



**Gaita v Kanyingi; Belgravia Services (K) Limited (Interested Party) (Environment & Land Case E424 of 2021) [2023] KEELC 16163 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16163 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E424 OF 2021**

**JO MBOYA, J  
MARCH 2, 2023**

**BETWEEN**

**JOHN MAHINDA GAITA ..... PLAINTIFF**

**AND**

**MARTIN NG'ANG'A KANYINGI ..... DEFENDANT**

**AND**

**BELGRAVIA SERVICES (K) LIMITED ..... INTERESTED PARTY**

**RULING**

**Introduction and Background**

1. Vide Notice of Motion Application dated the 20<sup>th</sup> January 2023, the Defendant/Applicant has approached the Honourable court seeking for the following reliefs;
  - i. this Application be certified as urgent.
  - ii. That this Honourable Court be pleased to set aside the Judgment entered against the Defendant on (sic) 23<sup>RD</sup> September, 2023.
  - iii. That the Defendant be granted unconditional Leave to defend this suit.
  - iv. That costs be provided for.
2. The instant application is premised and anchored on the various grounds that have been captured at the foot of the application. Besides, the application is supported by the affidavit of the Defendant/Applicant sworn on even date.
3. Upon being served with the instant application, the Plaintiff/Respondent responded thereto vide Replying affidavit sworn on the 20<sup>th</sup> February 2023, and in respect of which, the Plaintiff/Responded



has stated inter-alia, that the Defendant/Applicant herein was duly served with the Plaint and summons to enter appearance; and hence the instant application, constitutes an attempt to obstruct, delay and/or otherwise defeat the due process of the court.

4. On the other hand, it is appropriate to state and underscore that the Interested Party herein has neither filed any Grounds of opposition nor a Replying affidavit to and in respect of the instant application.
5. Be that as it may, the instant application came for hearing on the 22<sup>nd</sup> February 2023, whereupon the advocates for the respective Parties agreed to canvass and ventilate the application by way of oral submissions.
6. In this regard, the application was duly heard and thereafter reserved for delivery of Ruling.

## **Submissions by the Parties**

### **a. Applicant's Submissions**

7. Learned counsel for the Applicant adopted the grounds at the foot of the application as well as the contents of the Supporting affidavit sworn on the 20<sup>th</sup> January 2023 and thereafter highlighted three pertinent issues for consideration and determination by the Honourable Court.
8. First and foremost, learned counsel for the Applicant submitted that it was incumbent and obligatory upon the Plaintiff/Respondent or his nominated agent to effect service of the Plaint and summons to enter appearance upon the Defendant/Applicant, in accordance with the provisions of Order 5 Rule 8 of the *Civil Procedure Rules*.
9. In particular, learned counsel added that diligent efforts ought to have been taken and put in place to ensure that the Applicant herein was personally and duly served with the court process.
10. Furthermore, learned counsel contended that despite the express and explicit provisions of Order 5 Rule 8 of the *Civil Procedure Rules*, 2010, the Plaintiff/Respondent failed to effect service of the court process, either as required under the law or at all.
11. Premised on the foregoing, learned counsel added that insofar as service was never effected upon the Defendant/Applicant in accordance with the Law or at all, the resultant Judgment was not only irregular, but illegal.
12. Secondly, learned counsel submitted that even though the Plaintiff/Respondent through his nominated process server contends that same served the summons to enter appearance and the Plaint upon the Applicant's Groundsman, no details inter-alia, the name of the purported groundsman or even his cellphone number, were alluded to or contained in the impugned affidavit of service.
13. Additionally, learned counsel submitted that even where the Principal Party, in this case, the Defendant, who was to be served has not been found, the law provides that the serving officer must make various, albeit diligent efforts to effect service.
14. Furthermore, learned counsel added that the impugned affidavit of service, which was relied on by the Plaintiff/Respondent, does not establish or demonstrate whether the serving officer, made any diligent efforts prior to and before purporting to serve (sic) the groundsman.
15. On the other hand, learned counsel further submitted that even where the Party to be served is not available despite diligent efforts, the law only provides for service upon an Adult member of the Family, or an Agent, albeit, duly authorized to receive such service.



