IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: P. KIHARA KARIUKI (PCA), MAKHANDIA, & OUKO, JJ.A)

CIVIL APPLICATION NO. 288 OF 2008

BETWEEN

MICHAEL MUNGAI……..……...…….APPLICANT

AND

HOUSING FINANCE COMPANY (K) LTD……...……1ST RESPONDENT

KENYA BUILDING SOCIETY LTD…….....….2ND RESPONDENT

TAIFA AUCTIONEERS…….….....3RD RESPONDENT

CHRISTOPHER AVISA…….....4TH RESPONDENT

KENYA COMMERCIAL BANK LIMITED/KPCU……...….5TH RESPONDENT

(An application for restoration, compensation and settlement of endorsed Bills for reinstatement and inclusion of other expenses arising from the Ruling and Decree of the High Court of Kenya at Nairobi (Osiemo, J) delivered on 16th January, 2002 in H. C. C. C. NO. 1026 OF 2001)

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RULING OF THE COURT

What this Court is being called upon to determine by the applicant acting in person, is a motion on notice dated 18th August 2016. The applicant describes the application as:

> "***an application for restoration, compensation & settlement of endorsed and stated bills for reinstatement, intrusion (direct and indirect), stated damages & costs and other expenses, in enforcement and execution of served lawful orders, decrees, rulings, determination, warnings, notices & bills etc.***"

The application is expressed to be brought under "***Articles 23, 24, 25, 27, 28, 29, 35, 40, 46, 47, 49, 50, 159, 164 & 259 and others of the Constitution of Kenya, as read with sections 1A & B, 3A & B, 7, 33, 34, 38, 51, 68, 78, 64, 80, 91-100 & Order 22, 42, 43,45 of the Civil Procedures Act CAP 21, together with Sections 2, 5, 35, 41 & 74, 103 and others of the appellant jurisdiction act CAP 9, sections 60, 74, 77, 104 (2) of the TPA, (sections 7, 34, 43, 61 & 78) of the repealed LTA ACT CAP 282, repealed RLA***

CAP 300 and RTA CAP 281 (sections 2, 23, 24, 34, 53, 61, 75 & 83) together with criminal procedure code and penal code and other local and international laws, the law reform act, & the miscellaneous provisions act (cap 2) and other enabling powers of statute and law."

The above part reproduction of the applicant's prayers and the application's underpinning testifies to the incoherent, jumbled and convoluted nature of the applicant's complaints in general. It is difficult to follow and decipher what the applicant wants in the application. The applicant has invoked so many statutes and used extensive legal jargon, sometimes incorrectly, that even deducing the basis of his complaint becomes problematic. A perusal of the application and court record shows a litigant who has been around the courts for a period in excess of 20 years, mostly acting in person. That would perhaps explain his perceived knowledge of the law though he also depones to be a graduate with vast experience.

The applicant has also quoted many of the cases that he has been involved in as a party. They include **HCCA 335 of 1997, HCCC 288 of 2008 (Nrb), HCCC 3 & 17 of 2001, HCCC 1026 of 2001** and **HCCC 779 of 2009.** It appears that the previous courts that have handled the applicant's cases above which all revolve around a property known as Nairobi Block 111/530 "the suit property" have found themselves in similar situation as this Court now finds itself, the difficulty in understanding the applicant's complaint(s) and have lamented about the same in their various determinations.

For instance in **HCCC No. 1026 of 2001** between the applicant and the respondents, the High Court (**Kamau, J**.) stated that the applicant had admitted to filing about thirty-six (36) applications which had been dismissed by both the High Court and Court of Appeal. The court then went on to observe as follows;

> ***"The court spent numerous hours poring over the hundreds of documents that had been filed by the Plaintiff at different times with a view to comprehending his case as the same was not properly presented. Notably, Mwilu J (as she then was) and Kimaru J, amongst other judges, did at the times they were handling the case herein, observe that they were unable to understand the Plaintiff's case. The judgment herein was thus rendered on the basis of documents that were filed at various times since suit was filed as a matter of giving the Plaintiff a fair and reasonable opportunity to present his case as a layman".***
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> Further that,
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> *"….**the Plaintiff refused to heed to the advice given by previous judges who handled this case to get himself legal representation. He failed to seek legal representation. As presented, the Plaintiff's case could not succeed because it was not cogent or comprehendible (sic). This court went over backwards to analyse the documentation that he filed without leave of the court just to understand what his case was all about. His case was not coherent and was not well explained."***

