



**Nelifa Holdings Limited v Kanee (Civil Appeal E121 of 2023)
[2024] KEELC 703 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 703 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL APPEAL E121 OF 2023
JO MBOYA, J
FEBRUARY 15, 2024**

BETWEEN

NELIFA HOLDINGS LIMITED APPELLANT

AND

PETER MWANGI KANEE RESPONDENT

(Being an Appeal from the Ruling and Orders of the Chief Magistrate's Court at Nairobi Hon. H. M Nyaberi (CM) delivered on 2nd November 2022 in Nairobi Chief Magistrate's Court ELC case Number E429 of 2021)

JUDGMENT

Introduction and Background:

1. The instant Appeal arises from the Ruling and decision of Hon. H.M Nyaberi, Chief Magistrate rendered on the 2nd November 2022; and wherein the learned Magistrate declined to strike out the Respondent's suit pertaining to and or concerning L.R No. 209/9832 [hereafter referred to as the suit property]; and whose value was [sic] stated to be in the sum of Kes.190, 000, 000/= only
2. Notably, the Appellant herein had filed an Application dated the 12th January 2022; and wherein same annexed assorted documents, inter-alia, a copy of Valuation Report prepared by M/s Gimco Ltd dated the 5th February 2018; and which documented the market value of the suit property.
3. Following the delivery of the Ruling rendered on the 2nd November 2023, the Appellant herein felt aggrieved and/or dissatisfied and thereafter proceeded to and filed the Memorandum of Appeal dated the 29th November 2022; and which raises the following Grounds of appeal;
 - i. The Learned Magistrate erred in law and in fact in failing to consider the pleadings as filed by the Respondent which was for a portion of the suit property being L.R No. 209/9832, which



portion was not ascertainable and that the reliefs sought were in respect of the same property which has a value exceeding the Jurisdiction of the subordinate court.

- ii. The Learned Magistrate erred in law and in fact in failing to consider that the suit property has one title and is not sub-divided to give rise to a claim to a portion which is discernable or defined.
 - iii. The Learned Magistrate erred in law and in fact in finding that the Plaintiff is only claiming a portion of the land [sic] valued at Kes.5, 000, 000/= only and not the entire suit property.
 - iv. The Learned Magistrate erred in law and in fact in failing to find that the Subordinate court had no Jurisdiction to hear and determine the Respondent suit as the suit property has a market value of Kes.190, 000, 000/= only despite sufficient evidence before the court on the market value.
 - v. The Learned Magistrate erred in law and in fact in failing to find that the suit offends Section 6 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; as the issues in dispute, as pleaded in the plaint, are substantially the same and they relate to the same parties as the other suit filed or pending in the environment and land court.
 - vi. The Learned Magistrate erred in law and in fact in failing to appreciate that the Plaintiff before court was a Party in other suit involving the same suit property which were filed or pending in the environment and land court.
 - vii. The Learned Magistrate erred in law and in fact in failing to appreciate the pleadings and documents filed over the suit property in other matters despite sufficient pleadings and documents presented before the court.
 - viii. The Learned magistrate erred in law and in fact in dismissing the Appellant's application dated the 12th January 2022.
4. The Appeal herein came up for directions pursuant to the Provisions of Order 42 Rule 13 of the Civil Procedure Rules 2010, on the 5th December 2023, whereupon the advocates for the Parties confirmed that the record of appeal was complete and contained the requisite documents stipulated under the law.
 5. Furthermore, the advocates for the respective Parties also covenanted to canvass and ventilate the Appeal by way of written submissions. Consequently and in this regard, the court proceeded to and circumscribed the timeline for the filing and exchange of the written submissions.
 6. Moreover, the Appellant thereafter proceeded and filed two sets of written submissions dated the 19th December 2023 and supplemental submissions dated the 30th January 2024, whereas the Respondent filed written submissions dated the 15th January 2024. Nevertheless, it suffices to point out that the Respondent's submissions are titled as (sic) Appellant's Written Submissions.
 7. Save for the misnomer apparent on the face of the submissions filed on behalf of the Respondent, it is imperative to underscore that all the sets of the submissions are on record.

