

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KWALE

ELCC 71 OF 2021

JANE NJERI MESSIREZ PLAINTIFF

- VERSUS -

HAZINA INVESTMENT CO. LIMITED..... 1ST

RESPONDENT

LAND REGISTRAR KWALE 2ND

RESPONDENT

RULING

I. Introduction

1. Before the Honourable Court for its determination is a Notice of Motion application dated 16th December 2025. It was raised by “*Hazina Investments Co. Limited*” - 1st Defendant/Applicant herein.
2. The application was brought under the provision of Order 26 Rule 5 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya.

3.

II. The Application by the 1st Defendant/Applicant

4. The Notice of Motion application dated 16th December 2025 sought the following orders: -

a) This Honourable Court be pleased to dismiss the Plaintiff's suit as a whole.

b) Costs be awarded to the 1st Defendant in any event.

5. The application was premised on the ground, testimonial facts and the averments made out under by a 11 Paragraphed Affidavit sworn by Mr. DAVID GITONGA MURIITHI dated on 16th December 2025

together with annexures marked as “DMG” annexed hereto. He averred as follows that:-

- a) He was the Director of the 1st Defendant/Applicant and duly authorized by the company and its other Directors to depose thereto, averring competence to do so.
- b) On 2nd October 2023, this Honourable Court issued an order directing the Plaintiff/Respondent to execute and file a bond for security for costs in the sum of Kenya Shillings Three Million (Kshs. 3,000,000/=) within thirty (30) days, a true copy of which was annexed and marked “DMG-1”.
- c) Despite of the lapse of the stipulated period, the Plaintiff/Respondent had failed, neglected, and/or refused to comply with the said order to date.
- d) The Plaintiff/Respondent had been severally requested and reminded to comply, particularly on 17th July 2025, when the hearing was adjourned due to non - compliance and the Court expressly directed compliance with a further affidavit exhibiting the executed bond.
- e) Instead of executing and filing the bond as ordered, the Plaintiff/Respondent filed a document described as an undertaking, which never amounted to compliance with the express terms of the Court’s order.
- f) The Plaintiff/Respondent’s conduct evinced no intention to comply with the Court’s lawful orders, thereby occasioning prejudice to the 1st Defendant/Applicant.
- g) The order for security for costs was made for good reason, including concerns over the Plaintiff/Respondent’s identity and ability to satisfy any costs awarded against her.

- h) The continued non - compliance was said to expose the 1st Defendant/Applicant to imminent and irrecoverable loss, as it incurs ongoing legal costs in defending the suit without the ordered security.
- i) Relying on advice from Advocates on record, which advice the deponent verily believed to be true, it was deposed that failure to comply with court orders—particularly those relating to security for costs—entitles the Court to grant appropriate sanctions, including dismissal or conditional orders.
- j) The 1st Defendant/Applicant averred that it had acted in good faith at all times, while the Plaintiff/Respondent had persisted in conduct amounting to abuse of the court process.
- k) In the interests of justice, the deponent prayed that the Plaintiff/Respondent be compelled to comply with the Court's order or face the attendant consequences.

III. The responses by the Plaintiff/Respondent

6. While opposing the Notice of Motion application dated 16th December 2025, the Plaintiff/Respondent filed responses through a 14 Paragraphed Replying Affidavit sworn and dated on 26th January 2026 by JANE NJERI MISEREZ where she deposed that: -
- a) She was fully conversant with the facts giving rise to the dispute and the interlocutory application before court.
 - b) In the year 2013, while the Plaintiff/Respondent was resident in Switzerland, the 1st Defendant/Applicant moved the court for orders for security for costs.
 - c) She complied with the said application by executing an undertaking and furnishing a bond for security for costs dated 12th August 2013, which was duly filed in court.

