proceeding on 5th September, 2024 as had been scheduled, the Appellants were ambushed with an oral application by the Respondent, the subject matter of which the subordinate court had seemingly been aware of prior to the date, as the learned magistrate had stated in open court when questioning the 8th Appellant that he had prior to the date checked the Law Society of Kenya website to ascertain whether or not the 8th Appellant was an advocate in good standing, seemingly following private representations made to him by counsel for the Respondent without the knowledge of the Appellants. This was contrary to**

their fair hearing right as provided for in Article 50(1) of the Constitution.

2. **The subordinate court ignored the affidavit on record dated 14th August, 2023 of the 2nd Appellant on the 1st to 7th Appellants having appointed the 8th Appellant as their authorized representative pursuant to section 22 of the Environment and Land Court Act (ELC Act), and mischaracterized it as a memorandum of appearance.**
3. **The subordinate court ignored both oral and written submissions by the Appellants on section 22 of the ELC Act, as read together with the Civil Procedure Rules 2010 (CPR 2010) Order 9, rules 1 and 2, and Article 162(2) of the Constitution — portions of law that are fundamental to the resolution of the question of lawful representation of the 1st to 7th Appellants.**
4. **The subordinate court mischaracterized the issue for consideration before it being that only advocates of the High Court of Kenya can lawfully represent parties before it, and consequently, whether or not the 8th Appellant was an advocate of the High Court of Kenya, and if so, in good standing.**

5. **The subordinate court failed to address in its Ruling the Appellants' oral and written submissions on its jurisdiction, or the lack of it, on the issue in question being res judicata, and on the subordinate court sitting in appeal over a Consent between the parties dated 13th December, 2023 that the subordinate court had adopted as its order at the mention on 15th December, 2023, and had already been acted upon for the full benefit of the Respondent and only in partial benefit for the 1st to 7th Appellants.**
6. **The subordinate court failed to address in its Ruling the Appellants' oral and written submissions on the exception provided for in section 83 of the Advocates Act, providing that nothing in this Act or any rules made thereunder shall affect the provisions of any other written law empowering any unqualified person to conduct, defend or otherwise act in relation to any legal proceedings.**

3. The Appellants seek for orders that the ruling delivered on 8th October, 2024 be set aside and they be awarded the costs of the appeal.

BRIEF FACTS

4. Counsel for the Respondent through an oral application made on 5th September, 2024 argued that the Appellants were not properly represented and that the 8th Appellant was not an Advocate thus lacked the *locus standi* to represent them.

5. The 8th Appellant claimed that there was an affidavit by the 2nd Appellant which appointed the 8th Appellant as the Appellant's representative by virtue of Section 83 of the Advocates Act which allowed exceptions. The trial court vide its ruling dated 6th October, 2024 allowed the Respondent's objection and directed the Appellants to sort out the issue of representation.

6. The Appellant being dissatisfied with the ruling filed the present appeal which this court on 22nd January, 2025 directed that it be canvassed by way of written submissions.

7. During the pendency of the instant appeal, that is to say, on 4th May 2025, the 1st Respondent filed a document dated the same date. By it she stated that she authorized the 8th to represent her in the appeal. The document reads as follows:

"REPRESENTATION Of the 1st Appellant

I, Prisca Nyaoke, of P O Box 112-40404. Rongo, the 1st Appellant herein, do authorise the 8th Appellant, Isaac Aluochier, to represent

me in these proceedings, pursuant to the Civil Procedure Rules Order 1 rule 13."

Submissions

8. Only the Appellants file written submissions dated 23rd January 2025. They were a detailed set that identified six issues before the appellant gave q summary of findings and holdings and the reliefs sought. They were as follows:

9. They argued on Issue 1 which was on the right to Fair Hearing that Article 50(1) of the Constitution provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court. Article 50(2) provides that aspects of a fair hearing or trial include the right – … (c) to have adequate time and facilities to prepare a defence.