Parties Submissions:

a. Appellant's submissions:

8. The Appellant herein filed two [2] sets of submissions dated the 19th December 2023; and 30th January 2024, respectively and wherein the Appellant has highlighted two [2] issues for consideration and determination by the Honourable court.



9. The first issue which has been highlighted and canvassed by learned counsel for the Appellant touches on and concerns grounds one to four of the Memorandum of appeal. Instructively, Learned counsel for the Appellant has submitted that the learned Chief Magistrate erred in fact and in law in finding and holding that same was seized of the requisite Jurisdiction to entertain and adjudicate upon the dispute concerning the suit property or a portion thereof.
10. Furthermore, Learned counsel for the Appellant has submitted that at the foot of the Application dated the 12th January 2022, which sought to strike out the suit on, inter-alia, want of Jurisdiction, the Appellant placed before the learned Chief Magistrate a copy of the Certificate of title showing that the suit property was at the material point in time charged to M/s Equity Bank Limited for the sum of Kes.104, 400, 000/=.
11. Other than the foregoing, Learned counsel for the Appellant has also highlighted the fact that the Appellant also placed before the learned Chief Magistrate a copy of the valuation report prepared by M/s Gimco Ltd and dated the 5th February 2018, which documented the market value of the suit property as Kes.190, 000, 000/= only.
12. Be that as it may, Learned counsel for the Appellant has submitted that despite the evidence placed before the learned Chief Magistrate, which clearly pointed out that the value of the suit property fell outside the pecuniary Jurisdiction of the Chief Magistrate, the learned Chief Magistrate still proceeded to and held that same was seized of the requisite Jurisdiction.
13. In this regard, Learned counsel for the Appellant has submitted that in finding and holding that same [chief magistrate] had the requisite Jurisdiction to entertain and adjudicate upon the suit property, same acted contrary to and in contravention of Section 7 of the Magistrate's Court Act, 2015, which circumscribes the monetary Jurisdiction of the magistrate's court.
14. In support of the submissions underpinning the question of Jurisdiction, Learned counsel for the Appellant has cited and relied on the case of Owners of The Motor Vessel Lilian S vs Caltex Oil Kenya Ltd (1989)eKLR.
15. Secondly, Learned counsel for the Appellant has canvassed the issue of sub-judice and same has contended that the learned Chief Magistrate erred in fact and in law in failing to find and hold that the instant suit was prohibited by dint of Section 6 of the [Civil Procedure Act](#), Chapter 21 Laws of Kenya.
16. Whilst agitating the second issue, namely, the question of Res-Sub-Judice, learned counsel for the Appellant has invited the Honourable court to take cognizance of a plethora of related suits, which have been hitherto filed by and on behalf of the current Respondent.
17. In particular, learned counsel for the Respondent has quoted and cited, inter-alia, Nairobi ELC No. 841 of 2007; ELC No 91 of 2010 and HCC No 910 of 2007 (OS), which the Appellant contend to touch on the same suit property.
18. According to Learned counsel for the Appellant, the Respondent herein has been party and privy to the various suits, which have been enumerated, either directly as a party or indirectly as a primary witness.
19. In view of the foregoing, Learned counsel for the Appellant has therefore submitted that the Learned trial Magistrate failed to properly exercise his Jurisdiction and hence the plea that this court should find and hold that the suit beforehand is prohibited by the doctrine of res-sub-judice.
20. To buttress the submissions pertaining to and concerning the import and tenor of the Doctrine of res-sub-judice, Learned counsel for the Appellant has cited and quoted the case of Republic vs Paul



Kihara Kariuki, Attorney General & 2 Others (Ex-parte Law Society of Kenya) (2020)eKLR and Rubis Energy Kenya PLC vs SAS Africa General Trading Ltd & 2 Others (2021)eKLR, respectively.