16. Based on the foregoing, learned counsel submitted that the person who was purported to have been served, namely, the groundsman, was/is not an adult member of the Applicant's Family.
17. Consequently and in the premises, learned counsel has invited the Honourable court to find and hold that the impugned affidavit of service does not measure up to or accord with the stipulations of the law, as pertains to service of court process.
18. Thirdly, learned counsel for the Applicant has submitted that the Applicant herein has exhibited a Draft Statement of Defense, which demonstrates Bona fide triable issues, capable of being interrogated and investigated by the court during a plenary hearing.
19. In the premises, learned counsel has contended that where a Party has a Defense that raises and displays Bona fide and triable defense, it behooves the Honourable court to set aside the default Judgment and thereby afford the defaulting party an opportunity to be heard on the merits of his/her case.
20. In support of the foregoing submissions, learned counsel has cited and quoted the decision in the case of *Patel v East Africa Cargo Handling Services Ltd* (1974)EA, wherein the meaning, import and tenor of what constitutes a triable defense was discussed and elaborated upon.
21. In a nutshell, learned counsel for the Defendant/Applicant has therefore submitted and implored the Honourable court to exercise the requisite discretion and thereby set aside the default Judgment entered on the 23<sup>rd</sup> September 2022; and thereby afford the Applicant an opportunity to be heard on the basis of the issues contained at the foot of the Draft Statement of Defense.

#### **b. Respondent's Submissions**

22. Learned counsel for the Respondent adopted and relied upon the contents of the Replying affidavit sworn on the 20<sup>th</sup> February 2023; and thereafter highlighted three salient issues for consideration and determination by the court.
23. Firstly, learned counsel for the Respondent submitted that the purposes of an affidavit of service is to prove and demonstrate that indeed service was duly effected upon the Intended Party, in this case, upon the Defendant/ Applicant.
24. Additionally, learned counsel submitted that once it is shown and established that the Intended Party was served or became aware of the intended service, then the affidavit of service has satisfied and achieved its purpose.
25. In this respect, learned counsel therefore submitted that the affidavit of service filed by the named process server has satisfied the requisite ingredients established and provided under the law. Consequently, counsel submitted that the Defendant/Applicant herein was properly and duly served.
26. Secondly, learned counsel has submitted that the issues which have been raised and pointed out by the Applicant, pertaining to the defects and the deficiencies in the affidavit of service, are irregularities, which do not vitiate and/ or otherwise, impugn the affidavit of service.
27. Furthermore, learned counsel for the Respondent contended that the numerous defects, contained in the affidavit of service and which are being relied upon by the Applicant herein are curable by dint of Article 159 (2) (d) of the Constitution 2010.
28. At any rate, counsel further contended that the Applicant herein has neither shown nor demonstrated how the impugned defects, contained in the affidavit of service have prejudiced him or at all. In



this regard, it has been contended that the Applicant herein is merely intent on relying on a undue technicalities to defeat a lawful Judgment of the court.

29. Thirdly, learned counsel for the Respondent has submitted that the Draft Statement of Defense which has been exhibited and annexed by the Applicant herein, does not disclose any bona fide and triable defense, capable of being interrogated by the court in a plenary hearing or at all.
30. In any event, learned counsel has added that the court does not merely exists to set aside a regular Judgment, even where there is no valid Defense capable of being heard by the court. For clarity, counsel submitted that the issues raised and contained at the foot of the Draft Defense are issues which had been ventilated and determined vide a separate suit, namely, ELC No. 412 of 2019.
31. In the premises, learned counsel invited the court to be guided with the principle of finality; and to find and observe that where issues have hitherto been determined with finality, then same ought not to be re-opened for fresh agitation, either in the manner proposed by the Applicant herein or otherwise.
32. Consequently and in view of the foregoing submissions, learned counsel has therefore impressed upon the Honourable court to find and hold that the application beforehand is misconceived , legally untenable; and in any event, same is devoid of merits.

