



Republic v Chief Land Registrar & another; Criticos & another (Exparte Applicants); Seva & 446 others (Intended Interested Party) (Environment & Land Case E011 of 2023) [2024] KEELC 1111 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEELC 1111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E011 OF 2023**

**JO MBOYA, J
FEBRUARY 29, 2024**

**IN THE MATTER OF: ISSUANCE BY THE LAND REGISTRAR OF
THE ORIGINAL CERTIFICATE OF TITLE TO L.R NO. 10287/7**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

HON BASIL CRITICOS EXPARTE APPLICANT

HE MAMA NGINA KENYATTA EXPARTE APPLICANT

AND

JUMA SEVA & 446 OTHERS INTENDED INTERESTED PARTY

RULING

Introduction And Background:

1. The Intended Interested Parties’ have approached the Honourable court vide Application dated 14th February 2024; and in respect of which same have sought for the following reliefs [verbatim];
 - i.Spent.



- ii. That pending the hearing and determination of this Application or until further orders, this Honorable court be pleased to stay, suspend and/or arrest the delivery of its Judgment scheduled for the 22nd February 2024.
 - iii. That this Honorable court be pleased to order that the Applicant herein be joined to the proceedings as an Interested Party in the suit.
 - iv. That this Honorable court be pleased to arrest the delivery of its Ruling on [sic] the Contempt Application scheduled for the 22nd February 2024.
 - v. That costs of this Application be in the cause.
2. Prior to and before the Application could be heard, the intended interested parties'/Applicants' proceeded to and filed an Amended Notice of Motion dated the 15th February 2024; and in respect of which same sought for the following reliefs;
- i. That pending the hearing and determination of this Application or until further orders, this Honorable court be pleased to stay, suspend and/or arrest the delivery of its Judgment scheduled for the 22nd February 2024.
 - ii. That this Honorable court be pleased to order that the Applicant herein be joined to the proceedings as an Interested Party.
 - iii. That this Honorable court be pleased to allow the Interested Parties' an opportunity to;
 - a. File replying affidavit to the substantive motion.
 - b. Submit written and oral arguments.
 - c. Submit with leave of the court any other information it may deem important and relevant of the just disposition of this matter.
 - iv. Costs of the Application be in the cause.
3. The Amended Notice of Motion Application is anchored and premised on various, albeit numerous grounds which have been enumerated in the body thereof. Furthermore, the amended Application is supported by the affidavit of Juma Seva, sworn on the 15th February 2024; and in respect of which the Deponent has averred inter-alia, that the suit property was surrendered by the Ex-parte Applicants for purposes of settling the intended Interested Parties'
4. Furthermore, the Deponent has also averred that the intended Interested Parties' herein have been residing on the suit property and are thus squatters thereon. Consequently and in this regard, the Deponent has averred that by virtue of being squatters on the suit property, the intended Interested Parties' thus do have a stake in the subject matter.
5. Be that as it may, upon being served with the amended Notice of Motion, the Ex-parte/Applicants' filed Grounds of opposition and wherein same adverted to a plethora of issues, inter-alia, that the subject Application is a nullity ab initio, insofar as same was amended without leave of the court.
6. Moreover, the subject Application came up for hearing on the 2nd February 2024; whereupon the advocates for the respective Parties covenanted to canvass and dispose of the Application by way for written submissions. Instructively, the advocates for the respective Parties highlighted their respective submissions for and in respect of the Application beforehand.



Applicants' Submissions:

7. The Applicants' herein adopted and reiterated the grounds contained in the body of the Application, as well as the averments alluded to in the Supporting affidavit; and thereafter same highlighted five [5] salient issues for due consideration by the Honourable court.
8. Firstly, Learned counsel for the Applicants' submitted that even though the Applicant had filed the Application dated the 14th February 2024, same found it appropriate and necessary to amend the Application beforehand.
9. Furthermore, Learned counsel for the Applicants submitted that the original Notice of Motion Application was amended, albeit without leave of the court. In any event, counsel added that no leave was required prior to and/or before the amendment of the Application.
10. Secondly, Learned counsel for the Applicants' has submitted that even if, the court were to find and hold that leave was necessary prior to and/or before the filing of the amended Notice of Motion, [which is contended not to be the case], the court is still seized of the requisite discretion to grant the Leave ex-post-facto.
11. Thirdly, Learned counsel for the Applicants' has also submitted that if the court were to find and hold that the amended Notice of Motion Application was filed without Leave and is therefore void, then the court still has the liberty to revert to and adjudicate upon the original Notice of Motion Application which was filed by the Applicants.
12. Fourthly, Learned counsel for the Applicants' has also submitted that the suit property, which is the subject of the Judicial Review proceedings, was surrendered to the Government of Kenya for purposes of settling the Applicants' herein, who are squatters residing thereon.
13. Premised on the basis that the Applicants' are said to be squatters on the suit property, Learned counsel for the Applicants' has thus contended that the Applicants' have established and demonstrated a legitimate stake and interests in the suit and by extension, in the suit property.
14. Consequently and in the premises, Learned counsel for the Applicants' has contended that the Applicants' have demonstrated a clear basis to warrant their joinder as Interested Parties' in the subject matter.
15. Finally, Learned counsel for the Applicants' has submitted that the suit property is situated within Taita Taveta County, which is served by the Environment and Land Court situated at Voi. In this regard, Learned counsel for the Applicants' has thus contended that the suit herein therefore ought to have been filed at Voi and not otherwise.
16. Arising from the foregoing, Learned counsel for the Applicants' has thus invited the Honourable Court to find and hold that the court herein is divested of the requisite Jurisdiction to entertain and adjudicate upon the subject dispute.
17. In a nutshell, Learned counsel for the Applicants' has therefore implored the court to find and hold that the Application beforehand is meritorious and thus ought to be allowed.

Ex-parties' Applicants' Submissions:

18. Learned counsel for the Ex-Parte Applicants' filed Ground of opposition, which same highlighted and amplified during his submissions. Further and in addition, Learned counsel or the Ex-Parte Applicant raised and canvassed five [5] salient issues for consideration by the court.



19. First and foremost, Learned counsel for the Ex-parte Applicants' has submitted that the instant Application was amended without Leave of the court and to the extent that same was amended without leave of the court, the Application is thus illegal, unlawfully and void.
20. In any event, Learned counsel has submitted that having filed the application without leave, the Applicants' herein cannot now be heard to seek for Leave and/or validation of the amendment, ex-post-facto. In short, Learned counsel for the Ex-parte Applicants has submitted that the application beforehand, which was amended without leave, is a nullity ab initio and same ought to be expunged from the record.
21. Secondly, Learned counsel for the Ex-parte Applicants' has submitted that the titles over and in respect of the suit property are housed at the Central Registry in Nairobi and that all the registration processes touching on and concerning the suit property, are by law undertaken at the Central Registry and not otherwise.
22. To the extent that the processes, inter-alia, the issuance of the Certificate of title are undertaken at the Central Registry, Learned counsel for the Ex-parte Applicants' has submitted that the suit herein was properly and lawfully filed at Milimani, which adjudicates upon dispute[s] arising from and touching on the registration process at the Central Registry.
23. Further and in addition, Learned counsel for the Ex-parte Applicants' has also submitted that the Environment and Land Court is one court, with registries spread across the country. In this regard, Learned counsel pointed out that the Environment and Land court; unlike Magistrate's court, is not subject to Geographical or territorial Jurisdictional limitations.
24. Thirdly, Learned counsel for the Ex-parte Applicants' has submitted that the intended Interested Parties herein are seeking to join the subject proceedings with a view to canvassing and ventilating a separate and distinct cause of action, which is at variance with the issues canvassed by the Ex-parte Applicants.
25. To the extent that the intended interested Parties' are seeking to bring forth a separate and distinct claim/cause of action, Learned counsel for the Ex-parte Applicants' has submitted that such claims, which are separated and distinct from the issues beforehand, cannot premise joinder of the Applicants' in respect of the subject matter.
26. In support of the submissions that an Applicant cannot seek joinder with a view to introducing new and separate issue in the matter, Learned counsel for the Ex-parte Applicants, has cited and relied on the case of Francis Kariuki Muruatetu vs Republic (2016)eKLR.
27. Fourthly, Learned counsel for the Ex-parte Applicant has submitted that the instant Application has been filed by the firm of M/s John Bwire & Co Advocates, which law firm belongs to the current and sitting Member of Parliament for the area in which the suit property is situated.
28. Notwithstanding the foregoing, Learned counsel for the Ex-parte Applicants' has submitted that the proprietor of the said firm, namely, Honourable John Bwire, has neither taken nor been issued with the current practicing certificate for the year 2024. In this regard, Learned counsel for the Ex-parte Applicants has thus contended that the impugned pleadings have been filed by an unqualified person and thus same ought to be struck out.
29. Finally, Learned counsel for the Ex-parte Applicants has submitted that even the advocates, namely, Mr. Griffins Timber, who canvassed/ argued the Application before the Honourable court has neither been issued with nor taken out the practicing certificate for the years 2023; as well as 2024, respectively.



30. Based on the foregoing, Learned counsel for the Ex-parte Applicants has thus invited the Honourable court to find and hold that one Mr. Griffin Timbe, [who appeared before the court], who have not taken a practicing certificate, was therefore guilty of professional misconduct.

Respondents' Submissions:

31. Learned counsel for the Respondents, namely, Mr. Allan Kamau; Principal Litigation Counsel, on behalf of the Honourable Attorney General; intimated to the court that same had not filed any response to the Application.
32. Nevertheless, Learned counsel for the Respondents highlighted and canvassed two [2] salient issues in support of the Application.
33. Firstly, Learned counsel for the Respondents submitted that the issues raised and canvassed by Learned Counsel for the Ex-parte Applicants' touching on the competence or otherwise of the Application, could only canvassed vide a formal Application and not otherwise.
34. Furthermore, Learned counsel for the Respondents has contended that in the absence of an Application for striking out, the submissions of the Ex-parte Applicants' seeking to strike out the Application beforehand, are therefore misconceived.
35. In support of the foregoing submissions, Learned counsel for the Respondents cited and relied on, inter-alia, the holding in the case of Oraro v versus Mbaja (2004)eKLR and Ali Joho versus Suleiman Sheikh Shabal & Others (2014)eKLR, respectively.
36. Secondly, Learned counsel for the Respondents has submitted that the Applicants' herein have established and demonstrated a legitimate basis to warrant their inclusion/ joinder as Interested Parties' in respect of the instant matter.
37. In a nutshell, Learned counsel for the Respondents has therefore invited the Honourable court to find and hold that the Application beforehand is meritorious and thus ought to be allowed.

Issues For Determination:

38. Having reviewed and evaluated the instant Application and the Responses thereto; and upon taking consideration of the oral submissions that were made before the Honourable court, the following Issues do emerge and are thus worthy of determination;
- i. Whether the Environment and Land court sitting in Nairobi is seized of the requisite Jurisdiction to entertain and adjudicate upon the subject suit.
 - ii. Whether the Amended Motice of motion Application, which was amended without Leave of the court is a nullity ab initio or otherwise.
 - iii. Whether the Applicants' herein can be admitted and/or joined into the subject suit with a view to raising and canvassing a separate and distinct cause of action.



Analysis And Determination:

Issue Number 1 Whether the Environment and Land Court sitting in Nairobi is seized of the requisite Jurisdiction to entertain and adjudicate upon the subject suit.

39. Learned counsel for the Applicants' herein contended that the suit property, which is the subject of the instant proceedings is situated in Taita Taveta County, which is served by the Environment and Land court at Voi.
40. Furthermore, Learned counsel submitted that insofar as there is an Environment and Land court sitting at Voi, the instant suit/proceedings ought to have been filed before the Environment and Land court sitting at Voi; and not otherwise.
41. Premised on the foregoing, Learned counsel for the Applicants has thus submitted that the Environment and Land court sitting in Milimani – Nairobi, is thus devoid and divested of the requisite Jurisdiction to entertain and adjudicate upon the subject dispute.
42. Consequently and in the premises, Learned counsel for the Applicants' has thus invited the court to find and hold that the instant suit ought to be struck out for want of Jurisdiction; and in the alternative, that same be transferred to the Environment and Land court sitting at Voi for hearing and determination.
43. On his part, Learned counsel for the Ex-parte Applicants' has submitted that the title pertaining to and concerning the suit property is housed at the Central Registry at Nairobi and not otherwise.
44. Additionally, Learned counsel for the Ex-parte Applicants' has also submitted that the processes pertaining to and concerning the registration over and in respect of the suit property, are undertaken by the Chief Land Registrar at Nairobi; and not by the County Land Registrar.
45. In view of the foregoing, Learned counsel for the Ex-parte Applicants has therefore submitted that the Environment and Land court sitting in Milimani, is thus seized of the requisite Jurisdiction to entertain the subject suit.
46. Having reviewed the submissions by the Parties' herein, I take the following position. Firstly, the Environment and Land court is one court, albeit sitting at various Registries within the Republic of Kenya.
47. Furthermore, there is no gainsaying that the Environment and Land court is a Superior court with Jurisdiction across the country; and hence same does not suffer from territorial and/or geographical Jurisdiction limitation, either as contended by Learned Counsel for the Intended Interested Parties, or at all.
48. Premised on the foregoing, one cannot therefore purport and/or contend that the Environment and Land court sitting at Nairobi; is devoid and divested of Jurisdiction to entertain the subject suit, merely on the basis that the suit property is situate in Taita Taveta County.
49. Secondly, it is not lost on this court that the designated Registry which handles and deals with the registration process touching on the suit property, is the Central Registry situate at Nairobi, which is within the Jurisdiction of this Honorable court.
50. Thirdly, it is also important to underscore that the actions and/or omissions complained of, are attributed to the Chief Land Registrar based at Nairobi; and hence the Ex-parte Applicants were



entitled and in any event, within their constitutional rights, to file and mount the proceedings before this Honorable court.

51. Lastly, it is also evident that the Respondents, who are the Principal Parties to the subject suit; are all based and domiciled within the City County of Nairobi, which is served by the Environment and Land court sitting at Milimani.
52. In a nutshell, my answer to issue number one [1] is to the effect that the Environment and Land court sitting at Nairobi is indeed seized and possessed of the requisite Jurisdiction to entertain and adjudicate upon the subject dispute.

Issue Number 2 Whether the amended Notice of Motion Application which was amended without Leave of the court is a nullity ab initio or otherwise.

53. It is instructive to state and observe that the Applicants herein filed the Notice of Motion Application dated the 14th February 2024; and in respect of which same sought to be joined into the instant proceedings. Nevertheless, despite having sought for liberty to be joined into the instant proceedings, the Applicants did not seek any further or other reliefs at the foot of the original Application.
54. Notwithstanding the foregoing, the Applicants herein proceeded to and filed an amended Application dated the 15th February 2024; and in respect of which the Applicants retained the prayer for joinder as interested parties, but also included the prayer for liberty to file a Replying affidavit; and to participate in the hearing of the substantive Notice of Motion Application.
55. Be that as it may, the critical point that is worthy of determination relates to whether or not the Applicants herein had the right and/or liberty to file an Amended Application albeit without Leave of the court.
56. To start with, it is important to state and observe that a Party to a suit, has the right and/or liberty to amend any pleading at any time prior to and before the close of pleadings. [See Order 8 Rule 1 of the Civil Procedure Rules 2010].
57. Nevertheless, it is equally important to point out that what constitutes a pleading is well defined and delineated vide the provisions of Section 2 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.
58. For coherence, the term pleadings does not however include ordinary Notice of Motion Applications, which are filed in the course of proceedings like the instant Application. Consequently, where one seeks to amend an Application, like the Application that was filed by and on behalf of the Applicants, then same is obliged to seek for and obtain Leave of the court prior to and or before filing the amended Application.
59. To my mind, it was incumbent upon the Applicants herein to seek for and obtain leave of the court, prior to and before filing the impugned amended Notice of Motion Application.
60. However, it is worthy to underscore that no leave was ever sought for and/or obtained before the impugned Application was filed; and in this regard, the question that does arise, is whether the impugned amended Application is properly before the court or otherwise.
61. Be that as it may, my humble view is that the Applicants herein could not proceed to and amend the Application and thereafter seek to validate the amended Application ex-post-facto. Suffice it to point out that such kind of conduct, where a litigant proceeds to undertake an action without Leave of the court; and thereafter seeks to procure leave thereafter, is irregular and cannot be countenanced by a court of law.



62. To this end, it suffices to adopt and reiterate the holding of the Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Salat versus IEBC & 7 Others [Civil Application No. 16 of 2014] [2014] eKLR, where the court stated and observed as hereunder;

“To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave [an order of this Court extending time] , is expunged from the Court’s Record.”

63. Similarly, it is also important to highlight the holding of the Supreme Court of Kenya in the case of Nairobi Bottlers Ltd vs Mark Ndumia Ndungu & Another (2023) KESC [Ruling] [delivered on the 28th of December 2023]:

(28) Furthermore, even assuming that the applicant had offered satisfactory explanation for the entire period of delay, which it hasn’t, its Motion for extension of time would still be subject to the same fate. This is because, the applicant has urged this Court that upon extending time to deem the appeal as being properly filed. Time and time again, we have reiterated that filing an appeal out of time without leave and then seeking this Court’s discretion to extend time is presumptive and inappropriate. As we stated in Nicholas Salat “No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence.”

64. Whereas the Supreme Court of Kenya dealt with and/or considered the scenario of where an Appeal was filed out of time and thereafter an application was mounted ex-post-facto for validation, [which the court found to be presumptive] ; the situation beforehand relates to an amendment which was taken prior to and before leave was sought for and/or obtained.

65. To my mind, it was incumbent upon the Applicants to obtain Leave beforehand and insofar as no such Leave was procured beforehand, the impugned amended Notice of Motion Application is vitiated and thus rendered a nullity.

66. Nevertheless, I am aware that Learned counsel for the Applicants sought to implore the court to grant leave and deem the amended Notice of Motion Application as duly filed, but I beg to underscore that the impugned amended Notice of motion being a nullity, same cannot by any stretch of imagination, be validated.

67. In a nutshell, it is my finding and holding that the impugned amended Notice of Motion dated the 15th February 2024; is a nullity ab initio and thus same is fatally incompetent and incapable of redemption.

68. Before departing from this particular issue, it is worthy to recall that Learned counsel for the Applicant also invited the court to find and hold that in the event the amended Application is found to be vitiated, then the court should revert to and consider the original Notice of Motion Application



69. Nevertheless, I beg to point out from the onset that whenever a litigant endeavors to amend any document and/or pleading, the amendment renders the original document or pleadings redundant and otiose. Consequently and in the premises, one cannot be heard to contend that if the amended document or pleadings is found vitiated, then the court ought to revert to the original pleading.
70. Simply put, the amendment of a document or pleadings kills, vitiates and/or negates the original document and/or pleadings; and henceforth the proceedings can only be predicated on the amendment and not otherwise.

Issue Number 3: Whether the Applicants' herein can be admitted and/or joined into the subject suit with a view to raising and canvassing a separate and distinct cause of action.

71. Other than the procedural issues which have been outlined and highlighted in the preceding paragraphs, there is the more pertinent issue which touches on and concerns whether the Applicants herein have established and or demonstrated a stake in the suit and by extension the suit property, to warrant joinder as Interested Parties.
72. It is common ground that any person, the Applicant not excepted, who are desirous to be joined into an existing suit as an Interested Party, must demonstrate a stake and/or claim in respect of the suit, before same can procure a favorable order.
73. Furthermore, it is also not lost on this court that a Party cannot seek to be joined into an existing suit, like the one beforehand with a view to propagating and/or canvassing a separate and distinct cause of action.
74. Pertinently, there is no gainsaying that even where a Party is joined as an Interested Party, in a suit and/or proceedings, the issues for determination shall remain the issues generated and/or propagated by the Principal Parties and not otherwise.
75. To highlight the foregoing exposition, it suffices to reiterate and adopt the holding of the Supreme Court of Kenya in the case of Communications Commission of Kenya versus Royal Media Services and 7 Others (2014)eKLR, where the court stated at paragraph 27 as hereunder;
 - (27) We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause. On this point, we are guided by the principle which we had pronounced in the Mumo Matemo case (at paragraph 24), as follows:

“A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”
76. Other than the foregoing decision, the parameters to be met and/or satisfied before one can be joined as an Interested Party were similarly amplified and elaborated upon by the Supreme Court of Kenya in the case of Francis Kariuki Muruatetu vs Republic (2016)eKLR at paragraphs 37 and 42 thereof.
77. For coherence, the court stated and held as hereunder;



- (37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

- (42) Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.

78. Back to the instant matter. It is imperative to point out and underscore that the dispute at the foot of the instant proceedings touches on and or concerns (sic) the failure by the Respondents to perform and/or discharge statutory duty in accordance with the provisions of the [Land Registration Act, 2012](#).
79. In particular, the Ex-parte Applicants herein have contended that even though same presented and lodged all the requisite transfer documents for purposes of registration and issuance of a Certificate of title by the 1st Respondent, same [1st Respondent] has however failed, neglected and/or refused to process and issue the requisite certificate of title.
80. Consequently and in the premises, what the Ex-parte Applicants' are seeking to obtain from the court is an order of mandamus to compel the 1st Respondent to perform and/or discharge her statutory duties; and not otherwise.
81. To the contrary, the Applicants' herein are propagating a contention that the same are squatters residing on the suit property and that by virtue of such occupation and possession, same [Applicants] has acquired prescriptive rights over the suit property.
82. Additionally, the Applicants' have also contended that what comprises the suit property was surrendered to the Government by the Ex-Parte Applicants for purpose of settling inter-alia, the Applicants herein. In this regard, the Applicants' are also seeking to canvass the question of (sic) surrender of the suit property.
83. From the foregoing, there is no gainsaying that the Applicants herein are seeking to be joined into the subject proceedings with a view to propagating their [own and distinct cause of action].



84. Quiet clearly, what the Applicants' are endeavoring to achieve is to hijack the suit proceedings by the Ex-parte Applicants and thereafter propagate a distinct cause of action, which is at variance with the one being canvassed by the Ex- parte Applicants.
85. To my mind, the issues that are being adverted to and propagated by the Applicants herein, are issues that cannot be entertained and/or adjudicated upon by this Honorable court, in the manner sought or at all.
86. Furthermore, it is also not lost on the court that the issues that the Applicants desire to canvass before the court are issues that will require production/adduction of viva voce evidence; and thus can only be entertained in an ordinary suit and not in Judicial proceedings, the latter, which are only concerned with the review of the decision-making process as opposed to the merits. [See the Decision in the case of Kunste Hotels Limited versus Commissioner of Lands and Another [1997] eklr]
87. Consequently and in view of the foregoing, my answer to issue number three [3] is twofold. Firstly, the Applicants' herein are seeking to propagate a cause of action that is separate and distinct from the one canvassed by the Ex-parte Applicants.
88. Secondly, the nature of issues that the Applicants are seeking to bring forth and propagate, are issues which cannot be canvassed, entertained and adjudicated upon vide Judicial Review proceeding[s] or at all.

Final Disposition:

89. From the forgoing analysis, it must be evident and apparent that the impugned amended Notice of Motion Application dated the 14th February 2024; is not only incompetent, but same is equally misconceived and bad in law.
90. Notwithstanding the foregoing, it is also worthy to point out that the impugned documents and proceedings by and on behalf of the Applicants, were propagated and mounted by an unqualified person not authorized to file pleadings and documents before a court of law.
91. Furthermore, it is also appropriate to under score that even the advocate who appeared before the court, namely, Mr. Griffins Timbe; admitted that same had neither taken out nor procured the requisite practicing certificate for the year 2023 and 2024, respectively. In this regard, even the counsel who appeared before the court was guilty of professional misconduct.
92. Suffice it to point out that advocates who appear before the court, Mr. Griffins Timbe not excepted, ought to ensure that same are duly authorized and qualified to practice before the court[s].
93. Short of that, courts of law, shall be called upon to mete out appropriate punishment. Be that as it may, I have found and held that the amended Notice of Motion Application dated the 15th February 2024; is incompetent, misconceived and otherwise an abuse of the due process of the court.
94. Consequently and in the circumstances, same [Application], be and is hereby dismissed with costs to be borne by the law firm of M/s John Bwire & Associates Advocates.
95. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024.

OGUTTU MBOYA

JUDGE



In the Presence of;

Court Assistant: Benson.

Mr. Griffins Timbe [not duly qualified] for the Applicants

Mr. Greg Karungo for the Ex-Party Applicants

Mr. Allan Kamau [Principal Litigation Counsel] for the Respondents

