

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BOMET**  
**ELC CASE NO. E052 OF 2026**  
**(FORMERLY KERICHO ELC CASE NO. 3 OF 2020)**

**ALEXANDER KIPNGETICH KIMETO (Suing as the Legal Representative of the estate of Daniel Kikwai Chepkwony alias Kikwai Arap Chepkwony (Deceased)).....**  
**....PLAINTIFF**

**VERSUS**

**CHARLES KORIR.....1<sup>ST</sup>**  
**DEFENDANT**

**LEONARD LANGAT.....2<sup>ND</sup>**  
**DEFENDANT**

**ELIJAH KIMETO.....3<sup>RD</sup> DEFENDANT**

**ALICE KIMETO.....4<sup>TH</sup>**  
**DEFENDANT**

**DENNIS KORIR.....5<sup>TH</sup>**  
**DEFENDANT**

---

**RULING.**

**Introduction.**

1. This ruling is in respect of the Defendants/Applicants Notice of Motion application dated 28<sup>th</sup> June, 2025. The application is expressed to be brought under **Article 159 (2)(d) & Article 50 (1)** of the Constitution of Kenya, **Sections 1A, 1B, 3A & 63 (e)** of the **Civil Procedure Act** and **Order 51**

**Rule (1) & Order 18 Rule 10 of the Civil Procedure Rules.**

2. The application seeks the following prayers;

**a. Spent**

**b. That this Honourable Court be pleased to set aside the ex parte hearing and proceedings.**

**c. That this Honourable Court be pleased to grant leave to the Defendants to file their statement of defence.**

**d. That the costs of this application be in the cause.**

3. The application is based on the grounds on its face and the supporting affidavit of **Elijah Kimeto** the 3<sup>rd</sup> Defendant/Applicant that is sworn on 28<sup>th</sup> June, 2025.

**Factual Background.**

4. The Plaintiff/Respondent commenced the present proceedings vide the Plaint dated 16<sup>th</sup> January, 2020 which

plaint was amended on 1<sup>st</sup> August, 2023. In the Amended  
Plaint, the Plaintiff seeks the following prayers;

**a. A permanent injunction restraining the Defendants either by themselves, their servants, employees, agents, personal representatives and/or any other person acting for them and/or on their behalf from selling, disposing of, alienating, transferring and/or in any other manner whatsoever dealing with and/or intermeddling with that parcel of land known as Title Number Kericho/Ndarawetta/1048 or any portion thereof.**

**b. A declaration that any sale or disposition of that property known as Kericho/Ndarawetta/1048 or any portion thereof by the Third, Fourth and Fifth Defendants to the First and Second Defendants is null and void ab initio for want of authority or grant of representation in terms of Section 45 of the Law of Succession Act.**

**c. A declaration that the Defendants have contravened Section 45 (1) of**

***the Law of Succession Act and are thus guilty of an offence and are each liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both.***

***d. A declaration that the First and the Second Defendants are trespassers on that parcel of land known as Kericho/Ndarawetta/1048.***

***e. General damages for trespass.***

***f. Mesne profits at the rate of Kshs. 369,600/= per annum from January 2019 till the First and Second Defendants vacate that parcel of land known as Kericho/Ndarawetta/1048.***

***g. Special damages of Kshs. 120,000/=***

***h. Exemplary, aggravated and or punitive damages.***

***i. An order compelling the First and the Second Defendants to forthwith vacate that parcel of land known as Kericho/Ndarawetta/1048, remove all fences and other structures they have erected thereon and uproot tea and***

***other crops they have planted thereon at their own cost.***

***j. In default of prayer (e) above within thirty (30) days from the date of judgement, the First and the Second Defendants do pay the Plaintiff Kshs. 240,000/= as costs for uprooting tea and other crops planted by the First and the Second Defendants on that parcel of land known as Kericho/Ndarawetta/1048.***

