



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waituika v Waituika; Waituika & 2 others (Third party) (Environment and Land Appeal E006 of 2022) [2024] KEELC 1505 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1505 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANGA**  
**ENVIRONMENT AND LAND APPEAL E006 OF 2022**  
**LN GACHERU, J**  
**MARCH 20, 2024**

**BETWEEN**

**MICHAEL WAITUIKA ..... APPELLANT**

**AND**

**FASILIA NYAMBURA WAITUIKA ..... RESPONDENT**

**AND**

**PETER IRUNGU WAITUIKA ..... THIRD PARTY**

**JOYCE WAMBUI WAITUIKA ..... THIRD PARTY**

**ESTHER WANGUI WAITUIKA ..... THIRD PARTY**

*(Being an Appeal against the Ruling of the learned Hon. E.M. Nyaga (SPM) delivered on 10/5/2022, in- Muranga CMC, Civil Case No. 335 of 1994)*

**JUDGMENT**

1. The Appellant herein Michael Waituka, being dissatisfied by the Ruling of the trial court delivered on 10<sup>th</sup> May 2022, moved this Court through a Memorandum of Appeal dated 13<sup>th</sup> May 2022, and sought the following reliefs:
  - a. The appeal herein be allowed and the orders of the lower court dated 10<sup>th</sup> May 2022, be vacated.
  - b. There be an order therefore dismissing the Respondent's application dated 20<sup>th</sup> January 2022, filed in the lower Court.
  - c. The costs of this Appeal and of the suit in the lower court be borne by the Respondent.
2. The grounds of Appeal are;



- a. The Learned Senior Principal Magistrate erred in law and fact in finding that the Judgement of the lower court delivered more than 12 years ago was executable.
  - b. The Learned Senior Magistrate erred in law and fact in not finding that Judgement sought to be executed by the Applicant/Respondent was time barred under the [Limitation of Actions Act](#).
  - c. The Learned Senior Principal Magistrates erred in law and fact in finding that leave was granted to execute the judgement out of time since the orders for leave were granted in contravention of the law.
  - d. The Learned Senior Principal Magistrate erred in law and fact by failing to interrogate the circumstances under which the suit was filed.
  - e. The Learned Senior Principal Magistrate erred in law and fact by not making a specific finding that the title initially registered in the names of the appellant were indefeasible and absolute and that the appellant cannot be compelled in law to share the land to wit land parcel number Loc.6/Munguni/139 and 898 to the Applicant who is the Respondent herein.
  - f. The Learned Senior Principal Magistrate erred in law and fact by failing to appreciate and protect the sanctity of the title deeds now being held by the interested parties.
  - g. The Learned Senior Principal Magistrate erred in law and fact by deviating from the law and established tenets of legal jurisprudence by ordering the cancellation of the interested parties titles which orders will lead to a possible breach of the peace and the law.
  - h. The Learned Senior Principal Magistrate erred in law by allowing the application dated 20<sup>th</sup> January 2022, filed by the Respondent in the lower court without applying the law relating to matters of this nature.
  - i. The Learned Senior Principal Magistrate erred in law and fact by obliterating the rights of the interested parties granted by the [Land Registration Act](#) and the proprietary rights appurtenant thereto which are protected by law.
  - j. The Learned Senior Principal Magistrate erred in law and fact by misapplying the law governing landed property and the legal regime pertaining to the title to land.
3. The Appellant and the Respondent herein were formerly husband and wife, who allegedly got married in 1978, under Kikuyu Customary Law.
  4. However, in 1994, the Appellant herein as the Plaintiff filed Murang'a Civil Suit No 335 of 1994, at the Magistrates Court, and sought for dissolution of the said Marriage on grounds of cruelty.
  5. The Respondent filed her Defence and Counter-claim, wherein she sought for dissolution of the said marriage on grounds of cruelty, and subdivision of the matrimonial properties.
  6. The matter proceeded for interparties hearing, and after the final analysis of the available evidence, the trial court allowed the prayers for dissolution of the marriage, vide its judgement of 10<sup>th</sup> November 2000.
  7. Further, the trial court granted the prayers sought by the Respondent in her Counter-claim, among them a prayer for subdivision of the matrimonial properties. The final orders of the trial court were as follows; -
    - a. That Land Parcel No LOC/6/Munguni/898, be shared equally between the Defendant and Plaintiff.



