

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC NO. E017 OF 2024

JUSTUS KADENGE BAYA
PLAINTIFF

VERSUS

DAMA CHARO DHURI
DAMA THOYA BAYA AND
KATANA CHARO DHURI
(SUED AS ADMINIOSTRATORS OF THE
ESRTARE OF KARISA DHURI KOMBE ALIAS CHARO DHURI KOMBE) & 18 OTHERS
DEFENDANTS

RULING

1. The application dated **17th September 2024** seeks orders that the defences entered by the 2nd ,3rd ,4th ,6th ,9th ,14th and 15th defendants, all dated 30th August, 2024 be expunged from the court record; that the 14th defendant be committed to civil jail for contempt of the order of this court issued on 30th May, 2024.
2. The grounds upon which the application is made are that service of the plaint and summons was effected by a process server on the defendants Nos 6, 8, 12, 14, 17, 18 and 19 herein; a court order was later issued on 5th March, 2024, ordering service by substituted means on the remaining defendants and interested parties with the exception of the 20th to 21st defendants who were joined to the suit later after that order. An affidavit of service was also filed.
3. It is further stated that the defences entered by the 2nd ,3rd 4th 6th 9th 14th and 15th defendants have been filed outside the timelines prescribed by **Order 7 Rule 1** of the Civil Procedure Rules by more than **5** months and

with no explanation offered for such delay; that those defences also contravene **Order 7 CPR** as they lack accompanying documents required by the provisions thereof including: a list of witnesses, written statements signed by the witnesses except expert witnesses and copies of documents to be relied on at the trial; besides that, the said defences are bare and shallow; that on the 9th April, 2024 interlocutory judgment was entered against the 12th defendant for failure to enter appearance and interlocutory judgment was entered against the 5th and 14th December in default of defence; that on 28th May, 2024 interlocutory judgment was again entered against the 1st 2nd 3rd 4th 6th 7th 9th 10th 11th 14th 15th and 16th defendants and the 1st , 2nd ,3rd , 4th and 5th Interested Parties for default of appearance; that despite unreasonable delay in filing their defences and the existence of interlocutory judgment against the defendants, none of them have moved this court to be granted leave to set aside the existing interlocutory judgments and/or be granted leave to file their defences out of time; that the filing of the said defences out of time without regard to due process is an abuse of the court process and should not be indulged by this court.

4. Further, the applicant stated that on 30th May, 2024 this court gave an order restraining the respondents by themselves and all their agents from selling, transferring, charging, or in any other way from dealing with the suit properties; that the plaintiff has been made aware that the 14th defendant has made arrangements to dispose of some of the properties

that make up and subject matter of this suit by having the same purchased by unsuspecting third parties who are unaware of the ongoing proceedings, that the 14th defendant may thus unjustly enrich himself if he continues with those plans; that under the Constitution, a person who is not a citizen may hold land on leasehold basis only and that any such lease, when issued, shall not exceed 99 years. It is asserted that the actions of the defendants greatly offend the spirit of the Constitution with regard to the above mentioned provision of the Constitution as the defendants have admitted that they are Italian nationals who have purported to obtain absolute title following illegal subdivision of **Chembe/Kibambamshe 313** as well as 500-year leasehold titles, which actions are a gross contravention of the Constitution of Kenya 2010; that at the time the plot number **Chembe/ Kibambamshe 313** was illegally transferred from the 1st defendant to the 2nd defendant, the latter was a private company that was **99%** owned by an Italian national; that transfers were undertaken without the consent of the Land Control Board. The application is supported by the affidavit of the plaintiff sworn on 17th September, 2024.

Plaintiff's Submissions

5. The plaintiff file submissions dated 21st March, 2025. Counsel for the plaintiff gave a brief background of the matter as outlined herein above and identify the three issues for determination as follows:
 - a. Whether the defences dated 30th August, 2024 should be struck out and expunged from court record;

- b. Whether the defences raise any triable issues;
- c. Whether the 14th defendant should be held in contempt of court order dated 30th May, 2024.