10. It was the appellants' submissions that the subject of this Appeal was an oral application made, in the trial court, without prior notice to the Appellants, on 5th September, 2024 at the defence hearing of the case. At the time the Respondent's advocate made and prosecuted an oral application for invalidating the Appellants' representation and the striking out of all documents that had been filed by the Appellants.

11. He argued that the move was an ambush because the Appellants had not been given adequate time and facilities to prepare their defence to the oral application, as required by Article 50(2)(c) of the Constitution. Thus the subordinate court contravened appellant’s right to a fair hearing as provided for in Article 50(1) and (2)(c) of Constitution.

12. Further, Article 19(3)(c) of the Constitution provides that the rights and fundamental freedoms in the Bill of Rights are subject only to the limitations contemplated in this Constitution. And Article 25(c) provides that the right to a fair trial shall not be limited, the proceedings connected to the said oral application on 5th September, 2024 were contrary to the Appellants' fair hearing right under Article 50. They argued that Article 2(4) of the Constitution provides that any action or omission in contravention of this Constitution is invalid. They stated that the conduct on the subordinate court's part was invalid. Consequently, they urged the court to invalidate the proceedings of 5th September, 2024.

13. They argued further that after the court session they filed electronically their response to the oral application. It was filed on 6th September, 2024 and a physical copy delivered on 11th

September, 2024. There was no record in the proceedings of the subordinate court's, or even the Ruling dated 8th October, 202 that the court took into consideration the Appellants' filed response. Had the court considered it, it could have been taken to have given the Appellants adequate time and facilities to prepare their defence. Absent of that, court failed to give the Appellants adequate time and facilities to prepare their defence. They concluded that for reason of this unfairness the proceedings pertaining to the oral application dated 5th September, 2024 were invalid and ought to be set aside.

14. On issues 2 and 3 regarding Section 22 of the ELC that from the moment the 1st to 7th Appellants appointed the 8th Appellant as their duly authorized representative in the subordinate court's proceedings on 14th August 2023, the appointment took effect since then. It therefore did not require the approval of the court as was subsequently obtained on 15th December, 2023, by way of the court adopting the consent between the parties that was dated 13th December, 2023. Further, that in the Appellants' submissions before the subordinate court, dated 5th September, 2024 and filed on 6th September, 2024, they made reference to Sections 3(1) and

31(b) of the Interpretation and General Provisions Act (IGP Act), demonstrating that no subsidiary legislation shall be inconsistent with the provisions of an Act. They contended that the Civil Procedure Rules (CPR) is therefore not to be inconsistent with the Civil Procedure Act, and, by extension, the ELC Act, pursuant to adoption of the Civil Procedure Act by Section 19(2) of the ELC Act. It was the same with respect to Section 81(1E) of the Civil Procedure Act that requires the CPR not be inconsistent with the Civil Procedure Act or any other written law. Consequently, the limitation provisions in the CPR, being, Order 9, Rule 2(a), that are inconsistent with Section 22 of the ELC Act, are void, and cannot limit the jurisdiction or the powers of a party as conferred by section 22 of the ELC Act – the power to appoint his duly authorized representative. They summed it that the appointment and representation of the 8th appellant was valid in law, without any purported limitation from a subsidiary law.

15. They argued that the 2nd Appellant's affidavit was in the subordinate court's file, as shown at Pages 7 and 8 of the Record of Appeal which had, simply, copies taken from the subordinate court file. They added that the subordinate court ignored evidence on record that demonstrated that the Appellants had

duly appointed the 8th Appellant as their representative. They concluded that for this reason the subordinate court did not administer justice fairly in this matter.

16. On issue 4, about mischaracterizing the issue under consideration to the effect that only advocates of the High Court of Kenya could lawfully represent parties before it, and consequently the 8th Appellant was an advocate, they argued that from both section 22 of the ELC Act and CPR Order 9, rules 1 and 2, and their submissions it was clear that a party can appear in court either in person or by a duly authorized representative, who may be either a recognized agent or a duly appointed advocate but not necessarily by only advocates of the High Court of Kenya. The subordinate court therefore mistook the law to limit itself on the representation of the appellants by the 8th Appellant. They argued that the subordinate court manifested a bias in favour of a pre-conceived position of law that only advocates of the High Court of Kenya could represent parties in court.

