



Guo v Beijing Zhongji Jingu Integrated Housing Technology Company Limited & 2 others (Cause E328 of 2023) [2024] KEELRC 1024 (KLR) (15 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1024 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E328 OF 2023
NZIOKI WA MAKAU, J
APRIL 15, 2024**

BETWEEN

JUN GUO CLAIMANT

AND

**BEIJING ZHONGJI JINGU INTEGRATED HOUSING TECHNOLOGY
COMPANY LIMITED 1ST RESPONDENT
JINGU KENYA INVESTMENT LIMITED 2ND RESPONDENT
KENYA (CHN) HOKING REAL ESTATE COMPANY LIMITED 3RD
RESPONDENT**

RULING

1. Before this Honourable Court for determination are the Claimant's Notice of Motion Application dated 23rd May 2023 and the Respondents' Notices of Preliminary Objection (P.O) dated 5th May 2023 and 9th June 2023. In response, the Respondents filed Replying Affidavits sworn on 31st January 2024 and 19th February 2024 while the Claimant filed a Further Affidavit sworn on 4th March 2024.

2. Claimant/Applicant's Case

The Claimant's Motion Application dated 23rd May 2023 seeks for Orders that:

- a. Spent.
- b. Pending hearing and determination of this Application, the Honourable Court be pleased to issue an order of inhibition restraining any further dealings, registration and transactions whatsoever and the order of inhibition be registered over the parcel of land known as LR. No. 1/462/ IR No. 16611/1 (Original Number 1/214 and Part of 1/213) (herein referred to as "the Suit Property") situated in



- Nairobi Municipality (Upper Hill Estate) pending compliance with the Court Order issued on 24th April, 2023 and subsequently on 10th May 2023 by the Respondents.
- c. The Honourable Court be pleased to issue an order of inhibition restraining any further dealings, registration and transactions whatsoever and the order of inhibition be registered over the parcel of land known as LR. No. 1/462/ IR No. 16611/1 (Original Number 1/214 and Part of 1/213) (herein referred to as "the Suit Property") situated in Nairobi Municipality (Upper Hill Estate) pending the hearing and determination of the Claimant/Applicant's Notice of Motion Application dated 19th April 2023.
 - d. The Costs of this Application be provided for.
3. The Claimant's Application of 23rd May 2023 is premised on the grounds set out therein and supported by the Affidavit of the Claimant, who averred that the matter has severally come up for Mention to confirm if the Respondents have complied with the Court Order issued by this Court on 24th April 2023 and subsequently on 11th May 2023. That the 3rd Respondent Company is the registered proprietor of the aforementioned Suit Property located in Nairobi Municipality. That the 3rd Respondent had held a Special Ordinary General Meeting on 11th January 2023 whereat it passed a Board Resolution resolving that: Mr. Ferdinand Muchomba had ceased being the Company Secretary, and Mr. John Maina Mburu had thereby been appointed the Company Secretary with immediate effect. Moreover, Mr. John Mburu was authorised to prepare all documents on behalf of the Company and perform such functions of a Company Secretary. A Specific Power of Attorney was then signed between the 3rd Respondent and Mr. John Mburu t/a John Mburu & Company Advocates, donating specific acts to Mr. John Mburu.
 4. The Claimant/Applicant further averred that the Respondents have identified a purchaser and unless restrained by this Honourable Court, the Respondents will dispose of the Suit Property at any time. That the Donee, Mr. John Mburu, had prepared an Agreement for Sale to dispose of the said property to Maoye Lucky Limited. It was the Claimant's averment that considering the Respondents do not have any other known assets in the Republic of Kenya save for the Suit Property, there is need to urgently issue an order of inhibition stopping further dealings, registration and transactions on the said property. That this is because the said land can be utilized for execution of the decree that will eventually be rendered in this matter and the Claimant/Applicant has satisfied the conditions for grant of an Order of inhibition. The Claimant noted that if the said property is however disposed, he will not be able to execute any award made by this Honourable Court and stands to suffer irreparable loss. That on the other hand, the Respondents will not suffer any prejudice should the orders sought be granted.