6. Citing *Beatrice Wanjiru Kamuri Versus John Kibira Muiruri* 2016 eKLR, Counsel relied on **Order 7 Rule 1** of the Civil Procedure Rules and stated that there had been no explanation for the delay in filing defences since the date of substituted service; that this court has jurisdiction to strike out the said defences under **Order 2 Rule 15 CPR**. Counsel stated that in further abuse of judicial process, even after being made aware of the ongoing proceedings the defendants persisted in filing their defences without appropriately moving the court under the rules to set aside the existing interrogatory judgments entered against them on 9th April, 2024 and 28th May, 2024 despite the said judgment being valid. Counsel relied on the case of **James kanyita Nderitu & another versus Marios Philotas Ghikas & another** 2016 eKLR and urged that it cannot be disputed that service was effected against the Defendants by way of substituted service in this case; that striking out of the defences would deter parties from filing pleadings out of time and save the plaintiff from substantial prejudice that would be suffered if the court were to admit the same.

7. Counsel also submitted that the defences do not raise any triable issues bearing in mind that the defendants admit being Italian nationals who owing to **Article 65** of the **Constitution** of Kenya 2010 and **Section 9(c)** of the **Land Control Act** cannot own absolute or freehold title, yet the

plaintiff has demonstrated that they obtained freehold title to the land in question. Counsel submitted that their titles are invalid in law. Citing **Teresia Kamene King'oo Versus Harold Edward Mwangi 2019 eKLR** Counsel submitted that they can be not be any triable issue of lawful ownership as the premise upon which the defendants would raise their claims is founded on an illegality.

8. It was also submitted that **Section 26** of the **Limitation of Actions Act** does provide that time does not be in to run until the plaintiff has discovered a fraud, or the mistake, or could with reasonable diligence have discovered it; that the plaintiff has demonstrated to court at he became aware of the fraud on or around 17th July 2017 when he came across a Kenya gazette notice of the same date. Which listed land parcel Chembe/Kibabamshe/313 as being registered under the name Karisa Dhuri Kombe and that the suit was filed within **7** years from that date.
9. Regarding contempt, it was submitted that the plaintiff had been made aware that the 14th defendant had made arrangements to dispose of some the properties constituting the subject matter of this suit by having the same purchased by unsuspecting third parties, who are unaware of the ongoing proceedings. That the 14th defendant has therefore acted in flagrant violation of this court order dated 30th May 2024.

Defendants' Submissions

10. The defendants filed submissions in opposition to the Notice of Motion seeking the striking out of their defences. Those submissions are dated

14th April, 2025. Counsel for the defendant submitted that the application emanates from the main suit which was filed **43** years after the cause of action arose in **1981**, and that it is clearly statute barred; that the defendants were not aware of the filing and existence of the suit as they were in Italy at the time it was filed and so they could not enter appearance and subsequently file their defences within the required time frame; that upon learning of the existence of the suit they filed appearance and defence. Counsel stated that notwithstanding that this suit concerns land, interlocutory judgments against the defendants were obtained on 9th April, 2024 and 28th May, 2024 in contravention of order 10 rule 4 and 6 CPR which provides that interlocutory judgments can only be issued in claims seeking pecuniary damages; that the defendants are purchasers for value without notice of any defect in title who have been in occupation of their parcels of land from time of acquisition without any claim having been laid on the land by any person since then. Citing **Ramji Meghji Gudka Limited Versus Alfred Morfat Omundi Michira & 2 Others 2005 eKLR** counsel stated that striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. The defendants have a good defences against the plaintiff's suit and they should be heard. Counsel argued that the defences filed by the defendants raise triable issues, the application has been brought under **Order 2 rule 15** regarding grounds upon which a pleading can be struck out, and that the said provision provides that a

pleading can only be struck out if it discloses no reasonable cause of action or defence or is scandalous frivolous or vexatious, or it may prejudice and balance or delay the fair trial of the action and also if it is otherwise an abuse of the process of the court.