17. This was a BIAS in favour of representation only by advocates as against representation by non-advocates. They argued that the bias violated the right of the 1st to 7th Appellants under

Article 50(1) of the Constitution which is to the effect that every person has the right to have any dispute resolved by the application of law decided fairly and in public before a court or, if appropriate, another independent and impartial tribunal or body. Further, that disputes must be resolved by applying the law and therefore that the subordinate court also contravened the 1st to 7th Appellants' right to a fair hearing under Article 50(1).

18. They raised issue No. 5 about failure to address Jurisdictional challenges. They argued that the subordinate court lacked jurisdiction to entertain the Respondent's application before it but it did not address it. They contended that paragraphs 4 to 20 of the Appellants' submissions in the subordinate court dealt with the issue of res judicata in the sense that the Respondent's oral application was res judicata, pursuant to Section 7 of the Civil Procedure Act because the issue then raised had been fully heard and determined before the same court. It could not therefore be raised again before the same court. He adopted the same argument before this court. They added that the issue of the representation of the Appellants had already been heard and determined by the subordinate court when on 15th December, 2023 it considered the consent the parties entered into on 13th

December, 2023, and duly adopted it as its order, and permitted the substitution of the Respondent with his wife, for purposes of the conduct of the proceedings, and approving the 8th Appellant as the 1st to 7th Appellants' duly appointed representative. The subordinate court was therefore devoid of jurisdiction in again considering a matter that had been fully resolved before it.

19. They raised the issue of Section 59C of the Civil Procedure Act on alternative dispute resolution (ADR) methods outside arbitration and mediation. It was their argument that pursuant to section 59C(1), parties could agree to refer a matter to an ADR mechanism. Thus, in the subordinate court, the parties agreed to refer to the ADR mechanism of negotiation the matters of substitution of the Respondent and the representation of the Appellants. They added that by virtue of Section 59C(3) any settlement arising from a suit referred to any other ADR method by the Court or agreement of the parties shall be enforceable as a judgment of the Court. Consequently, the consent entered into on 13th December, 2023, following negotiations among the parties, was a Ruling of the subordinate court following its adoption as its order on 15th December, 2023, and by virtue of Section 59C(4) no appeal lay in respect of any judgment entered

under this section. Consequently, the consent dated 13th December, 2023 and adopted by the subordinate court on 15th December, 2023 was final and not subject to any appeal. Therefore, the oral application made on 5th September, 2024, meant the Respondent was appealing the consent adopted on 15th December, 2023.

20. The other argument raised was that the Appellants' submissions in the subordinate court considered whether or not the Respondent's oral application could have been categorized as a review of judgment/ruling application, even though it had not been presented as such. They argued that the said oral application failed to meet the requirements of a review application under the CPR. Consequently, the subordinate court did not have the jurisdiction to entertain the oral application of 5th September, 2024.

21. About issue 6 which was on failure to address Section 83 of The Advocates Act, the appellants contended while section 31(1) prohibits unqualified persons acting as advocates in any court of civil or criminal jurisdiction, section 83 provides exceptions thereto. They argued that the former Section provides that nothing in this Act or any rules made thereunder shall affect the

provisions of any other written law empowering any unqualified person to conduct, defend or otherwise act in relation to any legal proceedings. They argued that by virtue of that provision, section 22 of the ELC Act prevails over the provisions of the Advocates Act. Further, that the same held for Order 9, Rules 1 and 2 of the CPR. They then argued that the subordinate simply made a decision, without applying the law as concerns the Section 83 of the Advocates Act.

Analysis and Determination

22. Upon consideration of the grounds of appeal, pleadings, appellants' submissions and the authorities cited, the following issues are for determination:

1. **Whether the appeal is merited.**
2. **Who should bear the cost of the appeal.**

23. I begin with the analysis and determination of the first issue: the merits or otherwise of this appeal. Being a first appeal, the court relies on a number of principles as set out in **Selle and another V Associated Motor Boat Company Ltd and others [1968] 1 EA 123**:

> **"…this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it**

should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ..."