5. Respondents' Case

In response to the Claimant's Application, the 1st and 2nd Respondent's P.O dated 5th May 2023 is raised on the grounds that this Court lacks jurisdiction to hear the Application and the main suit. They reasoned that by virtue of the Labour Contract dated 22nd September 2016 signed between the 1st Respondent and the Claimant, the dispute is to be heard and determined under the Labour Law and other relevant laws of the People's Republic of China, which both parties willingly submitted to as the governing law and choice of law. Furthermore, both the Claimant and the 1st Respondent submitted to the jurisdiction of the Labour Dispute Arbitration Commission Peoples Republic of China under article 23 of the said Labour Contract between the parties. That under clause 7 of the Labour Contract, parties agreed for any arising dispute to be heard and determined according to Chinese Law, by the Beijing Arbitration Commission and the arbitration conducted in Chinese. The 1st and 2nd Respondent asserted that both the Claimant's Application and the suit should be struck out and the Court of 25th April 2023 vacated because this Court lacks jurisdiction.



6. The 3rd Respondent's P.O against the Claimant's Application is filed under Order 51, rule 14 of the [Civil Procedure Rules](#). Its grounds are that this Court lacks the jurisdiction to hear and determine the Application since the Claimant is yet to exhaust all the dispute resolution mechanisms provided in the Labour Contract dated 22nd September 2016, signed between him and the 1st Respondent. That therefore as per the Labour Contract, there is no nexus between the Claimant and the 3rd Respondent. That in addition, the Application is premature and contrary to Article 162(2)(b) of the [Constitution of Kenya, 2010](#) since this Honourable Court does not have the jurisdiction to grant an order of inhibition on the Suit Property, which said jurisdiction lies with the Environmental and Land Court. The 3rd Respondent also argued that the Claimant's Application is similar to a pending application for which this Court issued Orders on 25th April 2023 and which matter is coming up on 14th June 2023 to confirm compliance. That the Claimant's Application is thus frivolous, vexatious and an abuse of the Court and that as the 3rd Respondent was not granted an opportunity to be heard, the Application should be dismissed with costs.
7. The 1st and 2nd Respondents' reaction was made in the Replying Affidavit sworn by Mr. Yuxin Li on 19th February 2024. Mr. Li asserted that he is a director of the 1st and 2nd Respondents and that the Motion herein is incompetent and does not meet the legal tests for grant of the reliefs sought. He argued that their P.O dated 5th May 2023 should be heard first in limine before delving into any other applications as it raises issues of jurisdiction. He further asserted that by the time their Counsel on record filed the said P.O, this Court had already issued *ex parte* orders in the matter on 24th April 2023 for the Respondents to deposit Kshs. 50 Million before the inter partes hearing slated for 10th May 2023. That the said Order for security of costs was given without according the 1st and 2nd Respondents a chance to be heard on either the preliminary objection raised or on the amount of costs ordered. It was Mr. Li's averment that the Claimant/Applicant's Motion dated 23rd May 2023 does not meet the threshold set by the Supreme Court of Kenya in the case of [Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others](#) (Petition No. 16 (E023) of 2021), *inter alia* that security of costs should not impede a litigant's right to access justice or stifle proceedings.
8. Mr. Li further averred that the 1st and 2nd Respondents have not been able to pay the amount of Kshs. 50 Million as security for costs because when they sought leave to prosecute their P.O on record on 10th May 2023, the Court declined to grant the leave and instead ordered the Respondents to provide a bank guarantee within 24 hours. That they however faced and still face several hardships in implementing the same including; the 2nd Respondent not having an operational bank account in Kenya to process a bank guarantee, the 1st Respondent being located in China, both Respondents not having the money sought, and the People's Republic of China very strict rules and regulations on provision of foreign guarantees (e.g. it is illegal for a Chinese entity to issue a guarantee to a foreign legal entity). Mr. Li also contended that since the Suit Property belongs to the 3rd Respondent, the Claimant's Application as against the 1st and 2nd Respondents fails and ought to be dismissed with costs to the 1st and 2nd Respondents.
9. The 1st and 2nd Respondents, through Mr. Li, averred that in the alternative, the Claimant's Application does not meet the threshold set out in Order 40 of the [Civil Procedure Rules](#) as the Claimant does not have a *prima facie* case against them by virtue of their P.O before Court. Secondly, that the Claimant has not demonstrated he will suffer irreparable loss if his Application is not granted. Mr. Li maintained that the order to deposit in Court Kshs. 50 Million and/or furnish a security as may be sufficient to satisfy the impending decree against the Respondents is punitive as it impedes the Respondents' access to justice. He noted that by swearing the Replying Affidavit, the 1st and 2nd Respondents have not waived their right to raise the P.O and are acting in good faith on the directions issued by this Honourable Court.



