



**Mutiso & another v South Sea Services Limited (Environmental and Land Originating Summons 207 of 2021) [2024] KEELC 4874 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4874 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 207 OF 2021**

**LL NAIKUNI, J**

**JUNE 6, 2024**

**BETWEEN**

**BEATRICE SILU MUTISO ..... 1<sup>ST</sup> PLAINTIFF**

**AMOS KILUNGYA MUTISO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SOUTH SEA SERVICES LIMITED ..... DEFENDANT**

**RULING**

**I. Introduction**

1. This Honourable Court was called upon to make a determination with regard to the Notice of Motion application dated 29<sup>th</sup> August, 2023 by the Plaintiffs/Applicants herein, Beatrice Silu Mutiso and Amos Kilungya Mutiso, as against South Sea Services Limited, the Defendant in the main suit and the Plaintiff in the Counter - Claim. The Application was premised under the provision of Sections 3, 3A and 3B of the *Civil Procedure Act*, Cap. 21, Rule 9 of the *Auctioneers Rules* (1997) and Section 11 of the *Distress for Rent Act* Cap 293.
2. Despite the service of the objection having been effected to the Respondent, it never elicited any responses to counter the application.

**II. The Plaintiffs/Applicants' case**

3. The Plaintiffs/Applicants sought for the following orders:-
  - a. Spent
  - b. That this Honourable be pleased to grant Kithemu Auctioneers a break open order in respect to the premises situate on Title No. Mombasa/ms/block 1/242 occupied by the Plaintiff in the Counter - Claim South Sea Services Limited and remove movable items therein to settle



rent arrears for the period between 1<sup>st</sup> January 2020 to 31<sup>st</sup> December, 2021 at the rate of Kshs. 100,000/- per month and which amounts to Kshs. 2,780,000.00.

- c. That this Honourable Court be pleased to order for eviction of the Plaintiff in the Counter - Claim pending the hearing and the determination of the counterclaim.
  - d. That this Honourable Court be pleased to order that Officer Commanding Station-Likoni Police Station to supervise the execution of the said orders.
  - e. That the costs of this application be provided for.
4. The application was premised on the grounds, testimonial facts and the averments made out under the seventeen (17) Paragraphed Supporting Affidavit of Amos Kilungya Mutiso, the 2<sup>nd</sup> Plaintiff herein sworn and dated on 29<sup>th</sup> August, 2023 and the eight (8) exhibits annexed and marked as “AKM - 1 to 8” thereto. He averred as follows:-
- a. The Plaintiff in the Counter - Claim hereinafter, was a tenant on Title No. Mombasa/ms/block 1/242 (Hereinafter referred to as “The Suit Land”) pursuant to a lease agreement dated 31<sup>st</sup> October, 2019. Annexed in the affidavit is a copy of the said lease and mark the same as annexure “AKM - 1”. In this lease, the Plaintiff was to pay rent of a sum of Kenya Shillings One Million Two Hundred Thousand (Kshs. 1,200,000/-) for the 1<sup>st</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs. 1,440,000/-) for the 2<sup>nd</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs. 1,440,000/-) for the 3<sup>rd</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs. 1,440,000/-) for the 4<sup>th</sup> year and a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs. 1,440,000/-) for the 5<sup>th</sup> year. These were set out in the body of the Lease Agreement.
  - b. From 1<sup>st</sup> January, 2020 to 31<sup>st</sup> December, 2021, the Plaintiff never paid any rent to the landlord. For this reason, the landlord instructed M/s. Kithemu Auctioneers whom issued proclamation notice dated 2<sup>nd</sup> June, 2021. He annexed in the affidavit a copy of the notice and mark the same as annexure “AKM - 2”.
  - c. It was within his knowledge that after service of the proclamation by auctioneer, the Plaintiff filed CMCC NO. 864 of 2021. He annexed in the affidavit a copy of the Plaintiff and marked it as “AKM - 3”. (This was the lower court case).
  - d. In the lower court case, the Plaintiff had prayed for an injunctive orders to restrain them from levying distress. The application was dismissed. He annexed in the affidavit a copy of the ruling and mark as “AKM - 4”.
  - e. It was within his knowledge that after the lower court case ruling, the Plaintiff filed before this court an appeal No. 68 of 2021 Mombasa. This appeal was heard and judgment delivered on 23<sup>rd</sup> November, 2022. He annexed in the affidavit a copy of the Judgment and mark it as “AKM - 5”. In this Judgment, the court directed that:-
    - i. The Plaintiff deposits a sum of Kenya Shillings One Million (Kshs. 1,000,000/-) in a joint escrow account within 30 days
    - ii. The Certificate of Title Deed deposited as security be transferred and be deposited in the lower court case
  - f. For avoidance of doubt, the lower court case dealt with rent arrears between January, 2020 to April, 2021.