24. Again, it is worth of note that this is an appeal that challenges the exercise of discretion by the trial court. The principles that govern the instances that an appellant court may interfere with a decision arrived at by exercise of discretion by a court appealed from are now settled. This court must be cautious in deciding to interfere with the discretion of the trial court. If I must do so, I should not substitute my decision with the that of the trial court. I must consider and find, if I have to overturn that decision, that the trial court failed to act judiciously or was plainly wrong on principles that he proceeded on or considered or failed to consider factors which he ought not or ought to have considered, respectively. Thus, in ***Supermarine Handling***

Services Ltd versus Kenya Revenue Authority [2010] eKLR (Civil Appeal 85 of 2006) the Court stated :-

> ***"… Thus, where a trial Court has exercised its discretion on costs, an appellate Court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute "good reason" within the meaning of the rule".***

25. Also, in ***Farah Awad Gullet v CMC Motors Group Limited [2018] eKLR*** the Court of Appeal held that

> *"…the Court of Appeal, in interfering with the exercise of discretion of the trial Judge appealed from, ought to satisfy itself that the exercise of that discretion either way was improper and therefore warrants interference."*

26. Additionally, in ***Edward Sargent versus Chotabha Jhaverbhat Patel [1949] 16 EACA 63***, it was held that there is no bar to an appeal lying to an Appellate Court against an order made in the exercise of judicial discretion, but for the Appeal

Court to interfere only if it be shown that the discretion was exercised injudiciously.

27. Furthermore, in ***Mbogo and Another v Shah [1968] EA 93*** *at* ***96*** the court held:

> ***"For myself I like to put it in the words that a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been mis-justice."***

28. Also, in **Agola v Ngodhe (An administrator to the Estate of Zakayo Ngodhe) (Environment and Land Appeal E025 of 2024) [2025] KEELC 1367 (KLR) (6 March 2025) (Judgment),** this court stated;

> "As for the instant appeal, it is clear that it arose from the low court's exercise of discretion. Regarding appeals of such nature, the appellate court will not normally interfere with the discretion of the trial court unless the trial

magistrate or judge exercised the discretion wrongly, injudiciously or misdirected himself in some matter thereby arriving at a wrong decision, the decision clearly wrong."

29. The decision appealed from was the Ruling delivered on 8th October 2024 in which the trial court found that the 8th appellant was not qualified to represent the appellants since he is not a person qualified by law to do so. This is fulcrum of the appeal herein. That is the issue herein.

30. The law regarding representation of persons or parties in court is not so complex. It is nevertheless confusing to the simple mind.

31. Starting with the provisions that the 8th 'Appellant' relied on, and I have deliberately written in quotes the party referred to as the 8th Appellant, for good reasons as will be seen in the tail end of this decision, Section 22 of the Environment and Land Court Act provides that,

"*A party to the proceedings may act in person or be represented by a duly*

authorized representative."

32. The 8th 'Appellant' submitted that this provision as read with Section 83 of the Advocates Act grant him authority to represent the seven appellants herein. In my view, each provision of the

law should not be read in isolation of the entire legal provisions that deal with an issue or provide for it. They should be contextually read and placed therein. Again, the provisions have to be read by first using the plain language and where there is an ambiguity then other tools of statutory interpretation, such as the mischief rules, the golden rule and many others be resorted to in order not to bring about an absurdity. In the current appeal, this is what the court resorts to do. It starts by looking at Order 9 Rule 1 of CPR.

33. Order 9 Rule 1 and **2 of the Civil Procedure Rules** provides as follows:

1. Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf: Provided that—

a) any such appearance shall, if the court so directs, be made by the party in person; and

b) where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney- General or an officer authorized by law to make or to do such application, appearance or act for and on behalf of the Government, the Attorney-General or such officer, as the case may be, may by writing under his hand depute an officer in the public service to make or to do any such application, appearance or act.

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

a) subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;

b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in

matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts;

c) in respect of a corporation, an officer of the corporation duly authorized under the corporate seal."