11. It is stated that the defendants can only protect their rights over the suit parcels which they are in occupation of if they are given an opportunity in court at the full trial to adduce evidence and that it would amount to a great miscarriage of justice if they are condemned unheard.
12. Counsel also relied on **Continental Butchery Limited Versus Nthiwa 1978 KLR** and **Ternic Enterprise Limited Versus Waterfront Outlets Limited 2018 eKLR** for the proposition that the triable issues raised in their defences would require further interrogation by a court during full trial, and therefore they ought to be granted leave to defend. Other cases relied on were **Job Kilach Versus Nation Media Group Limited Salaba Agencies Limited and Michael Rono 2015 eKLR**. It was stated that striking out the defences would oust the defendants from the judgment seat contrary to the constitutional imperatives on the right to access justice as contemplated in **Article 48** of the constitution and the sun they would be denied right to a fair hearing and **Article 50** of the Constitution. The case of **Jubilee Insurance Company Limited Versus Grace Anyona Mbinda 2016 eKLR** was quoted for the proposition that the power to strike out a suit or defence should be used sparingly and only on the clearest of cases where the impugned pleading is a demurrer

or something worse than a demurrer. The case of **Crescent Construction Company Limited Versus Delphis Bank Limited 2007 eKLR** was also relied on for the proposition that the power to strike out a pleading is discretionary. Citing **Wachira Karani Versus Bildad Wachira 2016 eKLR** to submitted that if the defences are allowed to stand under the suit proceeds to full trial no particles.

13. Counsel also faulted the interlocutory judgments dated 9th April, 2024 and 28th May, 2024 as irregular unlawful and therefore liable to be set aside; that interlocutory judgments should address a quantifiable monetary loss or expense arising in contractual disputes but not land disputes involving ownership or possession. Citing the case of **Peter Karanja Kamani Versus Isaac Mwangi Kimani 2018 eKLR** and **Ibrahim Gatobu Versus Mwichwiri Farmers Company Limited 2020 eKLR**, it was argued that **Order 10 rule 4 and 6** provide that where a party fails to enter appearance after being served with summons an interlocutory judgment may be entered against the party provided the claim is for pecuniary damages or for detention of goods yet the present claim is a land matter without pecuniary damages to warrant interlocutory judgment, thus the plaint does not fall within the purview of that order; that the proper course of action was for the plaintiff to set down the suit for hearing as provided for under **Order 10 rule 9 and 10** of the Civil Procedure Rules 2010; that the court should not have on its own motion endorsed the plaintiff's request for entry of interlocutory judgment owing

to the illegality of such a request. Citing **EPCO Builders Limited Versus Nairobi City Water & Sewerage Company & Three Others 2021 eKLR**, Counsel stated that the entry of interlocutory judgments had determined the plaintiff case without a full interrogation of the facts, which is irregular and unlawful, and they should not remain in place. Counsel also relied on **Solomon Mwobobia Nkuraru Versus Jacob Mwiti 2015 eKLR** and **Tree Shade Motors Limited Versus DT Dobie & Another (1995 To 1998) 1 EA 324** and **Patel Versus East African Cargo Handling Services Limited 1974 EA 75**.

14. It was also submitted that the applicant has not established that the 14th defendant is in contempt of Court.

Other Related Proceedings.

15. This court has noted that subsequent to the filing of the present application, the 5th defendant filed an application dated 14/11/2024 seeking to set aside interlocutory judgment against him, which was granted on 30th April, 2025. He also filed a defence and counterclaim dated 13/5/2025 and a list of documents and list of witnesses, both dated 26/5/2025.

16. The court has noted that after writing a letter dated 16th October, 2024 to the Deputy Registrar seeking copies of the orders on entry of interlocutory judgment, 10th defendant filed a similar application dated 30th October, 2024 which was granted on 30th April, 2025. The 10th

defendant also filed his statement of defence and counterclaim dated 13/5/2025 as well as a list of documents dated 16th May, 2025.

ANALYSIS AND DETERMINATION.