***k. The OCS Silibwet Police Station do supervise the eviction of the First and the Second Defendants and provide security to facilitate the removal of fences and other structures and uprooting of tea and other crops planted by the First and the Second Defendants on that parcel of land known as Kericho/Ndarawetta/1048.***

***l. Interest on (e), (f), (g) and (h) above at Court rates from the date of judgement till payment in full.***

***m. Costs of this suit.***

***n. Such further or other relief as this Honourable Court deems fit and just to grant.***

- 5.** The Defendants/Applicants entered appearance on 5<sup>th</sup> February, 2020 but have to date not filed any pleadings.
- 6.** The application under consideration first came up for hearing on 1<sup>st</sup> July, 2025 when the Court directed that it be served upon the Plaintiff/Respondent.
- 7.** On 16<sup>th</sup> September, 2025 the Court issued directions that the application be canvassed by way of written submissions.
- 8.** The application was mentioned severally to confirm filing of submissions before it was reserved for ruling on 28<sup>th</sup> January, 2026.

**The Defendants/Applicants Contention .**

- 9.** The affidavit in support of the application is sworn by **Elijah Kimeto** the 3<sup>rd</sup> Defendant/Applicant.
- 10.** He contends that he is swearing the said affidavit on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants.
- 11.** He also contends that in the year 2024, their then advocates on record informed him that the suit was dismissed for want of prosecution.
- 12.** He further contends that on 26<sup>th</sup> June, 2025, he received a call from their previous advocates who informed him that the suit against them had been reinstated and heard *ex parte*.
- 13.** He contends that their previous advocate informed him that he was served with a hearing notice on 2<sup>nd</sup> January, 2025 which notice stated that the matter had been scheduled for hearing on 28<sup>th</sup> January, 2025.

- 14.** It is his contention that their previous advocate on record informed him that he was not able to attend Court on the said date because he was sick.
- 15.** It is also his contention that their previous advocate on record was not served with any other documents.
- 16.** It is further his contention that he has all along believed that the suit against them was dismissed for want of prosecution.
- 17.** He contends that he had fully instructed their previous advocate to file a Statement of Defence and adds that they have a defence that raises triable issues.
- 18.** He further contends that he is the son of the deceased owner of the suit parcel of land and a beneficiary of his estate.
- 19.** It is his contention that the Plaintiff/Respondent has been frustrating the succession proceedings by instructing the

Chief not to issue them with an introductory letter thereby denying them peaceful enjoyment of their inheritance.

- 20.** It is also his contention that if the application under consideration is not allowed, they will suffer great injustice as the Plaintiff/Respondent will disinherit them.
- 21.** It is further his contention that the Plaintiff/Respondent will not suffer any prejudice if the application is allowed as prayed.
- 22.** He contends that unless their application is allowed, the Court will not be able to reach a just and fair determination of the dispute.
- 23.** He also contends that there will be a miscarriage of justice and they will suffer irreparable loss and damage unless the prayers sought are granted.

**24.** He ends his deposition by stating that the application under consideration has been filed without unreasonable delay.

**The Plaintiff/Respondent's Response to the Defendants/Applicants application.**

**25.** The Plaintiff/Respondent filed a Replying Affidavit sworn on 18th July, 2025 in response to the Defendants/Applicants application.

**26.** He deposes that he filed the present suit on 17<sup>th</sup> January, 2020 and summons to enter appearance were issued and served upon the Defendants/Applicants on 27<sup>th</sup> January, 2020.

**27.** He also deposes that upon service, the Defendants/Applicants appointed the firm of Kadet & Company Advocates to represent them and goes on to state that the said firm of advocates filed a Memorandum of Appearance on 4<sup>th</sup> February, 2020 on behalf of the Defendants/Applicants.