Similarly, this Court, constituted differently, in **CA 288 of 2008 (supra)** expressed itself as follows:

> *"**As the applicant is acting in person, it was difficult to decipher what he wanted this Court to do for him. He passionately argued his application and as it happens with an overwrought litigant, he is ready and willing to vilify anybody who appears to him to be against what he thinks is his right. That is why in this application even the advocate of the 1st respondent is made a party in the suit!***
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> ***We have meticulously gone through the voluminous record placed before us in this application and having given the background to this matter, we are still of the view that this Court cannot grant the prayers sought.**"*

The applicant has been advised previously by the courts to seek legal representation and this Court in the aforementioned civil appeal even advised him to refrain from making frivolous applications since they would not advance his case any further. The present application however shows no heed or regard by the

applicant to the sentiments or advice given previously by the courts. The present application exhibits the same incorrigible, messy and untidy nature of the applicant's complaints and prayers. Indeed and as it were they do not advance his case at all, whatever it might be. Most of annextures exhibited and authorities cited and attached are incomplete. Although the application is typed, the applicant has made alterations and or additions to the same in ink without as much as seeking court's leave to do so. It is small wonder that the 1st and 2nd respondent did not formally bother to reply to the application though they were represented during the hearing. The application shows a total disregard of the rules of engagement of this court. The application as presented does not allow any reasonable exposition of the law so as to determine the application on its merit. In the **Supreme Court of Kenya Appeal/Application 9 of 2015,** yet another application by the applicant, the Court observed;

> ***"Justice has to be sought within the justice system, which has rules and regulations that govern how one pursues his cause of action. It is not enough for a person to plead pursuit of justice and approach a court of law. Before one approaches a court in pursuit of justice, he or she must be cognizant that he has a justiciable cause of action. Even with such a cause of action, one has to follow the legal regime that informs him as to which court to approach, and in which manner: hence the rules of procedure in our statute books."***

The prayers the applicant seeks from this Court are reproduced below not only because to paraphrase would probably make them lose their import according to the applicant, but also to show how misconceived they are. The applicant seeks;

> *"**A. Spent***
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> ***B. Spent***
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> ***C. That Court of Appeal extend the interim orders that were issued by justice Mbaluto in July/ September 2001 as extended by justice Mutungi (Prof.) effective from the dates of the Applications i.e. 5/7/2001, 5/9/2001 and 8/7/2003), and or alternatively give specific orders as to how the Respondents will be stopped from interfering with the Applicant's/Appellant quiet possession, occupation use, enjoyment and proprietorship of the suit home on L. R. Nairobi Block 111/530 and the other suit properties pending the full hearing of this application and or an appeal/application No. SC9 OF 2015 before the Supreme Court.***
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> ***D. That this Court of Appeal order the High Court to strike off the 4th defendant's applications, defense and counterclaim (in HCCC 1026 of 2001) and all the other illegal, unlawful and unauthorized decrees, certificates and other offending documents that were presented by the respondents before the High Court and court of appeal in HCCA 335 of 1997, HCCC 17 & 3 of 2001, HCCC 1026 of 2001, HCCC 779 of 2012, CA 288 of 2008, CA 55 of 2012, etc.***
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> ***E. That the Hon. Court consolidate CA Nai 55 of 2012, CA Nai 288 of 2008 and the appeals in HCCA 335 of 1997 HCCC 17 & 3 of 2001, HCCC 779 of 2009 into one file. And or alternatively, the Court grant the Appellant/Applicant leave to file and annexed memorandum of appeal be deemed to have been filed with the permission of the court and unchallenged. Hence proceed with the application and appeal without the High Court proceedings.***
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> ***F. That the Hon Court strike out, set aside, review and or vary the said misleading, offending, un procedural, conflicting, contradictory, illegal and unlawful High Court determinations & orders by (Justice Kamau & others) and Court of Appeal determinations, rulings, judgments orders and decrees that were issued in HCCC 17 & 3 of 2001, HCCC 1026 of 2001 and HCCC 779 of 2009 CA Nai 55 of 2012, CA Nai 288 of 2008.***
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> ***G. That the Hon Court grant reasonable, fair and practical orders of decree showing how the High Court Judgement, determinations and Decrees/rulings in favour of the appellant/applicant by Hon. Justice Boghori (sic) dated the 13thJuly 1998, DR Mr. Muiruri, DR. Ms. Wangila and Justice Okwengu, (HCCA 335 OF 1997) justice Lady (sic) Aluoch, Justice Kubo, Justice Rawaal***

