



**Kasigau Ranching (DA) Company Limited v Cabinet Secretary, Ministry of Petroleum & Mining & 3 others; Ngilorit (Interested Party) (Environment and Land Case Civil Suit 159 of 2019) [2024] KEELC 3312 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3312 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE CIVIL SUIT 159 OF 2019  
SM KIBUNJA, J  
APRIL 24, 2024**

**BETWEEN**

**KASIGAU RANCHING (DA) COMPANY LIMITED ..... PLAINTIFF**

**AND**

**THE CABINET SECRETARY, MINISTRY OF PETROLEUM & MINING ..... 1<sup>ST</sup> DEFENDANT**

**THE COMMISSIONER OF MINES AND GEOLOGY ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**LILIAN MERCY MUTUA T/A LILIAN M. GEMS ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**ELIZABETH WANGECHI NGILORIT ..... INTERESTED PARTY**

**RULING**

**[Notice of Motion Dated The 27th November 2023]**

1. The application before the court has been brought by the 4<sup>th</sup> defendant under Sections I, IA, 1B, 3, 3A, 63 (e) of the *Civil Procedure Act*, Articles I, 2, 3, 10, 12, 19, 20, 21, 22, 23, 24, 25, 28, 39, 40, 47, 48, 50, 60, 64, 159, 162 165, 169, 258, 259 of the *Constitution* of Kenya, 2010 and Order 22 Rule 22, Order 40, Order 45 Order 51 Rule I of the *Civil Procedure Rules*. The 4<sup>th</sup> defendant/applicant seeks for the following orders:

1. Spent.
2. Spent.



3. Spent.
  4. Spent.
  5. “That the honourable court be pleased to call for and examine the entirety of the Court Record and Transcription of the Virtual and physical Proceedings conducted herein on 17/10/2023 and 18/10/2023.
  6. The Honourable Court be Pleased to vary, review and/or set aside *ex debito justitiae*:
    - i. The Ruling delivered and Orders Given herein on 17/10/2023.
    - ii. The Ruling delivered and Orders Given herein on 18/10/2023.
    - iii. The entirety of proceedings conducted on 17/10/2023 and 18/10/2023.
    - iv. Any/all Orders and/or process consequential thereto.
  7. That consequently, the Honourable Court be pleased to Reinstate in their entirety, the Parties respective Claims herein.
  8. That the Honourable Court be pleased to RECUSE itself from any further conduct of the Proceedings herein.
  9. That the costs of this Application be provided for.”
2. The application is premised on nine (9) grounds on its face and supported by the affidavit of Lilian Mercy Mutua, the 4<sup>th</sup> defendant/applicant. The applicant gave a chronological summary of the suit and in particular, the events leading up to the hearing of 17<sup>th</sup> and 18<sup>th</sup> October 2023. The applicant averred that on 24<sup>th</sup> April 2023, the plaintiff closed its case and the suit was adjourned for defence hearing on 17<sup>th</sup> and 18<sup>th</sup> October 2023. On 17<sup>th</sup> October 2023, the applicant claimed that she was unduly influenced by the court to proceed with the defence hearing in the absence of her previous counsel on record. On that material day, the 1<sup>st</sup> to 3<sup>rd</sup> defendants’ witness testified and they proceeded to close their case. The case was then adjourned for further Defence Hearing on 18/10/2023, and on this material day, she informed the court that she had now appointed the firm of Ngonze and Ngonze Advocates to represent her going forward. Mr Ngonze informed the court that due to the voluminous documentation to be relied upon by his client as well as the sensitive nature of the proceedings, he needed the court to grant him an adjournment to prepare for the case. The applicant maintained that the court declined to grant her an opportunity to prepare her defence and further placed her on the witness stand under duress and she led no evidence in support of her case. The court further proceeded to mark the applicant’s case as closed *suo moto*. In addition, the interested party closed her case after testifying and being cross-examined by counsel for the plaintiff as well as the 1<sup>st</sup> to 3<sup>rd</sup> defendants, but counsel for the applicant was unable to participate in the cross-examination. The matter is now at the stage of filing of submissions pending delivery of judgment. It was the applicant’s case that the court condemned her unheard for the benefit of the plaintiff and interested party, which is a departure from the dictates of judicial impartiality. The court was said to have formed an opinion and committed itself to render a decision without granting the applicant a right to be heard in an open, fair transparent and impartial forum. The court was urged to dispense justice by setting aside the entire proceedings of 17<sup>th</sup> and 18<sup>th</sup> October 2023, reopening and reinstating the 1<sup>st</sup> to 3<sup>rd</sup> defendants’ as well as the interested party’s case, as well as recusing itself from the case. The court was also called to remedy the error of closing the applicant’s case as it has caused the applicant injustice and is in the interest of natural justice, equality and in accordance with the rules of law.