21. Premised on the foregoing submissions, learned counsel for the Appellant has thereafter proceeded to and implored the court to find and hold that the impugned Ruling by the learned chief magistrate was wrought with serious errors and thus ought to be set aside. In this regard, learned counsel for the Appellant has invited the court to find and hold that the appeal is meritorious.

b. Respondent's submissions:

22. The Respondent herein filed written submissions titled "Appellant's written submissions", but which essentially are the Respondent's written submissions dated the 15th January 2024; and in respect of which the Appellant has raised, highlighted and canvassed three [3] pertinent issues for consideration.
23. First and foremost, Learned counsel for the Respondents has submitted that the Appellant has proceeded to and included in the Record of Appeal, pleadings and documents which were filed long after the delivery of the Ruling being appealed against.
24. On the other hand, Learned counsel for the Respondent has also contended that the Appellant herein also failed to include the complete Replying affidavit sworn on the 31st January 2022 and wherein the Respondent opposed the Application dated the 12th January 2022.
25. Premised on the foregoing submissions, Learned counsel for the Respondent has therefore contended that the Appeal beforehand is incompetent for failure to include all the requisite pleadings and/or documents which were relied upon by the Parties.
26. In support of the contention that a failure to include copies of pleadings and (sic) documents relied upon in the trial court renders the appeal incompetent, Learned counsel for the Respondent has cited and quoted the holding in the case of *Bwana Muhamed Bwana vs Silvano Buko Bonaya & 2 Others* (2015)eKLR.
27. Secondly, Learned counsel for the Respondent has submitted that the Respondent's suit before the Chief Magistrates Court touched on and/or concerned a portion of the suit property, namely L.R No. 209/9832 and not the entire suit.
28. Furthermore, Learned counsel for the Respondent has thereafter proceeded to and contended that the portion of the suit property, which is claimed by the Respondent and in any event, which forms the basis of the instant suit, is worth less than kes.5, 000, 000/= only and not otherwise.
29. Premised on the contention that the Respondent's claim relates to only a portion of the suit property and which in any event, is said to be less than Kes.5, 000, 000/= only, Learned counsel for the Respondent has submitted that the suit herein fell within the monetary/pecuniary Jurisdiction of the chief magistrate's court.
30. On the other hand, Learned counsel has contended that whenever a litigant approaches a court of law, the court should always endeavor to sustain the suit and adjudicate upon same on merits, other than driving a litigant away from the seat of justice.
31. To this end, Learned counsel for the Respondent has cited the decision in the case of *Habre International Company Ltd vs Kassam & Others* (1999) EA, where the Supreme Court of Uganda is reported to have underscored the need to entertain and adjudicate a matter on the merits.
32. Thirdly, Learned counsel for the Respondent has similarly submitted that even though there have been other previous suits, however, the previous suits, [whose details were alluded to by the Appellant



herein], related to a separate and distinct parcel of land, namely, L.R No. 209/9833 and not the instant suit.

33. Additionally, learned counsel for the Respondent has also submitted that the said suits were also between different Parties separate and distinct from the one before hand. For clarity, Learned counsel for the Respondent has pointed out that the various suits were either filed by Affiliated Business Contracts Ltd or against same.
34. Arising from the foregoing, Learned counsel for the Respondent has thus submitted that the Appellant before hand has failed to demonstrate and or establish the requisite ingredients that underpin the Application of the Doctrine of res-sub-judice.
35. Consequently and in the premises, Learned counsel for the Respondent has thereafter implored the Honourable court to find and hold that the appeal beforehand is devoid of merits and thus ought to be dismissed with costs.

ISSUES FOR DETERMINATION

36. Having reviewed the record of Appeal, the proceedings of the trial court; as well as the written submissions filed by and on behalf of the respective Parties, the instant Appeal turns of the following grounds;
 - i. Whether the Appeal beforehand is [sic] Incompetent for non-inclusion of the Replying affidavit filed on behalf of the Respondent.
 - ii. Whether the Chief Magistrate's Court was seized of the requisite Jurisdiction to entertain the suit before her or otherwise.

