Irungu & 2 others v Njaramba (Environment and Land Appeal E078 of 2022) [2024] KEELC 1027 (KLR) (15 February 2024) (Judgment)

Neutral citation: [2024] KEELC 1027 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT AND LAND APPEAL E078 OF 2022

BM EBOSO, J

FEBRUARY 15, 2024

BETWEEN

NICHOLAS IRUNGU ..... 1ST APPELLANT

JACINTA WAMBUI ..... 2ND APPELLANT

JOHN NJARAMBA MUIRURI ..... 3RD APPELLANT

AND

JANE NJARAMBA ..... RESPONDENT

(Being an Appeal against the Ruling of Hon. J. A Agonda, Principal Magistrate, delivered on 7/9/2022 in Ruiru SPMC MCL&E Case No. E120 of 2021)

JUDGMENT

Introduction

1. This appeal challenges the post-judgment ruling rendered on 7/9/2022 by Hon J. A Agonda, Principal Magistrate, in Ruiru SPMC MCL&E Case No E120 of 2021. The respondent in this appeal was the plaintiff in the lower court. The 1st and 2nd appellants were the defendants. The 3rd appellant was not a party to the suit in the lower court; he was an unsuccessful applicant in a post – judgment application seeking an order of joinder in the suit.

2. The impugned ruling related to an application by the three appellants seeking: (i) an order setting aside the *exparte* Judgment of the trial court, rendered on 3/3/2022; and (ii) an order joining the 3rd appellant as an interested party in the suit. The trial court found that the appellants' application was unmerited and dismissed it. The ruling triggered this appeal. The two key issues to be determined in the appeal are: (i) Whether the 3rd appellant satisfied the criteria for an order of post-judgment joinder to a suit; and (ii) Whether the three appellants satisfied the criteria for an order setting aside an *exparte* judgment. Before I dispose the two issues, I will briefly outline a brief background to the appeal.

Background

3. The suit in the trial court was initiated by the respondent against the 1st and 2nd appellants through a plaint dated 30/8/2021. She sought: (i) an eviction order, (ii) and a permanent injunction restraining the two appellants against interfering with property she described as Plot No. 1458, Kahawa Sukari [hereinafter referred to as the "suit property"]. She contended that she jointly acquired the suit property with her husband [the 3rd appellant] in the year 2007. It was her case that they jointly built on the suit land their matrimonial home consisting of a 3 bedroomed house and 2 servant quarters. They lived together until sometime in 2016 when the 3rd appellant deserted their matrimonial home. Sometime in the year 2008, she took in the 1st appellant, who is her stepson, and allowed him to live in one of the servant quarters. The 1st appellant later married the 2nd appellant and the two continued to live in the servant quarters. The respondent added that the 1st and 2nd respondents resorted to constantly harassing and insulting her and were threatening to evict her from the suit property.

4. Upon initiating the suit, the respondent contemporaneously filed an application dated 30/8/2021 under a certificate of urgency, seeking interlocutory injunctive orders against the two appellants. The respondent was directed by the trial court to serve the 1st and 2nd appellants with the pleadings and hearing notice. The interlocutory application was subsequently heard *exparte* and the trial court rendered a ruling on the application on 27/10/2021 in which it issued orders of interlocutory injunction against the 1st and 2nd appellants. There is, however, no evidence in the record of the trial court to suggest that the *exparte* interlocutory order was enforced against the two appellants.

5. The suit was subsequently set down for pre-trial conference on 24/11/2022, when the court directed that the suit was to be heard as an undefended cause. Following the ensuing *exparte* trial, the trial court delivered an *exparte* Judgment on 3/3/2022 and ordered eviction of the 1st and 2nd appellants from the suit property.