3. The plaintiff responded to the application with a replying affidavit dated 18<sup>th</sup> December 2023 sworn by Jonathan Mwangaje Mshiri, the plaintiff's chairman. He deponed that the applicant had an advocate on record at all material times before the proceedings of 17<sup>th</sup> and 18<sup>th</sup> October 2023 and even cross-examined the plaintiff. The deponent contended that on 17<sup>th</sup> October 2023 the applicant informed court that though her counsel was not present, she was ready to proceed with the hearing and she participated in the hearing by cross-examining the 1<sup>st</sup> to 3<sup>rd</sup> defendants. On 18<sup>th</sup> October 2023, the applicant appointed new advocates, who ought to have understood the task at hand. The deponent argued that it was not justified for the applicant's new counsel to ask the court to recuse itself for simply rejecting an adjournment they had sought. The deponent argued that the court was functus officio on its proceedings and ruling delivered on 17<sup>th</sup> and 18<sup>th</sup> October 2023, and the applicant ought to proceed to file an appeal, rather than seek setting aside of the said proceedings. The court was urged not to recuse itself, as such was a tendency of the applicant, who in Voi CM ELC No 16 of 2018 applied for the recusal of a magistrate in a similar matter that was consolidated with the present case. The court was further urged to dispense justice expeditiously with no fear or favour and dismiss the application as sought.
4. The interested party also responded to the application vide a replying affidavit sworn by Elizabeth Wangechi Ngilorit on 13<sup>th</sup> December 2023. She deponed that the application was frivolous, vexatious and an abuse of the court process. She deponed that the issue of staying proceedings herein was made orally by the applicant's counsel, after which all parties responded to it and the court ruled on it by declining it on 18<sup>th</sup> October 2023. That the court's ruling was final and the same cannot be amended or annulled as sought by the applicant. The deponent contended that the applicant freely participated in the proceedings of 17<sup>th</sup> October 2023 and even cross-examined the witnesses who testified on that day. The applicant was said to have all the time to instruct counsel to represent her which she did on 18<sup>th</sup> October 2023. The interested party argued that the applicant has not pointed to any error committed by the court by proceeding with the hearing as opposed to adjourning. It was further stated that the applicant has not given any valid reason to reopen the case and argued that if she was aggrieved by the ruling of the 17<sup>th</sup> and 18<sup>th</sup> October 2023, recourse lay in appealing rather than this application. The court was urged to dismiss the application as there is no valid reason to recuse itself from the case.
5. The following are the issues for determination by the court:
  - a. Whether the applicant [4<sup>th</sup> defendant], has shown reasonable cause for the court to recuse itself from the proceedings herein.
  - b. Whether the applicant has met the threshold for the court to vary, review and or set aside the ruling issued on 17<sup>th</sup> and 18<sup>th</sup> October 2023.
  - c. Who pays the costs of the application?
6. The court has considered the grounds on the application, affidavit evidence, the record and come to the following conclusions:
  - a. The suit herein was instituted vide a plaint dated 29<sup>th</sup> August 2019 and filed on 4<sup>th</sup> September 2019, where the plaintiff sought inter alia for judgement against the defendants jointly and severally for cancellation of mining permit registration number MP/2018/0113 dated 7<sup>th</sup> November 2018, issued to the 4<sup>th</sup> defendant; the 4<sup>th</sup> defendant to be found in trespass of LR No 12180 and mining location reference number 1459/1-10 Machungwa 'A' Kasigau Ranch.  
  
The firm of Mulwa Isika & Mutia Advocates entered appearance on behalf of the 4<sup>th</sup> defendant by filing a Memorandum of Appearance dated 25<sup>th</sup> September 2019 on 27<sup>th</sup> September 2019.