Analysis and Determination

Issue number 1

Whether the appeal beforehand is (sic) incompetent for non-inclusion of the Replying affidavit filed on behalf of the Respondent.

37. Learned counsel for the Respondent has highlighted and canvassed an issue that touches on the competence or otherwise of the appeal filed beforehand.
38. According to the Respondent, the Appellant herein failed to include all the pleadings that were filed in the subordinate court and in particular, Learned counsel for the Respondent has highlighted the failure to include the entire Replying affidavit sworn on the 31st January 2022; and which was relied upon by the Respondent in opposing the Application dated the 12th January 2022.
39. Premised on the contention that the Appellant did not include the entirety of the said Replying affidavit, Learned counsel for the Respondent has ventured forward and invoked the provisions of Order 42 Rule 13(4) (f) of the Civil Procedure Rules, 2010, to anchor the contention that an Record of Appeal that does not include all the pleadings filed before the trial court is incompetent.
40. Further and in any event, Learned counsel for the Respondent has ventured forward and contended that based on (sic) the omission to include the said Replying affidavit, the court should proceed to and strike out the appeal beforehand.
41. Whereas the contention by and on behalf of Learned counsel for the Respondent is correct, insofar as the Record of Appeal dated the 31st October 2023, does not include a copy of the Replying



affidavit sworn on the 31st January 2022, it is important to point out that the subject appeal came up for directions on the 5th December 2023; whereupon the advocates for the respective Parties duly confirmed to the court that the Record of Appeal was complete and contained all the requisite pleadings and documents envisaged under the law.

42. Furthermore, the advocates for the respective Parties thereafter proceeded to and participated in the directions towards the hearing and disposal of the appeal, culminating into the court granting various directions, inter-alia, the filing and exchange of written submissions.
43. Other than the foregoing, it is common ground that neither of the Parties, the Respondent not excepted, has sought to review the inter-partes directions that were granted by the court on the 5th December 2023. Consequently, the said Directions that were taken remain part of the Record of the Court and hence same are binding n all the Parties.
44. To my mind, Learned counsel for the Respondent having participated in the proceedings during the issuance of the directions by the court, same cannot now be heard ex-post-facto, to complain about the inadequacy or deficiency in the Record of appeal. Simply put, the complaint by and on behalf of the Respondent herein is overtaken by events and thus rendered moot.
45. Notwithstanding the foregoing, it is also imperative to point out and underscore that wherever a Party to an appeal, the Respondent herein not excepted, is desirous to raise and canvass an objection as pertains to the Jurisdiction of the court, such an objection must be raised and canvassed prior to or at the time of the issuance of directions and not otherwise.
46. To this end, it is instructive to take cognizance of the provisions of 42 Rule 13(2) of the Civil Procedure Rules, 2010.
47. For the sake of brevity, is suffices to reproduce the foregoing provisions.
48. Consequently, same are reproduced as hereunder;

[Order 42, rule 13.] Directions before hearing.

13.

- (1) On notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the appellant shall cause the appeal to be listed for the giving of directions by a judge in chambers.
 - (2) Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule.
 - (3) The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.
49. Arising from the import and tenor of the provisions (supra), it is evident and apparent that it was incumbent upon the Respondent or his learned counsel to raise and canvassed the issue of the



competence, or otherwise of the appeal at the time of the giving of directions, insofar as the competence or otherwise of the appeal, goes to the Jurisdiction of the court.

