

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. E125 OF 2022

WILSON NG'ANG'A NGURE
PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITED 1ST
DEFENDANT

EVERLYN IMINA BENGAL 2ND
DEFENDANT

RICHARD MURAGURI MWANGI 3RD
DEFENDANT

THE CHIEF LAND REGISTRAR 4TH
DEFENDANT

THE HON. ATTORNEY GENERAL 5TH
DEFENDANT

RULING

1. Before this Court for determination is a Notice of Motion dated 7th May 2025 brought pursuant to **Articles 40, 50 and 159** of the **Constitution, Order 10, Rule 11, Order 9 Rule 9** of the **Civil Procedure Rules, Sections 1A, 1B and 3A** of the **Civil Procedure Act** and **Section 25 and 26** of the **Land Registration Act**. Through the said motion, the 1st Defendant seeks the following orders:

- a. That the firm of M/S Macharia Gakuo & Co. Advocates be granted leave to come on record for the 1st Defendant/Applicant herein after judgement.*
 - b. That this Honourable Court be pleased to set aside its judgment delivered on 27th March 2025 and all the consequential orders.*
 - c. That the firm of M/S Macharia Gakuo & Co. Advocates be granted leave to file a statement of defense and all relevant documents on behalf of the 1st Defendant/ Applicant.*
2. The application is supported by the affidavit of Jack Kamau Wachira, an employee of the 1st Defendant, and is premised on the grounds set out on its face. It is the 1st Defendant's case that on 27th March 2025, this Court entered judgment in favour of the Plaintiff as against, inter alia, the 1st Defendant, owing to the latter's failure to enter appearance and/or file a Statement of Defence.
3. The 1st Defendant contends that the judgment, and all consequential orders and decree emanating therefrom, are premature, irregular, and bad in law, on account that service of summons to enter appearance or any pleadings in the suit was never effected upon it.
4. It was deponed that any return of service that may have been filed by the Plaintiff is flawed, as the alleged service was

never effected. The 1st Defendant maintains that any signature or stamp purporting to acknowledge receipt of the pleadings is a forgery and a fabrication intended to mislead the Court and defeat the ends of justice. It was further asserted that the 1st Defendant was never served with the pleadings or with a notice of entry of judgment.

5. The 1st Defendant averred that it first became aware of these proceedings when one of its surveyors was informed by the 2nd Defendant that judgment had been entered against her in respect of property allegedly acquired from the 1st Defendant. Upon inquiry, the 1st Defendant discovered that a judgment in default of appearance had indeed been entered against it.
6. It was contended that the 1st Defendant was denied its right to be heard and that material facts were misrepresented to the Court, leading to an erroneous judgment. The Applicant therefore prays that the judgment be set aside to enable the 1st Defendant to present its Defence.
7. It was further deponed that there exists a pending dispute, **Commercial Suit No. 096 of 2019: Embakasi Company Limited vs Registrar of Companies & 14 Others**, between rival directors of the 1st Defendant. In that suit, Lady Justice Grace Nzioka on 30th July 2019 and Lady Justice Njoki Mwangi on 28th July 2023 issued orders that the directors currently in office remain in office while those

appearing on the company's CR-12 remain listed but are precluded from assuming any official duties.

- 8.** The Applicant stated that the summons to enter appearance and pleadings in the present case were irregularly served upon persons who are not in office as directors.
- 9.** The 1st Defendant contends that it is the sole allocating authority of plots to its shareholders, and that both the Plaintiffs and the Defendants in this matter derive their titles from it. It was explained that each share in the company corresponds to a specific plot of land.
- 10.** Consequently, it was deposed, the 2nd and 3rd Defendants are shareholders entitled to two plots, namely, Title Numbers Block 105/1235 and Block 105/1240, and that the judgment delivered on 27th March 2025 erred in fact and law by declaring the Plaintiff the lawful owner of the said plots.
- 11.** It was further deposed that this suit arises from confusion as to how multiple parties came to hold documents relating to the same parcels of land, a matter the 1st Defendant is well placed to clarify. The Applicant stated that the judgment of 27th March 2025, which cancelled certain titles, has directly affected the 2nd and 3rd Defendants, who are the bona fide allottees and have been in occupation and development of the subject properties. It was contended that the judgment effectively deprived them of their rightful ownership, leading

to double allocation and exposing the true allottees to loss and injustice.