- b. That Land Parcel No. LOC/6/Munguni/139, be shared equally between the parties herein.
  - c. That marriage between them be and is hereby dissolved.
  - d. That there be maintenance for the Defendant by the Plaintiff at monthly rates of Ksh. 4,000/-.
  - e. Plaintiff is condemned to pay costs for the counterclaim.
8. The Decree of the Court was issued on 7<sup>th</sup> June 2001. From the court record, there was no other action until 29<sup>th</sup> September 2008, when the Respondent herein, as a Defendant/Applicant filed a Notice of Motion Application, wherein she urged the court to allow the Executive Officer of the Court, to sign all the necessary forms to facilitate subdivision and the transfer of half shares of the two parcels of land, Loc 6/ Munguni/898, and 139, on behalf of the Plaintiff/ Respondent, who is the Appellant herein.
  9. This Application was never prosecuted to its conclusion, and it seems to remain pending. The Appellant herein, as the Plaintiff/Respondent in the said Application, filed a Replying Affidavit dated 1<sup>st</sup> November 2011, and averred that the two parcels of land did not belong to him, and he did not have the title deeds to produce as sought by the Defendant/Applicant, the Respondent herein. He annexed the copies of Green cards and official search to confirm the owners of the suit property. He urged the court to dismiss the said Application.
  10. With the above averments, the Defendant/Applicant, who is the Respondent herein sought for more time, and thus the Notice of Motion Application dated 29<sup>th</sup> September 2008, was stood over generally. It has not been prosecuted to date.
  11. However, on 28<sup>th</sup> June 2017, the Respondent as the Defendant in the trial court's case filed an application dated 23<sup>rd</sup> June 2017, wherein, she sought to join the new proprietors of the parcels of land as third parties in the suit. This said application was opposed by the Appellant herein, but on 28<sup>th</sup> January 2018, the court allowed the said application, and the third parties herein were joined in the suit. This was long after the judgement.
  12. After the said joinder, the Respondent filed an Application dated 20<sup>th</sup> January 2022, wherein she sought for the following orders;
    - a. That this Honourable Court be pleased to cancel entries in the green cards purporting to transfer Land Parcels No. Loc.6/Munguni/139 and Loc.6/Munguni/898, to the third parties herein and the subsequent titles issued to the third parties herein be cancelled with the result that the Land Parcels No. Loc.6/Munguni/139 and Loc.6/Munguni/898 to revert to the name of the Plaintiff/Respondent herein.
    - b. That the Honourable Court be pleased to order that this application be heard together with the one dated 29<sup>th</sup> September 2008.
    - c. That the costs of this application be borne by the Defendant/Respondent herein.
  13. It is the Ruling of this Application that was determined by the trial court on 10<sup>th</sup> May 2022, that aggrieved the Appellant herein. The Appellant had opposed the Respondent's Application for cancellation of entries in the Green cards for the two parcels of land, on the ground that the judgment sought to be executed was stale. But in its Ruling, the trial court held "consequently leave is granted as sought to enable the judgment and the decree be satisfied, orders to issue accordingly."
  14. The Appellant herein vide this Appeal has challenged the said Ruling of the trial Court delivered on 10<sup>th</sup> May 2022, which Ruling was issued in response to the Respondent's Application dated 20<sup>th</sup>