- g. The Plaintiff never paid any rent to Landlords after April, 2021 and the arrears kept increasing.
- h. To recover rent arrear for the period not covered by the lower court case they once again instructed their auctioneer to levy distress. There was resistance by the Plaintiff and they filed a motion in the lower court dated 21<sup>st</sup> April, 2022. He annexed in the affidavit a copy of the motion and mark it as “AKM - 6”.
- i. The lower court heard our application dated 21<sup>st</sup> April, 2022 but disallowed it because of the existence of the ELC Appeal No. 68 of 2021 Mombasa. He annexed in the affidavit a copy of the ruling and mark it as “AKM - 7”.
- j. Cumulatively, the Plaintiff had never paid rent since January, 2020. This was absurd.
- k. It was within his knowledge that on 30<sup>th</sup> April, 2021, they issued a statutory notice terminating the lease agreement and the same was served. He annexed a copy of the notice dated 30<sup>th</sup> April, 2021 together with the affidavit of service and mark it as “AKM - 8”.
- l. The tenancy with the Plaintiff came to an end on 31<sup>st</sup> December, 2021 in accordance with the notice of termination. The Plaintiff should move out of their property.
- m. The allegation that the Plaintiff had carried out extensive renovation of their property was not true. In any case, they never authorized any renovation. Indeed, Clause 2 (i) of the Lease Agreement demands that authority must be in writing
- n. The Court should allow the application as prayed.

### **III. Submissions**

- 5. On 21<sup>st</sup> February, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 29<sup>th</sup> August, 2023 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 3<sup>rd</sup> April, 2024 a ruling date was reserved on 30<sup>th</sup> May, 2024 by Court accordingly.

#### **A. The Written Submissions by the Plaintiffs/Applicants**

- 6. The Plaintiffs/Applicants through the Law firm of Messrs. Munyiya, Mutugi, Umara & Muzna Company Advocates filed its submissions dated 4<sup>th</sup> March, 2024. Mr. Munyiya Advocate submitted that the Defendant in the Counter - Claim herein sought for the orders contained in the Notice of Motion Application dated 29<sup>th</sup> August, 2023:-
  - i. That this matter be certified urgent and service be dispensed with at the first instance.
  - ii. That this Honourable be pleased to grant Kithemu Auctioneers a break open order in respect to the premises situate on Title No. Mombasa/ms/block 1/242 occupied by the Plaintiff in the Counter - Claim South Sea Services Limited and remove movable items therein to settle rent arrears for the period between 1<sup>st</sup> January 2020 to 31<sup>st</sup> December, 2021 at the rate of Kshs. 100,000/- per month and which amounts to Kshs. 2,780,000.00.
  - iii. That this Honourable court be pleased to order for eviction of the Plaintiff in the Counter - Claim pending the hearing and the determination of the Counter - Claim.
  - iv. That this Honourable court be pleased to order that Officer Commanding Station - Likoni Police Station to supervise the execution of the said orders.