- 28.** He further deposes that the 1<sup>st</sup> Defendant/Applicant vide an Authority to Plead dated 4<sup>th</sup> February, 2020 appointed the 2<sup>nd</sup> Defendant/Applicant to plead on his behalf.
- 29.** It is his deposition that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants vide the Authority to Plead also dated 4<sup>th</sup> February, 2020 appointed the 3<sup>rd</sup> Defendant/Applicant to appear and plead on their behalf.
- 30.** It is also his deposition that he filed a Notice of Motion application dated 16<sup>th</sup> January, 2020 together with the Plaint which the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants responded to vide Replying Affidavits that were sworn on 5<sup>th</sup> February, 2020.
- 31.** It is further his deposition that despite service of a mention notice to confirm filing of submissions, the Defendants/Applicants did not attend Court nor file submissions.

- 32.** He deposes that the Court delivered a ruling on 19<sup>th</sup> January, 2023 and the orders issued therein were on 23<sup>rd</sup> January, 2023 served upon the Defendants/Applicants.
- 33.** He also deposes that the matter was fixed for pre-trial directions on 21<sup>st</sup> February, 2023 when his advocates on record sought and were granted leave to amend the Plaint.
- 34.** He further deposes that he amended his Plaint on 3<sup>rd</sup> August, 2023 and it was served upon the Defendants/Applicants.
- 35.** It is his deposition that the matter was fixed for hearing on 14<sup>th</sup> May, 2024 and the Defendants/Applicants were served with a hearing notice on 30<sup>th</sup> April, 2024.
- 36.** It is also his deposition that on the said date, the Defendants/Applicants did not attend Court. He also states that the suit was dismissed for want of prosecution as his Counsel did not appear physically in Court as he thought that the matter would proceed virtually.

- 37.** It is further his deposition that he filed an application to reinstate the suit dated 14<sup>th</sup> May, 2024 which application was served upon the Defendants/Applicants and allowed by the Court on 26<sup>th</sup> September, 2024.
- 38.** He deposes that the suit was then scheduled for hearing on 28<sup>th</sup> January, 2025 and goes on to state that the Defendants/Applicants were served through their then Counsel on record with a hearing notice on 30<sup>th</sup> December, 2024.
- 39.** He also deposes that the suit proceeded for hearing on 28<sup>th</sup> January, 2025 in the absence of the Defendants/Applicants who opted not to attend Court.
- 40.** He further deposes that the matter was scheduled for mention to confirm filing of submissions on 25<sup>th</sup> June, 2025 when the then Counsel for the Defendants/Applicants appeared in Court and feigned ignorance of the proceedings.

- 41.** It is his deposition that the Defendants/Applicants admit at paragraphs 3 and 4 of their affidavit in support of the application under consideration that they were aware of the present proceedings.
- 42.** It is also his deposition that from the foregoing it is clear that the Defendants/Applicants slept on their rights and failed to file a Statement of Defence within time.
- 43.** It is further his deposition that he has been advised by his advocates on record that the Defendants/Applicants have not established sufficient reasons for this Court to grant the prayers sought.
- 44.** He also deposes that any alleged inaction by the Defendants/Applicants counsel is not an excusable mistake to warrant the grant of the orders sought.

**45.** He further deposes that the Defendants/Applicants have not demonstrated any steps they took to prosecute the matter and/or file a Statement of Defence.

**46.** It is his deposition that the allegation that Counsel for the Defendants/Applicants was unwell when the suit came up for hearing is unsubstantiated and does not explain the delay and/or failure to file a Statement of defence within time.

**47.** It is also his deposition that he is advised by his advocates on record that the Defendants/Applicants are guilty of laches and the application under consideration is an afterthought. He goes on to state that the Defendants/Applicants are deliberately attempting to frustrate and delay the expeditious disposal of the present suit which was filed five years ago.

**48.** It is further his deposition that he is also advised by his advocates on record that the Defendants/Applicants do not

have a defence that raises triable issues as the attached draft defence consists of mere denials.

- 49.** He ends his deposition by stating that the Defendants/Applicants application is incompetent, unmerited and is otherwise an abuse of the Court process.