- January 2022, wherein the Respondent had sought for the cancellation of entries in the Green Cards for land parcel number LOC.6/Munguini/139 and LOC.6/Munguini/898, (the suit properties) to the third parties herein as well as cancellation of title deeds issued to the third parties herein.
15. The trial Court allowed the said Application, but he did not clarify about prayer No 2, wherein the Respondent as the Applicant had sought that the Notice of Motion Application dated 20<sup>th</sup> January 2022 be heard together with another one dated 29<sup>th</sup> September 2008. The trial court did not make it clear whether it had allowed the Notice of Motion Application dated 29<sup>th</sup> September 2008.
  16. The Appellant who is aggrieved by the above Ruling of the trial Court, averred that the Lower Court in its decision dated 10<sup>th</sup> May 2022, purported to extend the period of limitation applicable to Judgments of the Court as provided in the *Limitation of Actions Act* beyond the stipulated 12 years. The Appellant filed the Instant Memo of Appeal dated 13<sup>th</sup> May 2022, and urged the court to allow the Appeal, and set aside the said trial court's ruling.
  17. The Appeal was canvassed by way of written submissions. The Appellant filed his submissions on 13<sup>th</sup> October 2023, through T.M. Njoroge & Co Advocates, wherein he submitted that the trial court erred in law in purporting to sanitize a judgment of the court which has been caught up by the limitation period. Further, it was submitted that the trial court order of extending the limitation period was out of sync with the law, and hence the orders are illegal.
  18. It was also submitted that the judgement which the lower court purported to give life was unenforceable in law and equity as it was stale, and Cap 22, does not have provisions for execution of stale judgements. He submitted that the orders that emanated from the Notice of Motion Application dated 20<sup>th</sup> January 2022, were devoid of merits and he urged the court to vacate and /or set aside the said orders issued in contravention of the law governing such matters of stale judgement.
  19. The Respondent filed written submissions on 23<sup>rd</sup> January 2024, wherein she stated that since 7<sup>th</sup> June 2001, she was unable to execute the Judgment of the Court because the Appellant herein held onto the title deeds for the suit lands and refused to make the necessary transfers in the Respondent's favour as directed by the Court.
  20. The Respondent further submitted that due to the obstructive conduct of the Appellant, she filed an application dated 29<sup>th</sup> September 2008, seeking the Court to allow the Executive Officer of the Court to sign the necessary forms to facilitate subdivision of the two suit properties and transfer half of the suit lands to the Respondent. She also sought in the same application an order directing the Land Registrar to dispense with the production of the original titles by the Appellant.
  21. The Respondent set out two issues for determination in her submissions. These two issues for determination are;
    - i. Whether the Judgment dated 10<sup>th</sup> November 2000, has lapsed/expired and thus cannot be executed.
    - ii. Whether title deeds for the interested parties can be impeached.
  22. It was her further submissions that on 29<sup>th</sup> September 2008, she filed a Notice of Motion Application for execution of the Judgment dated 10<sup>th</sup> November 2000, which Application was within the statutory period of 12 years, and that it is during the hearing of the said Application that she discovered that the Appellant had disposed off the suit land to avoid execution of aforesaid Judgment.