- v. That the costs of this application be provided for.
7. They confirmed that ground (a) is spent. Ground (b) would serve no purpose as the goods earlier distrained by the Auctioneer had already been moved out of the suit premises. This was disclosed within the body of the submissions. The Applicants were now seeking prayer (c), (d) and (e) of the application.
8. The Learned Counsel submitted that they wished to demonstrate the existence of special injunctive orders at interlocutory stage. The summary of these grounds were as follows:-
- a. The Plaintiff in the Counter - Claim hereinafter, was a tenant on suit premises - Title No. Mombasa/ms/block 1/242 pursuant to a lease agreement dated 21<sup>st</sup> October, 2019. In this lease, the Plaintiff was to pay rent of a sum of Kenya Shillings One Million Two Hundred Thousand (Kshs.1,200,000/-) for the 1<sup>st</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs. 1,440,000/-) for the 2<sup>nd</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs.1440,000/-) for the 3<sup>rd</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs. 1,440,000/-) for the 4<sup>th</sup> year and a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs.1,440,000/-) for the 5<sup>th</sup> year, these were set out in the body of the Lease Agreement.
  - b. From 1<sup>st</sup> January, 2020 to 31<sup>st</sup> December, 2021, the Plaintiff never paid any rent to the landlord. For this reason, the landlord instructed M/s. Kithemu Auctioneers whom issued proclamation notice dated 2<sup>nd</sup> June, 2021.
  - c. That after service of the proclamation by auctioneer, the Plaintiff filed CMCC NO. 864 of 2021 (this was the lower court case). Here the Plaintiff had prayed for injunction orders to restrain the Applicants from levying distress. The application was dismissed.
  - d. After the lower court case ruling, the Plaintiff filed before this court an appeal ELC Appeal No. 68 of 2021 Mombasa. This appeal was heard and Judgment delivered on 23<sup>rd</sup> November, 2022. In this Judgment, the court directed that:-
    - a. The Plaintiff deposits a sum of Kenya Shillings One Million (Kshs. 1,000,000/-) in a joint escrow account within 30 days.
    - b. The Certificate of Title Deed deposited as security be transferred and be deposited in the lower court case
  - e. On or around 12<sup>th</sup> February, 2024, the Respondent removed all the movable goods and took them to unknown destinations to avoid removal by the Auctioneer. Currently, the premises was not occupied for any economic purpose except a small barber shop run by one of the Directors of the former tenant/Respondent.
  - f. For avoidance of doubt, the lower court case dealt with rent arrears between January, 2020 to April, 2021. The Plaintiff never paid any rent to Landlords after April, 2021 and the arrears kept increasing. Cumulatively, the Plaintiff had not paid rent since January, 2020. This was absurd and against statute.
  - g. That on 5<sup>th</sup> August, 2021, the applicants issued a statutory notice terminating the lease Agreement and the same was served. The tenancy with the Plaintiff came to an end on 31<sup>st</sup> December, 2021 in accordance with the notice of termination. The Plaintiff should move out of the suit property.



- h. The allegation that the Plaintiff had carried out extensive renovation of their property were not true. In any case, the applicants never authorized any renovation. Indeed, Clause 2 (i) if the Lease Agreement demanded that authority must be in writing.
9. There existed special circumstances which merit the grant of mandatory orders at an interlocutory stage in that:-
- i. Since January, 2020 the Respondent had not paid rent.
  - ii. The Respondent had not complied with express orders of the Court in ELC Appeal No. 68 of 2021 Mombasa issued on 23<sup>rd</sup> November, 2022.
  - iii. The tenancy was formally terminated since 31<sup>st</sup> December, 2021. For that reason, the Respondent became a trespasser.
  - iv. The claim for compensation could be paid back to it should the Counter - Claim succeed.
10. To buttress on this point, the Learned Counsel relied on the case of Joseph D. K. Kimani & Another v Simon Chege Kamangu [2016] eKLR, where the Court of Appeal stated as follows:

“ 21. With regard to the grant of a mandatory injunction, the test is correctly set out in Vol. 24 Halsbury's Laws of England 4<sup>th</sup> Edition, Paragraph 98, thus:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff... a mandatory injunction will be granted on an interlocutory application”.