17. The issues arising for determination are as follows:

- a. Were the defendant's defences were filed late and without leave of court?**
- b. Should the defendant's defences be struck out and expunged from the record?**
- c. Is the 14th defendant guilty of contempt of court orders?**

Were The Defendants' Defences Filed Late and Without Leave of Court?

18. A cursory perusal of the court record bears out the applicant's claim that interlocutory judgment was indeed entered against the named defendants (alongside other parties) on 28th May 2024 and the cases against them ordered to be set down for formal proof. That later on, that is, on 2/9/2024 the said defendants filed defences dated 30th August, 2024 through the law firm of Kiarie Kariuki, Atieno Obura & Partners. I have perused the entire court record and found that no leave of court was obtained for the filing of the said defences. It is standard that a Deputy Registrar examines the record for any appearance or defence, and, if none is filed, for proof that the time within which any of them ought to be filed as set by the rules or by the order of court has expired. I do not find any controversy to exist between the parties on whether such time had

expired or such defences had been filed by the time of expiry of that period, and the mere fact that the Deputy Registrar entered interlocutory judgment is indicative of the fact that the time set for the filing of defence had expired without any defences of the defendants being filed.

Should The Defendant's Defences Be Struck Out and Expunged from The Record?

19. Clearly, the 5th and 10th defendants were thus excluded from the category of persons against whom interlocutory judgment in the present case applies.

20. The defendants against whom orders are being sought are the 2nd, 3rd, 4th, 6th, 9th, 14th and 15th. It is sought for an order that their defences all dated 30th August 2024 be expunged from the court record

- a. First, for being filed outside the timelines prescribed by Order 7 Rule 1 of the Civil Procedure Rules by more than 5 months and with no explanation offered for such delay;**
- b. That those defences also contravene Order 7 CPR as they lack accompanying documents required by the provisions thereof;**
- c. Above all other issues, that on 28th May 2024, interlocutory judgment was entered against the said defendants among others for default of appearance;**
- d. That despite unreasonable delay in filing their defences and the existence of interlocutory judgment against the defendants, none of them have moved this court to set aside the existing interlocutory judgments and/or be granted leave to file their defences out of time.**

21. Regarding **ground (a)**, this court has already concluded that the defences of the defendants were filed out of time. Perchance there is any doubt on that, the record shows that substituted service was effected on 19/3/2024 and the 21 days granted for the court for the filing of

appearance and defence expired on 9/4/2025 without any appearance or defence having been filed for the defendants. By filing their defences late the defendants acted in breach of the express court order dated that gave them **21** days to comply.

22. On **ground no (b)** above, this court has noted that no accompanying documents were filed alongside the defences. I have perused the provisions of **Order 7 Rule 5** regarding the filing of defence. The law therein is that the defence shall be accompanied by the list of witnesses to be called at the trial, the written statements signed by the witnesses, and copies of documents to be relied on at the trial. I do not find there to be any controversy between the parties that these documents have not been filed together with the impugned defences. By virtue of that omission, the defendants are therefore in breach of **Order 7 Rule 5 CPR**.

23. Regarding **ground (c)** it is true that interlocutory judgment was sought by the plaintiff against the defendants vide a request dated **8/5/2024** and on **28/5/2025** the Deputy Registrar entered judgment as requested. However, it is crucial to note that the request for judgment was brought under **Order 10 Rule 2** CPR and that it included a request that the matter be set down for formal proof. That request for listing for formal proof by the plaintiff is vital as it signifies that he has not been served with any defence and that he wishes to proceed as authorized under **Order 10 Rule 2**. Where such a request has been granted, it is clear that the defendant has exceeded the timelines allowed by law or by

an express court order, and, regardless of whether interlocutory judgment can be entered in a suit or not, it is not proper for a defendant to merely file a defence and purport that he has done nothing in violation of the rules. In a land matter, the grant of leave to set down the matter for formal proof significantly bars the defendants from filing a defence willy nilly, just as a proper interlocutory judgment in a pecuniary claim does.