23. The Respondent further submitted that the Judgment dated 10<sup>th</sup> November 2000, does not fall within the purview of Section 4(4) of the Limitation of Actions Act, as the execution process commenced before the lapse of 12 years from the date of Judgment.
24. She added that the Appellant's activities of transferring the suit land to third parties had the effect of making the Judgment dated 10<sup>th</sup> November 2000, unenforceable, with the result that time stopped running in respect of the said Judgment, when said parcels of land were transferred to third parties.
25. Reliance was placed in the cases of Koinange investments and Development Co. Ltd V Ian Kahi Ngethe & 3 Others (2015) e KLR and Elijah Makeri Nyangwasa Vs Stephen Mungai Njuguna & Another (12013)e KLR.
26. The above is the available evidence as is contained in the Record of Appeal, and the trial court's original file. This court has considered the said Record of Appeal, and the written submissions herein. The court too has considered the relevant provisions of law and the decided cases on similar matters and finds as follows; -
27. There is no doubt that the trial court in the year 2000, delivered a judgement, wherein, it held that the two parcels of land herein being matrimonial properties be subdivided into two equal shares so that each of the party herein, Appellant and Respondent would get equal shares.
28. From the available evidence, it is also evident that the said judgment has not been executed. After the judgement, the next action in an attempt to execute the said judgment was on 29<sup>th</sup> September 2008, when the Respondent Applied to have the Executive Officer of this court sign the necessary documents for transfer. It was alleged that the Appellant had refused to sign the said transfer documents or release the title deeds.
29. This Application has not been prosecuted to date. Though in the Notice of Motion dated 20<sup>th</sup> January 2022, the Respondent had sought to prosecute the said Notice of Motion Application with the one dated 29<sup>th</sup> September 2008, there is no evidence of prosecution of the said Application – (dated 29<sup>th</sup> September 2008). The trial court too did not mention it in the impugned ruling.
30. There is also no doubt that the subject parcels of land were transferred to third parties in 2008. Further, from the available evidence, after the Notice of Motion Application dated 29<sup>th</sup> September 2008, was adjourned in 2012, the next action was in 2017, when the Respondent sought to join the third Parties to the suit. This was about 17 years after the judgement of the court.
31. Further, it is clear that the joinder was allowed on 28<sup>th</sup> January 2018, and again the next action after the joinder was 20<sup>th</sup> January 2022, when the Notice of Motion Application for cancellation of entries was made. Again, this Applications was filed over 20 years after the judgement.
32. It is the contention of the Appellant that the judgement of the court entered on 10<sup>th</sup> November 2000, was now stale, and cannot be enforced after 12 years. The Respondent has alleged that the limitation period cannot apply herein since the Appellant frustrated the execution of the said judgment, as he transferred the suit properties to third parties herein to defeat the cause of justice or enforceability of the court judgment.
33. The gist of this Appeal is whether the Judgment of the court delivered on 10<sup>th</sup> November 2000, and the Decree issued on 7<sup>th</sup> June 2001, were stale, and whether they are enforceable, and thus whether the Notice of Motion Application dated 20<sup>th</sup> January 2022, was merited or not.
34. Having now carefully considered the available evidence, and the relevant provisions of law, the court finds the issues for determination are;



- i. Whether the judgement of the court delivered on 10<sup>th</sup> November, 2000, and Decree issued on 7<sup>th</sup> June 2001, are stale?
- ii. Whether the Appeal herein is merited?
- iii. Who should pay costs of this Appeal?

**i. Whether the judgement of the court delivered on 10<sup>th</sup> November, 2000, and Decree issued on 7<sup>th</sup> June 2001, are stale?**

35. As this Court has observed above, the Judgement in issue was delivered on 10<sup>th</sup> November 2000, and the same has not been executed. The Respondent herein vide her Notice of Motion Application of 20<sup>th</sup> January 2022, sought to have the title deeds registered in the names of the third parties herein cancelled in an attempt to execute the said judgment.

36. Section 4(4) of the *Limitation of Actions Act* provides as follows;

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due. ”

37. The rationale for bar to enforcement of stale Judgement was aptly stated in the case of East African Court of Justice appeal case No. 2 of 2012, Attorney General of Uganda & Another Vs. Omar Awadh & 6 Others (2013 )Eklr, where the court held;

“Both justice and equity abhor a claimant's indolence or sloth. Stale claims prejudice and negatively impact the efficacy and efficiency of the administration of justice. The overarching rationale for statutes of limitations, such as the time limit of Article 30 (2) of the EAC Treaty, is to protect the system from the prejudice of stale claims and their salutary effect on the twin principles of legal certainty and of repose (namely: affording peace of mind, avoiding the disruption of settled expectations, and reducing uncertainty about the future)”.

38. The issue of limitation was also captured in the case of Gathoni –vs- Kenya Co-operative Creameries Ltd (1982) KLR 104, wherein Potter JA spelt out the rationale of the Law of Limitation as follows: -

“The law of limitation of actions is intended to protect Defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

39. Indeed, the issue of limitation goes to the jurisdiction of the court. This was the holding in the case of Bosire Ongero vs Royal Media Services (2015) eKLR, where the court held that; “the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same....”.



40. Therefore, if the court would find that the Judgement herein is stale, then it would be evident that the trial court had no jurisdiction to grant the orders that it did issue. See a case from the East African Court of Appeal in the matter of Iga V. Makerere University (1972) E.A 62, where the court stated that;

“The limitation Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time-barred, the court cannot grant the remedy or relief..... The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint, and no grounds of exemption are shown in the plaint, the plaint must be rejected.” (Our emphasis). The learned Judge in this appeal, no doubt did not err when she determined whether, by operation of the law, she had to down tools for want of jurisdiction.”