### **Issues For Determination**

33. Having reviewed and evaluated the instant Application, the Supporting affidavit thereto as well as the Replying affidavit filed in opposition thereto; and having considered the submissions ventilated by the advocates for the respective Parties, the following issues do arise and are thus worthy of determination;
  - i. Whether the Defendant/Applicant was duly served with the summons to enter appearance and Plaintiff or otherwise.
  - ii. Whether the resultant Judgment rendered by the Honourable court was a regular Judgment or otherwise and if otherwise, whether same ought to be set aside Ex-Debito Justitiae.
  - iii. Whether the Draft Statement of Defense discloses bona fide and triable issues or otherwise.

### **Analysis and Determination**

#### **Issue Number 1: Whether the Defendant/Applicant was duly served with the summons to enter appearance and Plaintiff or otherwise.**

34. It is common ground that where a suit has been filed and/or lodged against an impleaded Defendant, it behooves the Plaintiff to extract the requisite summons to enter appearance (where appropriate) and thereafter to effect service thereof upon the named Defendant or adverse Party.
35. Furthermore, it is imperative to restate and reiterate that service of court process and in particular, service of summons to enter appearance, is a conscious, intentional and deliberate act, whose purpose is to bring to the attention of the impleaded adverse party that same has indeed been sued before some court of law or tribunal.
36. In any event, it is the deliberate and intentional service of the requisite summons to enter appearance or relevant court process, that will provoke the responses from the adverse party. Clearly, before the adverse party is duly served with the requisite summons to enter appearance or court process, it is inconceivable to expect the adverse Party to take any responsive steps in a matter that same is unaware of .



37. In view of the foregoing observation, there is no gainsaying that service of summons to enter appearance occupies a critical and central position in the process of the court; and hence same is integral to the exercise of Jurisdiction by the court.
38. To underscore the importance of service of summons to enter appearance, it is worthy to take cognizance of the holding of the Court of Appeal in the case of *Equatorial Commercial Bank Limited v Mobansons (K) Limited* [2012] eKLR, where the Honourable court and stated as hereunder;
- “....We begin by stating that in our judicial system issuance and service of summons is an important procedural regime which has an impart on justice. Ours is an adversarial system of law. A notice of the claim (“Plaint” as is called in our system) is prescribed to be served on the defendant by way of summons which is a document issued by the court to call upon the defendant to submit to the jurisdiction of the court and bring forth his side of the case, so that the court, after hearing both sides, can determine the matter. The salient principle of law that “No one shall be punished or prejudiced unheard” has led the Rules Committee to make comprehensive provisions vide Order 5 of *Civil Procedure Rules*. No doubt that those provisions are worded in mandatory language by using the word “Shall” and in normal circumstances the court shall give it a strict Interpretation”.
39. In addition and to underscore the significance of service of summons to enter appearance, the Rules committee has promulgated a Comprehensive Code, underlining the steps that ought to be undertaken and complied with in the course of service of summons to enter appearance.
40. In this respect, the Plaintiff herein through his nominated process server was expected to endeavor to and to effect service upon the Defendant in accordance of the provisions of Order 5 Rules 8 of the *Civil Procedure Rules*, 2010.
41. Given the significance of Order 5 Rules 8 of the *Civil Procedure Rules*, 2010, it is therefore appropriate that same be reproduced.
42. For coherence the provisions are reproduced as hereunder;
8. Service to be on defendant in person or on his agent [Order 5, rule 8.]
- (1) Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on the agent shall be sufficient.
- (2) A summons may be served upon an advocate who has instructions to accept service and to enter an appearance to the summons and judgment in default of appearance may be entered after such service.
43. From the foregoing provisions, it is explicit and crystal clear that the impugned summons to enter appearance ought and should have been personally served upon the Defendant/Applicant.
44. In any event, where there was any difficulty to effect service of the summons to enter appearance and the consequential court process upon the Defendant personally, then the law provides a window to be exploited and appropriated by the serving officer.
45. In this respect, the law contains a provision that after the serving officer has made diligent and reasonable attempts to effect service on the named Defendant, but has not been able to do so, then same can resort to and effect service on an adult member of the Defendant’s family.