24. The mainstay of the defendants' opposition to the present application is that such interlocutory judgment is illegal as this suit concerns land and not a pecuniary claim. I must correct the defendant's view that the claim concerns only title to land. It is incorrect in that there is a claim for general damages at **prayer (viii)** of the amended plaint. All reliance on the case law specifying that interlocutory judgment is inapplicable in this matter falls by the wayside.

25. It is now clear that the defendants, unlike the 5th and 10th defendants before them, appear quite unwilling to make an application to set aside the interlocutory judgment entered against them, in the belief that the judgment is irregular. They thus appear to be of the firm but extremely erroneous position that a party may file any document at any time and rely on it in the proceedings. It does not work like that in civil proceedings, otherwise Parliament would not have needed to provide for the enactment of rules under **Section 81** of the CPA, and the Rules Committee members would have been usefully doing other work not in

any manner related to formulation of rules to guide the civil litigation process.

26. The anarchy and unpredictability that would be engendered by absence of or non-application of Civil Procedure Rules would result in the very kind of injustice that the defendants are apprehensive of. Supposing the plaintiff just filed the suit and indicated that he could not locate the defendants and this court proceeded to hear his suit in their absence, would the defendants feel justly treated? And here is a plaintiff who goes the entire length to expend resources in a newspaper advertisement to ensure that the defendants are not left out of the proceedings he has filed, and all the defendants can impress upon the court is that they are at liberty to file their documents in any manner and at whatever time they wish, without regard to the rules. I find that to be a very self-centered approach that does not take into consideration that the plaintiff's side has also made sacrifices in obeying rules as to service of process to serve the interests of justice. It appears that the defendants fail to appreciate is that Civil Procedure Rules were made to be followed and to bring orderliness to civil proceedings and that without them, hardly any predictability would be in place as to when or how proceedings would be concluded. If they did they would have filed their documents within the time prescribed, or sought leave of court to file them late, to avoid any risk of striking out. Which brings this court back to the issue of propriety of interlocutory judgment in this matter.

27. Interlocutory judgment as entered by the Deputy Registrar of this court is not to the effect that the plaintiff's claim against the defendants has been finally concluded or proved. The Deputy Registrar qualified her entry of judgment with the clause that the matter was to be set down for formal proof.

28. Interlocutory judgment in the present case, and in all land matters where it has been obtained, lacks the connotation that the proceedings have conclusively ended. In the earlier days of only physical file records, it merely marked a milestone that the Court, through the custodian of its files the Deputy Registrar, has certified that the defendants have not filed their defences, that they are not in the court file, and that no one knows when, if ever, the defendants will ever desire to rise up and oppose the suit, and that in the absence of that knowledge the plaintiff is at liberty to set down his suit for hearing. The act of the Deputy Registrar of allowing the plaintiff to set the suit down for formal proof is simply in aid of implementation of **Order 10 Rule 9** CPR. After her decision, automatic right to file defence expired and leave of court was needed for any of the affected parties to competently file any defence. Any defence filed without such leave was therefore incompetent, irregular and can not be relied on by the court or the parties and indeed the plaintiff was not required to answer such a pleading. In the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries**

Commission & 7 others [2014] eKLR, the Supreme Court of Kenya stated:

“However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires.”

29. In the case of **Wanja v Kago (Civil Appeal E006 of 2021) [2022] KEHC 10332 (KLR)**, the court stated as follows:

“14. The appellant has urged this court to find that failure to seek leave is a technicality that can easily be cured by this court invoking article 159 (2) (d) of the Constitution and then make a finding in favour of the appellant. The Court in the case of Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR held that the objective of Article 159(2) (d) of the Constitution of Kenya was not to validate actions that are null and void but disguised as procedural technicalities. The Court further held that these provisions cannot be invoked by a party who has been indolent and fails to comply with the laid down provisions of the law to ride on a ground of a mere irregularity or procedural technicality.”