- d) The said security for costs was accepted by the 1st Defendant/Applicant without objection and remained valid and subsisting.
- e) She had since relocated from Switzerland and was now permanently resident in Diani, South Coast, Kwale County, within the jurisdiction of this Court.
- f) Notwithstanding the existence of the earlier security for costs, the 1st Defendant/Applicant filed a fresh application for security for costs dated 26th April 2023.
- g) In compliance with the subsequent orders of the Court, she executed and furnished a further security for costs together with a supporting affidavit, all dated 29th July 2025.
- h) The said documents were forwarded to the 1st Defendant/Applicant's Advocates vide a letter dated 30th October 2025.
- i) The present application by the 1st Defendant/Applicant never disclosed the existence of the earlier security for costs or her subsequent compliance with the Court's directions.
- j) The application had been brought at an advanced stage of the proceedings, at a time when the hearing of the main suit is imminent.
- k) The 1st Defendant/Applicant had previously filed multiple applications and had instituted a separate suit in a lower court involving the same subject matter, a fact which she urges the Court to take judicial notice of.

l) She reiterated not having any intention of leaving the jurisdiction of this Court and that her residence in Kenya is permanent.

m) She recently lost her husband, who was cremated at the Mombasa Hindu Crematorium, which she relied on as demonstrating her permanent ties to Kenya.

n) The Plaintiff/Applicant urged the Court to find that the present application was unwarranted and to dismiss it so as to allow the main suit to proceed to hearing without further delay.

IV. The Supplementary Affidavit by the Defendant/Applicant

7. With the leave of Court, the Defendant/Respondent/Applicant filed a Supplementary Affidavit sworn on behalf of the 1st Defendant/Applicant through Messrs. Muchangi Nduati Ngingo, Advocate of the High Court of Kenya, who deponed that:

- a) He was duly on record for the 1st Defendant/Applicant thus fully conversant with the facts and proceedings herein since inception.
- b) The issue of security for costs arose as early as 31st October 2012, when the Court ordered the Plaintiff/Respondent to execute a bond for security for costs in the sum of Kenya Shillings Three Million (Kshs. 3,000,000/=) within seven (7) days.
- c) The Plaintiff failed to comply with the said order and instead filed a personal undertaking, which was objected to by the 1st Defendant/Applicant on the basis that it never amounted to a proper bond for security for costs as directed by the Court.

- d) The Court was thereafter moved, and on 16th September 2013, it issued a further and explicit order directing the Plaintiff to execute a proper bond for security for costs, which order, according to the 1st Defendant/Applicant was never complied with.
- e) Following the Plaintiff/Respondent's failure to comply with the said order, no meaningful steps were taken to prosecute the suit, culminating in the dismissal of the suit for want of prosecution on 17th May 2017.
- f) The 1st Defendant/Applicant annexed to the Supplementary Affidavit a copy of the dismissal order dated 17th May 2017 and correspondence dated 18th February 2014, which was relied upon as evidence of the Plaintiff/Respondent's continued non-compliance and inaction.
- g) The Plaintiff/Respondent re-emerged on 17th March 2020, nearly three years after the dismissal of the suit, seeking reinstatement on the grounds that she had allegedly not been informed by her advocates of the Notice to Show Cause issued by the Court.
- h) The application for reinstatement was allowed on 4th July 2021, and the Court subsequently issued Pre - Trial directions on 21st July, 2022, thereby reviving the suit.
- i) Despite of the reinstatement, the Plaintiff/Respondent had continued to delay the progress of the matter by repeatedly changing advocates on record, a conduct the 1st Defendant/Applicant viewed as deliberate and calculated to frustrate the expeditious disposal of the suit.

- j) Owing to the Plaintiff/Respondent's historical and continued non-compliance, the 1st Defendant/Applicant filed an application dated 26th April 2023, seeking fresh orders for security for costs.
- k) The Court, upon hearing the said application on its merits, re-issued an order on 2nd October 2023, directing the Plaintiff/Respondent to execute a bond for security for costs, an order which the 1st Defendant/Applicant maintained and remained binding and enforceable.
- l) The Plaintiff/Respondent could not circumvent strict compliance with the Court's order by filing a mere personal undertaking, which does not meet the legal threshold of a bond for security for costs.
- m) In conclusion, the 1st Defendant/Applicant deponed that given the Plaintiff/Respondent's conduct throughout the life of the suit, it was both just and necessary that the order for security for costs be enforced to protect the 1st Defendant/Applicant from the risk of loss should the Plaintiff/Respondent's claim ultimately fail.