(sic) ***and Justice Musyoka (HCCC 17& 3 of 2001) (Justices Khaminwa, Justice Mbaluto, Justice Mutungi (Prof), Justice Ogolla, Justice Mabeya Justice Kariuki & Justice Osiemo and the others in HCCC 1026 of 2001) shall be enforced and executed immediately. (See annexed list)***

H. That pending the full hearing of this application, and or an appeal for the execution/ enforcement of the said orders/ decrees, the respondents and their agents be ordered to deposit in Court, or in a joint account costs, loses and damages as billed by the Appellant/Applicant (decree holder).

I. That alternatively the respondents be ordered to stop selling or disposing off of their properties or shares, including the sale of the houses and a shopping mall on the disputed land in Komarock Estate Phase 5, Nairobi. And then be ordered to deliver the properties to the appellant/applicant and provide this court with all the accounts and documents pertaining to all the One thousand and fifty (1,050) properties that they (respondents and their agents) were instructed by the Applicant to purchase between 1989 and 2010

J. The Costs of this Application and all other relative pleadings, applications and proceedings together with any other relief that the Hon. Court deems fit to grant the applicant be provided for against the respondents."

One can easily see how difficult it is to this Court to appreciate and grant any of the prayers. The prayers cut across the various superior courts thereby creating jurisdictional conundrum or minefield.

As earlier stated, the applicant's many disputes before the various courts revolve around the suit property situate in Komarock Estate, Nairobi. The suit property was allocated jointly to the applicant and one Nancy Wanjeri Mungai, then the applicant's wife, by the 2nd respondent through a provisional allocation letter dated 12th May 1989. The allotees were to make a deposit of Kshs. 41, 323/- then pay Kshs. 280,000/- as the consideration for the suit property. The 1st respondent was to act as the financier to the allotees. The suit property was subsequently registered in the names of the allotees as joint tenants with the 1st respondent as the chargee. The applicant alleged that the 1st respondent varied the repayment scheme plus interest which led to default in servicing the mortgage, following which the suit property was sold to the 4th respondent by the 3rd respondent in a public auction, on the instructions of the 1strespondent on 28th June 2001. Before the auction however, the 1st respondent alleged that it had received instructions from the applicant's wife to auction the suit property. This, the applicant alleged was done without his knowledge. He had at that time become estranged from his wife, which resulted in divorce proceedings. He instituted and unsuccessfully prosecuted HCCC No. 1026 of 2001 to try and salvage the suit property. The suit was ultimately dismissed by the High Court through a judgment dated 22nd January 2015. In its determination, the High Court found that the applicant's fate in getting the suit property back had been sealed with the dismissal of the case against the 4th respondent. According to the High Court, the suit property could not be transferred back to the applicant through a declaration in the absence of any tangible evidence. Other than a Notice of Appeal, no substantive appeal has been filed against these findings.

Though the applicant has exhibited Notices of Appeal dated 23rd January 2015, 7th March 2002, 22nd December 2014, 14th February 2012 and 17th October 2008 in **HCCC No. 1026, HCCC No. 1026 of 2001, HCCC N0. 17 & 3 of 2001, HCCC 779 of 2009** and **CA No. 492 of 2008** respectively thus invoking this Court's jurisdiction, it is unclear upon which intended appeal the present application is predicated or the fate of the intended appeals which ought to have been filed within 60 days of the Notice of Appeal as per rule 82 of the Court of Appeal Rules. Furthermore, looking at the prayers sought, it is impossible to determine what the applicant is asking of the Court. The applicant seeks prayers that are clearly untenable and which cannot properly or lawfully issue from this Court. The applicant for example prays that this Court extends interim orders issued by the High Court in 2001 and 2003 pending the hearing of this application and his application in the Supreme Court seeking certification. Such interim orders have already been spent or have lapsed and this Court cannot purport to extend orders that

comatose. Further, by way of his own admission, the application before the Supreme Court has already been determined, so that what is there to stay? And even if there was, this Court has no jurisdiction to order extension of interim orders in matters it is not possessed of. Such jurisdiction rightly belongs to the High Court and the Supreme Court where the matters were or are *insitu.*