41. From the provisions of Section 4(4) of the *Limitation of Actions Act*, it is evident that no action may be brought upon a Judgement after the end of 12 years. This court has considered the court’s records, and it is very clear that after the judgement was delivered for the subdivision of the matrimonial properties, there was no action until 29<sup>th</sup> September 2008, when the Respondent sought for orders that the Executive Officer of the court be allowed to sign the transfer documents.

42. Further, from the Replying Affidavit sworn by the Appellant herein on 1<sup>st</sup> November 2011, it was evident that the suit properties were no longer in the name of the Appellant. However, the Respondent did not take any other action until 2017, when she sought to join the third parties to the suit.

43. This Application to join the third parties was brought after 17 years, after the judgement. There was no application by the Respondent for extension of time for executing the Judgement. This claim against the Appellant was over land, and section 7 of the *Limitation of Actions Act* bars any one from bringing a claim for recovery of land after expiry of 12 years. It reads as follows;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

44. This Court therefore, finds and holds that by the time the Notice of Motion Application for joinder was file on 2017, the Judgement in issue, had become stale and the Respondent claim for recovery of land against the Appellant was time barred by virtue of Limitation of actions as provided by section 7 of *Limitation of Actions Act*. Though the Respondent had filed an Application to start execution process within the stipulated time, the same was not prosecuted, and had not been prosecuted even by the time of filing the Notice of Motion Application dated 20<sup>th</sup> January 2022, which is the genesis of the impugned Ruling.

45. The Application for cancellation of the title deeds was filed on 20<sup>th</sup> January 2022, which was more than 20 years after the Judgment was delivered and Decree issued. The said Judgement had become stale, and the Respondent did not apply to court for extension of time. Therefore, the Judgement sought to be executed through the Application dated 20<sup>th</sup> January 2022, is a stale Judgement, which is not enforceable.

46. This court will be guided by the holding of the Court of Appeal in the case of M’Ikiara M’rinkanya & Another vs Gilbert Kabeere M’mbijiwe (2007) eklr, where the court stated as follows: -

“Lastly, it is logical from the scheme of the Act, that a judgment for possession of land, in particular should be enforced before the expiration of 12 years because Section 7 of the Act



*(Limitation of Actions Act)* bars the bringing of action for recovery of land after the end of 12 years from the date in which the right of action accrued. By the definition in Section 2(2) (3) of the Limitation Act:

‘reference in this Act to a right of action to recover land include reference to a right to enter into possession of the land and reference to the bringing of an action in respect of such right of action include reference to making of such an entry.’

According to that definition the institution of proceedings to recovered possession of land including proceedings to obtain a warrant for possession is statute-barred after the expiration of 12 years.”

47. The Respondent herein filed an Application for Executive Officer to sign the transfer forms, but did not prosecute the said application. She filed the Application for cancellation of title deeds, long after the Judgment had been caught by the provisions of Section 4(4) of the *Limitation of Actions Act*, and thus the Judgment delivered by the court on 10<sup>th</sup> November 2000, and the decree issued on 7<sup>th</sup> June 2001, are stale are therefore not enforceable.

**ii) whether the Appeal herein is merited?**

48. In his Memorandum of Appeal dated 13<sup>th</sup> May 2022, the Appellant has sought for the Appeal to be allowed, and the orders issued on 10<sup>th</sup> May 2022, be vacated and the Notice of Motion Application dated 20<sup>th</sup> January 2022, be dismissed. The orders issued on 10<sup>th</sup> May 2022, were to the effect that the title deeds in favour of the third parties be cancelled and the said parcels of land be restored in the name of the Appellant.
49. The trial magistrate in allowing the Application dated 20<sup>th</sup> January 2022, held that;
- “I will again refer to the ruling delivered on 26<sup>th</sup> January 2018, where the court ordered “consequently leave be granted as sought to enable the judgement and decree be satisfied, orders to issue accordingly”
50. However, it is not in doubt that the orders that were issued on 26<sup>th</sup> January 2018, were in respect to a Notice of Motion Application dated 23<sup>rd</sup> June 2017, which was filed after 17 years from the date of the Judgment of 10<sup>th</sup> November 2000. By this time, the said Judgment had become stale, and the Respondent herein, as the Applicant thereon did not seek for extension of time for execution of the said stale Judgment. The said Orders were therefore issued in a matter caught by limitation of action and consequently, the trial court erred in referring to the said ruling of 26<sup>th</sup> January 2018, in allowing the Notice of Motion Application dated 20<sup>th</sup> January 2022.
51. Further, the title deeds that were cancelled were issued in favour of the third parties in the year 2008. Section 7 of the *Limitation of Actions Act*, states that no action to recover land can be brought after 12 years from the time the cause of action accrued. 12 years herein expired in 2020, and the Respondent had not brought any action against the third parties, apart from joining them to the suit.