Also in Locabail International Finance Limited v Agrpexport and Others [1986] 1 All ER 901, at page 901, it was stated:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the thought that the matter ought to be decided it once or which could be easily remedied or where the defendant had granting a mandatory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction”.

(22) Our courts have approved the above principles over time. See for instance Belle Maison Limited v Yaya Towers Limited [HCCC No.2225 of 19921 (UR), The Ripples Limited v Kaman Mucuba [HCCC No. 4522 of 1992] (UR), Malindi Air Services Limited v Halima Abdnoor Hussan (C.A. 202 of 1998), (UR) and Kenya Breweries Limited & Another v Washington Okovo, Nairobi C.A.NO. 332OF 2000J(UR).



- (23) In this case, there is no dispute that in the Bungoma case a decree was granted to the plaintiff therein who then applied for execution. Prima facie, an execution would appear to have taken place. We say prima facie, because the appellants have discredited the same. But the 2<sup>nd</sup> appellant learnt of the attachment of the said vehicle and lodged objection against the attachment. There is further no dispute that the objection proceedings did not succeed which again, prima facie, paved way for the sale of the said vehicle. The respondent placed material before the learned Judge of the court below which persuaded the learned Judge that he had purchased the said vehicle at an auction. He had transfer documents in his favour. He also had possession of the vehicle. He had, of course, before the order of injunction was granted, briefly lost possession to the 2<sup>nd</sup> appellant but by the time the order was made, there is no dispute that he was in possession of the vehicle. There is no doubt that the Learned Judge was alive to the circumstances under which the respondent briefly lost possession. The 2<sup>nd</sup> appellant's advocate had, without an order of the court, instructed the 1<sup>st</sup> Appellant to repossess the said vehicle and the 1<sup>st</sup> Appellant had, without more, complied with the advocate's somewhat unorthodox instructions. So, the respondent was armed with evidence of execution pursuant to a court decree and had possession of the vehicle. Of significance, the auctioneer who sold the vehicle to him was not joined in the suit giving rise to this appeal.
- (24) It was also evident to the learned Judge of the High Court that the 2<sup>nd</sup> appellant's previous efforts to assert his ownership of the said vehicle had been without success. Besides losing the objection proceedings in the Bungoma case, his challenge of that order in an appeal had come to naught. He had further instituted HCCC No. 481 of 2009 which he had withdrawn.
- (25) In the case of *Shariff Abdi Hassan v Nadhif Jama Adan* [CA 121/2005 (2006) eKLR, this Court observed:
- “The courts have been reluctant to grant mandatory injunction at interlocutory stage. However, where it is prima facie established as per the standard spelt out in law as stated above that a party against whom a mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for the full hearing of the entire case. That position could be taken by the courts in such cases as those of alleged trespass to property”.
- (26) Given the material which was placed before the learned Judge, as summarized above, it did appear that the 2<sup>nd</sup> appellant was in the wrong. The grant of a mandatory injunction therefore, had basis.”

11. The Learned Counsel also referred the Honourable Court to the case of *Zacharia Somi Ng'ang'a v another & Margaret Wangechi Njuguna* [2020] eKLR, where the court held that:

- “ 13. What is of concern is the order of eviction that was granted by the learned Judge against the appellant, ordering him to vacate the suit land within 30 days. In effect, that meant that the order issued by the court went beyond an



interlocutory order. It was a the final order that was sought by the respondents in the plaint. The issue is whether the learned Judge was right in granting the order of eviction which amounted to a mandatory injunction at that interlocutory stage.

14. In *Kenya Breweries Limited & another v Washington Okeyo* [2002] eKLR, this Court adopted the test for granting a mandatory injunction as stated in volume 24, *Halsbury's Laws of England*, 4<sup>th</sup> Edition para 948 as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a match on the plaintiff... a mandatory injunction will be granted on an interlocutory application.”