- 12.** It was asserted that this court has the mandate to set aside a default judgment or any consequential orders issued on a written request of any party that is aggrieved by the decree or order if the court is satisfied on evidence given by the Applicant, and on hearing of the other parties, that the default was inadvertent, the applicant has a valid Defence with a possibility of success and there are sufficient grounds to warrant setting aside the default judgement, decree or order.
- 13.** The 1st Defendant further averred that it has a strong and arguable Defence raising triable issues, which should be heard on its merits.
- 14.** In response, the Plaintiff filed a Replying Affidavit in which he deponed that the supporting affidavit is defective and incompetent as it was not sworn by an authorized officer of the 1st Defendant, and that the purported authority is not under the company seal.
- 15.** The Plaintiff contends that the application is unmerited and an abuse of the court process, the 1st Defendant having been duly served with the pleadings and summons to enter appearance, which were stamped to acknowledge receipt.

- 16.** Mr. Ngure deponed that as a long-standing member of the 1st Defendant, he personally accompanied the process server, Vincent Mambuya, to the 1st Defendant's offices, where the summons and pleadings were served and stamped with the company's seal.
- 17.** He further deponed that after the 1st Defendant failed to enter appearance, it was again served with a mention notice dated 30th January 2025, which was duly received and stamped. He contended that any internal dispute regarding the 1st Defendant's directorship is immaterial, as the summons were served at its registered office in accordance with law.
- 18.** The Plaintiff contends that the present application is an afterthought instigated by the 2nd Defendant, who ought to have questioned the 1st Defendant's non-participation earlier. It was observed that the 1st Defendant now purports to defend property allegedly owned by the 3rd Defendant, who himself distanced from Title Number Block 105/1240 and did not participate in the hearing.
- 19.** Vincent Mabaya Sabatia, a licensed process server, deponed that on 13th April 2022, he received instructions from Mr. Karuga of M/s Kibatia & Company Advocates LLP, the Plaintiff's advocates on record, to effect service of court documents upon the Defendants.

- 20.** The documents included a Hearing Notice dated 4th April 2022, a Notice of Motion dated 30th March 2022, a Plaint dated 30th March 2022, Summons to Enter Appearance, List of Witnesses, List of Documents, Witness Statement, and annexures thereto.
- 21.** He stated that he was informed the matter was scheduled for inter partes hearing on 28th April 2022 before the Environment and Land Court at Nairobi, and was instructed to effect service upon all Defendants.
- 22.** He deponed that on the same day, in the company of the Plaintiff, he proceeded to the 1st Defendant's offices and thereafter to the residences of the 2nd and 3rd Defendants. On 14th April 2022, he prepared and filed an Affidavit of Service sworn on the same date, annexing the documents duly served upon the 1st Defendant, which bore the company's official stamp.
- 23.** He averred that the Affidavit of Service was filed as proof of proper service in compliance with **Order 5 Rule 15(1)** of the **Civil Procedure Rules**. He further deponed that the Summons to Enter Appearance dated 6th April 2022 were received by one Tabitha Karoki, a receptionist at the 1st Defendant's office, who acknowledged receipt by signing, affixing the company rubber stamp, and indicating the date on the process server's original copy.

Submissions

24. Counsel for the 1st Defendant submitted that the ex parte judgment entered in this matter was irregular, as service of summons and pleadings was never effected upon the 1st Defendant. Counsel placed reliance on **Order 10 Rule 11** of the **Civil Procedure Rules** and the decision in **James Kanyita Nderitu vs Marios Philotas Ghikas & Another [2016] eKLR**, where the Court emphasized that a judgment entered without proper service is irregular and must be set aside as of right.
25. On the issue of service, Counsel referred the Court to **Order 5** of the **Civil Procedure Rules** and cited the cases of **Fredrick Kibet Chesire vs Raymond W. Bomet [2006] eKLR**, **Patel vs E.A. Handling Services Ltd [1974] EA 75**, **Tree Shade Motor Ltd vs D.T. Dobie & Co. (K) Ltd, Civil Appeal No. 38 of 1998**, and **Mania vs Muriuki [1998] KLR 407**.
26. Counsel urged this court to set aside the judgement delivered on 27th March 2025 on the ground that it has occasioned double allocation of the suit property, thereby exposing the 2nd Defendant to grave injustice. It was argued that the 2nd Defendant, who has developed and resides on the suit property, now risks eviction as a result of the impugned judgment.
27. As to whether leave should be granted to file a Defence, Counsel submitted that the 1st Defendant was denied a fair

