



REPUBLIC OF KENYA



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Mbugua & 6 others v Mbuthia & 3 others (Sued as Administrators of the Estate of Dinah Muthoni Mbuthia - 2nd , 3rd, & 4th Defendants) (Environment & Land Case E057 of 2022) [2023] KEELC 76 (KLR) (18 January 2023) (Ruling)

Neutral citation: [2023] KEELC 76 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E057 OF 2022
JO MBOYA, J
JANUARY 18, 2023

BETWEEN

JOSEPH KINYURU MBUGUA 1ST PLAINTIFF
PETER MUGO KANYIRI 2ND PLAINTIFF
JAMES KARANU GATHUA 3RD PLAINTIFF
JOYCE NJERI WACHIRA 4TH PLAINTIFF
PAUL GAKINYA MACHARIA 5TH PLAINTIFF
PETER MURIGI KIBANDI 6TH PLAINTIFF
JULIUS KATHURIMA MUCHEKE 7TH PLAINTIFF

AND

DAVID GITAU MBUTHIA 1ST DEFENDANT
JANE NJERI NGURE 2ND DEFENDANT
JUNE WANJUGU KOINANGE 3RD DEFENDANT
SAMUEL GITAU MBUTHIA 4TH DEFENDANT
SUED AS ADMINISTRATORS OF THE ESTATE OF DINAH MUTHONI
MBUTHIA - 2ND , 3RD, & 4TH DEFENDANTS

RULING

1. Vide Notice of Motion Application dated the October 28, 2022, the Plaintiffs herein have sought for the following Reliefs;



- i. That for reasons appearing on the Certificate of Urgency the Instant Application be certified as Urgent, service be dispensed with, and the same be admitted for hearing on a priority basis.
 - ii. That this Honourable Court be pleased to order stay the Execution of the Judgment/Decree issued by the Court (Hon Oguttu Mboya) on July 19, 2022 in Nairobi ELC Case No 1314 of 2013 pending hearing and determination of Applicants application herein.
 - iii. That this honuorable court be pleased to grant orders restraining the respondents by themselves, their agents, servants and or employees from evicting, demolishing and or taking possession of the applicants structures and or interfering with their quiet stay in LR NO 3811/6 Original Number 3811/1/2, also described as Certificate of Title No Lr No 16024 County of Nairobi, pending hearing and determination of the application.
 - iv. That this honuorable court be pleased to grant orders restraining the respondents by themselves, their agents, servants, employees from evicting, demolishing and or taking possession of the applicants structures and or interfering with their quiet stay in LR NO 3811/6 Original Number 3811/1/2, also described as Certificate of Title No Lr No 16024 County of Nairobi, pending hearing and determination of the suit.
 - v. That this Honourable Court be pleased to order stay the Execution of the Judgment/Decree issued by the Court (Hon Oguttu Mboya) on July 19, 2022 in Nairobi ELC Case No 1314 of 2013 pending hearing and determination of Applicants/plaintiffs suit herein.
 - vi. That status quo be maintained pending hearing and determination of both the application and the suit herein filed.
 - vii. That proceedings in ELC 1314 of 2013 did not include the part of the suit property registered in the names of David Gitau Mbuthia, who is a joint owner with Dinah Muthoni Mbuthia.
 - viii. That whereas the estate of Dinah Muthoni Mbugua devolved to the 2nd,3rd and 4th Respondents as successors in title as per the judgment, the decree and order issued by this court did not delve in the other half of the suit property registered in the names of the joint owner David Gitau Mbuthia. The plaintiffs aver they have been living in the side of David Gitau Mbuthia continuously from diverse years between 1974 and 1980- 1993,which is relevant to the suit herein.
 - ix. That the Court do grant any other Orders as the Court may deem just and expedient.
 - x. That costs of this Application do abide the outcome of the suit.
2. The instant Application is premised and anchored on various grounds which have been enumerated at the foot of the application and same is further supported by the affidavit of Joseph Kinyuru Mbugua sworn on the October 28, 2022.
 3. Upon being served with the named application, the Defendants/Respondents filed Grounds of opposition dated the November 16, 2022, as well as a Replying affidavit sworn on the 2November 2, 2022. For clarity, the Replying affidavit has been sworn by the 3rd Defendant/Respondent, albeit on behalf of the rest of the Defendants/Respondents.
 4. Nevertheless, it is imperative to point out that when the subject application came up for hearing, the Parties herein agreed to canvass and dispose of same by way of written submissions.