15. In *Alex Wainaina t/a John Commercial Agencies v Johnson Mwangi Wanjibia* [2015] eKLR, this Court having examined the principles to be applied in mandatory injunctions had this to say:

“These principles have received full approval by the courts in this country, including:-

*Belle Maison Limited v Yaya Towers Limited* H.C.C.C. 2225 of 1992, per Bosire, J. (as he then was) *Ripples Limited v Kamau Mucuba* H.C.C.C. No. 4522 of 1992 per Mwera, J. and *Magnate Ventures Limited v Eng. Kenya Limited* [2009] KLR 538 which summarized the principles thus:

- (i) A mandatory injunction need not to be given at an interlocutory stage. It could be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it would not normally be granted. However, it would be granted if the case was:-
  - (a) Clear and one which the court thought it ought to be decided at once, or
  - (b) If the act done was a simple and summary one which could be easily remedied.
  - (c) Or if the defendant attempted to steal a match on the Plaintiff.



- (ii) The decision to grant a mandatory injunction at the interlocutory stage was a decision dependent on the discretion of a judge and each case had to be decided on the basis of its own peculiar facts and circumstances.

The consistent reiteration of those principles by the courts is an affirmation that the remedy of mandatory injunction is a drastic one which ought not to be granted mechanically but considered with caution.”

- 16. The order granted by the learned Judge ordering the appellant to vacate the property within 30 days, was in effect a mandatory injunction that once executed, would be difficult to reverse as the possession was given without any strings attached. We have considered whether the learned Judge properly exercised her discretion and caution in granting the order of eviction. As each case depends on its own peculiar circumstances, we must consider whether there were exceptional circumstances and whether in the circumstances obtaining before the learned Judge, it was appropriate to issue an order of eviction by way of a mandatory injunction”.
- 12. In conclusion, the Learned Counsel submitted that the conditions to grant of a mandatory injunction at any interlocutory stage were met in this case. This court has power to issue such orders as prayed in the application. They urged the court to allow the application as prayed.

#### **IV. Analysis & Determination.**

- 13. I have carefully read and considered the pleadings herein by the Plaintiff/Applicant, the myriad of cases cited herein, the relevant provisions of the [Constitution of Kenya](#), 2010 and statutes.
- 14. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-
  - a. Whether the break in order and other preceding consequential orders in the Notice of Motion application dated 29<sup>th</sup> August, 2023 is merited?
  - b. Whether the parties are entitled to the reliefs sought?
  - c. Who will bear the Costs of Notice of Motion application dated 29<sup>th</sup> August, 2023.

#### **Issue No. a). Whether the break in order and other preceding consequential orders in the Notice of Motion application dated 29<sup>th</sup> August, 2023 is merited**

- 15. The orders sought by the Plaintiffs/Applicants herein are in the nature of a mandatory injunction to compel the Defendant to break open the doors in the suit premises. The law as regards the principle to be applied when considering whether or not to grant mandatory injunction is higher than that in respect of prohibitory and/or temporary injunctions.



16. I seek to refer to the case of:- “*Locabail International Finance Limited v Agro – Export & Another* (1986)1 ALL ER 901” it was stated:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of Special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was at a simple and summary act which could easily be remedied or where the Defendant had attempted to steal a watch on the Plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high sense of assurance that at the end of the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than required for a prohibitory injunction. ”

17. As a matter of practice, the courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is *prima facie* established as per the standards spelt out in the law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.

**Issue No. b). Whether the parties are entitled to the reliefs sought?**

18. Now applying the afore going well stated legal principles to the instant case. In this particular case the Defendant/Plaintiff in the Counter - Claim hereinafter, was a tenant on the suit premises pursuant to a lease agreement dated 21<sup>st</sup> October, 2019. In this lease, the Plaintiff was to pay rent of a sum of Kenya Shillings One Million Two Hundred Thousand Kshs.1,200,000/- for the 1<sup>st</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs.1,440,000/-) for the 2<sup>nd</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs.1,440,000/-) for the 3<sup>rd</sup> year, a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs.1,440,000/-) for the 4<sup>th</sup> year and a sum of Kenya Shillings One Million Four Fourty Thousand (Kshs.1,440,000/-) for the 5<sup>th</sup> year, this is set out in the body of the Lease Agreement. From 1<sup>st</sup> January, 2020 to 31<sup>st</sup> December, 2021, the plaintiff did not pay any rent to the landlord. For this reason, the landlord instructed M/s. Kithemu Auctioneers whom issued proclamation notice dated 2<sup>nd</sup> June, 2021.