opportunity to defend itself and that the judgment was unfairly obtained. It was contended that the 1st Defendant, being the sole allocating authority of the suit properties, is the only entity capable of clarifying ownership and allocation of the disputed parcels.

- 28.** Counsel therefore urged that leave be granted to the 1st Defendant to file its Defence so that the matter may be determined on its merits. He relied on **Article 50(1)** of the **Constitution** and the cases of ***Joel Gichana Nyamigwa vs SDA (W.A.) Union Ltd [2017] eKLR*** and ***Signature Tours and Travels Limited vs National Bank of Kenya Limited [2018] eKLR***.
- 29.** In opposition, Counsel for the Plaintiff submitted that the Plaintiff instituted this suit by way of a Plaint dated 30th March 2022 seeking declaratory reliefs. It was contended that despite the 1st Defendant being duly served, it failed to enter appearance, file pleadings, or otherwise participate in the proceedings.
- 30.** It was submitted that the 2nd Defendant, however, filed a Defence and actively participated in the hearing, while the 3rd, 4th and 5th Defendants filed Defences but did not attend the hearing, and that the matter proceeded on 28th May 2024, during which the Plaintiff and the 2nd Defendant testified and tendered evidence. Judgment was thereafter delivered on 27th March 2025 in favour of the Plaintiff.

- 31.** Counsel submitted that the present application is fatally defective and incompetent. It was argued that the supporting affidavit is incurably defective as it was sworn by a person who is neither an officer of the 1st Defendant nor authorized under the company seal. Counsel submitted that this defect is not a mere procedural lapse but goes to the root of the application.
- 32.** Counsel further submitted that the application is devoid of merit, as the 1st Defendant was duly served at its registered office with the Plaint, Summons to Enter Appearance, and subsequent Mention Notice. Counsel relied on **Orders 5, 10 Rule 11**, and **12 Rule 7** of the **Civil Procedure Rules**, and pointed to the annexed copies of the duly stamped documents as proof of proper service.
- 33.** It was deponed that the Plaintiff personally accompanied the process server, Vincent Mambuya Sabatia, who effected service upon the 1st Defendant. The said service was confirmed through an Affidavit of Service sworn on 14th April 2022, by the licensed process server.
- 34.** Counsel submitted that there exists a strong evidential presumption in favour of an affidavit of service, and that the 1st Defendant has failed to produce any credible evidence to rebut it. The alleged internal wrangles concerning the 1st Defendant's directorship, Counsel argued, are immaterial to the validity of service.

35. Once service was effected at the registered office, it was submitted that the company was deemed duly notified of the proceedings. Counsel further submitted that it would be unreasonable to expect a process server to investigate internal corporate disputes before effecting service. Accordingly, the judgment entered against the 1st Defendant was a regular judgment, lawfully founded on proper service. In support, reliance was placed on **Shadrack arap Baiywo vs Bodi Bach [1987] eKLR.**
36. On the exercise of the Court's discretion, Counsel submitted that the guiding principles do not favour the Applicant. It was argued that the 1st Defendant has offered no plausible explanation for its failure to defend the suit despite proper service, and further, has not annexed any draft Defence to demonstrate the existence of triable issues. Counsel relied on **Shah vs Mbogo & Another [1967] EA 116, Justus vs Gikandi [2022] KEHC 12012 (KLR), and James Kanyita Nderitu & Another vs Marios Philotas Ghikas & Another [2016] KECA 470 (KLR),** for the proposition that discretion to set aside a regular judgment must be exercised judiciously and only upon demonstration of sufficient cause and a bona fide Defence.
37. It was further submitted that setting aside the judgment would gravely prejudice the Plaintiff, who has diligently prosecuted this matter and has yet to enjoy the fruits of the

judgment in respect of land allocated to him over forty years ago.