10. The 3rd Respondent's Replying Affidavit was sworn on 31st January 2024 by its director, Mr. Tang Jiarong, who averred that apart from the 1st Respondent, the Respondents are separate entities with no correlation with the Claimant. That this Court issued the *ex-parte* orders without considering that the 3rd Respondent was wrongly sued and was not privy to the Labour Contract signed between the 1st Respondent and the Claimant. That there was also no justification how the Claimant arrived at the amount of Kshs. 50 Million to necessitate this Court to issue the orders without giving the 3rd Respondent an opportunity to be heard. The 3rd Respondent further averred that it is incapable of settling the amount to an unknown third party as there is no privity of contract between it and the Claimant. Moreover, that the Claimant misled this Court to grant the *ex-parte* orders whereas he is an illegal immigrant without a valid work permit to enable him reside and institute legal proceedings in Kenya. It was the 3rd Respondent's averment that the Claimant has not brought forthwith sufficient evidence to establish the correlation between him, the 3rd Respondent and the Suit Property.

11. Claimant/Applicant's Rejoinder

The Claimant averred in the Further Affidavit dated 4th March 2024 that the Labour Contract dated 22nd September 2016 expressly indicated that he was to serve as the Manager of the Kenya Branch according to the work needs of the 1st Respondent. He stated that he equally worked for the 2nd and 3rd Respondents who are affiliate companies of the 1st Respondent and located in Kenya and also noted that Mr. Yuxin Li is also a director in the 3rd Respondent Company. The Claimant further averred that the 2nd Respondent procured the renewal of his work permits in Kenya for the period he was in the employ of the Respondents herein, which obligation is placed upon an employer as under section 45 of the [Kenya Citizenship and Immigration Act](#) (Cap. 170, Laws of Kenya). That when he left employment, the 3rd Respondent attempted to clear his salary arrears by making payment from Equity Bank Limited but the same was not sufficient to clear the arrears. That the 3rd Respondent made the payment on behalf of the 1st and 2nd Respondents because as admitted by themselves, the 2nd Respondent does not have an operational bank account in Kenya. According to the Claimant, the foregoing proves the employer-employee relationship between him and the 2nd and 3rd Respondents.

12. It was the Claimant's further averment that since the dispute before Court arose in Kenya and not within the territory of the People's Republic of China, it cannot be referred to the Labour Dispute Mediation Committee or submitted to the Beijing Arbitration Commission as asserted by the Respondents. That notably, the said Contract was performed in Kenya, the Respondents have registered offices in Kenya and he is still working in Kenya. That therefore despite the Labour Contract indicating the choice of law as the Labour Law of the People's Republic of China, this Court has the jurisdiction to offer protection to an employee in accordance with the Kenyan Law. He argued that it is only fair and just that the Application is allowed to have insurance for the huge amount of money that is to be spent in the prosecution and defence of the matter and its incidentals. The Claimant asked the Court to dismiss the Respondents' Notices of Preliminary Objection with costs to him.

13. Claimant/Applicant's Submissions

The Claimant/Applicant submitted that the issues for determination are whether this Court has the jurisdiction to hear and determine this suit and whether the orders sought in the Claimant's Application dated 23rd May 2023 should be granted. It is the Claimant/Applicant's submission that this Court has the jurisdiction to hear and determine this suit. That sections 14 and 15 of the [Civil Procedure Act](#) provide that a suit may be instituted either where the defendant or plaintiff resides or carries on business, or where the wrong was done, at the option of the plaintiff. He argued that there being no specific provision relating to the jurisdiction in the [Employment Act](#) or [Rules](#), the provisions of the [Civil Procedure Act](#) would apply in the ELRC provided they do not conflict with the [Employment Act](#) or any specific legislation on employment relations. That Article 2 of the