5. Consequently, the court proceeded to and circumscribed the timeline for the filing and exchange of the written submissions. For coherence, both Parties thereafter duly complied and filed their respective submissions.
6. Be that as it may, I beg to point out that the Plaintiffs/Applicants filed written submissions dated the November 24, 2022, whilst the Defendants/Respondents filed their written submissions on the December 8, 2022.
7. For completeness, the two sets of written submissions forms part and parcel of the record of the court and same shall be taken into account whilst crafting the instant Ruling.

Submissions By The Parties

- a. Plaintiffs'/applicants' Written Submissions:
 8. The Plaintiffs/Applicant filed their written submissions on the November 24, 2022 and same have highlighted four pertinent issues for due consideration and determination.
 9. First and foremost, the Plaintiffs/Applicants have submitted that though there was a previous suit, namely, ELC N0 1314 of 2013, which was heard and determined vide Judgment rendered on the July 19, 2022, the Plaintiffs/Applicants herein were however not Parties to the said suit.
 10. Owing to the fact that the Plaintiffs/Applicants were not Parties to the said suit, counsel for the Applicants have contended that the Provisions of Section 34 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya, therefore does not affect the subject suit, either in the manner contended by the Defendants/Respondents or at all.
 11. In any event, counsel has further submitted that the Plaintiffs/Applicants herein were similarly not Parties to ELC No 623 of 2009 (OS), which had been filed by another set of Plaintiffs, allegedly for and on behalf of the members of Mwohozi Cooperative Society.
 12. Furthermore, counsel for the Plaintiffs/Applicants have further contended that the provisions of Section 34 of the *Civil Procedure Act*, could only apply if the Plaintiffs/Applicants have been Parties to the two named suits or if, the previous suit had been filed and defended by their representatives, which was not the case.
 13. In support of the submissions pertaining to and concerning the import and tenor of Section 34 of the *Civil Procedure Act*, counsel for the Applicants has cited and quoted various decisions inter-alia, *Richard Boko Chacha & 3 Others versus Linus Kai Kai & Another (2021)eKLR*, *Rosaline Violet Akinyi versus Celestine Opiyo Wagwau (2020)eKLR*, *Brian Muchiri Waihenya versus Jubilee Hauliers Ltd & Another; Geminia Insurance Company Ltd (Interested party) (2018)eKLR* and *Kuronya Auctioners versus Morris O Othoch & Another (2003)eKLR*.
 14. Secondly, counsel for the Plaintiffs/Applicants has also contended that even though ELC NO 623 of 2009 (OS) was alleged to have been filed for and on behalf of the members of Mwohozi Cooperative Society, it has not been Shown that the Plaintiffs/Applicant were members of the said Cooperative Society, if at all and whether, same consented to the filing of the said suit.
 15. Thirdly, it has been submitted that the issue as to whether or not the Plaintiffs who filed and lodged the previous proceedings vide ELC No 623 of 2009 (OS) were representatives of the current Plaintiffs/Applicants, is a question of evidence which can only be determined and adjudicated upon during the plenary hearing and not in the manner proposed or alluded to by the Defendants/Respondents.