Since then the said firm of advocates has been on record for the 4<sup>th</sup> defendant/applicant to date. The suit was certified ready for hearing on 6<sup>th</sup> June 2022 in the presence of counsel representing the parties herein, as well as Ms. Isika counsel for the 4<sup>th</sup> defendant. The hearing proceeded for the plaintiff's case on 12<sup>th</sup> October 2022 & 24<sup>th</sup> April 2023 when PW1 and PW2 testified and on both occasions, Ms. Isika cross-examined them. On 24<sup>th</sup> April 2023, the plaintiff concluded and close closed its case, and in the presence of all counsel on record, the court fixed the 17<sup>th</sup> and 18<sup>th</sup> of October 2023 for defence hearing.

- b. On 17<sup>th</sup> October 2023 when the matter came up for defence hearing, the 4<sup>th</sup> defendant informed the court that she had been trying to contact her advocate, who had messaged her that she was in Machakos and was unavailable to attend court. She further told the court that she was ready to continue with the case in the absence of her counsel. The court proceeded with the defence hearing after noting that the hearing date was fixed on 24<sup>th</sup> April 2023 in the presence of Ms Isika, and that Ms. Isika was absent without notice to either the court or any of the advocates on record, and that the 4<sup>th</sup> defendant had expressed her preparedness to proceed with the hearing. The defence hearing proceeded, and DW1 adduced evidence on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants and the 4<sup>th</sup> defendant had an opportunity to cross-examine him, along with the counsel for the other parties present. Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants proceeded to close their case. The court then directed that the hearing would proceed the next day, the 18<sup>th</sup> October 2023.
- c. On 18<sup>th</sup> October 2023, the firm of Ngonze & Ngonze Advocates filed a Notice of Appointment of Advocates dated 18<sup>th</sup> October 2023 to act for the applicant/4<sup>th</sup> defendant, alongside the firm of Isika & Associates Advocates. Mr Ngonze informed the court that he was appointed to act for the 4<sup>th</sup> defendant alongside Ms. Isika, after that counsel failed to attend court on 17<sup>th</sup> October 2023. He contended that the rules of fair hearing entitled a party to a suit to legal representation. He stated that the reasons why Ms. Isika failed to attend court were unknown to the 4<sup>th</sup> defendant and out of her control. He claimed that the 4<sup>th</sup> defendant's documents were with Ms. Isika and it would be difficult for the court to compel the 4<sup>th</sup> defendant to proceed with the hearing, with him as he had just come on record. He argued the court to grant the 4<sup>th</sup> defendant/applicant an adjournment, to enable him to prepare for the hearing, adding that no prejudice would be caused to the other parties that could not be compensated by an award of damages. He further argued that by the 4<sup>th</sup> defendant agreeing to proceed with the hearing on 17<sup>th</sup> October 2023 without legal representation rendered the proceedings unfair. He insisted that he needed time to obtain all copies of proceedings and documentation before he could reasonably represent the 4<sup>th</sup> defendant. He argued that the 4<sup>th</sup> defendant ought not to be punished for the fault of her counsel and urged the court to allow the application as prayed. The application for adjournment was opposed by Mr. Getanga, counsel for the plaintiff. He maintained that the hearing date was fixed on 24<sup>th</sup> April 2023 and the 4<sup>th</sup> defendant ought to have engaged Mr. Ngonze early enough for him to prepare for the hearing. He argued that justice ought not be delayed and as such, in all fairness, hearing should proceed as his clients have been faithfully attending court and are eager to conclude the matter without delay. Further to that, counsel contended that on 17<sup>th</sup> October 2023, the 4<sup>th</sup> defendant had expressed her preparedness to proceed with the hearing in person, which she did.
- d. After hearing Mr Ngonze and the responses by other counsel on record, and upon considering the notice of appointment filed, the court proceeded to deliver a ruling on the said oral application for adjournment. The court directed as follows:



- a. “That under Article 159 of the Constitution and the oxygen provisions in the Civil Procedure Act and the Environment and Land Court Act, the court is obligated to ensure justice is delivered without delay. All the parties and counsel herein have an obligation to help the court ensure expeditious disposal of the disputes before the court. That the defence hearing dates of yesterday and today, the 17<sup>th</sup> and 18<sup>th</sup> October 2023, were fixed in the presence of all parties’ counsel on the 24<sup>th</sup> April 2023 after the plaintiff closed their case, and the 4<sup>th</sup> defendant have had about six months to ensure her counsel would attend court, and if need to appoint another counsel arose, to do so in good time, so as not to cause delay.
- b. That the application for adjournment made by Mr. Ngonze if allowed would result to more delay in the finalization of this case and will be a waste of judicial time as this is the only matter fixed for hearing today.
- c. That for the reasons above the 4<sup>th</sup> defendant application for adjournment is rejected and hearing to proceed.”