Law of the People's Republic of China on [Labour-Dispute Mediation and Arbitration](#) expressly indicates that, "This Law is applicable to the following labour disputes arising between employing units and workers within the territory of the People's Republic of China". That the dispute arising in Kenya and not within the territory of the People's Republic of China warrants the ousting of the choice of law and choice of jurisdiction clause in the Labour Contract. That in addition, Article 27 of the Law of the People's Republic of China on [Labour-Dispute Mediation and Arbitration](#) provides that the limitation period for Arbitration of a labour dispute is one (1) year from the date a party comes to know or is expected to know the infringement of rights. That the limitation period to refer the dispute in this case to arbitration lapsed in July 2023 because the Claimant left the Respondents' employ in July 2022. In support of his foregoing submissions, the Claimant/Applicant cited the case of [United India Insurance Co Ltd v East African Underwriters \(Kenya\) Ltd](#) [1985] eKLR, KLR [898] in which the Court of Appeal held that in exercising its discretion on parties' contracts, a court should consider all the circumstances of the particular case and the following matters:

- i. In what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the court of the country and the court of the foreign country;
 - ii. Whether the law of the foreign court applies, and if so, whether it differs from the law of the country in any material respects;
 - iii. With what country either party is connected, and how closely;
 - iv. Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantage; and
 - v. Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would be deprived of security for their claim, be unable to enforce any judgment obtained, be faced with a time bar not applicable in their country.
14. The Claimant/Applicant further noted that Radido J stated in the case of [Dorcas Kemunto Wainaina v IPAS](#) [2018] eKLR that although the issue jurisdiction is connected to the issue of choice of law, the two are conceptually distinct and the question of application of foreign law may therefore be irrelevant to the question of jurisdiction in certain instances. The said Court further opined that a domestic court may be called upon to apply foreign law in a contractual situation as had obtained in the case and that the distinction is simply on choice of jurisdiction and choice of law. The Claimant also argued that the principle of *Lex Loci Laboris* provides that the applicable law in employment matters is always the law of the country in which the employee was based or working during his term of the contract. That the law of the Republic of Kenya is therefore applicable in this case since the Labour Contract between the Claimant and 1st Respondent was performed in Kenya and was from Kenya. He cited the case of [Dede Esi Annie Amanor-Wilks v Action Aid International](#) [2014] eKLR where the respondent raised a P.O that the Court could not assume jurisdiction because parties had clearly indicated in the Contract of Employment that the same was made in accordance with and subject to the Laws of England and Wales. In determining the issue, Rika J. held it had jurisdiction to hear and determine the claim and that since labour standards fall within international public policy, States will not easily cede their sovereignty over issues that concern implementation of labour standards within their territorial boundaries. The Claimant also relied on the case of [Emmanuel Fresco v Camusat Kenya Limited & another](#) [2019] eKLR in which the Court dismissed a P.O after applying the facts of the case to the Court of Appeal decision in [United Indian Insurance Co. Ltd](#) case (*supra*) and finding it was the right forum connected to the dispute because: the contract was performed in Kenya; the claimant was resident in Kenya; the alleged misconduct and breaches took place in Kenya; the 2nd respondent had a regional office in Nairobi; and the claimant enjoyed protection of Kenyan Employment Law under



International Law. It was the Claimant/Applicant's submission that the Respondents had failed to demonstrate genuinely why they desire the case to be tried in China rather than in Kenya or to show what prejudice they are likely to suffer should this case proceed before this Honourable Court. He maintained that it is thus in order for this Court to overlook the exclusive foreign jurisdiction clause in the Labour Contract and assume jurisdiction over this Claim.

15. As regards the orders sought, the Claimant/Applicant submitted that the Order of inhibition will not affect the Respondents' rights over the Suit Property but will serve the greater interest of justice by preserving the said parcel of land while the Claim is being heard and determined. That the Respondents have shown that they do not intend to comply with the Court Order issued on 24th April 2023 and since their financial standing is also unknown, the Claimant will suffer irreparable harm and financial loss as the Claim is for a substantial amount of money him. He invited the Court to uphold the principle that the court should always take the course that carries the lower risk of injustice as stated in the case of *Reynolds Construction Co (Nig) Ltd v Festus M'arithi M'mboroki* [2022] eKLR.