6. On 24/3/2022, the three appellants filed an application dated 24/3/2022 seeking: (i) an order setting aside the ex-parte Judgment; and (ii) an order joining the 3rd appellant as an interested party in the suit. The said application was subsequently struck out on 31/5/2022 on the ground that the appellants' advocates had not sought prior leave to come on record. The appellants subsequently filed an application dated 15/6/2022 seeking: (i) leave to appoint advocates; (ii) an order setting aside the *exparte* judgment; and (iii) an order joining the 3rd appellant as an interested party to the suit. They contended that they were never served with summons to enter appearance, adding that the 3rd appellant was an interested party in the dispute. The said application was dismissed on 7/9/2022. The trial court's finding was that the 1st and 2nd appellants were properly served in accordance with the provisions of Order 5, rule 22C of the *Civil Procedure (Amendment) Rules, 2020*.

Appeal

7. Aggrieved with the findings of the trial court, the 1st, 2nd, and 3rd appellants filed this appeal, advancing the following ten verbatim grounds:

    1. That the learned magistrate erred in law and misdirected herself when she failed to appreciate that the suit/judgment sought to be set aside involved an eviction order against the 1st and 2nd appellants who had not been heard in their defence.

    2. That the learned magistrate failed to appreciate the magnitude of the decree issued *exparte* that makes the 1st and 2nd appellants destitute as they had approached the court promptly when they became aware of the proceedings.

3. The learned trial magistrate erred in law and fact when she held that the 1st and 2nd appellants were properly served by the mere fact that an affidavit of service had been sworn alleging service of summons via WhatsApp without ascertaining that the said phone number belonged to the appellants and or indeed their telephones had the WhatsApp and thereby shifting the burden of proof to the appellants contrary to law.

4. The learned trial magistrate erred in law and fact in failing to consider the application for joinder by the interested party who is the father of the 1st and 2nd appellants and the husband of the respondent and who is the owner of the parcel of land in question being Plot No. 1458 Kahawa Sukari wherein he has settled the respondent and the 1st and 2nd appellants and who the respondent in her testimony alleged was deceased.

5. The learned trial magistrate misdirected herself and applied the wrong principles of law in dealing with the application for setting aside an *exparte* judgment when it was manifestly clear that the said *exparte* judgment was obtained by deceit.

6. The learned trial magistrate erred in law and fact when she failed to see the mischief of the alleged service via WhatsApp application on people who live in the same compound.

7. The learned trial magistrate erred in law and fact in failing to appreciate that there was no service of notice of entry of interlocutory judgment which would have alerted the 1st and 2nd appellants of the suit before her.

8. The learned trial magistrate erred in law and fact when she seemed to have already made up her mind that the 1st and 2nd appellants and the interested party's application had to fail by first allowing a preliminary objection on the flimsy grounds that the advocate of the 1st and 2nd appellants had to seek leave to appear for them as judgment had already been entered when this is contrary to law.

9. The learned trial magistrate erred in law and fact by showing open bias against the appellants.

10. The learned trial magistrate erred in law and fact by failing to appreciate the appellants' constitutional rights had been /would be infringed by the eviction orders she granted *exparte*.

8. The 1st, 2nd and 3rd appellants urged this court to allow the appeal; set aside the judgment and the decree of the subordinate court; and substitute them with an order allowing the appellants to defend the suit. They urged the court to award the costs of the suit at the trial court and the appeal.

Appellants' Submissions

9. The appeal was canvassed through written submissions dated 24/2/2023, filed by M/s Irungu Mwangi Ng'ang'a T.T & Company Advocates. Counsel for the appellants submitted that the 1st, 2nd, and 3rd appellants did not participate in the suit and only came to know of it when they were served with an eviction order. Counsel faulted the trial court for failing to uphold the appellants' constitutional rights to a fair trial and the provisions of Sections 1A and 1B of the *Civil Procedure Act* on the overriding principle of doing justice to all parties in a case. He added that the court is obliged to see to it that substantive justice is done to all parties.

10. Counsel submitted that in the impugned ruling, the honourable trial magistrate correctly interpreted Order 9 rule 9 of the *Civil Procedure Rules 2010* when she noted that the appellants' counsel did not require leave to come on record. Counsel for the appellants, however, faulted the learned magistrate for not properly analysing the issue of setting aside the judgment. Counsel added that while the

honourable principal magistrate appreciated that setting aside an *exparte* judgment is a discretionary jurisdiction, she failed to exercise the same judiciously in the circumstances of the case.