**Issues for Determination.**

- 50.** The Defendants/Applicants filed their submissions on 21<sup>st</sup> October, 2025 while the Plaintiff/Respondent filed his submissions on 27<sup>th</sup> January, 2025.

- 51.** The Defendants/Applicants submit on the following issues;

***a. Whether the Defendants/Applicants rights to be heard were affected.***

***b. Whether the Defendants/Applicants have a valid and justifiable reason for failing to attend Court for hearing.***

***c. Whether the Defendants/Applicants have a defence that raises triable issues.***

52. On the first issue, the Defendants/Applicants rely on **Articles 47 & 50** of the Constitution of Kenya, the Fair Administrative Action Act, 2015, the judicial decision of **Karanja vs Sikalieh - Chairman Karen Langata District Association (Constitutional Petition E397 of 2022) [2022] KEHC 15924 (KLR)** and reiterate the averments in the affidavit in support of the application.
53. The Defendants/Applicants reiterate that the suit proceeded for hearing in their absence thereby denying them the opportunity to be heard.
54. The Defendants/Applicants submit that it will be unjust if they are condemned unheard as this is contrary to the Constitution and principles of natural justice.
55. The Defendants/Applicants rely on the judicial decisions of **Mbaki & Others vs Macharia & another [2005] 2 EA 206, Onyango Oloo vs Attorney General [1986-1989] EA 456** and **Pashito Holdings Ltd & another vs Paul**

**Nderitu Ndungu & 2 Others [1997] eKLR** in support of their submissions.

- 56.** It is the Defendants/Applicants submissions that the doctrine of *audi alteram partem* is the cornerstone of natural justice and it provides that no person shall be condemned unheard.
- 57.** The Defendants/Applicants reiterate that their previous counsel was served with a hearing notice but he was indisposed on the date the matter came up for hearing.
- 58.** It is also the Defendants/Applicants submissions that the Court ought to have in the interest of justice and fairness adjourned the matter to a later date that would have been convenient for all the parties.
- 59.** It is further the Defendants/Applicants submissions that such an adjournment would have accorded them a fair opportunity to cross examine the Plaintiff's witnesses,

challenge the evidence presented and adequately prepare and file a defence.

- 60.** On the second issue, the Defendants/Applicants rely on the judicial decision of **Richard Nchapi Leiyagu vs IEBC & 2 Others [2013] eKLR** and reiterate that they did not attend Court when the suit came up for hearing because their then Counsel on record was indisposed.
- 61.** The Defendants/Applicants submit that their involuntary absence should not be held against them.
- 62.** The Defendants/Applicants also submit that mistakes and/or omissions of Counsel should not be visited upon litigants. The Defendants/Applicants rely on the judicial decisions of **Philip Chemwolo & another vs Augustine Kubede [1982-83] KAR 103 at 1040** and **Belinda Murai & another vs Amoi Wainaina [1978] LLR 2782** in support of their submissions.

- 63.** On third issue, the Defendants/Applicants rely on the judicial decision of **The Shade Motors Ltd vs D.T Dobie & another [1995-1998] 1 EA 324** and submit that they have attached to the affidavit in support of the application a copy of their Draft Statement of Defence.
- 64.** The Defendants/Applicants also submit that in their Draft Statement of Defence, they have raised issues on the extent to which the Plaintiff/Respondent has obstructed their efforts to administer the estate of the deceased.
- 65.** The Defendants/Applicants further submit that they have raised the issue whether they are trespassers on the property of the deceased which issues are contested and require proper examination through oral evidence.
- 66.** The Defendants/Applicants reiterate the averments in the affidavit in support of the application and submit that it is trite law that where a party demonstrates the existence of a

plausible defence, the Court should allow such a party to defend their claim.

**67.** The Defendants/Applicants also submit that the Court should exercise its discretion and set aside the *ex parte* proceedings so as to allow for a fair and just determination of the suit.

**68.** The Defendants/Applicants further submit that they filed the application under consideration at the earliest possible opportunity and they urge the Court to allow it as prayed.