46. Similarly, and subject to making diligent and reasonable efforts to serve the named Defendant, but upon being unable to effect service personally upon the Defendant, the serving officer is also at liberty to serve an agent of the Defendant, albeit who is duly authorized to receive such service.
47. To this end, the provisions of Order 5 Rules 12 of the *Civil Procedure Rules* are not only relevant but applicable.
48. For ease of reference of Order 5 Rules 12 of the *Civil Procedure Rules* are reproduced as hereunder;
12. Service on agent or adult [Order 5, rule 12.]
- Where in any suit, after a reasonable number of attempts have been made to serve the defendant, and defendant cannot be found, service may be made on an agent of the defendant empowered to accept service or on any adult member of the family of the defendant who is residing with him.
49. Having reproduced and made reference to the provisions cited in the preceding paragraphs, it is now ripe to revert to and consider the contents of the impugned affidavit of service sworn on the 2<sup>nd</sup> March 2022, which forms the basis of the subject application.
50. From the onset, there is no gainsaying that service was never effected upon the Defendant/Applicant personally. For clarity, the serving officer does not aver that same ever met and served the Defendant/Applicant in person.
51. Secondly, the process server states and explains in his affidavit of service that the summons to enter appearance and the consequential Plaintiff were served on the Defendant's/Applicant's groundsman. However, it is worthy to note that no name of (sic) the groundsman has been alluded to at the foot of the affidavit of service.
52. Furthermore, the process server has also not extracted and supplied any other details pertaining to the ground's man who was served. For example, the process server has not pointed out how and on what basis he came to know that the nameless ground's man was an employee of the Applicant.
53. In any event and for good measure, one would also have expected the process server to procure and obtain the cellphone number, if any, of the groundsman, who was purportedly served.
54. Be that as it may, this Honourable court is confronted with an affidavit of service, which is not only economical with the truth, but also deficient in terms of content.
55. Furthermore, it is also not lost on this court that a groundsman is not a member of the Defendant's/Applicant's family. In my humble view, the usage of the word family in the rules denote such adult members who have affinity, nexus and consanguinity with the said Defendant, who is to be served.
56. Essentially, what the law anticipated is that; such adult members of the family would be persons who have a direct relationship with the Defendant to be served and thus bear an obligation to escalate the named court process to the designated person, whilst being alive that such documents/court process may attract adverse consequence.
57. Before departing from this particular perspective, it is also appropriate to state that the groundsman, would similarly not comprise of an agent, duly authorized to receive court service, (sic) on behalf of the Employer.



58. In any event, if the process server sought to contend that the ground's man was an agent duly authorized to receive service, then it behooved the process server to avail or supply evidence of such authority, if any.
59. Be that as it may and from the totality of the analysis contained in the preceding paragraphs, it is difficult to appreciate the contention by the Plaintiff/Respondent that indeed the Defendant/Applicant herein, was duly and properly served.
60. It is also important to underscore that the burden of proving that the Defendant was duly served laid upon the serving officer and where the serving officer has placed before the court a valid affidavit of service, taking into account the provisions of Order 5 Rules 8 and 12 of the *Civil Procedure Rules*, 2010; then the burden shifts to the person disputing service to rebut/controvert the evidence of such service.
61. However, in respect of the instant matter, I have come to the conclusion that the summons to enter appearance and Plaint were neither served upon the Defendant/Applicant nor any adult member of his family, as envisaged under the law.
62. To surmise, there is no evidence to warrant a finding and a conclusion that the Applicant herein was ever served, with the Summons to Enter appearance and Plaint, either in accordance of the law or at all.

**Issue Number 2 ;Whether the resultant Judgment rendered by the court was a regular Judgment or otherwise and if otherwise, whether same ought to be set aside Ex-Debito Justitiae.**

63. Having duly addressed and resolved the question of whether service was duly effected or otherwise and having come to the conclusion that service was never effected, the question that does arise is; what is the legal implication of want/ lack of service on the Judgment of the court.
64. I beg to state that where Judgment is procured and obtained without due and proper service, the resultant Judgment becomes an irregular Judgment, which a court of law is obligated to impugn, impeach and vacate, Ex-Debito- Justitiae.
65. Put differently, the obtaining Jurisprudential position is that where a Judgment has been obtained without service, then the Honourable court has no discretion or at all in setting aside the impugned Judgment. For coherence, the duty and obligation of the court is to set aside such a Judgment as a matter of Right.
66. In this respect, the rich and elaborate Jurisprudence obtains in the holding in the case of *James Kanyita Nderitu v Maries Philotas Ghika & Another* [2016] eKLR where it was held:

“We shall first address the ground of appeal that faults the learned Judge for setting aside the default judgment and consequential orders in the circumstances of this case. From the onset, it cannot be gainsaid that a distinction has always existed between the default judgment that is regularly entered and one, which is irregularly entered. In a regular default judgment, the defendant will have been duly served with summons to enter appearance, but for one reason or another, he had failed to enter appearances or to file defence, resulting in default judgment. Such a defendant is entitled, under Order 10 Rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment, and will take into account such as the reason for the failure of the defendant to file his Memorandum of appearance or defence, as the case may be, the length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer



(see *Mbogo & Another V Shab* (supra); *Patel v EA Cargo Handling Services Ltd* [1975] EA 75, *Chemwolo & Another v Kubende* [1986] KLR 492 and *CMC Holdings v Nzioki* [2004]1 KLR 173).

In an irregular judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside *ex debito justitiae*, as a matter of right. The court does not even have to be moved by a party once it comes to its notice that the judgment is irregular, it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raises triable issue. Or whether there has been inordinate delay in applying to set aside the irregular judgment. The reason why such judgment is set aside as of right, and not as a matter of discretion, is because the party against whom it is entered has been condemned without notice of the allegations against him or an opportunity to be heard in response to those allegations. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See *Onyango Oloo v Attorney General* [1986 – 1989] EA 456). The Supreme Court of India forcefully underline the importance of the right to be heard as follows in *Sangram Singh V Election Tribunal*, Kotch, AIR 1955 SC 664, at 711:

“There must be never present to the mind the fact that ours of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”

67. Duly nourished and guided by the elaborate enunciation of the relevant and applicable principle, ( details in the foregoing decision), it is my humble view that the impugned Judgment, which was entered in the absence of service of summons to enter appearance upon the Defendant/ Applicant, ought to be set aside and/or rescinded.
68. Suffice it to point out that where a Judgment is procured without service, which is central in the process of the court, then such a Judgment is a nullity and no amount of ingenious arguments or explanations can sustain same.
69. I do acknowledge that where a matter has been heard and determined by a court of competent Jurisdiction, it behooves the court in any subsequent proceedings to invoke and adopt the principle of finality.
70. However, as pertains to the subject matter, there is no gainsaying that the issues beforehand have not been determined as between the disputing Parties herein. Consequently, I am unable to appreciate and understand the basis of the Respondent’s advocate submissions that the court ought to apply the principle of finality in respect of this matter.
71. Nevertheless, it is important to reiterate that service is essential and fundamental. Indeed, without service then there is a likelihood that the adverse party would stand condemned without being heard and thus such a process would infringe upon and violate the Right to Fair Hearing. See Article 50(1) of the Constitution.
72. Furthermore, any order that is obtained without due and proper service upon the adverse Party (save for those orders that are provided for to be obtained *ex-parte*) would be a nullity. In this regard, it is appropriate to adopt and reiterate the holding in the case of *Macfoy v. United Africa Co. Ltd* [1961]



3 All ER 1169, where Lord Denning while delivering the opinion of the Privy Council at page 1172 (1) stated and made the following remarks:

73. For clarity, the reverend Judge said:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so.

And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

74. In respect of the second issue herein, I therefore come to the conclusion that the impugned Judgment, which was procured, albeit without due service is thus amenable to be set aside as a matter of Right.

**Issue Number 3; Whether the Draft Statement of Defense discloses Bona Fide and Triable Issues or otherwise.**

75. It is important to underscore that where the court comes to the conclusion that the impugned Judgment was a regular judgment, entered on the basis of due and proper service, then the court is still conferred with the requisite discretion to set aside such a Judgment.

76. For the avoidance of doubt, whilst dealing with a regular Judgment, the court is called upon to exercise his/her unfettered discretion, subject only to the Interests of Justice.