V. The Skeletal arguments by the Defendant/Applicant

8. The 1st Defendant/Applicant filed Skeletal arguments dated 16th December 2025 in support of the application. Mr. Nduati Advocate commenced by stating that the Defendant/Applicant sought the dismissal of the Plaintiff/Respondent's suit for failure to comply with the express orders of this Court made on 2nd October 2023.
9. It was the Applicant's submission that the said order, annexed to the supporting affidavit as Annexure marked as "DMG '1'", was clear, unequivocal and binding, having allowed the application dated 26th

April 2023 and directed the Plaintiff/Respondent to execute a bond for security for costs in the sum of Kenya Shillings Three Million (Kshs. 3,000,000/=) within thirty (30) days. The Applicant further submitted that despite the clarity of the order, the Plaintiff/Respondent failed to comply and instead filed a personal undertaking, purporting it to be a bond for security for costs, an action which the Applicant characterizes as misconceived and a deliberate attempt to evade compliance.

10. The Court was urged to note that the Plaintiff's non-compliance persisted notwithstanding reminders and express directions by the Court, including those issued on 17th July 2025, when the Court reiterated the requirement for compliance with the order of 2nd October 2023.
11. The Learned Counsel averred that, as a matter of practice and law, a bond for security for costs must ordinarily take the form of a bank guarantee, cash deposit, or insurance bond, thereby assuring the availability of funds in the event that costs was awarded. It was further argued that even where an undertaking was permitted in lieu of a bond, such undertaking must be issued by a third party and not by the litigant herself, as was the case herein, rendering the Plaintiff's purported compliance legally insufficient.
12. To buttress on this point, the Applicant placed reliance onto the provision of Order 26 of the Civil Procedure Rules, 2010 contending that the essence of security for costs was to protect a Defendant from the risk of being unable to recover costs from a Plaintiff who was either impecunious or otherwise unlikely to satisfy a costs order.

13. The Court was urged to find that the order for security for costs was made in the exercise of judicial discretion, taking into account the circumstances of the case, and that the Plaintiff/Respondent had neither complied with nor challenged the said order by way of review or appeal.
14. On the legal consequences of non-compliance, the Applicant submits that execution of the bond for security for costs was a condition precedent to the continuation of the suit, and that failure to comply within the stipulated time entitles the Defendant to seek dismissal of the suit.
15. The Applicant relied on the decision of the Supreme Court in the case of:- "**Westmont Holdings SDN BHD - Versus - Central Bank of Kenya & 2 Others, Petition No. 16 (E023) of 2021**", wherein the Court revisited the principles governing security for costs, including the decisions in "**Sir Lindsay Parkinson & Company Limited - Versus - Triplan Limited (1973)**" and "**Keary Developments - Versus - Tarmac Construction (1995)**".
16. The Applicant further cited the Court of Appeal decision in "**Gatirau Peter Munya - Versus - Dickson Mwenda Kithinji & Others (2014) eKLR**", where the rationale for security for costs was articulated as safeguarding a successful party from unrecoverable costs and preventing indefinite litigation by a party unable to meet adverse cost orders.
17. It was submitted that while the Plaintiff/Respondent, in her undertaking, asserts an ability to meet any costs that may be awarded, her continued failure to execute the bond as ordered exposes the Defendant/Applicant to ongoing litigation expenses with no corresponding security.

18. In conclusion, the Defendant/Applicant urged the Court to find that the Plaintiff/Respondent's conduct amounted to willful disobedience of a lawful court order and that, in the circumstances, the continued pendency of the suit was prejudicial to the Defendants. Therefore, it should allow the application dated 16th December 2025 and dismiss the Plaintiff/Respondent's suit with costs to the 1st Defendant/Applicant.

VI. Analysis and Determination

22. I have keenly assessed and considered the filed pleadings being mainly the said Notice of Motion application dated 16th December, 2025, the annexures thereof, the replies, supplementary affidavit and skeleton arguments, the myriad authorities cited, the provision of the Constitution of Kenya, 2010 and the statutes.

23. For the Honourable Court to arrive at an informed, reasonable and fair decision, the following three (3) issues fall for determination in the application: _

a) Whether the Notice of Motion application dated 16th December 2025 has any merit to wit, the Applicants have made a case to strike out the Suit.

b) Whether the parties herein are entitled to the reliefs sought; and

c) Who bears the costs of the application?

ISSUE No. a). Whether the Notice of Motion application dated 16th December 2025 has any merit to wit the Applicants have made a case to strike out the Suit.

27. Under this Sub - heading, the Honourable Court will examine the substratum raised by the Defendant/Applicant - striking out a the Plaintiff/Applicant's suit for non - compliance of a Court order to execute a security bond. Essentially, that the entire

Suit as instituted by the Plaintiff/Respondent herein has offended certain provision of the law. Legally speaking, the striking out of the suits are governed under the provision of Order 2 Rule 15 of the Civil Procedure Rules, 2010. It does allow a party to apply for the striking out of a suit. It provides as follows: -

Striking out pleadings [Order 2, Rule 15.]