Similarly, this Court cannot order the High Court to strike out the 4th respondent's applications, defense and counterclaim in HCCC 1026 of 2001 since that suit has already been concluded and those issues rendered moot unless an appeal has been properly proffered. There is no such evidence. This Court cannot also order any consolidation of cases that have not been placed before it. In **Supreme Court of Kenya Appeal/Application 9 of 2015,** the Supreme Court held as below,

> ***"Consolidation is a legal process done by a court of competent jurisdiction when it is seized of more than one matter, which matters spring from the same cause of action but filed by different parties or involves other parties too. The matters are consolidated and heard together so as to save judicial time and also avoid the courts giving conflicting judgments in similar matters. A party cannot ask a court of law to consolidate matters not before it. The applicant before us asks this Court to consolidate matters and yet, before this Court is only this single application. This prayer is prima facie a total abuse of the process of this Court not withstanding it being frivolous."*** *[Emphasis added*]

The applicant submitted during the hearing of this application that he sought a review of this Court's ruling dated 11th June 2010 in CA No. 288 of 2008. Learned counsel for the 1st respondent **Mr. Laichena** reiterated that no grounds had been laid for review nor had review been specifically been prayed for. Learned counsel for the 5th respondent, **Mr. Muirethi** aligned himself with those assertions and prayed further that this application be dismissed for want of merit. This Court has no jurisdiction to strike out, set aside, review and or vary the '*misleading, offending, un procedural, conflicting, contradictory, illegal and unlawful High Court determinations & orders by (Justice Kamau & others) and Court of Appeal determinations, rulings, judgments orders and decrees that were issued in HCCC 17 & 3 of 2001, HCCC 1026 of 2001 and HCCC 779 of 2009, CA Nai 55 of 2012, CA Nai 288 of 2008'*. The rest of the prayers the applicant seeks are analogous and also untenable.

In conclusion, the Supreme Court sentiments in **Michael Mungai v Housing Finance Co. (K) Ltd & 5 other [2017] eKLR** are applicable and relevant to the present application as had been then. The Court remarked as follows,

> ***"In a nutshell, the applicant must be told in firm terms that we find no legitimate, cognizable and sound prayer in the prayers sought that this Court can consider and grant. Access to justice as a principle enshrined in the Constitution is not a blank cheque for all and sundry to bring all manner of 'applications' and 'matters' before the Court. Courts are constitutional creatures and exercise that jurisdiction only bestowed to them by the law (See Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 others [2012] eKLR). While the applicant comes at the disguise of seeking access to justice, the truth is that this application, because of being vexatious and frivolous, impedes the access to justice of others by clogging the judicial system and taking up this Court's precious judicial time that it would have used to hear other litigants with legitimate causes of action."***

This Court in its ruling in C.A No. 288 of 2008 observed that counsel for the 1st respondent, **Mr. Laichena** had expressed displeasure with the numerous applications by the applicant and it was Mr. Laichena's view that in future, the applicant should be ordered to provide security for costs. Time is now nigh to impose such strictures taking into account the several times the applicant has been advised to seek legal redress or simply stop filing any further applications that do not advance his case without giving any heed to that advise. Litigation must at some point come to an end and the applicant should not be given any leeway further to continue vexing the respondents with frivolous applications.

Accordingly, we direct the registry to ensure that should the applicant in future be inclined to file any applications, he should be directed to provide security for costs on application by application basis.

The application thus fails in its entirety and is dismissed with costs

Dated and delivered at Nairobi this 29th day of September, 2017.

P. KIHARA KARIUKI (PCA)

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JUDGE OF APPEAL

ASIKE - MAKHANDIA

……..……

JUDGE OF APPEAL

W. OUKO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR