



1. What is coming up before the court is the 1<sup>st</sup> Defendant/Applicants' Notice of Motion dated the 20<sup>th</sup> April, 2022 seeking the following reliefs:

***a. Spent***

***b. Spent***

**c. The consent judgment entered by the parties hereto on 7<sup>th</sup> March, 2022, be varied and/or set aside together with any subsequent orders.**

**d. Leave be granted to the 1<sup>st</sup> Defendant to amend its Defence and Counterclaim to include a crossclaim against the 2<sup>nd</sup> Defendant as per the annexed Draft.**

**e. The costs of the application be provided for**

2. The Motion is premised on the grounds set out on the face of the Motion and supported by the Affidavit of George Weru, a duly licensed Insolvency Practitioner, and one of the joint Provisional Liquidators of the 1<sup>st</sup> Defendant/Applicant with the authority of his co-Provisional Liquidator Muniu Thoithi.

3. He deponed that on the 7<sup>th</sup> March, 2022, the Plaintiff and the 2<sup>nd</sup> Defendant herein, on the one hand, and the Plaintiff and the 6th to the 26th Interested Parties, on the other hand, recorded a consent judgment substantially compromising the suit herein between the parties and marking this matter as closed.
4. The aforesaid consent also unilaterally declared the 2<sup>nd</sup> Defendant, the undisputed proprietor of the parcel of land known as Land Reference No. 11329 Kasarani (*suit property*) and proceeded to make provisions alienating the suit property to the Plaintiff and the 2<sup>nd</sup> Defendant.
5. According to Mr Weru, there is an obvious error on the face of the record in the said consent judgment, as the 1st Defendant had filed a defence and counterclaim against the Plaintiff. While the Plaintiff withdrew its suit against the 1st Defendant, the 1st Defendant's counterclaim remains unresolved in this matter.
6. He explained that they have since established that the transfer of the suit property from the 1st Defendant to the 2nd Defendant on or about 3rd June, 2011, was fraudulent,

null, and void. The aforementioned information was not available to them at the time of recording the impugned consent judgment mentioned earlier.

7. He deposes that in light of the new and important information discovered as aforesaid, it has become necessary for the 1<sup>st</sup> Defendant to amend its Defence and counterclaim filed on 25<sup>th</sup> June 2009 to include a crossclaim against the 2<sup>nd</sup> Defendant. The consents recorded herein also need to be reviewed in light of the new evidence.
8. The 1<sup>st</sup> Defendant urged that the intended amendment is necessary to properly articulate and protect its proprietary rights over the property and will enable the court to effectively and conclusively determine the real questions in controversy between the parties.
9. According to Mr Weru, the Respondents and the Interested Parties are in the process of extracting a decree with a view to executing the consent judgment, notwithstanding an apparent error on the face of the record. That, unless the orders are granted, the property faces a real and imminent

risk of disposal or alienation in violation of the 1<sup>st</sup> Defendant's proprietary rights.

10. In response to the Motion, the Plaintiff filed a Notice of Preliminary Objection dated the 23<sup>rd</sup> September, 2022 premised on the grounds that the Motion offends the provisions of **Order 25 Rule 2** of the **Civil Procedure Rules, 2010**, and as such, this court became functus officio and ceased to have jurisdiction the moment the 1<sup>st</sup> Defendant ceased to be party vide a withdrawal on 7<sup>th</sup> March, 2022.

11. In response to the Motion, the Plaintiff, through its Directors Stephen Muriuki Maathai and Pius Mwangi Gukira, filed Replying Affidavits dated 22<sup>nd</sup> July 2025 and 30<sup>th</sup> September 2025 respectively.

12. They deposed that the 1st Defendant had actively taken part in the negotiations organised to align the parties' interests and reach an amicable settlement of the dispute. According to them, a director of the 1st Defendant was present when the Plaintiff and the 2nd Defendant signed the consents dated 21st February 2022, and no objection was

raised nor was the existence of any pending counterclaim disclosed.

13. It was further deponed that Mr. Paul Wafula, advocate for the 1<sup>st</sup> Defendant, was present in court on 7<sup>th</sup> March, 2022 when the said consents were formally adopted as an order of the court by Hon. Justice S. Okong'o (as he then was), yet no objection was raised and no reference was made to the counterclaim dated 1<sup>st</sup> June 2009.
14. It was therefore argued that the matter was definitively resolved and that the court subsequently became functus officio, and that the present Motion seeks to improperly reopen a dispute that had already been concluded through a binding agreement.
15. The Directors further averred that the consent orders have since been substantially implemented. Part of the suit property was transferred from the 2<sup>nd</sup> Defendant to the Plaintiff, resulting in the parties' becoming tenants in common, while other portions were transferred to Kingdom Seekers Fellowship and Murare Holdings Limited.

16. The land was subsequently converted to Title No. Nairobi Block 181/2504 and partitioned into seventeen parcels, sixteen of which are now owned by third parties who are not parties to these proceedings. Some of the third parties have since transferred or charged their parcels of land to financial institutions.
17. They further deponed that the Plaintiff paid Kshs 30,430,000/= to the 6<sup>th</sup>-26<sup>th</sup> Interested Parties in satisfaction of the consent and that several third parties have since taken possession and undertaken substantial developments on the land.
18. In their view, reopening the matter would occasion grave prejudice to the Plaintiff and third parties and would undermine the constitutional imperative of promoting amicable settlement under **Article 159(2)(c)** of the **Constitution**.
19. The Plaintiff also argued that the 1st Defendant, being in liquidation, should have sought leave prior to initiating this proceeding. Further, the claim now being introduced is

time-barred, and the correct course of action would have been to commence a new suit with leave where necessary.

20. They maintained that a consent order carries contractual effect and can only be set aside on recognized grounds such as fraud, misrepresentation, non-disclosure or mistake, none of which have been demonstrated in the present case. Accordingly, the Motion was characterized as frivolous, vexatious and an abuse of the court process, and the court was urged to dismiss it with costs.

21. The 2nd Defendant filed a Preliminary Objection dated 23<sup>rd</sup> September 2022, seeking to strike out the present Motion on the grounds that it is incompetent and cannot lie under the provisions of the law on which it has been brought. It also states that the 1st Defendant lacks the locus standi to seek the prayers sought in the Application, nor was leave sought before the filing of the Motion pursuant to Section 432 of the Insolvency Act 2015.

22. It was further contended that the proposed cross-claim against the 2<sup>nd</sup> Defendant is incompetent as it seeks to introduce an entirely new cause of action that is time-

barred under the Limitation of Actions Act, and is merely an attempt by the 1st Defendant to defeat the 2nd Defendant's defence of limitation.

23. It was also argued that the Application improperly seeks to introduce a new party into the counterclaim without leave of the court as required under **Order 1 Rule 10** of the **Civil Procedure Rules**, and that the purported appointment of George Weru and Muniu Thoiti as co-Provisional Liquidators of the 1<sup>st</sup> Defendant is invalid and contrary to the mandatory provisions of the law.

24. The 2<sup>nd</sup> Defendant equally filed a Replying Affidavit sworn on 23<sup>rd</sup> September 2022 by Gurdip Singh Rupra, a director of the 2<sup>nd</sup> Defendant.

25. He deponed that the Application is incompetent and an abuse of process as the 1<sup>st</sup> Defendant lacks locus standi; failed to obtain requisite approval under **Section 432** of the **Insolvency Act, 2015** and seeks to introduce an untenable "cross-claim" which raises a new and time-barred cause of action contrary to the Limitation of Actions Act.

26. Further, it improperly seeks to enjoin a new party without leave under **Order 1 Rule 10** of the **Civil Procedure Rules**. He also questioned the validity of the alleged appointment of co-provisional liquidators under **Section 437** of the **Insolvency Act**.

27. He deposed that the supporting affidavit was misleading for omitting that the 1<sup>st</sup> Defendant's advocate was present when the consent was adopted on 7<sup>th</sup> March 2022 and raised no objection or reference to the counterclaim.

28. He denied that the consent unilaterally declared the 2<sup>nd</sup> Defendant proprietor, stating that it was entered into by the remaining parties after withdrawal of the suit against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

29. According to him, the consent merely reflected the position obtaining since the 2011 transfer, which the 1<sup>st</sup> Defendant had not previously challenged and which he maintained was lawfully undertaken. The 1<sup>st</sup> Defendant's shareholders and directors duly executed the transfer of the property in the

2<sup>nd</sup> Defendants favour and paid the stamp duty of Kshs 1, 800,000/= payable in respect of the transfer.

30. He maintained that the 1<sup>st</sup> Defendant was not party to the consent between the Plaintiff and the 2<sup>nd</sup> Defendant and therefore lacks standing to impugn it.

31. The deponent further stated that the 1<sup>st</sup> Defendant is estopped from alleging fraud, having previously denied the same, and that the alleged discovery of new information regarding the transfer is untenable since the transaction was within the 1<sup>st</sup> Defendant's knowledge. In his view, the 1<sup>st</sup> Defendant is at liberty to pursue any such claim through a fresh suit.

32. He also deponed that the present Application was served nearly three months after it was filed, without any explanation for the delay. According to him, setting aside the consent would occasion significant prejudice by undoing years of negotiations and settlement efforts, and would unnecessarily draw the Plaintiff and the Interested Parties into what is essentially a dispute between the 1st and 2nd Defendants.

33. He maintained that the proposed cross-claim is stale and time-barred, and that allowing the Application would be inequitable, prejudicial, and contrary to the principles governing the setting aside of consent judgments, urging the Court to dismiss the Application with costs.

34. The Interested Parties opposed the Motion through Replying Affidavits sworn on 10<sup>th</sup> November, 2022 and 20<sup>th</sup> November 2025 by Joseph Patrick Macharia Muroki on their behalf.

35. Mr Macharia deposed that the Application is vexatious and amounts to an abuse of the court process. They fully associate themselves with the averments contained in the Replying Affidavit sworn by Pius Mwangi Gukira on behalf of the Plaintiff, which, in their view, correctly sets out the factual and legal position.

36. He deposed that the impugned consent was recorded in open court on 7<sup>th</sup> March 2022, when the 1<sup>st</sup> Defendant was duly represented by Mr. Wafula, Advocate, who neither opposed its adoption nor objected to the withdrawal of the suit against the 1<sup>st</sup> Defendant. No intention to pursue the

counterclaim was disclosed to the Court and that the 1<sup>st</sup> Defendant remains represented by the same firm of advocates.

37. Pursuant to the consent, he explained, the Plaintiff settled the claims of the 6<sup>th</sup> to 26<sup>th</sup> Interested Parties by paying Kshs. 30,430,000/= in two instalments through Ngugi & Wamuyu Advocates, sums which were duly disbursed and expended.

38. He maintained that the payments were received as of right and that setting aside the consent will cause grave prejudice, particularly after more than twenty years of litigation. In his view, the 1<sup>st</sup> Defendant has no genuine intention of prosecuting the counterclaim.

39. He urged that the matter has been overtaken by events, the court is functus officio, and the subject matter referred to in the counterclaim no longer exists in its original form.

### **SUBMISSIONS**

40. The 1<sup>st</sup> Defendant/Applicant, in submissions filed on 15<sup>th</sup> January 2026, argued that although its counsel was present in court when the consent was recorded, the only

consenting parties were the Plaintiff and the 6<sup>th</sup>-26<sup>th</sup> Interested Parties. Counsel contended that if the 1<sup>st</sup> Defendant had been a party to the consent, its concurrence would have been expressly recorded in the consent order.

41. Relying on *Flora N. Wasike v Destimo Wamboko* [1988] eKLR and *Erick Gakuya Mwathaita v Maganjo Joshua Kago* [2017] KEELC 1389, counsel submitted that a consent order has contractual effect and is only binding on the parties involved. It was also argued that the declaration recognising the 2nd Defendant as proprietor of the suit land unlawfully affected the 1st Defendant's existing claim without proper adjudication, thereby infringing its right to be heard.

42. Counsel submitted that the 1<sup>st</sup> Defendant does not contest the consent to withdraw the suit against it and remains free to pursue enforcement of the costs awarded to it.

43. On the issue of amending the counterclaim, Counsel submitted that the position that the counterclaim was extinguished upon withdrawal of the suit is legally untenable, as a counterclaim constitutes a distinct and

independent cause of action capable of subsisting even where the primary suit has been withdrawn.