38. Counsel contended that the 1st Defendant's allegations of forgery and internal disputes are unsubstantiated and unsupported by any credible evidence. The same, it was argued, do not constitute an excusable reason for the 1st Defendant's failure to enter appearance or file a Defence.
39. Counsel submitted that even if the 1st Defendant were to demonstrate an excusable mistake, it must still show a Defence on the merits. Reliance was placed on **CMC Holdings Ltd vs James Mumo Nzioki [2004] KECA 143 (KLR)**, where the Court held that failure to annex a draft Defence is fatal to an application to set aside judgment.
40. It was argued that in the present case, the Applicant has not furnished any draft Defence, and the Court cannot therefore discern whether any triable issues exist.
41. It was submitted that reopening the matter at this stage would occasion grave prejudice to the Plaintiff, who has been in litigation for over three years and has expended substantial time and resources. Counsel further pointed out that the Plaintiff is advanced in age and has been deprived of the use and enjoyment of his land since 1978.

Analysis and Determination

42. Having carefully considered the application dated 7th May 2025, the affidavits filed in support and in opposition, the

rival submissions of Counsel, and the authorities cited. The issues that fall for determination are threefold:

- a. Whether the Supporting Affidavit sworn by Jack Kamau Wachira is properly on record*
- b. Whether the judgment delivered on 27th March 2025 was regular or irregular; and*
- c. Whether sufficient cause has been shown to warrant the setting aside of the said judgment and the grant of leave to file a Defence out of time.*

43. The 1st Defendant contends that it was never served with the Plaint or Summons to Enter Appearance, and impugns the return of service as fraudulent. The Plaintiff maintains that service was duly effected at the 1st Defendant's registered office, witnessed by the Plaintiff and acknowledged by an employee, one Tabitha Karoki, as evidenced by an Affidavit of Service sworn by Vincent Mabaya Sabatia on 14th April 2022.

44. The Plaintiff argues, *in limine*, that the Supporting Affidavit sworn by Jack Kamau Wachira, a surveyor employed by the 1st Defendant, renders the application incompetent for want of a company resolution under seal authorizing him to so depone, and that the same was sworn by an employee rather than an officer of the company.

45. Reliance was placed on **Order 4 Rule 1(4)** of the **Civil Procedure Rules**. That provision, however, regulates

verifying affidavits accompanying a Plaintiff where the Plaintiff is a corporation. It does not govern affidavits in support of interlocutory Motions by defendants.

46. Similarly, the decision in **East African Portland Cement Ltd vs Capital Markets Authority & 4 others [2014] KEHC 6532 (KLR)**, on which the Plaintiff sought to rely on, concerned affidavits in support of filing a petition, and is distinguishable from the facts in this case.
47. This application is brought by Notice of Motion under **Order 51 Rule 4** of the **Civil Procedures Rules** which only requires that a Motion state its grounds and that any supporting affidavit intended to be relied on be served. It does not restrict who may swear such an affidavit on behalf of a corporate litigant.
48. On affidavits in general, **Order 19 Rule 3(1)** requires that a deponent confine himself to facts within his own knowledge, with limited latitude for information and belief in interlocutory proceedings. The Rules do not prescribe that only a director/secretary may swear on a company's behalf.
49. There is therefore no legal imperative that only officers under seal may depone in support of a corporate party's Motion. What matters is competence and knowledge. Here, Mr. Wachira deposed to factual matters and exhibited the documents he relied on, including the company's internal authority, the impugned judgment, and related rulings.

50. This court is therefore satisfied that the supporting affidavit by Jack Kamau Wachira is properly on record and is not defective. The court now turns to the substance of the application.

51. The jurisdiction of this Court to set aside an *ex parte* judgment is anchored in **Order 10 Rule 11** of the **Civil Procedure Rules**:

“Where judgment has been entered under this Order, the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.”

52. The first task is to determine whether the judgment is regular or irregular. If service of summons was duly effected and the defendant failed to enter appearance or file a Defence, the judgment is regular, and the Court’s power to set it aside is discretionary. Conversely, if service was not effected, the judgment is irregular and must be set aside *ex debito justitiae*.

53. The Court of Appeal in ***James Kanyita Nderitu vs Maries Philotas Ghika & Another [2016] eKLR*** drew that distinction with clarity and explained the consequences as follows:

“...In a regular default judgment, the defendant will have been duly served with summons to enter appearance, but for one reason or another, he had

failed to enter appearances or to file defence, resulting in default judgment. Such a defendant is entitled, under Order 10 Rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment, and will take into account such factors as the reason for the failure of the defendant to file his Memorandum of appearance or defence, as the case may be, the length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer (see Mbogo & Another V Shah (supra); Patel V EA Cargo Handling Services Ltd [1975] EA 75, Chemwolo & Another V Kubende [1986] KLR 492 and CMC Holdings Vs Nzioki [2004]1 KLR 173). In an irregular judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside ex debito justitiae, as a matter of right. The court does not even have to be moved by a party once it

comes to its notice that the judgment is irregular, it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raises triable issue. Or whether there has been inordinate delay in applying to set aside the irregular judgment. The reason why such judgment is set aside as of right, and not as a matter of discretion, is because the party against whom it is entered has been condemned without notice of the allegations against him or an opportunity to be heard in response to those allegations. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See Onyango Oloo V Attorney General [1986 - 1989] EA 456). The Supreme Court of India forcefully underline the importance of the right to be heard as follows in Sangram Singh V Election Tribunal, Kotch, AIR 1955 SC 664, at 711:“There must be never present to the mind the fact that ours of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and

property should not continue in their absence and that they should not be precluded from participating in them.”

- 54.** It is settled that an irregular judgment offends the right to be heard and is set aside as of right; a regular judgment may be set aside only on a proper basis in discretion, taking into account reasons for default, delay, triable issues, and prejudice.
- 55.** In the present case, the Plaintiff was filed on 30th March 2022 seeking, *inter alia*, eviction orders against the 2nd and 3rd Defendants and injunctive relief against the 1st and 4th Defendants, together with mandatory orders for issuance of leases to the Plaintiff. The Plaintiff’s position is that service was duly effected on the 1st Defendant. The 1st Defendant denies service and alleges fraud.
- 56.** The Plaintiff produced an Affidavit of Service sworn by Vincent M. Sabatia on 14th April 2022 stating that, in the company of the Plaintiff, he served at the 1st Defendant’s offices, Embakasi Ranching Company upon a receptionist, Tabitha Karoki, who acknowledged service by signature and company stamp. Summons bearing the 1st Defendant’s stamp were also exhibited.
- 57.** Under **Order 5 Rule 3** of the **Civil Procedure Rules**, where the Defendant is a corporation, service of summons may be effected on the secretary, director, or any principal officer of

the corporation, or by leaving the same at the registered office of the company. Once service is effected in accordance with the Rule, notice is deemed to have been brought to the attention of the corporate body.

- 58.** The law presumes an affidavit of service to be prima facie proof of service unless rebutted by credible evidence. This was held by the Court of Appeal in **Shadrack arap Baiwo vs Bodi Bach [1987] eKLR.**
- 59.** While the 1st Defendant attacks the signature and stamp as forged, no contemporaneous record, forensic report, or affidavit from the alleged recipient was produced to sustain that serious allegation. Mere assertions, without tangible proof, cannot displace the evidential presumption that service was properly effected.
- 60.** The affidavit of service on record demonstrates that the process server visited the 1st Defendant's registered offices, delivered the summons to the company's receptionist, and obtained an acknowledgment by signature and company stamp. The Plaintiff accompanied the process server and corroborates this account.
- 61.** Moreover, the alleged internal disputes among the directors of the 1st Defendant are immaterial to the question of service. Once service was effected at the registered office, the company was duly notified of the proceedings.