34. It is important to note that at no point in time did the 8th Appellant file any documents to act for his Co-Appellants. In light of the above, it is this court's view that for one to act as an agent, he/she needs to hold a Power of Attorney and can only act subject to the approval of the court. Does the 8th appellant have a power of attorney? He does not. And even if he were to have one, the power must be that he takes over the defences of all the Defendants and becomes the Defendants themselves. Thus, each of the Defendants must donate that power to him "to be the Defendants".

35. Section 9 of the **Advocates Act** provides that:

"**Subject to this Act, no person shall be qualified to act as an advocate unless-**

(a) he has been admitted as an advocate; and

(b) his name is for the time being on the Roll; and

(c) he has in force a practising certificate".

36. Further **Section 10** of the same Act gives exceptions on who can be entitled in connection with the duties of his office to act as an advocate, and shall not to that extent be deemed to be an unqualified person.

37. Section 31 of the **Advocates Act** provides that:

"Subject to section 83, no unqualified person shall act as an advocate, or as such cause any summons or other process to issue, or institute, carry on or defend any suit or other proceedings in the name of any other person in any court of civil or criminal jurisdiction".

38. Section 83 of the Advocates Act provides that,

"*Nothing in this Act or any rules made thereunder shall affect the provisions of any other written law empowering any unqualified person to conduct, defend or otherwise act in relation to any legal proceedings.*"

39. The 8th 'Appellant' argued that Section 83 of the Act permits him to represent the other parties he purported to. A plaint reading of this "**Saving Provision**" renders the meaning that where there is any written law which empowers an unqualified

person to conduct or defend or otherwise act in any legal proceedings, then the provisions of the Advocates Act and any rules made thereunder that bar anyone from so acting shall not affect that other law. It begs the question: which law has permitted “Isaac Aluochier” to act for the Defendants or seven appellants? Mr. Aluochier attempted to rely on Section 22 of the ELC Act. I have found above that the said provision must be read in conjunction with the rest of the laws and specifically the Civil Procedure Act.

40. Section 19(2) of the ELC Act provides that “The Court shall be bound by the procedure laid down by the Civil Procedure Act.” The Civil Procedure Rules are made under the provisions of the Civil Procedure Act. This means that provisions of the Civil Procedure Act and the Rules made thereunder are the ones applicable in the procedures of this Court. It means that the said provisions cannot be interpreted to be strained or mean that the ones of the ELC Act override them. The said procedure rules provide, under Order 9 Rules 1 and 2 of the CPR, the manner in which a person who intends to be represented ought to appoint the one to represent him in accordance with the Rules. if the Parliament and the Rules Committee intended that the ELC Act

provisions override those of the CPR, it would have expressly stated as much and would not have provided that the Civil Procedure Act would apply.

41. From the above provisions, it is clear who can or cannot practice as an Advocate. It is not in dispute that the 8th Appellant is not listed as an advocate under the Law Society search engine of active advocates. In addition, he does not fall under the category of recognized agents since he did not expressly indicate to the court that he was representing himself. It is this court's view that the trial magistrate rightly found that the 8th Appellant was not entitled to represent his Co-Appellants.

In the case of **Jack J. Khanjira and Anor v Safaricom Ltd [2012] eKLR** the court held as follows:

"Clearly, the essential characteristic of a person acting as a recognized agent is that he or she acts, appears or makes any such applications, acts or appearances subject to the approval of the court. The above provision is important because by the very nature of the instrument of their appointment, it may donate to them powers which are, in law, untenable. So that, it appears to me that when exercising their functions in court, they

must periodically obtain the approval of the court to do such acts . It is for the court to oversee the scope and extent of the functions of a recognized agent, and to assure itself that they are not overstepping the bounds of the law. In my view, it is not the fact of being an agent that renders a donee of a power as recognized; it is the extent or scope of their agency that is recognized. That is to say, a recognized agent can perform only that which he is recognized or authorized to do in law. In this regard, I would go as far as to say that, for orderly representation in court, every appearance, act or application by a recognized agent should be subjected to the approval of the court as and when sought to be done."