(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) It discloses no reasonable cause of action or defence in law; or

(b) It is scandalous, frivolous or vexatious; or

(c) It may prejudice, embarrass or delay the fair trial of the action; or

(d) It is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

28. In the course of time, the High Court has extensively and through a plethora of authorities, it is settled law that the power and Jurisdiction of the Court to strike out pleadings is discretionary. It must be exercised judicially and be used sparingly and cautiously. That is the case as it is exercised without the court being fully informed on the merits of the case through discovery and oral evidence. The leading and still very relevant case on this front was that of:- ***“D.T. Dobie & Company (Kenya) Limited - Versus - Muchina [1982] KLR 1”***. Madan JA, stated:-

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by

amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it."

29. Further to that, in the case of: - ***"Co - operative Merchant Bank Limited - Versus - George Fredrick Wekesa (Civil Appeal No. 54 of 1999)"*** the Court of Appeal stated:

"Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the Appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the Respondent's action or which is otherwise an abuse of the process of the court."

30. Additionally, in the case of: - ***"Yaya Towers Limited - Versus - Trade Bank Limited (In Liquidation) (Civil Appeal No. 35 of 2000)"*** the same court expressed itself thus: -

"A Plaintiff (defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the Defendant (Plaintiff) can demonstrate shortly and conclusively that the Plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial.....It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved."

31. Now applying these principles to the instant case. The main reason why the applicant has sought for this suit to be struck

out is non-compliance with the Court order on security for costs by the Plaintiff. The law governing security of costs is set out under the provision of Order 26 of the Civil Procedure Rules, 2010 which provides as follows: -

“1. In any suit the court may order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party.

2. If an application for security for costs is made before a defence is filed, there shall be filed with the application an affidavit setting out defence the grounds of the defence together with a statement of the deponent’s belief in the truth of the facts alleged.

3. Where it appears to the court that the substantial issue is which of two or more defendants is liable or what proportion of liability two or more defendants should bear no order for security for costs may be made.

4. In any suit brought by a person not residing in Kenya, if the claim is founded on a bill of exchange or other negotiable instrument or on a judgment or order of a foreign court, any order for security for costs shall be in the discretion of the court.

5.(1) If security for costs is not given within the time ordered and if the Plaintiff is not permitted to withdraw the suit, the court shall, upon application, dismiss the suit.

(2) If a suit is dismissed under subrule (1) and the Plaintiff proves that he was prevented by sufficient cause from giving the required security for costs the court may set aside the order dismissing the suit and extend the time for giving the required security.

6. (1) Where security by payment has been ordered, the party ordered to pay may make payment to a bank or a reputable financial institution in the joint names of himself and the

defendant or in the names of their respective advocates when advocates are acting.

32. This legal position has been backed up by several Court decisions.

In the case of :-**Patrick Ngetakimanzi - Versus - Marcus Mutuamuluvi & 2 Others- High Court Election Petition No. 8 of 2013** it was held that: -

“Security of costs ensures that the respondent is not left without recompense for any costs or charges payable to him. The duty of the court is therefore to create a level ground for all the parties involved, in this case, the proportionality of the right of the petitioner to access to justice vis-a-vis the respondent's right to have security for any costs that may be owed to him and not to have vexatious proceedings brought against him.”

33. Further in the case of:- **Gatirau Peter Munya - Versus - Dickson Mwenda Githinji & 2 Others, CA No. 38 of 2013 [2014] eKLR**, the Supreme Court emphasized that: -

“In an application for further security for costs, the Applicant ought to establish that the Respondent, if unsuccessful in the proceedings, would be unable to pay costs due to poverty. It is not enough to allege that a Respondent will be unable to pay costs in the event that he is unsuccessful. And the onus is on the Applicant to prove such inability or lack of good faith that would make an order for security reasonable.”

34. It is undoubted that there was a Court Order made on 2nd October, 2023 and several reminders by Court on diverse dates including the 17th July, 2025 over the said issue. This Honourable Court has on umpteenth times stressed that Court orders are not cosmetic, proposals nor given as a formality. They have to be obeyed at all costs. Should a party be aggrieved by a Court order, the only remedy available is to

come back for it to be either reviewed, or stayed or set aside. Better still, conventionally there is always the route to prefer an appeal but for heavens sake never to disobey a Court Order. It is a simple as that.

35. While making this strong and assertive legal position, I have sought refuge from numerous Court precedents. In the case of:-

“Shah - Versus - Shah [1982] KLR 95” it was held that: -

“The general rule is that security is normally required from Plaintiff’s resident outside the jurisdiction, but as was agreed in the court below, a court has discretion, to be exercised reasonably and judicially, to refuse to order that security be given”.

36. Additionally, in the case of:- **“Kibiwott & 4 Others - Versus - The Registered Trustees of Monastery of Victory Nakuru, HCCC No 146 of 2004”** the court observed that an applicant for security of costs has to prove that the opposing party will not be able to pay the costs to be awarded in the event of the suit filed by such a party being unsuccessful. However, the above concerns striking out a suit for failure to provide security. Indeed, it is trite law that court orders are binding and must be obeyed unless lawfully set aside.

37. The Supreme Court in the case of:- **“Teachers Service Commission - Versus - Kenya National Union of Teachers & 2 Others [2013] eKLR”**, at paragraph 68, stated:

“Court orders are not made in vain and are meant to be complied with. Disobedience of court orders erodes the dignity and authority of the courts and the rule of law itself.”

38. Finally, the Court of Appeal in the case of:- **“Hadkinson - Versus - Hadkinson [1952] 2 All ER 567”**, at page 569, held:-

“It is the plain and unqualified obligation of every person against whom an order is made to obey it unless and until that order is discharged.”

39. Now applying these principles to the present matter. I reiterate that the Court order of 2nd October 2023 has neither been appealed against nor reviewed, and remains in force. Based on these legal reasoning, the Court holds that the application by the Applicant has merit and ought to be considered as prayed.

ISSUE No. b). Whether the parties are entitled to the reliefs sought

40. Under this Sub - heading, the Honourable Court now wishes to apply the established legal principles to the facts of this case and determine whether the 1st Defendant/Applicant is entitled to the orders sought in the Notice of Motion application dated 16th December 2025. There is no dispute that on 2nd October 2023 this Court directed the Plaintiff to execute and file a bond for security for costs in the sum of Kenya Shillings Three Million (Kshs. 3,000,000/=) within thirty (30) days. It is equally not disputed that the said order has neither been appealed against nor reviewed and therefore remains valid, binding and enforceable.

41. The 1st Defendant's position is that the Plaintiff/Respondent has willfully disobeyed the said order by filing what is described as a personal undertaking instead of a proper bond for security for costs, and that such non-compliance entitles the Court, under Order 26 Rule 5(1) of the Civil Procedure Rules, 2010 to dismiss the suit. The Plaintiff/Respondent, on the other hand, contends that she has previously furnished security for costs, that she has since relocated permanently to Kenya, and that she has

executed further documents in compliance with the Court's directions.

42. The Court has carefully perused the record and notes that the issue of security for costs in this matter has a long history dating back to 2012. The suit was at one point dismissed for want of prosecution and later reinstated. It is therefore evident that the litigation has been protracted and punctuated by interlocutory contests, particularly on the question of compliance with orders for security.

43. The provision of Order 26 Rule 5(1) of the Civil Procedure Rules, 2010 provides that if security for costs is not given within the time ordered, the Court shall, upon application, dismiss the suit. However, Rule 5(2) grants the Court discretion to set aside such dismissal and extend time if sufficient cause is shown. The language of the Rule must therefore be read together with the overarching constitutional imperatives under the provision of Articles 25 (c), 48, 50 (1) & (2) and 159 (2) (d) of the Constitution of Kenya, Sections 3 & 13 of the Environment & Land Act, No. 19 of 2011 which obligates this Court to facilitate fair hearing, access to justice and to administer justice without undue regard to procedural technicalities, while at the same time upholding the authority of court orders.

44. The Court is alive to the principle that court orders must be obeyed. As was stated in *Teachers Service Commission" (Supra)*, court orders are not made in vain. Nonetheless, dismissal of a suit is a draconian step as it summarily terminates a party's substantive claim without a hearing on the merits. The Court must therefore exercise its discretion judiciously, balancing the

Defendant's right to protection against unrecoverable costs with the Plaintiff's right to have her dispute heard and determined on its merits.