**69.** The Plaintiff/Respondent submits on the following issues;

**a. *Whether the application has been brought on behalf of all the Defendants/Applicants.***

**b. *Whether the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants are entitled to the orders sought.***

- 70.** The Plaintiff/Respondent submits that the 3<sup>rd</sup> Defendant/Applicant has filed the application under consideration on his behalf and on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants.
- 71.** The Plaintiff/Respondent relies on **Order 1 Rule 13** of the **Civil Procedure Rules** and submits that when the Defendants/Applicants entered appearance, they filed two authorities to plead.
- 72.** It is the Plaintiff/Respondent's submissions that in the first Authority to Plead, the 1<sup>st</sup> Defendant/Applicant appointed the 2<sup>nd</sup> Defendant/Applicant to plead on his behalf.
- 73.** It is also the Plaintiff/Respondent's submissions that in the second Authority to Plead, the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants appointed the 3<sup>rd</sup> Defendant/Applicant to plead on their behalf.

- 74.** It is further the Plaintiff/Respondent's submissions that the application under consideration has been filed by the 3<sup>rd</sup> Defendant/Applicant.
- 75.** The Plaintiff/Respondent submits that even though the 3<sup>rd</sup> Defendant/Applicant contends that he is swearing the affidavit in support of the application on behalf of the other Defendants/Applicants, no authority to plead on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents has been filed in the present matter.
- 76.** The Plaintiff/Respondent relies on the judicial decision of **Republic vs County Assembly of Nakuru, Speaker for the Nakuru County Assembly & George Mwaura (Majority Leader) Ex parte Samuel Waithuku Njane & 21 others [2017] KEHC 5529 (KLR)** in support of his submissions.
- 77.** On the second issue, the Plaintiff/Respondent submits that the Court should take into consideration the following issues in determining the application under consideration;

- a. The reason for the failure to file a defence on time.**
- b. The length of time that has lapsed.**
- c. Whether the intended defence raises triable issues.**
- d. The respective prejudice each party is likely to suffer.**
- e. Whether it is in the interest of justice to grant the orders sought.**

**78.** The Plaintiff/Respondent reiterates his averments in the Replying Affidavit on the chronology of events since the suit was filed and submits that the Defendants/Applicants are not deserving of the prayers sought.

**79.** It is the Plaintiff/Respondent's submissions that the Defendant/Applicants have not given a plausible reason for their failure to file a Statement of Defence.

**80.** It is also the Plaintiff/Respondent's submissions that the Defendants/Applicants entered appearance on 4<sup>th</sup> February, 2020 but to date they have not filed a Statement of Defence.

- 81.** It is further the Plaintiff/Respondent's submissions that a period of more than five years and six months has lapsed since they entered appearance.
- 82.** The Plaintiff/Respondent relies on the judicial decision of **Habo Agencies Limited vs Wilfred Odhiambo Musingo [2020]eKLR** in support of his submissions.
- 83.** The Plaintiff/Respondent submits that the Defendants/Applicants admit that their counsel was served with the hearing notice.
- 84.** The Plaintiff/Respondent also submits that even though the Defendants/Applicants contend that Counsel was sick, no evidence of the alleged sickness has been availed.
- 85.** The Plaintiff/Respondent relies on the judicial decision of **Peter Paul Muthoka vs Francis Kibiba Lelo [2012] KEHC 2080 (KLR)** and reiterates that the Draft statement of Defence attached to the affidavit in support of the

Defendants/Applicants application consists of mere denials and does not raise triable issues.

**86.** The Plaintiff/Respondent relies on the judicial decision of **Abdalla vs Hassan & 15 Others KEELC 1324 (KLR)** and urges the Court to dismiss the Defendants/Applicants application with costs.

**87.** It is the Plaintiff/Respondent's submissions that he will be prejudiced if the Defendants/Applicants application is allowed.

**88.** It is also the Plaintiff/Respondent's submissions that if the Court is inclined to allow the application under consideration, then it should do so while taking into consideration the period of time the suit has been pending in Court.