52. Given that the cause of action arose in 2008, the Respondent claim to recover land from the third parties had been caught by Limitation of Actions as stated in section 7 of the said [Limitation of Actions Act](#). See the case of Rawal -Versus- Rawal 1990 KLR 275 the Court held that: -

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand and to protect a defendant being disturbed after a long lapse of time. It is not to extinguish claims”

53. The Respondent herein vide her Application dated 20<sup>th</sup> January 2022, sought for cancellation of title deeds held by the third parties. These are substantive prayers which cannot just be issued in an interlocutory application, specifically a post judgment application. Maybe, the Respondent ought to have filed a substantive suit, against the third parties and/or even the Appellant herein, seeking cancellation of the said title deeds. The third parties would have gotten an opportunity to appear in court and defend their position. The title deeds were cancelled vide a post judgement application.

54. Having found that the Judgement that is sought to be executed is stale, and given that the suit for recovery of land as sought by the Respondent is time barred, and the trial court cancelled title deeds vide an Interlocutory Application, and not substantive suit, this court finds that the Appellant herein is entitled to the orders sought in the instant Appeal.

55. For the above reasons, the prayers sought in the Appeal herein are allowed and the orders issued by the trial Court on 10<sup>th</sup> May 2022, are set aside, and the Notice of Motion Application dated 20<sup>th</sup> January 2022, by the Respondent herein, be and is hereby dismissed entirely.

### **iii) who should pay costs of this Appeal?**

56. . As provided by section 27 of the [Civil Procedure Act](#), costs are granted at the discretion of the Court. Further, costs normally follow the event and are awarded to the successful litigants, unless there are circumstances that would warrant the court not to award costs to the successful litigant. See the case of Supermarine Handling Services Ltd vs Kenya Revenue Authority, Civil Appeal No. 85 of 2006, the court held that;

“Costs of any action or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order. It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts. If, however, there be, in fact, some grounds to support the exercise by the trial Judge of the discretion he purports to exercise, the question of sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide, and the Court of Appeal will not interfere with his discretion in that instance...Thus, where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised unjudicially or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where the reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule...”

57. In the instant Appeal, this court finds that the parties were once husband and wife. The suit has been in the judicial system since 1994. For the above reasons, the court directs each party to bear his/ her own costs.



58. Ultimately, having considered the Memo of Appeal herein, the Record of Appeal and the written submissions by the parties herein and the relevant provisions of law, this court finds and holds that this Appeal is merited. The court proceeds to interfere with the trial court's determination of 10<sup>th</sup> May 2022, by setting aside the orders issued by the trial court on the material day. Further this court as an Appellant court dismisses the Notice of Motion Application dated 20<sup>th</sup> January 2022, by the Respondent herein with costs to the Appellant and the third parties thereon. (Note, it is costs for the Notice of Motion Application dated 20<sup>th</sup> January 2022, but not this Appeal).

It is so ordered.

**DATED, SIGNED AND DELIVERED ONLINE AT MURANG'A THIS 20<sup>TH</sup> DAY OF MARCH, 2024.**

**L. GACHERU**

**JUDGE.**

Delivered online in the presence of;

Mr T.M. Njoroge for the Appellant

Mr Mbugua for Respondent

Mr T. M Njoroge for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Third Parties.

Joel Njonjo - Court Assistant

**L.GACHERU**

**JUDGE.**

**20/3/2024**