30. I therefore do not find any fault with the order issued against the defendants by the Deputy Registrar at all. The defendants named can not

be allowed by this court to hide under the provisions of the law relating to interlocutory judgment to frustrate the orderly progress of this litigation.

31. The last ground the plaintiff relies on that the defendants never concerned themselves with applying to set aside the interlocutory judgment. **Standard Chartered Bank Limited v Mwailemi (Civil Application E086 of 2022) [2023] KECA 1384 (KLR) (24 November 2023) (Ruling)**, summarizing the views of the decision of the Kenya Supreme Court **Nicholas Kiptoo Arap Korir Salat** (supra) held as follows:

“On its part, the supreme court of Kenya in Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others, Supreme Court Application No 16 of 2014 [2014] eKLR while expressing itself on the matter opined that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; that delay should be explained to the satisfaction of the court; whether there will be prejudice suffered by the respondents if the extension is granted; whether the application is brought without undue delay; and whether public interest should be a consideration.”

32. I have already stated that in a land matter, the Deputy Registrar's grant of leave to the plaintiffs to set down the matter for formal proof significantly bars the defendants from filing a defence willy nilly, just as a proper interlocutory judgment in a pecuniary claim does. There is a valid interlocutory judgment for all purposes, which requires to be set aside before any defence can be filed. A defence filed without prior setting aside of an interlocutory judgment, even in a land matter, is futile, and more so where the Deputy Registrar has already certified that the matter may be listed for formal proof. If a defence filed after that certification were allowed to stand, it would then mean that the plaintiff would be taken back to the status existing before close of pleadings and preparations for hearing would have no foreseeable end. The order granting leave to set down the matter for formal proof in a land matter is potent and can not be taken for granted. It signifies that the suit is not opposed by the defaulting defendants, just as is the case in an interlocutory judgment entered in a pecuniary claim, though the usual rule in **Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR** as to formal proof by way of evidence of the plaintiff is still necessary in both scenarios. Whatever the case, there are fixed timelines for filing defence in suits and the interlocutory judgment, however much the defendants perceive it to be irregular, marked a milestone in the proceedings, and it must be set aside if the defence is to be considered. That is what the defendants are not appreciating in this

matter. In my view the defaulting defendants only required to copy their counterparts, the 5th and 10th defendants and apply for setting aside the Deputy Registrar's orders, however irregular they thought they were. That has not been done, and I find that the application by the plaintiff is merited and it should be granted in terms of **prayer no 1** thereof.

33. Concerning contempt, the paragraphs 12, 13, 14 and 15 of the supporting affidavit are the only source of material upon which the allegations of contempt are made. However, the annexure "JKK5" at paragraph 13 in support of the statements in the affidavit does not specifically point at the 14th defendant as the one carrying on the alleged developments on the land. Besides, the description of the activity symbolized by annexure "JKK5" at paragraph 13 is as follows:

"Annexed are the pictures showing the ongoing construction by the defendants, marked as "JKK5."

34. Further, going by the contents of the affidavit, there is no evidence of disposition to third parties specifically attributable to the 14th defendant or indeed to any of the defendants. Contempt of court, it was said in the case of **Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227**, is a serious claim of a quasi-criminal nature and a court ought to be careful while determining an application seeking punishment for contempt because the liberty of some individual may be hinged on the court's finding. **Gatharia**, (supra) held that:

"A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily...."

It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

35. Upon scrutiny of the application before me, I find no evidence that could enable this court, even on a *prima facie* basis, make out any offence of contempt for which the 14th defendant can be convicted, and the prayer for committal is thus for dismissal. That is not to say that the 14th defendant has not violated the order. It is only that the evidence presented before court is insufficient to convict.

36. The final outcome of the application dated **17th September, 2024** is that it is granted in terms of **Prayer no 1** while **prayers nos 2 and 3** are declined. The plaintiff shall have the costs of the application as against the defendants named in the application as offending respondents who by their default prompted the application. The suit shall be mentioned on **26th February, 2026** for issuance of a hearing date.

Dated, signed and delivered at Malindi on this 20th day of January 2026.



**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**