**89.** The Plaintiff/Respondent relies on the judicial decision of **Nderitu vs Nderitu & 3 Others KEELC 476 (KLR)** and submits that if the Defendants/Applicants application is

allowed, the Defendants/Applicants should be ordered to pay throw away costs of Kshs. 250,000/= within fourteen days.

- 90.** The Plaintiff/Respondent also submits that in the event of failure to pay the said sum, the Court should proceed and deliver judgement.

**Analysis and Determination.**

- 91.** I have considered the Defendants/Applicants application, the response thereto and the rival submissions. It is my view that the only issue that arises for determination is whether application dated 28<sup>th</sup> June, 2025 has merit.

- 92.** The Defendants/Applicants are seeking that the Court sets aside the *ex parte* proceedings and grants them leave to file their Statement of defence.

- 93.** It is the Defendants/Applicants contention that in the year 2024, their Counsel then on record informed them that this suit had been dismissed for want of prosecution.

- 94.** It is also the Defendants/Applicants contention that on 26<sup>th</sup> June, 2025, the 3<sup>rd</sup> Defendant/Applicant received a call from their previous advocates on record informing him that the suit was reinstated and that it proceeded *ex parte*.
- 95.** It is further the Defendants/Applicants contention that Counsel also informed the 3<sup>rd</sup> Defendant/Applicant that he was served with a hearing notice on 2<sup>nd</sup> January, 2025 which stated that the matter was scheduled for hearing on 28<sup>th</sup> January, 2025.
- 96.** The Defendants/Applicants contend that their previous Counsel on record did not attend Court on the said date because he was sick.
- 97.** The Defendants/Applicants also contend that they had instructed their previous Counsel on record to file a Statement of Defence but he failed to do so.

- 98.** The Defendants/Applicants further contend that the failure to file a Statement of Defence was occasioned by their previous advocate on record which mistake should not be visited upon them.
- 99.** The Defendants/Applicants submit that they have attached to the Affidavit in Support of the application under consideration a draft Statement of Defence which raises triable issues.
- 100.** The Plaintiff/Respondent on the other hand contends that the Defendants/Applicants have always been served with hearing notices and applications filed in the present matter.
- 101.** The Plaintiff/Respondent also contends that the Defendants/Applicants admit that their Counsel previously on record was served with a hearing notice which hearing notice notified them that the suit was coming up for hearing on 28<sup>th</sup> January, 2025.

**102.** The Plaintiff/Respondent further contends that even though the Defendants/Applicants submit that Counsel was sick, no evidence has been adduced in support of the said submissions.

**103.** The Plaintiff/Respondent submits that a period of five years and six months has lapsed since the Defendants/Applicants entered appearance.

**104.** The Plaintiff/Respondent also submits that the Defendants/Applicants have not given a plausible explanation for their failure to file their Statement of Defence.

**105.** The Plaintiff/Respondent further submits that the draft statement of defence does not raise triable issues.

**106.** In the judicial decision of **Githui v Thiongo & 2 others [2025] KEELC 574 (KLR)** the Court cited **Shah v Mbogo and Another [1967] EA 116** where it was held as follows;

**“This discretion (to set aside ex parte proceedings or decision) is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”** (Emphasis mine)

**107.** A perusal of the Court record shows that on 28<sup>th</sup> January, 2025, the Plaintiff/Respondent gave evidence, closed his case and the Court issued directions on filing of submissions.

**108.** The Defendants/Applicants admit that their then Counsel on record was served with a hearing notice which notified them that the suit was coming up for hearing on 28<sup>th</sup> January, 2025.

**109.** The Defendants/Applicants contend that their then Counsel was not able to attend Court because he was unwell.

**110.** As submitted by the Plaintiff/Respondent, no medical documents have been availed to show that he was indeed sick.

**111.** The Defendants/Applicants also contend that they instructed their previous advocate on record to file a Statement of Defence but he failed to do so.