11. Counsel faulted the trial court for failing to allow the 3rd appellant's prayer for joinder in the suit yet he is the proprietor of the suit property and the orders granted in the impugned Judgment adversely affect him. Counsel added that the 3rd appellant who was the legitimate owner of the suit property was not a party to the suit and was not served yet the honourable magistrate pronounced a Judgment and issued a decree declaring the plaintiff the owner of the entire suit property. Counsel contended that substantive justice required the honourable magistrate to set aside the *exparte* Judgment notwithstanding her finding that the WhatsApp service was proper. Counsel argued that from the proceedings provided and the judgment, there was no proof that the appellants were ever served with the notice of entry of judgment and, as such, the proceedings to formally prove the case were defective and ought to have been set aside.

12. Counsel submitted that the suit at the trial court was a case of abuse of the court process where a plaintiff sued a party who was not the owner of the suit property and went ahead to obtain a decree pronouncing her as the owner when the legitimate owner had not been served or sued. Counsel urged the court to come to the rescue of the 1st and 2nd appellants and their father the 3rd appellant, the legitimate owner of the suit property, given that the process used to deprive them a home was unconstitutional and flawed. Counsel for the appellants urged the court to allow the appeal as sought in the memorandum of appeal.

Respondent's Submissions

13. The appeal was opposed through written submissions dated 14/3/2023, filed by Donex Juma & Company Advocates. Counsel identified the following as the main issues for determination in the appeal: (i) Whether the appeal is merited and; (ii) Whether the orders sought should be granted. Counsel for the respondent submitted that at all material times during trial at the lower court, the respondent complied with the court's direction on service of pleadings and mention notices upon the 1st and 2nd appellants. Counsel added that Order 5 rule 22C of the *Civil Procedure Rules, 2010* allows service of pleadings via mobile-enabled messaging applications to the last known and used telephone number of the recipient. Counsel added that for service to be considered as properly effected, the sender must receive a delivery receipt, which should be attached to the affidavit of service filed in court.

14. Counsel submitted that the WhatsApp messages annexed to the affidavits of service sworn on 2/9/2021 and 24/9/2021, contained double blue ticks meaning the messages were delivered and read. Counsel faulted the appellants for advancing the ground that the trial court erred by relying on the said affidavits of service without ascertaining whether the 1st and 2nd appellants indeed had mobile phones that supported the WhatsApp application. Counsel argued that it is common knowledge that if a mobile phone does not support a WhatsApp application, the two blue sticks would not appear on the sender's screen. Counsel added that the 1st and 2nd appellants never denied on oath that mobile phone numbers 0726xxxxxx and 0711xxxxxx belonged to them. Counsel urged the court to find that service of the summons and pleadings on the 1st and 2nd appellants was proper.

15. In response to ground 4 of the memorandum of appeal, the respondent's counsel submitted that there was no default judgment entered in the matter. Counsel added that upon satisfying itself that the suit was a land dispute and that the same was undefended, the trial court issued a merit-based judgment. Counsel urged the court not to set aside the merit-based decision in the absence of solid grounds.

16. On the allegation that the 3rd defendant was deceased, counsel submitted that the respondent never pleaded nor testified that the 3rd defendant was deceased. Counsel added that the respondent's case

was based on her occupation of the house jointly constructed and acquired by her and the 3rd appellant which sits on plot no. 1458, Kahawa Sukari. Counsel argued that the trial court made an error by stating that the 3rd appellant was deceased. Counsel added that the said error constitutes an error apparent on the face of the record and not an error in the substance of the Judgment. Counsel argued that Section 99 of the *Civil Procedure Act* and Order 45 rule 1 of the *Civil Procedure Rules* gave the court the power either suo moto or on application by a party, to correct the errors. Counsel contended that the review jurisdiction of the trial court was never invoked by the appellants, hence the said error cannot be the basis for seeking the setting aside of the entire judgment of court which was made on merit. Counsel urged the court to dismiss the appeal with costs.