16. Fourthly, counsel for the Plaintiffs/Applicants has also contended that the issue of Res-Judicata can also not apply or be invoked in respect of the subject matter insofar as the previous proceedings, namely, ELC No 623 of 2009 (OS), was a claim for adverse possession against named parties, who at the material point in time were the registered owners and proprietors of the suit property.
17. At any rate, counsel for the Plaintiffs/Applicants has added that the Defendants/Respondents herein merely applied to be joined into ELC No 623 of 2009 (OS), but no claim for adverse possession was ever mounted against same, in any manner whatsoever.
18. Premised on the foregoing, counsel for the Plaintiffs/Applicants has therefore contended that it would be inappropriate to contend that the issues raised in the subject suit are Res-judicata.
19. In support of the foregoing submissions, counsel has invited the court to take cognizance of the decision in the case of *William Kiprono Towet & 1597 Others versus Pharmland Aviation Ltd (2016)eKLR* and *John Florence Maritime Services Ltd & Another versus Cabinet Secretary Transport & Infrastructure & 3 Others (2015)eKLR*.
20. Finally, counsel for the Applicants have submitted that it is incumbent upon the court to entertain and adjudicate upon the dispute placed before same, without undue regard to procedural technicalities. For clarity, counsel invoked and relied on the provisions of Article 159 2(d) of the *Constitution*, 2010.
21. Furthermore, counsel for the Applicants also drew the attention of the Honourable court to the holding of the Supreme Court in the case of *Raila Odinga & Another Versus Independent Electoral and Boundaries Commission & 4 Others, Supreme Court Petition Number 5 of 2013 (2013)eKLR*.
22. In view of the foregoing, counsel for the Plaintiffs/Applicants invited the court to find and hold that sufficient basis has been established to warrant the issuance of the named orders contained and enumerated on the face of the application dated the October 28, 2022.
 - b. Defendants'/respondents' Submissions:
23. On his part, counsel for the Defendants/Respondents filed written submissions dated the December 8, 2022 and same has raised and amplified three issues for consideration and determination.
24. For coherence, the 1st issue that has been raised and amplified by counsel for the Defendants/Respondents touches on and concerns the application and relevance of Section 34 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.
25. It has been contended that the Plaintiffs herein were part and parcel of the Plaintiffs who had hitherto filed ELC NO 623 of 2009 (OS), which suit was consolidated and heard together with ELC No 1314 of 2013.
26. On the other hand, counsel for the Defendants/Respondents has further submitted that ELC NO 623 of 2009 (OS) was contended and stated to have been filed for and on behalf of all the illegal occupants of the suit property and thus same embodied and included the current Plaintiffs/Applicants.
27. Premised on the foregoing, counsel for the Defendants/Respondents has therefore urged the court to find and hold that the Plaintiffs/Applicants herein cannot now seek to challenge or impugn the proceedings and the resultant orders issued in the previous suit, by filing a new suit or at all.
28. In any event, counsel for the Defendants/Respondents has submitted that the nature of reliefs sought at the foot of the current application touches on and concerns the Judgment which was issued in ELC NO 1314 of 2013 and hence, the reliefs therein can only be procured and obtained if at all, in the said suit.



29. The second issue that has been raised and amplified by counsel for the Defendants/Respondents relates to the fact that the Judgment which was rendered by the court in respect of ELC NO 1314 of 2013, as consolidated with ELC No 623 of 2009 (OS), was a Judgment in Rem.
30. Based on the foregoing, counsel has submitted that the impugned Judgment therefore binds and affects all and sundry, including the Plaintiffs/Applicants who are in illegal occupation of the suit property.
31. To this end, counsel for the Defendants/Respondents has invited the court to take cognizance of the provisions of Section 44 of the Evidence Act Chapter 80 Laws of Kenya, as pertains to the meaning and import of a Judgment in Rem.
32. Thirdly, counsel for the Defendants/Respondents has submitted that the claim by and on behalf of the current Plaintiffs herein was deliberated and adjudicated upon by the court in terms of the Judgment delivered vide ELC 1314 of 2013, as consolidated with ELC No 623 of 2009 (OS).
33. In view of the foregoing contention, counsel has added that it would therefore not be appropriate for the Plaintiffs/Applicants herein to re-litigate the same issues of adverse possession, which the court has hitherto entertained and determined.
34. In support of the submissions pertaining to the doctrine of Res-judicata, counsel for the Defendants/ Respondents has invoked and relied upon the holding of the Supreme court in the case of John Florence Maritime Services Ltd & Another v Cabinet Secretary, Transport and Infrastructure & 3 Others (2013)eKLR.
35. Further and in addition, counsel for the Defendants/Respondents has also submitted that the Plaintiffs/Applicants herein are not genuine Litigants, but same are part and parcel of the previous Plaintiffs, in respect of ELC NO 623 of 2009 (OS).
36. In this regard, counsel for the Defendant/Respondent has submitted that the Plaintiffs/Applicants herein have merely filed the subject suit to defeat the Judgment which was issued vide ELC NO 1314 of 2013 and by extension to obstruct the current Defendants, (who are the Decree Holders) from enjoying the fruits of the Judgment issued by the court).
37. Finally, counsel for the Defendants/Respondents has submitted that even on the basis of *Giella v Cassman Brown & Company Ltd (1973) EA*, the Plaintiffs/Applicants herein have neither established nor proved the existence of a prima facie case with overwhelming chances of success, to warrant the grant of the orders of Temporary injunction, either as sought or at all.
38. In support of the various submissions mounted by and on behalf of the Defendants/Respondents, counsel has cited and relied on various cases inter-alia *Kimani Wanyoike versus Electoral Commission of Kenya & Another (1995)eKLR*, *John Florence Maritime Services Ltd & Another versus Cabinet Secretary, Transport and Infrastructure & 3 Others (2013)eKLR*, *Fatuma A Chamkono & 40 Others v District Commissioner, Msambueni District & Another; EMFIL Ltd (2013)eKLR* and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others (2003)eKLR*.