**112.** The Court of Appeal in **Habo Agencies Limited v Wilfred Odhiambo Musingo [2015] KECA 987 (KLR)** held as follows;

**"It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in**

**and to follow up their cases even when they are represented by counsel.** (Emphasis mine)

**113.** The Defendants/Applicants have taken the easier route; to blame counsel previously acting for them for failure to attend Court and file a written statement of defence. However, in the above cited judicial decision, the Court of Appeal held that it is not enough for a party to blame his advocates for mistakes and omissions in the conduct of a suit and added that parties have a responsibility to follow up on their cases even when they are represented by Counsel.

**114.** Consequently, I decline to set aside the ex parte proceedings but will instead exercise my discretion and allow the Defendants/Applicants to cross-examine the Plaintiff/Respondent.

**115.** Further, it is in the interest of justice to grant the Defendants/Applicants leave to file their Statement of Defence out of time.

**116.** Before penning off, I note that the Plaintiff/Respondent has extensively submitted on whether the application has been filed on behalf of all the Defendants/Applicants.

**117.** The Plaintiff/Respondent submits that the 3<sup>rd</sup> Defendant/Applicant only has the authority to plead on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants and therefore the Court cannot issue orders in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.

**118.** The application dated 28<sup>th</sup> June, 2025 has been filed by the Defendants/Applicants. The affidavit in support of the application is sworn by **Elijah Kimeto** the 3<sup>rd</sup> Defendant/Applicant.

**119.** He contends that he is swearing the said affidavit on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants.

**120.**As submitted by the Plaintiff/Respondent, no authority to plead on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants has been attached to the affidavit in support of the application.

**121.**In the judicial decision of **Okoyo v Guti & 8 others [2025] KEELC 6751 (KLR)** the Court held as follows;

***“At the onset, I must point out that the 1<sup>st</sup> Respondent deponed that had (sic) the express authority of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> defendant to swear and affidavit and make representations on their behalf. However, the 1<sup>st</sup> defendant did not annex any written Authority to swear on behalf of the said defendant respondents. Whereas I note that failure to annex the said Authority is not fatal (see *Brownstone Agencies Limited & another v County Government of Bomet & another, Bomet High Court Petition no. E002 of 2021*), in the absence of the said Authority, I would take the depositions***

***expressed in the Replying Affidavit to be those of the 1<sup>st</sup> Respondent only, and to the extent that there be any part that draws from or purports to be on behalf of a party who has not duly authorized the deponent that part be expunged, struck out or be treated as inadmissible hearsay.”***

**122.** In the above cited judicial decision, the Court held that failure to attach an authority to swear is not fatal and it opted to take the depositions expressed in the Replying Affidavit to be those of the party who deposed to it.

**123.** Similarly, in the present suit, I find that failure by 3<sup>rd</sup> Defendant/Applicant to attach the authority to plead on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants is not fatal.

**Disposition.**

**124.** Taking the foregoing into consideration, the Defendants/Applicants Notice of Motion application dated 28<sup>th</sup> June, 2025 is allowed in the following terms;

- a. Leave is hereby granted to the Defendants/Applicants to file their Statement of Defence out of time and shall do so within 7 days of the date hereof.**
- b. The draft Statement of Defence annexed to the affidavit in support of the application shall be deemed as duly filed upon payment of requisite court fees.**
- c. The plaintiff/Respondent shall file reply to defence within 7 days upon service of the statement of defence.**
- d. Leave is hereby granted to the Defendants/Applicants to recall the Plaintiff/Respondent for purposes of cross-examination only; within 30 days of the date hereof.**
- e. Costs of the application shall be in the cause.**

**125.** It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO  
THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

**L. A. OMOLLO  
JUDGE.**

**In the presence of: -**

**Mr. Tonui for the Plaintiff/Respondent.**

**Miss Langat for the Defendant/Applicants - Absent**

**Court Assistant; Mr. Joseph Makori.**

ORIGINAL COPY