42. The decision impugned was arrived at following an objection by Mr. Owaka Advocate that the 8th appellant purported to represent the appellants, then Defendants in the trial court. There was much argument about the appellants being denied right to fair trial, the right to be represented by a person of their choice and the constitutionality and or validity of some of the provisions of the law. Specifically, the appellants submitted that

Order 9 Rules 1 and 2 of the CPR should not be contrary to the provisions of the parent Act and also Section 22 of the Environment and Land Act. Further, that the provisions of the Advocates Act, specifically Section 83 give exemptions to persons who may represent others in a matter before court.

43. It is this court's view that being given the authority to plead is different from representation. As the trial court found, the 8th Appellant not being an advocate was not qualified to represent his fellow Appellants but he could act only in person or for himself. The law, by virtue of Order 9 Rules 1 and 2 of the Civil Procedure Rules, is clear that a party may appear in person. If he decides not to do so, then he has to either give a power of attorney to another do so or swear an affidavit to that effect. But even when he does so, that representation has to be subject to the approval of the court. In my view, it cannot be consented to by the parties, otherwise it will deny the opportunity to the court to investigate the matter and make a decision as to the compliance with the law.

44. One very cardinal issue in this appeal is the issue of representation of the appellants by the 8th appellant. The appellants argued that Section 22 of the ELC Act allows a party

or parties to appoint a person to represent them. Further, that a subsidiary legislation such as the Civil Procedure Rules should not override a parent Act or law.

45. Their main argument is that by a consent dated 13th October, 2023, entered into between the then plaintiff's advocates and the said 8th Defendant there was substitution of the Plaintiff with his wife, one Margaret Okindo. It was also agreed in the consent that "Isaac Aluochier, FCIArb, CPM do represent all the Defendants in this matter." This consent followed the filing of Memoranda of Appearances by each of the seven (7) Defendants in person and Defences, dated 9th August 2023 by the 4thDefendant, one Kepher Onyango Nyaoke, and by a joint "Originating Summons of the 1st, 2nd, 4th and 5th Defendants", signed by the 4th Defendant on behalf of all the said four named Defendants. It appears to me that the said all the said pleadings except the Memorandums of Appearance were drafted by the same individual who has drawn documents on behalf of the 8th 'appellant' because they are of the same font and format in virtually every respect.

46. The 8th 'Appellant' argued that the consent was a result of ADR negotiations provided for by the Constitution and should not be

challenged. Further, that the negotiations were the result of application of Section 59C of the Civil Procedure Act. It is an absurdity that the 8th 'Appellant' relies on one provision of the Act and discards the others, being the Rules made thereunder, that do not seem to suit his position of things. This is what it means to approbate and reprobate or playing double standards and it is demonstrative of insincerity which makes arguments mere academic exercises: this is not what courts should do or engage in.

47. One clear point that stands out in the lower record is that only seven (7) persons where sued. The said Isaac Aluochier was never a party. How he now surfaces to be the 8th Appellant, nobody knows. Whatever interest he has in the appeal other than 'representing' the appellants, no one knows. Whatever the record of the lower court bears is to say the least absolute confusion and plainly to say "a mess".

48. In summary from the above, it is clear that only 4th Defendant filed a Defence. The rest of the other defendants have never filed any. The document purporting to be an Originating Summons on behalf of the 1st, 2nd, 4th and 5th Defendants is not a document that can found a pleading because it is not signed by

the said parties. It is not clear how and in what capacity the 4th Defendants signed the document on their behalf. There is no nexus between the said 4th Defendant and the rest of those he signed the document on their behalf apart from the fact that they all are sued as Defendants. Again, none of the parties ever donated a power of attorney to or swore and affidavit as the law requires to give authority for Isaac Aluochier to represent them. As it is, one Isaac Aluochier, a stranger to the proceedings appeared from nowhere on the file and started conducting proceedings including entering into and filing a consent to act on behalf of persons who had not given him authority. There was no "notice of appointment" of the said Isaac Aluochier to act on behalf of any of the parties. So, in what capacity did he come onto the matter yet all the parties had filed Memorandums of Appearance and it remains so to date? The consent was actually a nullity in that respect.