44. Vide submissions dated the 23<sup>rd</sup> September, 2022 and 27<sup>th</sup> February, 2026, on behalf of the Plaintiff, Counsel submitting, guided by **Order 25 Rule 2** of the **Civil Procedure Rules** and the decisions in **Jubase vs Independent Electoral and Boundaries Commission & Anor [2022]KEHC 10047 (KLR)**, that a party's right to withdraw his claim cannot be questioned and the court cannot prevent a party from withdrawing the matter.

45. On the threshold for setting aside a consent, reliance was placed on **Brooke Bond Liebig (T) Ltd v Mallya (1975) EA 266**, where the court held that a consent judgment may only be set aside on grounds such as fraud, collusion, lack of consensus, public policy, or any other reason that would justify rescission of a contract, none of which has been established in the present case.

46. Counsel further submitted that although **Order 7 Rule 13** of the **Civil Procedure Rules** permits a counterclaim to proceed notwithstanding discontinuance of the main suit,

the counterclaim must be capable of independent determination. In this regard, reliance was placed on **Muna & 5 Others v Boscardin & 5 Others (ELC Case 27 of 2020) [2022] KEELC 3133 (KLR)** and **Njogu v Mbutura (ELC Case E062 of 2021) [2023] KEMC 318 (KLR)**.

47. Counsel submitted that both the original counterclaim and the proposed amended counterclaim are wholly dependent on the subject matter of the main suit, which question was conclusively settled by the consent of 7<sup>th</sup> March, 2022 rendering them moot.

48. The 2<sup>nd</sup> Defendant filed written submissions on 24<sup>th</sup> February, 2026. Counsel argued that a party must demonstrate a sufficient legal interest in the subject matter, citing **Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 Others [2002] eKLR**, it was submitted that the impugned consent was voluntarily entered into by the Plaintiff and the 2<sup>nd</sup> Defendant and was not vitiated by fraud, collusion, misrepresentation or illegality. Counsel also cited **Flora N. Wasike v Destimo Wamboko [1988] eKLR**.

49. Counsel further contended that the 1<sup>st</sup> Defendant was neither a party nor privy to the consent and therefore lacks standing to challenge it, relying on **Gideon Kitavi Mbuuko & Another v Cosmas Mrombo Moka t/a Madaltex Enterprises [2019] eKLR** on the doctrine of privity.

50. On the proposed amendment, Counsel submitted that the 1<sup>st</sup> Defendant's counterclaim dated 1<sup>st</sup> June 2009 lies only against the Plaintiff and contains no claim against the 2<sup>nd</sup> Defendant. The consent conclusively settled the dispute and cannot be reopened to introduce a belated and time-barred cross-claim. If any claim exists, it should be pursued in a fresh suit.

### **ANALYSIS & DETERMINATION**

51. Having considered the Motion, responses and submissions, the issues that arise for determination are:

- i. **Whether the Application is competent and if so,**
- ii. **Whether the court should revoke and set aside the consent orders adopted on the 7<sup>th</sup> March, 2022?**

**iii. Whether leave should be granted to the 1<sup>st</sup> Defendant to amend its amend its Defence and Counterclaim as per the annexed Draft?**

**I. Whether the Application is competent?**

52. In response to the Motion, the Plaintiff and the 2<sup>nd</sup> Defendant filed preliminary objections whose import was that the Application is incompetent and untenable in law.

53. They contended that following the withdrawal of the suit and adoption of the consent orders, the court became functus officio and therefore lacked jurisdiction to entertain the present Motion. It was further argued that the 1<sup>st</sup> Defendant lacks locus standi; that leave of the court was not obtained under **Section 432** of the **Insolvency Act**; that the proposed cross-claim introduces a new and time-barred cause of action.

54. Further, it is alleged that a new party is sought to be enjoined without leave under **Order 1 Rule 10** of the **Civil Procedure Rules**; and that the alleged appointment of the

co-provisional liquidators is invalid under **Section 437** of the **Insolvency Act**.

55. The law governing preliminary objections is well settled. In **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors (1969) EA 696**, the court held that a preliminary objection must raise a pure point of law capable of disposing of the matter on the assumption that all pleaded facts are correct. The same principles were reaffirmed by the Supreme Court in **Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others [2014] eKLR**.

56. Applying those principles to the objections raised, it is evident that they are not confined to pure points of law. The issues raised such as the authority of the alleged provisional liquidators, the nature of the proposed cross-claim, and the surrounding circumstances of the Application inevitably require interrogation of contested facts and the exercise of judicial discretion. They are therefore not sustainable as preliminary objections.

