

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MARSABIT**

**CCIVIL CASE NO. E005 OF 2025**

**LAISAMIS YOUTH EMPOWERMENT LIMITED.....  
PLAINTIFF**

**VERSUS**

**THE MANAGER,**

**LAISAMIS CONSTITUENCY UWEZO FUND..... 1<sup>st</sup>  
DEFENDANT**

**THE COMMITTEE,**

**LAISAMIS CONSTITUENCY UWEZO FUND.....2<sup>nd</sup>  
DEFENDANT**

**RULING**

**A. Introduction**

1.The Application for determination, before this court is a Notice of Motion application dated 22.07.2025 brought pursuant to the provisions of ***Section 1A, 1B and 3A of the Civil Procedure Act, & Order 10 rule 11, Order***

**45 Rule 1 & Order 51 (1) of the Civil Procedure Rules** and seeks for the following orders;

- a. THAT the Consent judgment adopted as a judgment of the court on 20<sup>th</sup> May 2025 be set aside and/or vacated.**
- b. THAT all consequential Orders, including garnishee proceedings against Cooperative Bank and the disbursements of Kshs.11,726,753.00/= to the plaintiff/Respondent, be set aside.**
- c. THAT the Notice of Appointment and pleadings filed by one KURGAT & COMPANY ADVOCATES purportedly on behalf of the Defendants/Applicants be struck out for want of authority.**
- d. THAT this Honourable court do issue an order for restitution of Kshs.11,726,753.00/= disbursed pursuant to the said consent/judgment and garnishee proceedings.**
- e. THAT the costs of this Application be provided for.**

2.The Application is supported by the grounds stated on the face of the said Application where they applicants counsel avers that the defendants/Applicants were never served with summons to enter appearance and/or pleadings in this matter and never appointed or instructed any counsel to act on their behalf. It was therefore clear that the firm KURGAT & CO ADVOCATES had no capacity and/or

authority to enter into the consent dated 20<sup>th</sup> May 2025 and thus urged the court to set aside the said consent on grounds that it was fraudulently procured without the Applicants' express knowledge, consent and/or authority.

3. As a result, the respondents had moved court to garnishee their account, which fact, they only become aware of on 1<sup>st</sup> July 2025 upon their accounts being attached and as a result had lost public money, yet their funds were not meant to support CDF projects. It was therefore clear that the respondent had compromised the integrity of the court process, a situation which the court could not countenance and thus urged this court to allow this application in the interest of justice.

4. The respondents, despite being served, did not file any response to the said application and though the same is deemed unopposed. Be that as it may, pray (2) and (4) of the said Application cannot be granted because the garnishee orders have already been effected and funds disbursed. That undisputed fact cannot be set aside. Secondly, the applicants are yet to file any pleadings the basis upon which the same a claim for refund can be founded. In other words, court orders cannot be granted in a vacuum, and the respondents have to file a counter claim the basis upon which a claim for refund of ***Kshs.11,726,753.00/=*** can be founded.

### **DISPOSTION**

5. Taking all relevant factors into consideration, I do find that;

**(a) The Application dated 22<sup>nd</sup> July 2025 is partially merited and the same is allowed in terms of prayer (1), (3), & (5).**

**(b) The costs of this Application is awarded to the plaintiff/Applicant and the same is assessed at Kshs.30,000/= all inclusive.**

6. The Applicant is granted leave to file and serve their defence and counter claim within the next 21 days

7. It is so ordered.

**READ, SIGNED and DELIVERED** virtually at **MARSABIT** on this **12<sup>th</sup>** day of **FEBRUARY 2026**.

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Team this **12<sup>th</sup>** day of **FEBRUARY 2026**.

**In the presence of: -**

N/A .....Plaintiff

N/A .....1<sup>st</sup> Defendant

N/A .....2<sup>nd</sup> Defendant

Mr. Jarso .....Court Assistant

ORIGINAL