16. Respondents' Submissions

The issues for determination according to the 1st and 2nd Respondents are whether this Court has the jurisdiction to hear and determine this suit and by extension the issues of choice of law, choice of jurisdiction, place, seat and language of the proceedings. Secondly, whether the Respondents should deposit in court a sum of Kshs. 50 Million and/or furnish security as may be sufficient to satisfy the decree that may be passed against them in the suit. First, it was the Respondents' submission that this Court lacks the jurisdiction to hear and determine the suit. That the Court of Appeal in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR stated that jurisdiction is everything without which a court of law acts in vain. The 1st and 2nd Respondents submitted that as per *Black's Law Dictionary* 8th Edition, page 726, 'choice of law' is defined as which jurisdiction's law should apply and 'choice of jurisdiction' is the choice of state or country that should exercise jurisdiction. The Respondents asserted that a Contract is deemed by law to be a binding instrument with the expectation for parties to perform obligations as mutually agreed by them and that a court of law cannot re-write a contract between parties. That in *Stanley Kamere & 26 others v National Housing Corporation & 2 others* [2015] eKLR, the Court pronounced itself that where a contractual relationship exists between parties, the same should be upheld as per the terms and conditions of the contract save for where there is fraud, coercion or undue influence. It was the 1st and 2nd Respondent's submission that therefore by dint of Contract Law, this Court should uphold the Contract entered into between the 1st Respondent and the Claimant in entirety, unless the Claimant can prove coercion or fraud.

17. The 1st and 2nd Respondents submitted that as argued in their P.O, imposing a harsh condition precedent would be unfair and unreasonable to the extent that it impedes the Respondents' right to access to justice and right to fair hearing contrary to Articles 48, 50 and 159 of the *Constitution* of Kenya. They asserted that a distinction must be made between their P.O herein and the one raised in the *Dorcas Kemunto Wainaina v IPAS* [2018] eKLR, such as the fact that the contract in the *Dorcas Kemunto Wainaina* case was signed in Kenya and involved a Kenyan residing in Kenya and an American Company, whereas this case involves Chinese nationals and a Contract that was signed in China. That secondly, the parties in the *Dorcas Kemunto Wainaina case* did not have a choice of law or choice of jurisdiction clause unlike the instant case where the Contract is clear on the choice of law, choice of jurisdiction, place, seat and language. They maintained that it is thus apparent that the parties herein expressly intended the applicable law to be Labour Law of the People's Republic of China and the relevant laws and regulations of the Republic of China, and that the Contract be adjudicated in China. That even though the ELRC may have jurisdiction to entertain a matter regarding an alleged breach of contract, the same should be conducted as per the governing laws to which the parties agreed. They argued that no party will be prejudiced if the same claim is instituted in China as per the Contract



following the Ruling in [United India Insurance Co. Ltd v East African Underwriters \(Kenya\) Ltd](#) [1985] KLR.

18. The 1st and 2nd Respondents further submitted that the suit is premature and untimely as the agreed avenue for dispute resolution under the Labour Contract was not exhausted. Furthermore, that the Claimant feeling he is limited in filing the suit in China does not mean he ought to bring a defective lawsuit in Kenya. That in any event, Article 27 of the Law of the People's Republic of China on [Labour -Dispute Mediation and Arbitration](#) provides for extension of time for application for arbitration. They argued that it is trite law that disputes stemming from implementation of a contract should be resolved using the law of the State in which the contract was made (*lex loci contractus*). That whereas the Claimant/Applicant relies on the principle of *lex loci laboris* to argue that performance was in Kenya, he has omitted the fact that significant performance of the Contract was done in Beijing, China. The Respondents relied on the case of [Edward Lwangu Mamboleo v Tristar Transport Limited](#) [2021] eKLR in which the Court held that it was only fair to provide redress to the claimant under the jurisdiction where he signed his contract. They urged the Court to find that the labour laws of the Republic of China apply to this case but that the Claim ought to be dismissed for being premature.
19. It submitted that secondly, with regard to depositing the security as ordered, the 1st and 2nd Respondents that Article 48 of the [Constitution](#) of Kenya 2010 requires the court to ensure access to justice for all persons and that if any fee is required, it shall be reasonable and not impede access to justice. In this regard, they restated the holding of the Court in the case of [Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others](#) (Petition No. 16 (E023) of 2021). That also under Article 159(2)(a) of the [Constitution](#), the Court should dispense justice to all irrespective of status. They denied the assertion that they do not intend to comply with the Court Orders, submitting that the Orders are punitive and unreasonable hence impossible to comply with and that the same impeded their access to justice.
20. The 3rd Respondent's submission was that this Court is not seized with the jurisdiction to hear and determine this matter based on the doctrine of exhaustion as the Claimant did not exhaust the mediation proceedings as set out in the Contract. That the Court in [Robert Khamala Situma & 8 others v Acting Clerk of the Nairobi City County Assembly](#) [2022] eKLR cited with approval the case of [Chief Justice and President of the Supreme Court of Kenya & another v Bryan Mandila Khaemba](#) [2021] eKLR, wherein the Court of Appeal held that notwithstanding the doctrine of exhaustion, courts still retain residual jurisdiction to intervene in exceptional circumstances despite existence of alternative remedies, where the action complained of is marred by illegality and procedural irregularities. The 3rd Respondent's position is that since the Claimant failed and or refused to apply to the Labour Dispute Arbitration Committee for Arbitration and the action complained of is not marred by any illegality and procedural irregularities, the Court ought to down its tools and direct the Claimant to exhaust all the alternative disputes available.
21. On privity of contract, the 3rd Respondent asserted that the binding nature of a contract that is executed willingly by parties is now well settled as stated by the Court of Appeal in [National Bank of Kenya Ltd v Pipeplastic Samkolit \(K\) Ltd & another](#) [2001] eKLR. That the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. It cited the case of [Bharminder Singh Osaban v Helicopters International Limited](#) [2021] eKLR. It was the 3rd Respondent's submission that only the Claimant and the 1st and 2nd Respondents are parties to the Contract being relied on by the Claimant. That evidently, the 3rd Respondent ought to be excused from the said Contract since it is not a party to it and consequently not bound by the terms therein. It further fronted that the suit ought to be heard and determined in China for the benefit of the Claimant if judgement is entered in his favour and further because it