57. Nonetheless, the same contentions have also been raised in the replying affidavits by the Plaintiff, the 2<sup>nd</sup> Defendant and the Interested Parties. These arguments therefore remain part of the substantive opposition to the Motion and must be addressed on their merits.

58. For clarity, the court will at this stage confine itself to the question of competence only in so far as it relates to whether it is functus, whether leave was required under the Insolvency Act before the present proceedings could be instituted and legitimacy of the 1<sup>st</sup> Defendants deponents.

59. The remaining objections including those touching the effect and finality of the consent orders, and the 1<sup>st</sup> Defendant's locus, as well as the propriety of the proposed cross-claim will be addressed under the subsequent issues for determination.

60. The doctrine of functus officio embodies the principle of finality in litigation, signifying that once a court has rendered its decision, it has exhausted its mandate over the matter. This position was affirmed by the Supreme Court in **Odinga v Independent Electoral and Boundaries**

**Commission & 3 others (Petition 5 of 2013) [2013]**

**KESC 2 (KLR).**

61. However, the doctrine does not operate to completely divest a court of jurisdiction. A court retains limited authority to entertain applications recognized in law, including applications for review, clarification, or setting aside of its orders where proper grounds are demonstrated. Consequently, the mere adoption of a consent order determining a suit does not render the court incapable of considering an application seeking its variation or setting aside.

62. It is not in dispute that the 1<sup>st</sup> Defendant is under liquidation and that the present Motion has been brought through its joint provisional liquidators. The 2<sup>nd</sup> Defendant contends that, pursuant to **Section 432** of the **Insolvency Act, 2015**, leave of the court ought to have been obtained before instituting the present proceedings.

63. **Section 432** of the **Insolvency Act** addresses the consequences of a liquidation order and restricts the

commencement or continuation of proceedings against a company in liquidation without leave of the court.

64. The position of the law was clarified in **In re Resolution Insurance Company Limited (Insolvency Petition E077 of 2023) [2025] KEHC 1949 (KLR)**, where the court held that while the jurisdiction to supervise liquidation flows from **Section 423** of the **Insolvency Act**, the requirement for leave under **Section 432** applies only to proceedings brought against a company in liquidation.
65. The court in that decision rejected the contention that a liquidator must obtain leave under **Section 432** to initiate or continue proceedings on behalf of the company. The statutory restriction is therefore directed at proceedings against the company, not proceedings commenced by it. Consequently, this objection is untenable.
66. As regards the alleged irregularity in the appointment of the provisional liquidators, that is not a matter that can be determined by the environment and land court.

**II. Whether the court should revoke and set aside the consent orders adopted on the 7<sup>th</sup> March, 2022?**

67. The 1<sup>st</sup> Defendant asks this court to revoke and set aside the consent orders adopted on 7<sup>th</sup> March 2022, particularly the consent entered into between the Plaintiff and the Interested Parties. It is contended that the declaration within the consent recognizing the 2<sup>nd</sup> Defendant as proprietor of the suit property prejudicially affects the 1<sup>st</sup> Defendant's interest in the property despite its claim thereto.

68. It is not in dispute that two consents were executed on 21<sup>st</sup> February 2022 and subsequently adopted as orders of the court on 7<sup>th</sup> March 2022. The first, between the Plaintiff and the 2<sup>nd</sup> Defendant, discharged the injunction issued on 10<sup>th</sup> December 2015 and marked the suit against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants as withdrawn.

69. The second, between the Plaintiff and the 6<sup>th</sup>-26<sup>th</sup> Interested Parties, provided a framework for settling claims arising from the Interested Parties' purchase of parcels

within the suit land from the Plaintiff, including verification of purchase documents and refund of the purchase price with interest upon agreed terms.

70. The law governing the setting aside of a consent judgment is well settled. In **In re Estate of RBC (Civil Appeal 117 of 2019) [2023] KECA 1553 (KLR)**, the Court of Appeal, citing **Board of Trustees National Social Security Fund v Michael Mwalo [2015] eKLR**, reiterated that a consent order has contractual effect and may only be interfered with on grounds that would justify rescission of a contract, such as fraud, collusion, misrepresentation, mistake or an agreement contrary to public policy.