Analysis and Determination

17. I have read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. I have also considered the legal frameworks and jurisprudence relevant to the key issues in this appeal. The two key issues that fall for determination in this appeal are: (i(Whether the 3rd appellant satisfied the criteria for joinder to a suit post-judgment; and (ii) Whether the three appellants satisfied the criteria for setting aside an *exparte* judgment.

18. This is a first appeal. The principle upon which a first appellate court exercises jurisdiction is well settled. The task of the first appellate court was summarized by the Court of Appeal in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR as follows:

> " As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyse, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions."

19. The above principle was similarly outlined in *Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:

> " This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way."

20. Did the 3rd appellant satisfy the criteria for joinder to a suit post judgment? The principle that guides our courts when exercising jurisdiction to grant an order of joinder to a suit post judgment was aptly outlined by the Court of Appeal in *Merry Beach Limited v Attorney General and 18 others* [2018] eKLR as follows:

> " However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. The order enjoining a party would also have to set aside the judgment entered to give him/her an opportunity to be heard."

21. In paragraphs 4 and 5 of the plaint that gave rise to the impugned Judgment, the respondent pleaded that she got married to John Njaramba [the 3rd appellant] in 1999 and that they jointly acquired and developed the suit property. She added that while they were living on the suit property, which she contended was co-owned as a matrimonial home of the couple, she allowed the 1st appellant - a son

to John Njaramba from a previous marriage and the 2nd appellant - a wife to the 1st appellant and a daughter-in-law to John Njaramba, to live in one of the servant quarters built on the land.

22. In the impugned Judgment, the trial court issued an order that was never prayed for, declaring the respondent as the lawful proprietor of the entire property yet the respondent had pleaded that the suit property was jointly acquired and co-owned by the 3rd appellant and herself. The relevant disposal order of the trial court reads thus:

> " 1) A declaration that the plaintiff is the lawful proprietors of all that parcel of land known as plot No 1458, Kahawa Sukari."

23. Clearly, given the pleadings and evidence that was before the trial court, it was obvious that the 3rd appellant was a necessary party to the suit. It was also clear from the above disposal order that the trial court had declared the respondent as the owner of the entire suit property yet the respondent had pleaded that the suit property was co-owned. It was therefore clear that the 3rd appellant was a party adversely affected by the Judgment of the trial court, hence he fully met the criteria for joinder post – judgment. That is my finding on the first issue.

24. Did the three appellants meet the criteria for setting aside an ex-parte judgment The criteria for setting aside an *exparte* judgment was elaborately outlined in *James Kanyitta Nderitu & another v Marios Philotas Ghikas & another* (2016) eKLR in the following words:

> " From the outset, it cannot be gainsaid that a distinction has always existed between a default judgment that is regularly entered and one, which is irregularly entered. In a regular default judgment, the defendant will have been duly served with summons to enter appearance, but for one reason or another, he had failed to enter appearance or to file defence, resulting in default judgment. Such a defendant is entitled, under Order 10 rule 11 of the *Civil Procedure Rules*, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment, and will take into account such factors as the reason for the failure of the defendant to file his memorandum of appearance or defence, as the case may be; the length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer; whether on the whole it is in the interest of justice to set aside the default judgment, among other. See Mbogo & Another v. Shah (*supra*), *Patel v. E.A. Cargo Handling Services Ltd* (1975) EA 75, Chemwolo & Another v. Kubende [1986] KLR 492 and *CMC Holdings v. Nzioki* [2004] 1 KLR 173).
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> In an irregular default judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside ex debito justitiae, as a matter of right. The court does not even have to be moved by a party once it comes to its notice that the judgment is irregular; it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raises triable issue or whether there has been inordinate delay in applying to set aside the irregular judgment. The reason why such judgment is set aside as of right, and not as a matter of discretion, is because the party against whom it is entered has been condemned without notice of the allegations against him or an opportunity to be heard in response to those allegations. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See *Onyango Oloo v. Attorney General*

[1986-1989] EA 456). The Supreme Court of India forcefully underlined the importance of the right to be heard as follows in *Sangram Singh v. Election Tribunal, Koteh*, AIR 1955 SC 664, at 711:

> "There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

25. The court has made a finding to the effect that the 3rd appellant was a party that was adversely affected by the Judgment of the trial court yet he had not been made a party to the suit. For that reason alone, he fully met the criteria for setting aside the *exparte* Judgment.

26. Secondly, it emerges from the record of the trial court that the appellant's application which culminated in the impugned ruling was uncontroverted. I say so because, whereas the trial court's proceedings of 12/7/2022 capture counsel for the respondent alluding to a preliminary objection and replying affidavit served on 4/7/2022, none of the two items were in the original record of the trial court. None was in the record of appeal filed. What was in the original record and in the record of appeal were: (i) the respondent's preliminary objection dated 6/4/2022, filed on 7/4/2022; and the respondent's replying affidavit sworn on 6/4/2022 and filed on 7/4/2022. It does, however, emerge from the proceedings of the trial court that the preliminary objection dated 6/4/2022 was disposed through a ruling rendered on 31/5/2022 which struck out the application dated 24/3/2022. The replying affidavit sworn on 6/4/2022 was a response to the application dated 24/3/2022 which, as indicated, was struck out on 31/5/2022. The record of the trial court does not contain any replying affidavit or grounds of opposition filed in response to the application dated 15/6/2022. It does not contain any order adopting any other response.

27. In the impugned ruling, the trial court relied on the replying affidavit sworn on 6/4/2022. That was obviously an error because, in the absence of an adoption order, an affidavit sworn on 6/4/2022 could not be a response to the appellants application dated 15/6/2022 which was filed on 17/6/2022. There was nothing in the record of the trial court indicating that the respondent adopted the affidavit sworn on 7/4/2022 as her response to the application dated 15/6/2022.

28. Even if this court were to treat the said affidavit dated 7/4/2022 as the respondent's response to the application dated 15/6/2022, it is clear that the screen shots which the respondent's process server exhibited as evidence of service did not bear the cellphone numbers to which the WhatApp messages were transmitted. There cannot therefore be said to have been proof of service of process on the 1st and 2nd appellants.

29. That is not all. In terms of identifying the key issues that fell for determination in the application dated 15/6/2022, the Learned Magistrate rendered herself thus:

> "I have carefully considered the application together with its supporting affidavit. I have also considered the affidavit filed in opposition, submissions by both partiesminary [sic] objection. The issue that I have to determine in this application is whether I should grant to the applicant the orders of stay of execution. In deciding whether to grant the stay of execution sought after by the applicant."

30. Clearly, there was a serious misdirection on part of the Learned Magistrate. The plea for an order of stay of execution stood spent at the point of disposing the application dated 15/6/2022. The question

as to whether or not to grant an order of stay of execution was obviously not the key issue at the point of disposing the application. The two key issues at that point were: (i) Whether the 3rd appellant had met the criteria for an order of post-judgment joinder; and (ii) Whether the appellants had satisfied the criteria for setting aside an ex-parte judgment.

31. The foregoing are not the only misdirections and errors that the trial court made in the post judgment proceedings. The appellants' first attempt to procure an order setting aside the impugned judgment was made through their notice of motion dated 24/3/2022. The respondent raised a preliminary objection dated 6/4/2022 contending that the application was a non-starter by dint of the fact that the appellants had filed it without leave of the court allowing their advocates to come on record. Through a ruling rendered on 31/5/2022, the trial court upheld the preliminary objection dated 6/4/2022 and struck out the appellants' application dated 24/3/2022. The trial court upheld the preliminary objection despite the fact that the appellants had never had an advocate on record prior to the filing of the impugned application and notice of appointment. Consequently, the appellants were constrained to file a fresh application in which they first sought leave to engage an advocate in the suit. The issue did not end there.