19. After service of the proclamation by auctioneer, the Plaintiff filed CMCC No. 864 of 2021 (this is the lower court case). Here the Plaintiff had prayed for injunction orders to restrain the Applicants from levying distress. The application was dismissed. After the lower court case ruling, the Plaintiff filed before this court an appeal ELC Appeal No. 68 of 2021 Mombasa. This appeal was heard and judgment delivered on 23<sup>rd</sup> November, 2022. In this judgment, the court directed that:-

- a. The Plaintiff deposits a sum of Kenya Shillings One Million (Kshs. 1,000,000/-) in a joint escrow account within 30 days.
- b. The Certificate of Title Deed deposited as security be transferred and be deposited in the lower court case

20. On or around 12<sup>th</sup> February, 2024, the Respondent removed all the movable goods and took them to unknown destinations to avoid removal by the Auctioneer. Currently, the premises are not occupied for any economic purpose except a small barber shop run by one of the Directors of the former tenant/ Respondent. For avoidance of doubt, the lower court case dealt with rent arrears between January, 2020 to April, 2021. The Plaintiff did not pay any rent to Land - Lords after April, 2021 and the arrears kept increasing. Cumulatively, the Plaintiff has not paid rent since January, 2020. This is absurd and



against statute. That on 5<sup>th</sup> August, 2021, the applicants issued a statutory notice terminating the lease Agreement and the same was served. The tenancy with the Plaintiff came to an end on 31<sup>st</sup> December, 2021 in accordance with the notice of termination. The Plaintiff should move out of the suit property. The allegation that the Plaintiff in the counter claim had carried out extensive renovation of their property were not true. In any case, the Applicants did not authorize any renovation. Indeed, Clause 2 (i) if the Lease Agreement demands that authority must be in writing.

21. Having carefully considered the material before me, I am not satisfied that the Plaintiff has made out a case to warrant the grant of the orders sought. The case is not unusually strong and clear as to allow me to grant the mandatory injunction prayed for as the Court has not finalized with the Counter - Claim. For these reasons, the application cannot, therefore, succeed.

**Issue No. c). Who will bear the Costs of Notice of Motion application dated 29<sup>th</sup> August, 2023.**

22. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court Jasbir Rai Singh v Tarchalan Singh (2014) eKLR and Cecilia Karuru Ngayo v Barclays Bank of Kenya Limited, (2014) eKLR.
23. In the case of Hussein Muhumed Sirat v Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In this case, this Honourable Court has reserved its discretion in not awarding costs.

**V. Conclusion & Disposition**

24. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, this court arrives at the following decision and makes below order:-
- a. That the Notice of Notice of Motion application dated 29<sup>th</sup> August, 2023 is found to lack merit and is hereby dismissed in its entirety.
  - b. That this Honourable Court do and hereby issues an order that status quo should be maintained pending the hearing and determination of the Counter - Claim.
  - c. That for expediency sake there be a hearing of this matter on 21<sup>st</sup> January, 2025. There shall be a Mention on 17<sup>th</sup> September, 2024 to ascertain full compliance on the Pre – Trial Conference under order 11 of the Civil Procedure Rules, 2010.
  - d. That there shall be no orders as to costs.

It is so ordered accordingly.

**RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 6<sup>TH</sup> DAY OF JUNE 2024.**

**HON. MR. JUSTICE L. L. NAIKUNI,  
ENVIRONMENT AND LAND COURT AT  
MOMBASA**



Ruling delivered in the presence of:-

- a) M/s. Firdaus Mbula, the Court Assistant.
- b) No appearance for the Plaintiffs/Applicants
- c) No appearance for the Defendant/ Respondent