49. Besides the above provisions, it was indeed clear, and it is not in dispute that the said Isaac Aluochier, FCIArb, CPM is not an advocate. The law, as is discussed below does not permit unqualified persons to act for others in court matters, unless they fall into the exceptions provided by the law. He does not fall

into one. Thus, the second limb of the nullity of the consent falls in place: can parties or individuals enter into a consent to commit an illegality and the courts accept and live by it? No. That would be a very sad day in the judicial circles. That which the Plaintiff, now Respondent, and the Defendants entered into on 13th December 2023 was not a consent properly so called. It was a nullity ab initio.

50. I have gone into great lengths to make the findings in the paragraphs immediate above because the 8th Appellant went into similar lengths to argue in favour of his presence or proper representation of the other seven Respondents. He heavily relied on the consent dated 13th December 2023 to say he was properly representing the parties and that the consent could neither be appealed against or reviewed. He argued that the Respondent, by raising the said issue of his representation of the seven Defendants, was appealing against the consent or applying to review or set it aside.

51. One of the clear reason why a court can review a judgment or order under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules is where there is an error apparent on the record. The recording of the consent dated 13th December

2023 and adopted on 15th December 2023 was an error apparent on the record.

52. I have demystified the "consent" which was not a consent properly so called or duly entered into. Someone must have misled the appellants, including the 8th 'appellant' whom I do not think is because he has never been a party in the trial court record. He has only sneaked himself into the record or is misled that the law recognizes him as a party merely by him 'representing' parties. How I wish, and I have always called on, parties who appear in person in legal matters could realize the danger of not seeking proper legal advice! They always fall in the danger of losing good cases or defences for lack of knowledge. Even the Holy Bible asks a simple question to all humanity, in Jeremiah 12:5, "If you have raced with men on foot and they have worn you out, how can you compete with horses? If you stumble in safe country, how will you manage in the thickets by the Jordan?". Be it known to the world that lawyers run on horses and compete in thickets by the river Jordan that is invested with crocodiles and other dangerous animals. It would require great intellect (and may be Artificial Intelligence or AI) and guesswork for non professionals to compete effectively with

even a poorly trained professionals, including lawyers. Lawyers, just as other professionals went to school to gain knowledge superior to that of non professionals in their fields. Everybody should teach themselves to always seek proper professional advice.

53. This court has found out that the 8th 'Appellant' has never been a party to the suit before the trial court. It has also found that he cannot represent any other persons sued therein. Again the ruling was in respect of seven defendants in that suit. Now there appears to be 8th persons in this appeal. None of the seven have signed the Memorandum of Appeal herein. Instead it is the 8th "appellant' who has signed it. This is a strange practice or drafting of pleadings. I repeat: parties should seek proper legal advice and draft proper pleadings.

54. I repeat that the consent dated 13th December 2023 in the Principal Magistrate's Court at Rongo in ELC No. E032 of 2023 was contrary to the law. It is a nullity.

55. The upshot of the foregoing is the instant appeal was brought by a stranger. He has engaged the time of the court for long over what was not supposed to be before it. Nevertheless, he needed a day in court and the court has given it to him. Therefore, there

is no competent appeal before me. It lacks merit. It is hereby dismissed with costs to the Respondent. And since costs follow the event, the person who brought the appeal is the one to bear them personally. I mean and clarify that the 8th Appellant as he appears on this record is the one to bear the costs and not the other seven appellants.

56. Lastly, the Deputy Registrar of this Court should bring to the attention of the trial Magistrate this judgment to cause it to be filed in the subordinate court file in order for the errors noted regarding the pleadings in the said file to be given attention to in future to avoid confusion.

57. Orders accordingly.

JUDGEMENT Dated, **SIGNED** and **DELIVERED VIRTUALLY** via the Teams Platform this **28th** day of **October 2025.**

HON. DR. IUR NYAGAKA

JUDGE

In the presence of,

Court Assistant: Ms. Lola

The 8th Appellant

Respondent and Advocate, absent.