32. In the subsequent ruling which is the subject of this appeal, the trial court revisited the above issue. This time round, the trial court made a finding that was clearly the opposite of her earlier finding on the same issue and set of facts.

33. For avoidance of doubt, in its ruling dated 31/5/2022, the trial court rendered itself on the issue as follows:

> " Having considered that order 9 rule 9 apply to the present case as the suit herein was heard and determined. In addition, the provisions of order 9 rule 10 is applicable and the defendant and interested party's advocate ought to have filed application or leave to come on record first though he failed to file that. But filed the application for setting aside of the orders. The error on his part is incurable under Article 159(2) (d) of *the Constitution* which directs the court not to pay undue regard to technicalities. He was of the view that the spirit of Order 9 rule 9 was to ensure a party to a suit is afforded legal representation. Further that an advocate was free to file any documents he may wish to file in court without seeking leave and it is up to the court to determine whether the advocate can be heard on the documents filed or not.
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> In the foregoing premises, I find that the defendant and interested party's advocate did not seek leave of the court to come on record as required under order 9 rule 9(a) of Civil Procedure Rules, 2010. The court finds the preliminary objection dated 6th April, 2022 is merited and is hereby upheld. The interim orders granted in relation to application dated 24th March, 2022 is vacated and the application is struck out with costs to the plaintiff."

34. In the subsequent/impugned ruling dated 7/9/2022, the same trial court rendered itself on the same issue as follows:

> " As to whether the firm of Irungu Mwangi Ng'ang'a T.T & Company Advocates should be granted leave to come on record after judgment. I note that the defendants merely cited Order 9 rule 9 of the *Civil Procedure Rules* which stipulates that:
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> > " When there is a change of advocates, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such

change or intention to act in person shall not be effected without an order of the court-

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be."

For the reason that the defendants did not participate in these proceedings before the default judgment was entered. I cite the case of *Kazungu Ngari Yaa-vs-Mistry v. Naran Mulji & Co.* (2014) eKLR, the court expressed the view that:

> "In the present case, the respondent did not file a response or participate in the proceedings and therefore there is no previous advocate that the firm which is coming on record, Musinga & Co. Advocates, can seek written consent from. And even if the respondent proposed to act in person, there is no other entity it could seek consent from. Order 9 rule 9(b) of the *Civil Procedure Rules, 2010* is consequently inapplicable..... order 9 rule 9(a) of the Civil Procedure Rules, 2010 is equally inapplicable. To hold otherwise would lead to an absurdity. There was no advocate on record previously engaged for the respondent and the respondent is not proposing to act in person, and there would be no logic in the respondent's advocate giving notice to his client that he proposes to come on record for it and then seeking leave of court."

I would be of the same view that all that was required of the defendant's advocate in the circumstances hereof, was to simply file a notice of appointment pursuant to Order 9 rule 7 of the *Civil Procedure Rules*, notwithstanding that default judgment had been entered; and cause the same to be served on the plaintiff."

35. The above contradictions point to clear misdirections and errors on the part of the trial court.

36. All in all, this court is satisfied that all the three appellants met the criteria for setting aside an ex-parte judgment.

Disposal Orders

37. For the above reasons, this appeal succeeds and is allowed in the following terms:

a. The ruling of the lower court rendered by Hon J.A Agonda PM on 7/9/2022 in Ruiru SPMC MCL&E Case No 120 of 2021 is set aside and is substituted with the following orders:

i. An order setting aside the *exparte* judgment rendered in the suit on 3/3/2022.

ii. An order joining John Njaramba Muiruri as the third defendant in the suit.

iii. An order that costs of the application dated 15/6/2022 shall be in the cause.

iv. An order that fresh trial do proceed before a different magistrate

b. Parties to this appeal shall bear their respective costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF FEBRUARY 2024

B M EBOSO

JUDGE

In the presence of: -

Mr. Mwangi for the Appellants

No appearance for the Respondents

Court Assistant: Hinga