Mr. Ngonze advocate for the 4<sup>th</sup> defendant requested for leave to appeal, certified copies of the ruling and proceedings as well as for the proceedings to be stayed pending filing of a formal application. The Court proceeded to rule as follows:

- a. “The Deputy Registrar to avail typed and certified copies of the proceedings and ruling to the parties upon the usual payments.
- b. Leave to appeal is granted,
- c. Application for stay of these proceedings is rejected.”

After the court delivered its ruling, the 4<sup>th</sup> defendant proceeded to testify as DW2 and closed her case. The interested party also testified as DW3 and closed her case too. Mr Ngonze then informed the court that the 4<sup>th</sup> defendant would not be participating any further in the proceedings. The court proceeded to issue directions for parties to file submissions within 21 days and fixed the matter for mention on 4<sup>th</sup> December 2023. The 4<sup>th</sup> defendant then filed this application dated 27<sup>th</sup> November 2023 which is before court for determination.

- e. This court is being asked to recuse itself from conducting these proceedings on the ground that on 17<sup>th</sup> October 2023, the court coerced the 4<sup>th</sup> defendant to proceed with the hearing without counsel on record. The court was further accused of placing the 4<sup>th</sup> defendant on her defence on the 18<sup>th</sup> of October 2023 without granting her an opportunity to prepare her defence with her new counsel on record, Mr Ngonze. The 4<sup>th</sup> defendant contended that the court closed her case suo moto, depriving her of the right to be heard, and present her case in an open, fair, transparent and impartial forum. In the case of Mike Sonko Mbuvi Gidion Kioko v Director



of Public Prosecutions & 5 others; Council of Governors & 2 others (Interested Parties) [2020] eKLR, the court held that;

“What constitutes recusal in legal parlance? Under what circumstances can a Judge or Magistrate recuse himself or herself from hearing a case? The word recusal is defined under the Black Law Dictionary as;

“Removal of oneself as Judge or policy-maker in a particular matter because of a conflict of interest.”

Pronouncing itself on what constitutes recusal of a judge, the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai and 4 others* (supra) held that circumstances calling for recusal, for a judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not participation of the Judicial officer is called for. Their Lordships went further to state that;

“... the object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised.”

- f. Regulation 21 of the *Judicial Service (Code of Conduct and Ethics) Regulations 2020* under the *Judicial Service Act* stipulates the instances where a Judge can recuse himself or herself in any of the proceedings in which his or her impartiality might reasonably be questioned where the Judge;
- (a) Is a party to the proceedings;
  - (b) Was, or is a material witness in the matter in controversy;
  - (c) Has personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (d) Has actual bias or prejudice concerning a party;
  - (e) Has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
  - (f) Had previously acted as a counsel for a party in the same matter;
  - (g) Is precluded from hearing the matter on account of any other sufficient reason; or
  - (h) Or a member of the Judge’s family has economic or other interest in the outcome of the matter in question.

In the instance case, the 4<sup>th</sup> defendant contended that the court was biased, and had placed her to proceed with a defence hearing under duress and without her counsel on record. In my view, I don’t think a reasonable person with knowledge of the case who looks at the facts objectively would conclude that the court was biased. The date of hearing, which was 17<sup>th</sup> and 18<sup>th</sup> October 2023 was fixed in the presence of the 4<sup>th</sup> defendant’s counsel six months prior. Furthermore, it is the 4<sup>th</sup> defendant who, on her own accord, informed the court that she was ready to proceed with the case in the absence of her counsel on record. Nowhere did the court coerce the 4<sup>th</sup> defendant into proceeding with the hearing against her will or better judgment.