Issues For Determination:

39. Having reviewed the Application dated the October 28, 2022, together with the supporting affidavit thereto, as well as the Grounds of opposition and the Replying affidavit filed on behalf of the Defendants/Respondents; and upon considering the written submissions filed by the Parties, the following do arise and are thus germane for determination;



- i. Whether the issue raised vide the subject Application are barred and prohibited by dint of Section 34 of the *Civil Procedure Act*, chapter 21 Laws of Kenya.
- ii. Whether the Honourable court is seized of the Jurisdiction to grant the Reliefs sought on the face of the instant application or better still whether the grant of such reliefs shall be tantamount to impugning the proceedings and Judgment issued by a court of coordinate jurisdiction.
- iii. Whether the Plaintiffs/Applicants have established a basis to warrant the grant of an order of Temporary Injunction, either in the manner sought or at all.

Analysis And Determination

Issue Number 1

Whether the issue raised vide the subject application are barred and prohibited by dint of Section 34 of the *Civil Procedure Act*, chapter 21 Laws of Kenya.

40. The Plaintiffs/Applicants herein contend that this honourable court entertained and adjudicated upon a separate and distinct suit, namely, ELC No 1314 of 2013 and thereafter the court proceeded to and rendered a Judgment on the July 19, 2022.
41. Furthermore, the Plaintiffs/Applicants have averred and deponed that the Judgment of the court which was issued vide the named suit only touched on and affected a portion of the suit property belonging to Dinah Muthoni, now Deceased and not the portion belonging to the mother of David Gitau Mbuthia.
42. Be that as it may, the Plaintiffs/Applicants have proceeded to and contended that despite the fact that the Judgment of the court only relates to a portion of the suit property, the Defendants/Respondents herein are now keen to execute and enforce the Judgment as against the Plaintiffs/Applicants, who are not in occupation of the impugned portion of the suit property.
43. On the other hand, the Defendants/Respondents have contended that the Judgment which was issued in respect of ELC No 1314 of 2013, as consolidated with ELC No 623 of 2009 (OS) touched and concerned the entirety of the suit property and not otherwise.
44. From the foregoing and more particularly the averment by the Plaintiffs in terms of paragraph 17 of the affidavit in support of the current Application, what becomes apparent and evident is that the Plaintiffs/Applicants herein are challenging the execution, satisfaction and implementation of the Judgment and decree which was issued by the court.
45. On the other hand, it is also important to recall that the Plaintiffs/Applicants herein acknowledged and confirmed that there had been a previous suit, namely, ELC No 623 of 2009 (OS), which had been filed by a group of persons occupying the suit property.
46. Nevertheless, the Plaintiffs/Applicants have hastened to and added that same were not part of the group who had hitherto filed and mounted ELC No 623 of 2009.
47. Notwithstanding the foregoing, it is not lost on this honourable court that ELC No 623 of 2009 (OS), was stated to have been filed on behalf of Mwohozi Cooperative Society, which indicated to comprise of all the illegal occupants of the suit property.