will be easier to execute against the 1st and 2nd Respondents. It was the 3rd Respondent's submission that having established that this Honourable Court does not have jurisdiction to hear and determine this suit, the Court cannot issue an order of inhibition since it does not have jurisdiction on matters relating to land and the Claimant's Application should therefore be dismissed with costs.

22. Jurisdiction is everything. This was held by the Court of Appeal (per Nyarangi JA) in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (*supra*). Without it, a court has no authority to make any step. As such, the preliminary objections by the Respondents stand to be determined first as the issue is critical to further proceedings herein. If I find I have no jurisdiction I will have to down my tools as the Court would be acting in vain where it acts without jurisdiction. At the onset, the Court notes the Respondents have been in contempt of court and only granted them audience out of pity.
23. The dispute herein is said to be subject to the Labour Dispute Arbitration Commission of the Peoples Republic of China under article 23 of the labour contract between the parties. Article 2 of the Law of the People's Republic of China on *Labour-Dispute Mediation and Arbitration* expressly indicates that, "this Law is applicable to the following labour disputes arising between employing units and workers within the territory of the People's Republic of China". This is the portion of the contract that the Respondents assert deprives the Court of any jurisdiction in the matter. The Court has considered the rival arguments by the parties. The issues that arose in relation to this contract arose in Kenya, not the People's Republic of China. As such the clause relied on by the Respondents is inapplicable. The principle of *Lex Loci Laboris* provides that the applicable law in employment matters is always the law of the country in which the employee was based or working during his term of the contract. In the case of the Claimant, he performed his contract in Kenya and therefore the law of the Republic of Kenya is applicable. That puts paid to the objections of the Respondents which are dismissed with costs to the Claimant.
24. In relation to the Claimant's notice of motion, the same seeks inhibition against the property identified as LR. No. 1/462/ IR No. 16611/1 (Original Number 1/214 and Part of 1/213). From the material before me, the property is owned by the 3rd Respondent who is the registered proprietor of the aforementioned suit property located in Upperhill, Nairobi. As the 3rd Respondent has been ordered to place before the Court a guarantee, it is imperative that sequestration of the property be the consequence of the failure of the Respondents to satisfy the orders of the Court. In the premises I find that there is need to issue an order that pending hearing and determination of this suit, there be and is hereby issued an order of inhibition restraining any further dealings, registration and transactions whatsoever and the order of inhibition be registered over the parcel of land known as LR. No. 1/462/ IR No. 16611/1 (Original Number 1/214 and Part of 1/213) (herein referred to as "the Suit Property") situated in Nairobi Municipality (Upper Hill Estate) pending compliance with the Court Order issued on 24th April, 2023 and subsequently on 10th May 2023 by the Respondents. The Claimant is entitled to costs on the motion which has been entirely successful.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF APRIL 2024

NZIOKI WA MAKAU

JUDGE