- g. Further to that, it is not correct for the 4<sup>th</sup> defendant to claim that she took the witness stand under duress and that her case was closed by the court suo moto. The truth of the matter is that the newly appointed counsel for the 4<sup>th</sup> defendant, Mr. Ngonze, sought for an adjournment, which the court declined. The adjournment was refused by the court on the ground that the court is obligated to deliver justice without undue delay, and that all parties are obligated to ensure expeditious disposal of cases. Therefore, when the hearing dates were fixed over six months earlier in the presence of all counsels, the 4<sup>th</sup> defendant, like the other parties, was obligated to ensure that her counsel was in court, and if need be, appoint another in good time in order to avoid delay. The court ruled that an adjournment would cause more delay and would be wasting judicial time since it was the only hearing fixed for that day.
- h. Granting of adjournment and staying of proceedings are both discretionally and will be granted depending on the circumstances of each case. The court only exercises its discretionally powers in favour of a party where there are sufficient grounds to do so and failure to exercise discretion in favour of one party is not a ground for the court to recuse itself. Litigants should not expect that the court will always decide in their favour and where the court does not do so, then turn around and claim the court is biased or partial. In the case of *Joseph Maina Theuri v Gitonga Kabugi & 3 others* [2013] eKLR, the court held that;

“Accordingly, the court holds that decisions by a judge in interlocutory proceedings against or for other party (like in the instant case) must be subjected to the very high measure of establishing the judge’s deep-rooted prejudice against a party or the subject matter that the judge cannot be trusted to decide fairly. It is not enough for a party, like in the present case, to simply allege that the party is dissatisfied or not happy with interlocutory orders and attribute the same to speculative and unsubstantiated allegations of bias in applying to seek recusal of the presiding judge. It is only where genuine reasons are established to doubt a judge’s impartiality that the judge should be required to recuse or may sua sponte recuse because the disabling grounds are visibly present. As it has been judicially decided again and again, the test is objective. It is not what rests in the mind of the judge to decide fairly but what a reasonable person with knowledge of all the circumstances and facts of the case will perceive of the judge’s capacity to decide the case fairly.”

- i. After the court declined to adjourn the defence hearing, the 4<sup>th</sup> defendant testified in the presence of her new counsel, Mr. Ngonze. None of the other counsel cross-examined her, and since she had no other witness to call, the court proceeded to mark her case as closed. Mr. Ngonze informed the court that since his adjournment application and that of stay of proceedings were declined by the court, the 4<sup>th</sup> defendant would not participate further in the proceedings as well as in the cross-examination of the interested party. The court did not at any point deny the counsel an opportunity to participate in the proceedings or cross-examine the interested party. It was an entirely independent decision made by the said counsel after exercising his judgment in the best interest of his client. To demand my recusal on the ground of refusing an adjournment, which is an exercise of judicial discretion as opposed to appealing against the said ruling, is in my view against the spirit of the oxygen principle. The 4<sup>th</sup> defendant has not met the key ingredients for my recusal as stipulated in the law, Judicial Code of Conduct and superior courts decisions. As such, I find no valid reason for my recusal has been established and the said prayer is rejected.



- j. The second issue for determination is whether the court ought to vary, review and or set aside the ruling issued on 17<sup>th</sup> and 18<sup>th</sup> October 2023. As highlighted above, the court on 17<sup>th</sup> October 2023 directed that the defence hearing proceed in the absence of the 4<sup>th</sup> defendant's counsel. On 18<sup>th</sup> October 2023, the court declined to grant Mr Ngonze's application for adjournment and ordered that the hearing proceed as scheduled. On 24<sup>th</sup> April 2023 in the presence of all counsel in conduct of this matter, the court directed the matter to be set down for defence hearing on two consecutive days i.e. the 17<sup>th</sup> and 18<sup>th</sup> October 2023. On 17<sup>th</sup> October 2023, there was no representation from the firm of Isika & Associates, but the 4<sup>th</sup> defendant was present and informed the court she was ready to proceed with the case in the absence of her counsel. The court directed the hearing to go on as scheduled as the date had been fixed on 24<sup>th</sup> April 2023 in the presence of the 4<sup>th</sup> defendant's counsel. In this case, the counsel stayed away from the court with no explanation to the court or to her fellow advocates who were on record for the other parties.
- k. As noted hereinabove, granting of adjournments is an exercise of judicial discretion. This court has been keen to conclude this matter since it began hearing the plaintiff's case on 12<sup>th</sup> October 2022. Towards that end, the court cleared its diary for the 17<sup>th</sup> and 18<sup>th</sup> of October 2023, and dedicated the two days to hearing of the defendants' case. The court is obligated by Sections 1A & 1B of the *Civil Procedure Act* to further the overriding objective of the Act, which includes just and expeditious determination of disputes before it. The orders issued by the court on 17<sup>th</sup> and 18<sup>th</sup> October 2023 were made pursuant to the obligation of the court to the overriding objective, as well as the inherent powers of the court in Section 3A of the *Civil Procedure Act* of making orders that are necessary for the ends of justice or to prevent abuse of the process of the court. In the case of *Catherine Njeri Angote (suing as the Administrator of the Estate of Samuel Angote Ababu (Deceased) v Lucy Wangari Ngugi & another* [2017] eKLR, the court held that;
- “Sections 1A and 1B of the *Civil Procedure Act* deal with the issue of overriding object of the Act which is to facilitate the just, expeditious proportionate and affordable resolution of disputes. Further, the Court has a duty to further the said overriding objective of this Act. The Court is called to further the said overriding objective by ensuring that disputes are determined in a just manner to all the parties, efficient and expeditious disposal of the matter and timely disposal of the proceedings. How does the Court ensure that the above objectives are achieved? The Court is supposed to manage its proceedings and ensure that parties are not given leeways to cause unnecessary delay in timely disposals of proceedings before it. Further that the proceedings of matter in court should be controlled and regulated by the Court but not the parties.”
- l. Further, Order 12 Rule 7 empowers the court to set aside or vary any order given during the hearing of a matter on terms that may be just, and in my view, after considering the circumstances of each case. When I consider the proceedings of the 17<sup>th</sup> and 18<sup>th</sup> October 2023, I do find that the said date was taken six (6) months before. There was no explanation from the 4<sup>th</sup> defendant's counsel as to why she did not attend court, nor did she send anyone to attend on her behalf. With full appreciation of that fact, the 4<sup>th</sup> defendant was prepared to proceed with the hearing on her own, and actually fully participated. On 18<sup>th</sup> October 2023, Mr. Ngonze came on record for the 4<sup>th</sup> defendant, and informed the court that he was to appear for her alongside Ms. Isika advocate. In my considered view, the 4<sup>th</sup> defendant had the right to appoint Mr. Ngonze as her additional legal representation at any stage of the proceedings. However, her



right to appoint Mr. Ngonze or any other counsel, as an additional advocate ought not cause further delay in the finalization of the matter. I wish to reiterate that the court had cleared its diary for the 17<sup>th</sup> and 18<sup>th</sup> October 2023 by not fixing any other matter for hearing on those two days, to enable the smooth hearing of the defendants' case to completion, and as such any application for adjournment, if allowed would have led to a waste of judicial time.

- m. The 4<sup>th</sup> defendant has a right to be heard and putting her case before the court for determination. This right has a corresponding duty of availing herself and her legal representation on the scheduled hearing dates. Justice has to be seen from both angles, that of a right and obligation. The 4<sup>th</sup> defendant cannot demand to exercise her right to be heard while evading her responsibility enshrined in Section 1A of the Civil Procedure Act of assisting the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court, and to comply with the directions and orders of the Court.
  - n. In my considered view the prayer of setting side the orders and proceedings of 17<sup>th</sup> and 18<sup>th</sup> October 2023 will not serve the ends of justice. If anything, it will lead to a waste of judicial time and a failure of the court to adhere to its duty as set out in Section 1B of the Civil Procedure Act. In the premise, I find that the 4<sup>th</sup> defendant/applicant has not demonstrated any sufficient cause that would warrant the setting aside of the orders and proceedings of 17<sup>th</sup> and 18<sup>th</sup> October 2023.
  - o. The upshot of the above findings is that the application dated 27<sup>th</sup> November 2023 lacks merit. That pursuant to section 27 of the Civil Procedure Act that costs should follow the events unless for good cause otherwise ordered, the 4<sup>th</sup> defendant/applicant shall pay the costs to the plaintiff and interested party who successfully opposed the application.
7. Flowing from the foregoing determinations, the court finds and orders as follows:
- a. That the 4<sup>th</sup> defendant's/applicant's application dated the 27<sup>th</sup> November 2023 is without merit, and is hereby dismissed in its entirety.
  - b. That the 4<sup>th</sup> defendant/applicant to pay costs to the plaintiff and interested party.

It is so ordered.

**DATED AND VIRTUALLY DELIVERED ON THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Plaintiff: Mr. Getange

Defendants : Mr. Ngonze For 4<sup>th</sup> Defendant

Interested Party : Mr. Getange Holding Brief For Muthami

Wilson – Court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