48. At any rate, during the hearing of ELC No 623 of 2009 (OS), which was consolidated with ELC NO 1314 of 2013, the Plaintiffs in the said suit contended that same were acting for and on behalf of all the illegal occupants/squatters occupying the suit property.
49. Consequently, the question that now arises is whether or not the current Plaintiffs/Applicants were duly represented by the Plaintiffs/Applicants in ELC NO 623 of 2009 (OS), which was consolidated with ELC NO 1314 of 2013.
50. Additionally, the incidental question that will also arise is which court is mandated to ascertain and determine whether the previous Plaintiffs' were Representative of the current Plaintiffs herein, or otherwise.
51. In my humble view, the issues which have been raised by the current Plaintiffs/Applicants, touch on and concern execution, satisfaction, Discharge and implementation of the Judgment and decree of the court which was issued vide ELC NO 1314 of 2013.
52. Furthermore, the issue as to whether or not the Plaintiffs in ELC NO.623 of 2009 (OS), were representatives of the current Plaintiffs/Applicants can only be determined vide the previous suit and not the current suit.
53. Based and premised on the foregoing, I am of the considered view that the provisions of Section 34 of the Civil Procedure Act, Chapter 21 Laws of Kenya, do apply to and are relevant in respect of the subject suit.
54. For completeness, it is appropriate to reproduce the provisions of Section 34 of the Civil Procedure Act, Chapter 21 Laws of Kenya. In this regard, same are reproduced as hereunder;

34. Questions to be determined by court executing decree

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
- (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
- (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

55. My reading of the said provision, drives me to the conclusion that where there is a dispute, as indeed there is herein, whether the previous Plaintiffs were representatives of the current Plaintiffs herein or otherwise, same can only be determined by the court executing the decree in the previous suit and not vide a new suit.



56. To buttress the foregoing analysis, it is imperative to take cognizance of the decision of the Court of Appeal in the case of *Kuronya Auctioneers versus Morris O Odhoch & Another* (2003)eKLR, where the court observed and stated as hereunder;

' In his first ground of appeal the auctioneer takes issue with the learned Judge that he erred in failing to find that Maurice's suit was barred by Section 34 of the *Civil Procedure Act*, which section reads as follows: -

'34(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a Party, such question shall, for the purposes of this section, be determined by the court.'

Section 34 allows the parties to a suit in which the decree was passed to have determined, in that suit, all questions relating to execution, discharge or satisfaction of the decree.

57. My reading and understanding of the provisions of Section 34 of the *Civil procedure Act*, coupled with the holding of the court of appeal in the decision (supra) drives me to the conclusion that the issues raised at the foot of the current the Application herein are issued that belonged to and fall within the purview of the previous suit, which was heard and determined.

58. In view of the foregoing consideration, I find and hold that the instant suit the Application, is clearly intended to invite the Honourable Court to deal with issues that belong elsewhere.

Issue Number 2

Whether the Honourable court has Jurisdiction to grant the Reliefs sought on the face of the instant Application or better still, whether the grant of such reliefs shall be tantamount to impugning the proceedings and Judgment issued by a court of coordinate Jurisdiction.

59. Other than the finding and holding that the issue raised vide the subject application are barred and prohibited by dint of Section 34 of the *Civil Procedure Act*, there is yet another perspective that merits discussions and deliberation.

60. For completeness, the perspective alluded to herein touches on and concerns whether this honourable court can issue and grant reliefs whose net effects are to impugn, impeach or otherwise negate the terms of the Judgment and decree of a court of coordinate/concurrent Jurisdiction.

61. In this regard, it is worthy to recall that what the Plaintiffs/Applicants herein are seeking, are orders which are meant to impugn and impeach a valid Judgment and decree issued vide ELC NO 1314 of 2013 as consolidated with ELC NO 623 of 2009 (OS).

62. In my humble view, if the Plaintiffs/Applicant herein had filed the current application in the previous suit, namely, ELC NO 1314 of 2013 as consolidated with ELC NO 623 of 2009 (OS), the court therein would be at liberty to consider whether or not to grant the orders of stay or temporary injunction, depending on the set of facts and circumstances pleaded.