77. Additionally, whilst exercising discretion on whether or not to set aside a regular Judgment (as opposed to irregular judgment), the court would be obliged to venture and consider whether the Applicant has demonstrated the existence of bona fide and triable issues worthy of investigations during a plenary hearing.

78. Indeed the forgoing position was elaborated upon and well-articulated in the ageless holding ( ratio decidendi) contained in the case of *Patel v EA Cargo Handling Services Ltd* (1974) EA 75 at page 76, where the court held as hereunder:

“The main concern of the court is to do justice to the parties, and the court will not impose conditions on itself to fetter the wide discretion given it by the rules. I agree that where it is a regular judgment as is the case here, the court will not usually set aside the judgment unless it is satisfied that there is a defence on the merits. In this respect defence on the merits does not mean, in my view, a defence that must succeed, it means as Sheridan J put it “a triable issue” that is an issue which raises a prima facie defence and which should go to trial for adjudication.”

79. Be that as it may, the considerations which were articulated in the decision (supra), are only applicable in a situation where the impugned Judgment was a regular one, which was procured albeit on the face of due and proper service.

80. Put differently, where the Honourable court finds and holds that the impugned Judgment was irregular (like the one herein) then the question as to whether or not the Applicant has a triable defense or otherwise, does not arise.

81. For the avoidance of doubt, the law does not fathom nay envisage a scenario where Judgment can be entered against a person, without service, (sic) merely because in the eyes of the claimant, the Adverse Party would have no defense anyway.



82. With humility, such is not the position of our adversarial system.
83. Conversely, the obtaining Jurisprudence is to the effect that the Honourable Court is called upon to afford the Adverse Party, the requisite opportunity to be heard, even if, the court would still reach the same decision. In this regard, the maxim goes; hear him/her, even if he/she has nothing to say.
84. In this respect, the holding of the Court of Appeal in the case of *Onyango Oloo v The Attorney General* (1987)eKLR is succinct and apt.
85. For coherence, the Court of Appeal stated and held as hereunder;
- “ A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at: *De Souza v Tanga Town Council* [1961] EA 377 at page 338, letter E-G. “
86. In view of the foregoing, I am not persuaded by the arguments ventilated by learned counsel for the Respondent that the Applicant herein would have no defense, in any event, to the claim for Mesne Profits, at the instance of the Plaintiff.
87. Whatever the case, the Rule of Natural Justice and the Right to Fair Hearing, underscores the necessity to afford the Defendant/Applicant, reasonable and due opportunity and latitude to be heard.
88. In a nutshell, it is my finding and holding that the question of whether or not the Applicant has a bona fide and triable defense to the claim beforehand, is not one of the considerations to be applied and taken into account, where it has been proven that the impugned Judgment was an irregular Judgment.

### **Final Disposition**

89. Having addressed, considered and analyzed the issues that were itemized in the body of the Ruling, it must have become crystal clear that the subject application is meritorious.
90. Consequently and in the premises, the Application dated the 23<sup>rd</sup> January 2023, be and is hereby allowed on the following terms;
- i. The Default Judgment arising out of the Formal Proof and rendered on the 23<sup>rd</sup> September 2022 (and not 23<sup>rd</sup> September 2023 as prophetically indicated in the Application) be and is hereby set aside and/or rescinded.
  - ii. The Defendant/Applicant be and is hereby granted liberty to enter appearance and file a Statement of Defense, if any, and same to be filed and served within 21 days herein.
  - iii. The Plaintiff/Respondent shall be at liberty to file a Reply to Defense if any, and same to be filed and served within 14 days from the date of service of the Statement of Defense.
  - iv. The Parties herein shall thereafter file and exchange the List and Bundle of Documents and all consequential Witness Statements and same to be filed and exchanged within 30 days from the close of Pleadings.
  - v. Costs of the Application shall abide the outcome of the suit.
91. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF March 2023.**



**HON. JUSTICE OGUTTU MBOYA,  
JUDGE**

In the Presence of:

Ms Gachinga h/b for Mr. Collins Namachanja for the Defendant/Applicant

Ms. Gakure for the Plaintiff/Respondent