- 62.** This court therefore finds that the Plaintiff has demonstrated, on a balance of probabilities, that service of summons and pleadings was properly effected upon the 1st Defendant in compliance with **Order 5** of the **Civil Procedure Rules**.
- 63.** It accordingly follows that the judgment entered on 27th March 2025 was regular. The Court must therefore proceed to consider whether the Applicant has laid a sufficient basis for the exercise of discretion in its favour.
- 64.** The principles of setting aside a regular judgment are well captured in the case of ***Shah vs Mbogo & Another [1967] EA 116***: discretion to set aside is intended to avoid injustice or hardship from accident, inadvertence, or excusable mistake, but not to assist a party who has deliberately sought to obstruct or delay justice.
- 65.** The Court of Appeal in ***CMC Holdings Ltd vs Nzioki [2004] KLR 173*** emphasized that the Court must consider both the explanation for default and whether the Defence raises triable issues, alongside prejudice:

“In an application for setting aside ex parte judgement, the Court exercises its discretion in allowing or rejecting the same. That discretion must be exercised upon reasons and must be exercised judiciously...In law the discretion that a court of law has, in deciding whether or not to set aside ex parte order was meant to ensure that a

litigant does not suffer injustice or hardship as a result of amongst other an excusable mistake or error. It would not be proper use of such discretion if the Court turns its back to a litigant who clearly demonstrates such an excusable mistake, inadvertence, accident or error. Such an exercise of discretion would be wrong principle. In the instant case the learned trial magistrate did not exercise her discretion properly when she failed to address herself as to whether the appellant's unchallenged allegation that its counsel did not inform it of the hearing date for the hearing that took place ex parte and hence it would appear was true and not if true, the effect of the same on the ex parte judgement was entered as a result of the non-appearance of the appellant and on the entire suit. The answer to that weighty matter was not to advise the appellant of the recourse open to it as the learned magistrate did here. In doing so she drove the appellant out of the seat of justice empty handed when it had what it might have well amounted to an excusable mistake visited upon the appellant by its advocate...The second disturbing matter which arises from the decision of the learned magistrate in dismissing the application for

setting aside the ex parte judgement is that in so dismissing the same application, the learned trial magistrate does not appear to have considered whether or not the defence which was already on record was reasonable or raised triable issues. The law is now well settled that in an application for setting aside ex parte judgement, the Court must consider not only the reasons why the defence was not filed or for that matter why the applicant failed to turn up for the hearing on the hearing date but also whether the applicant has reasonable defence which is usually referred as whether the defence if filed already or if draft defence is annexed to the application, raises triable issues. The Court has wide discretion in such cases to set aside ex parte judgment.”

- 66.** Although the 1st Defendant has not annexed a draft Defence to its application, the grounds of its Defence are discernible from the application itself.
- 67.** This suit revolves around ownership of land and the allocation of plots within Embakasi Ranching Company Limited. The 1st Defendant, as the entity charged with the management, allocation, and documentation of the company’s land parcels, is the custodian of records central to a full and just resolution of the dispute.

68. Its participation is therefore not merely procedural but necessary to enable the Court to conclusively determine the competing proprietary claims and to avoid multiplicity of proceedings. Consequently, it is the finding of the court that the 1st Defendant has raised triable issues.

69. Consequently, the Court is persuaded that in the interests of justice, the judgment herein ought to be set aside to allow for the just and effective determination of all issues in controversy. Nonetheless, the Court finds it proper that the 1st Defendant do pay to the Plaintiff throw-away costs in recognition of the time, effort, and expense already incurred in prosecuting the suit.

70. For those reasons, the 1st Defendant's application dated 7th May 2025 is allowed as follows:

a. **That the firm of M/S Macharia Gakuo & Co. Advocates is granted leave to come on record for the 1st Defendant/Applicant herein after judgement.**

b. **That the judgement delivered on 27th March 2025 and all the consequential orders be and are hereby set aside.**

c. **That the firm of M/S Macharia Gakuo & Co. Advocates is granted leave to file and serve a statement of Defence, a list of documents and witness statements on behalf of the 1st**

Defendant within fourteen (14) days of this ruling.

- d. The Plaintiff shall be at liberty to file a reply, if any, within fourteen (14) days of the date of service.**
- e. The 1st Defendant shall pay to the Plaintiff throw-away costs of Kshs. 100,000.**
- f. The 1st Defendant shall pay the costs of the application.**

Dated, signed and delivered virtually in Nairobi this 20th day of November, 2025.

**O. A. Angote
Judge**

In the presence of;

Ms Njeri holding brief for Macharia for 1st Defendant/Applicant

Ms Lanoi for Kanga for Plaintiff

Mr. Ambani for 2nd Defendant

Court Assistant: Tracy