50. To my mind, having failed to highlight and agitate the question of the absence of (sic) the Replying affidavit sworn on the 31st January 2022; at the opportune time, the issues being raised by the Respondent herein amounts to clutching onto straws.
51. Consequently and in view of the foregoing, I do not find and any substance in the contention that the appeal beforehand is rendered incompetent merely on the basis that the Replying affidavit which was relied upon by the Respondent, has not been included in the Record of appeal.
52. Before departing from this issue, there are two sub-issues, which arise and thus merits a short address. Firstly, the Respondent herein himself was at liberty to file and bring forth a copy of the Replying affidavit, which was said to have been omitted vide a Supplementary Record of appeal.
53. However, despite being availed the window and/or opportunity under the law and in pursuit of access to justice, the Respondent was content with lamentation[s].
54. The second sub-issue relates to the fact that the Respondent himself has proceeded to and highlighted the substratum of the Replying affidavit sworn on the 31st January 2022; in the body of his written submissions. For clarity, the substratum of the Replying affidavit have been reproduced between paragraphs 13 to paragraph 20 of the written submissions and wherein the Respondent's position is that same is on occupation of a portion of the suit property and not the whole thereof.
55. Furthermore, the Respondent has ventured forward and contended that the portion of the suit property, which same is laying a claim to has a monetary value of less than kes.5, 000, 000/=, which is contended to fall within the pecuniary Jurisdiction of the Chief Magistrate's court.
56. In view of the foregoing, it is my humble position that even in the absence of the Replying affidavit, [whose contents have been substantially reproduced by the Respondent], this court is still seized of sufficient material to render an effective determination on the critical question pertaining to Jurisdiction.
57. In view of the foregoing, my answer to issue number one [1] is three-fold. Firstly, the nature of objection now being raised in the body of the final submissions by the Respondent are overtaken by events and otherwise rendered moot.
58. Secondly, the learned counsel for the Respondent himself participated in the giving and taking of directions and hence same is duly bound by the proceedings on record, unless reviewed and/or set aside, which is not the case herein.
59. Thirdly and without prejudice, the Respondent himself has reproduced and agitated the contents of the Replying affidavit at the foot of his written submissions dated the 15th January 2024 and thus brought to the attention of the Court the relevant material/ information.

Issue number 2:

Whether the Chief Magistrate's Court was seized of the requisite Jurisdiction to entertain the suit before her or otherwise.

60. Before venturing to discuss the issue herein before, it is appropriate to recall, restate and reiterate the succinct exposition of the law as espoused by the Supreme Court of Kenya in the case of S K Macharial vs Kenya Commercial Bank & Others (2012)eKLR.



61. For coherence, the court stated and held thus;
- (68) A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.
62. Similarly, it is appropriate to remind ourselves of the significance of Jurisdiction to a court prior to and/or before undertaking any proceedings. In this respect, it suffices to cite and adopt the holding of the Court of Appeal in the case of Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR, where the court held thus;
1. At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
 2. In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.
63. Without endeavoring to belabor the point, there is no gainsaying that Jurisdiction is everything and without it, a conscientious court of law is called upon to down his/her tools and to terminate the matter, without much ado. See Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR.
64. Armed with the foregoing Jurisprudence, it is now appropriate to venture forward and to interrogate whether the Learned Chief Magistrate was seized with the requisite Jurisdiction to adjudicate and entertain the subject dispute.
65. To start with, evidence abound that the suit property is current charged to and in favor of M/s Equity Bank Limited for the sum of Kes.106, 400, 000/- only; plus a further charge of Kes.33, 600, 000/= only. For good measure, the information pertaining to the status of the suit property were availed to the court and in any event forms part of annexure ZN1 at the foot of the supporting affidavit sworn on the 12th January 2022.



66. Furthermore, the Appellant herein also placed before the court [Chief Magistrate] a copy of the valuation report dated the 5th February 2018 prepared by M/s Gimco Ltd and wherein the value of the suit property was documented to be Kes.190, 000, 000/= only.
67. Be that as it may, the Learned Chief Magistrate, whilst appreciating the market value of the suit property to be in the sum of Kes.190, 000, 000/= only, adopted a slanted and skewed reasoning and whereby same proceeded on the basis that what is being claimed by the Respondent is merely a portion of the suit property and not the whole property.
68. Additionally, the learned Chief Magistrate, in his wisdom ventured forward and held that the undisclosed portion of the suit property, which is claimed by the Respondent has a value of (sic) Kes.5, 000, 000/= only and not otherwise.
69. Instructively, in proceeding to and holding that an undisclosed portion of the suit property being claimed by the Respondent is valued at approximately Kes.5, 000, 000/- only, the Learned Chief Magistrate was inspired by an averment contained in the body of the Replying affidavit sworn by the Respondent herein on the 31st January 2022.
70. Sadly, however, the Learned Chief Magistrate allowed himself to be persuaded and moved on the basis of an assumption and/or hypothesis, propagated by the Respondent, instead of adopting a pragmatic, conventional and legal approach base on Empirical evidence.
71. For the avoidance of doubt, there is no gainsaying that at the point in time when the Learned Chief Magistrate embraced and proceeded on the basis of hypothesis, there was a dozen of evidence before him, which clearly showed that the value of the suit property was way beyond the pecuniary Jurisdiction of the Chief Magistrate's court.
72. In any event, one wonders how the Learned Chief Magistrate could say and hold that the Respondent's claim relates to a portion of the suit property and that the said portion values or is alleged to value Kes.5, 000, 000/= only and hence same falls within the Jurisdiction of the magistrate's court.
73. Surely, the big question to be addressed and redressed (but which was untouched) by the Learned Chief Magistrate is what is the size/ acreage of the suit property, which is being claimed by the Respondent. Further, what does a portion of the suit property denote.
74. In my humble view, though the Plaintiff lays a claim to an undisclosed portion of the suit property in terms of paragraph 3 of the Plaint dated the 10th November 2021, it is not lost on this court that the suit property which is being litigated over is one indivisible property, namely, L.R No. 209/9832.
75. Premised on the fact that the dispute beforehand touches on and/or concerns the said suit property, it would amount to splitting hairs and semantics for the Learned Chief Magistrate to contend that same was/is seized of Jurisdiction as pertains to a portion of the suit property, which remains an undivided to date.
76. Finally, it is common ground that prior to and/or before endeavoring to entertain and adjudicate upon a dispute, it is incumbent upon the designated Judicial officers to objectively evaluate the question of Jurisdiction and in particular, to avoid a slanted/ skewed approach, which is geared towards adopting Jurisdiction by craft, innovation, or better still, by means of hypothesis.
77. Be that as it may, it is still my humble plea that at all times, whether during the day or the night, designated Judicial officers shall endeavor to imbue and inculcate in same the words of wisdom contained at paragraph 68 in the case of S K Macharia vs Kenya Commercial Bank Ltd [2012] eklr.



78. Notwithstanding the foregoing, my answer to issue number two [2], which was highlighted herein before, is to the effect that the suit which was filed before the Chief Magistrate court fell outside the pecuniary the Jurisdiction of the subordinate court as circumscribed by the provisions of Section 7 of the Magistrate's Courts Act, 2015.

Final Disposition:

79. Having reviewed, evaluated and analyzed the issues which were enumerated herein before, this court comes to the conclusion that the Monetary value of the suit property, [captured and reflected at the foot of the Valuation Report], far exceeded the pecuniary Jurisdiction of the Chief Magistrate's court.

80. Consequently and in the premises, the Appeal beforehand is meritorious and same be and is hereby allowed.

81. In a nutshell, the court proceeds to and do hereby make the following orders;

- i. The Appellant's Application dated the 12th January 2022 be and is hereby allowed.
- ii. The Respondent's suit vide Milimani MCELC Case No E 429 of 2021 be and is hereby struck out.
- iii. The Appellant be and is hereby awarded costs of the Application dated the 12th January 2022; as well as costs of the suit in the Subordinate court.
- iv. The Appellant be and is hereby awarded costs of the Appeal.

82. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF FEBRUARY 2024.

OGUTTU MBOYA

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JUDGE.

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the Presence of;

Travis - Court Assistant.

Mr. Solomon Opole for the Appellant.

Mr. Mageto for the Respondent.