45. In the present case, while there has been delay and contestation surrounding the form and adequacy of the security furnished, the Court is not persuaded that the Plaintiff/Respondent's conduct, at this stage, warrants the ultimate sanction of dismissal. The suit has already undergone reinstatement, pre-trial directions have been taken and indeed its part heard whereby the Plaintiff is at the verge of closing its case. It ought to be concluded. To strike out the suit now would drive the Plaintiff/Respondent from the seat of justice without a determination of the substantive dispute.

46. Be that as it may, the Court cannot condone continued ambiguity or partial compliance with its orders. I reiterate that the order of 2nd October 2023 was graphically clear: the Plaintiff was to execute a bond for security for costs in the sum of Kenya Shillings Three Million (Kshs. 3,000,000/=). If the security furnished does not meet the legal threshold of a bond—whether by way of bank guarantee, insurance bond, or cash deposit in a joint interest earning account as contemplated under Order 26 Rule 6—then the Plaintiff/Respondent remains under an obligation to strictly comply.

47. In the premises, this Court declines to dismiss the suit at this juncture. Instead, in order to safeguard the interests of the 1st Defendant/Applicant while preserving the Plaintiff/Respondent's right to be heard to its logical conclusion, the Court will issue

robust orders on the conclusion and disposition part on the way forward and on the application.

ISSUE No. c) Who will bear the Costs of the Objection?

48. It is now well established that the issue of Costs is the discretion of Courts. Costs mean the award that a party is granted at the conclusion of a legal action or proceeding in any litigation. According to the Black Law Dictionary, "Cost" is defined to mean, ***"the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other"***.

49. The provisions of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that Costs follow events. By the events, it means the results or outcome of any legal action or proceedings thereafter. Further, these legal principles were upheld in the Supreme Court case of ***"Jasbir Rai Singh - Versus - Tarchalans Singh, (2014) eKLR"*** and the Court of Appeal cases of ***"Cecilia Karuru Ngayu - Versus - Barclays Bank of Kenya & Ano. (2016) eKLR"*** the Courts held: -

"..... the basic rule on attribution of costs is that costs follow the event.....it is well recognized that the principles costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in presenting or defending the case".

50. In the circumstances, and in order to do justice to both parties, the Court directs that the costs of the Notice of Motion application dated 16th December 2025 shall abide the outcome of the main suit.

VII. Conclusions & Disposition

51. Consequently, upon causing an in-depth analysis to the framed issues herein, the Honourable Court on Preponderance of Probabilities and the balance of convenience reaches at the following findings. These are: -

- a) **THAT** the Notice of Motion application dated 16th December, 2025 be and is hereby found to be partially meritorious as per the fulfilment of the Pre - Conditions stated herein below.
- b) **THAT** the Plaintiff/Respondent be and is hereby ordered **WITHIN FORTY-FIVE (45) DAYS** from the date hereof, execute and file a proper bond for security for costs in the sum of Kenya Shillings Three Million (Kshs. 3,000,000/=), in the form of a bank guarantee, insurance bond from a reputable insurer, or a cash deposit in a joint interest earning account in the names of the parties' advocates - Messrs. Muchangi Nduati & Company Advocates and Messrs. Birir Ngeno & Company Advocates.
- c) **THAT** the said bond shall be filed in Court and served upon the 1st Defendant's Advocates **WITHIN FOURTEEN (14) DAYS** of execution.
- d) **THAT** in default of compliance within the stipulated period, the Plaintiff/Respondent's suit shall stand automatically dismissed without the necessity of further application.
- e) **THAT** in the meantime, the matter shall be mentioned on 4th May, 2026 for compliance of this order. Upon the full compliance, the hearing of the matter shall be on 13th October, 2026.
- f) **THAT** the costs of the Notice of Motion application dated 16th December 2025 shall abide the outcome of the main suit.

IT IS ORDERED ACCORDINGLY.

**RULING DELIVERED THROUGH THE MICRO - SOFT TEAMS VIRTUAL
MEANS, SIGNED AND DATED AT KWALE THIS.....16th
DAY OFFEBRUARY2026**

.....
**HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT**

AT

KWALE.

Ruling delivered in the presence of: -

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Birir Advocate for the Plaintiff/Respondent.
- c) Mr. Nduati Advocate for the 1st Defendant/Applicant
- d) M/s Ondieki Advocate holding brief for M/s. Kiti Advocate for the 2nd Defendant.