63. However, it does not lie within the mandate of this Honourable court to seek to and grant orders of stay/temporary injunction, whose net effect is to impugn the proceedings, Judgment and decree which were lawfully and legally issued elsewhere.
64. To my mind, to do so would be tantamount to this court seeking to superintend or supervise the work and decision of a Court of a concurrent/coordinate jurisdiction. For clarity, such kind of action would be inimical to and in contravention of the Rule of law and General Administration of Justice.
65. On the other hand, to grant orders in the manner sought vide the current application, would also be tantamount or akin to usurping the powers that belongs to the Judge who dealt with and handled the previous suit.
66. Owing to the foregoing, I am afraid that the invitation by and at the instance of the Plaintiffs/Applicants herein constitutes a veiled attempt to defeat the lawful Judgment and decree issued elsewhere, albeit through the back door.
67. In this respect, I am inspired and duly guided by the ratio decidendi of the Court of Appeal in the case of *Bellevue Development Company Ltd v Francis Gikonyo & 7 others [2018] eKLR*, where the court stated and observed as hereunder;

' In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of the Constitution in these terms;

'The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.'

The learned Judge reasoned, correctly in my view, that an enquiry into the complaints in the Appellant's petition against the Judges called upon him to determine the lawfulness or good faith basis of both their decisions and their conduct, and he could not purport to arrogate to himself the power to review their decisions over which he had no authority. Such an undertaking would have been a plain nullity as had been stated by this Court in *Peter Ng'ang'a Muiruri Vs Credit Bank Ltd & 2 Others Civil Appeal No 203 of 2006* which the learned Judge cited.

68. Whereas the fore-cited decision touched on and or concerned a situation where a Judge of the High Court was called upon to impugn, impeach and interrogate the propriety or otherwise of a decision of another High court Judge, the reasoning therein does apply to the instant case, mutatis mutandis.
69. Needless to point out that the reliefs sought vide the current application are intended to impeach, impugn or better still to suspend the Judgment issued elsewhere. Quite clearly, such a process is not acceptable to the obtaining jurisprudence.
70. In short, I come to the conclusion that this court is not seized of the mandate, competence and by extension the jurisdiction to grant the reliefs sought on the face of the current application and to do so would be akin to superintending/supervising proceedings in a separate and distinct file/matter.



Issue Number 3

Whether the Plaintiffs/Applicants have established a basis to warrant the grant of an order of Temporary injunction, either in the manner sought or at all.

71. The Plaintiffs/Applicants herein are aware of, nay alive to the fact that the acts complained of arose from and are predicated upon a Judgment and decree of a court of competent jurisdiction. For clarity, that much is apparent from the face of the depositions of the Plaintiffs/ Applicants.
72. Despite being aware of the proceedings culminating into the impugned Judgment, the Plaintiffs/ Applicants have neither chosen to challenge the said judgment nor to stay same in the named suit.
73. Nevertheless, the Plaintiffs/Applicants herein have instead chosen to file a completely new suit and to seek for inter-alia, orders of temporary injunction to avert and abate the implementation of the Judgment issued elsewhere.
74. In my humble view, the question that arises and thus deserving of determination is whether and order of temporary injunction can issue to restrain and or prohibit the execution of a lawful Judgment, which has not been challenged vide Review, or Appeal, in the manner prescribed by the Law.
75. Additionally, it would also be imperative to discern whether an order of temporary injunction can issue by one judge of the same court sitting in a different matter, with a view to affecting execution in a separate and distinct file. For coherence, that is the import of the current Application.
76. Whilst dealing with the second issue herein, I expressed my doubts about the competence of the application and the reliefs sought thereunder.
77. Without repeating myself, I beg to reiterate that the orders or temporary injunction, which are being sought herein cannot lawfully issue and or be granted, with a view to restraining the execution of lawful Judgment and decree, which has neither been appealed against nor reviewed.
78. In a nutshell, it is my considered view that the Plaintiffs/ Applicants herein, have neither raised nor established a Prima Facie case, with the requisite probability of success.
79. Besides, I am also of the opinion that the orders of temporary injunction that have been sought vide the current Application, are similarly misconceived and legally untenable.

Final Disposition:

80. In my considered view, the issues that have been raised by the Plaintiffs/Applicants vide the Notice of Motion dated the October 28, 2022, have not established a Prima facie case, with probability of success.
81. Consequently and in the premises the said application (dated the October 28, 2022), is devoid of merits and thus same be and is hereby Dismissed with costs to the Defendants/Respondents.
82. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JANUARY 2023.

OGUTTU MBOYA

JUDGE

In the Presence of;

Benson - Court Assistant.



Ms. Agnes Ndunda for the Plaintiffs/Applicants.

Ms Ondече h/b for Mr. Lawrence Mbabu for the Defendants/Respondents.