71. Before considering whether that threshold has been met, the issue of locus standi arises. It is admitted that the 1<sup>st</sup> Defendant was not a party to either of the consents, which expressly identify the Plaintiff, the 2<sup>nd</sup> Defendant and the Interested Parties as the consenting parties. Guided by the doctrine of privity, as affirmed in **Flora N. Wasike v Destimo Wamboko [1988] eKLR**, a consent binds only

the parties to it. In those circumstances, the 1<sup>st</sup> Defendant lacks locus standi to impeach the impugned consents.

72. Even assuming, arguendo, that the 1<sup>st</sup> Defendant could surmount the hurdle of locus, no evidence has been placed before this court demonstrating fraud, collusion, misrepresentation, non-disclosure of material facts or any other vitiating factor that would justify rescinding the consent.

73. The 1<sup>st</sup> Defendant merely asserts in its affidavit that it has “*since established*” that the transfer of L.R. No. 11329 Kasarani from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant on or about 3<sup>rd</sup> June 2011 was fraudulent, null and void, and that this information was not available at the time the consent was recorded. The Applicant does not explain why this material was difficult to find, considering that the date between the transaction and the impugned consent is ten (10) years apart. It is my opinion and I so hold that it is not sufficient just to say the material was not available to a party without stating reasons.

74. Moreover, the record shows that the 1<sup>st</sup> Defendant's counsel was present in court when the consents were adopted, and he indeed raised no objection at that time.

75. In the premises, the 1<sup>st</sup> Defendant, not being a party to the impugned consents, lacks locus to challenge them, and in any event no vitiating factor has been demonstrated that would warrant the court's intervention. Accordingly, the threshold for setting aside a consent judgment has not been met.

76. However, the court does not agree with the contention by the Plaintiff and the other Respondents that the 1<sup>st</sup> Defendant's counterclaim was constructively withdrawn upon adoption of the consent and withdrawal of the suit against it. In law, a counterclaim constitutes a distinct and independent cause of action. Accordingly, under **Order 7 Rule 13** of the **Civil Procedure Rules**, the withdrawal or discontinuance of the main suit does not automatically extinguish a counterclaim. In the absence of an express withdrawal or dismissal, the 1<sup>st</sup> Defendant's counterclaim dated 1<sup>st</sup> June 2009 remains on record.

**III. Whether leave should be granted to the 1<sup>st</sup> Defendant to amend its amend its Defence and Counterclaim as per the annexed Draft?**

77.The 1<sup>st</sup> Defendant also asks for leave to amend its Defence and Counterclaim so as to introduce a cross-claim against the 2<sup>nd</sup> Defendant, premised on the alleged discovery of new information relating to the 2011 transfer of the suit property. It contends that such amendment is necessary to enable the court to effectually and completely determine the real questions in controversy between the parties.

78.In response, it is asserted that the proposed amendment is legally untenable as it seeks to introduce an entirely new cause of action against the 2<sup>nd</sup> Defendant long after the suit was settled by consent and the claim against the 1<sup>st</sup> Defendant withdrawn.

79.It is further argued that the counterclaim on record is directed solely against the Plaintiff, contains no claim against the 2<sup>nd</sup> Defendant, and that any intended claim

ought properly to be pursued in a fresh suit rather than grafted onto concluded proceedings.

80.As aforesaid, the suit against the 1<sup>st</sup> Defendant was withdrawn pursuant to the consent adopted on 7<sup>th</sup> March 2022. What this means is that there is presently no subsisting claim against the 1<sup>st</sup> Defendant within which a defence may lie.

81.While the counterclaim remains on record as an independent cause of action against the Plaintiff, there is no procedural foundation for the introduction of a cross-claim against the 2<sup>nd</sup> Defendant in the absence of a live suit between those parties.

82.The amendment sought would, in effect, revive or reconfigure proceedings that were conclusively settled and would introduce a new dispute between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under the guise of amendment. In the circumstances, the amendment, in the manner sought, is untenable and leave is declined.

83. In conclusion, for the reasons outlined herein, the Motion dated 20<sup>th</sup> April 2022, is deemed unmerited and is hereby dismissed with costs.

**Dated, signed and delivered at Kisii via virtual platform this 5<sup>th</sup> of March, 2026.**

**A. OMOLLO  
JUDGE**

ORIGINAL