



REPUBLIC OF KENYA



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**Chemweno v Kalya & 4 others; Chemweno & 11 others (Interested Parties)
(Civil Case 4 of 2023) [2024] KEHC 4074 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 4 OF 2023**

JRA WANANDA, J

APRIL 26, 2024

**IN THE MATTER OF THE WILLIAM KIPTANUI
CHEMWENO TRUST REGISTERED TRUSTEES**

AND

**IN THE MATTER OF THE TRUSTEES IN THE WILL
OF WILLIAM KIPTANUI CHEMWENO (DECEASED)**

BETWEEN

MAURICE KIPYEGO CHEMWENO.....PLAINTIFF

AND

WILSON KIPLAGAT KALYA.....1ST DEFENDANT

JOHN KIPLAGAT CHEMWENO.....2ND DEFENDANT

AMBROSE KIPKORIR CHEMWENO.....3RD DEFENDANT

PETER KIPNGETICH SAWE.....4TH DEFENDANT

THE WILLIAM KIPTANUI CHEMWENO

REGISTERED TRUST.....5TH DEFENDANT

AND

VERONICA KIMOI CHEMWENO.....1ST INTERESTED PARTY

CYPRIAN RONO.....2ND INTERESTED PARTY

SALINA CHEPKOSGEI WEKESA.....3RD INTERESTED PARTY

JACINTA MURGOR.....4TH INTERESTED PARTY

RAYMOND KIPKOECH CHEMWENO.....5TH INTERESTED PARTY

JUNE CHEPCHUMBA CHEMWENO.....6TH INTERESTED PARTY

YUANITA SUTER.....7TH INTERESTED PARTY



JULIUS KIPTOO CHEMWENO.....8TH INTERESTED PARTY
DENNIS KIBET CHEMWENO.....9TH INTERESTED PARTY
BRENDEN KIPKEMBOI CHEMWENO.....10TH INTERESTED PARTY
CORNELIUS KIGEN CHEMWENO.....11TH INTERESTED PARTY
JUDY CHEMELI CHEMWENO.....12TH INTERESTED PARTY

BETWEEN

MAURICE KIPYEGO CHEMWENO PLAINTIFF

AND

WILSON KIPLAGAT KALYA 1ST DEFENDANT
JOHN KIPLAGAT CHEMWENO 2ND DEFENDANT
AMBROSE KIPKORIR CHEMWENO 3RD DEFENDANT
PETER KIPNGETICH SAWE 4TH DEFENDANT
THE WILLIAM KIPTANUI CHEMWENO REGISTERED TRUST 5TH
DEFENDANT

AND

VERONICA KIMOI CHEMWENO INTERESTED PARTY
CYPRIAN RONO INTERESTED PARTY
SALINA CHEPKOSGEI WEKESA INTERESTED PARTY
JACINTA MURGOR INTERESTED PARTY
RAYMOND KIPKOECH CHEMWENO INTERESTED PARTY
JUNE CHEPCHUMBA CHEMWENO INTERESTED PARTY
YUANITA SUTER INTERESTED PARTY
JULIUS KIPTOO CHEMWENO INTERESTED PARTY
DENNIS KIBET CHEMWENO INTERESTED PARTY
BRENDEN KIPKEMBOI CHEMWENO INTERESTED PARTY
CORNELIUS KIGEN CHEMWENO INTERESTED PARTY
JUDY CHEMELI CHEMWENO INTERESTED PARTY

RULING

1. This Ruling is in respect to a Preliminary Objection.
2. The background of the matter is that by the Originating Summons dated 23/03/2023 and filed through Messrs SOW Advocates, the Plaintiff sought prayers as follows:



- i. That this Honourable Court do order and direct the Trustees of the William Kiptanui Chemweno Trust, being Wilson Kiplagat Kalya, John Kiplagat Chemweno, Ambrose Kipkorir Chemweno, Peter Kipngetich Sawe to account and/or give an account of all transactions undertaken, payments made, funds received, including rental income, and expenditures incurred on behalf of the William Kiptanui Chemweno Trust since 11th November 2020.
 - ii. That this Honourable Court do order and direct the Trustees of the William Kiptanui Chemweno Trust, being Wilson Kiplagat Kalya, John Kiplagat Chemweno, Ambrose Kipkorir Chemweno, Peter Kipngetich Sawe to account and provide a schedule of the Trust's assets.
 - iii. That there be a declaration that Wilson Kiplagat Kalya, John Kiplagat Chemweno, Ambrose Kipkorir Chemweno, and Peter Kipngetich Sawe in their capacity as Trustees of the William Kiptanui Chemweno Trust have failed to adhere to their duties as Trustees of the assets of the William Kiptanui Chemweno Trust thereby diminishing its income and assets.
 - iv. That this Honourable Court do find that Wilson Kiplagat Kalya, John Kiplagat Chemweno, Ambrose Kipkorir Chemweno are, jointly and severally, personally liable to indemnify the William Kiptanui Chemweno Trust for losses and damages suffered and/or incurred by the Trust.
 - v. That there be an order directing all tenants of the William Chemweno Trust, including Cyber, Highway Chemist, Wilchemsons Limited, Karuna Spares and L/L, to pay their rental arrears and keep all rental income and other payments due to the Trust fully paid.
 - vi. That there be a declaration that the interests of the Plaintiff and the Beneficiaries under the William Kiptanui Chemweno Trust would be best served best by the appointment of professional Trustees in terms of Clause 20(iii) of the Will.
 - vii. That Mr. Wilson Kiplagat Kalya, John Kiplagat Chemweno, Ambrose Kipkorir Chemweno and Paul Kipngetich Sawe be replaced as Trustees of the William Kiptanui Chemweno Trust
 - viii. That this Honourable Court do grant such further directions and orders as it may deem fit and necessary.
 - ix. The costs of this Cause be awarded to the Plaintiff.
3. In response, by the Preliminary Objection dated 25/09/2023, later amended on 26/09/2023, and filed through Messrs Kalya & Co. Advocates, the Defendants averred as follows:
- i. That High Court lacks the jurisdiction to hear and determine the Originating Summons by dint of Article 165(5) of the Constitution of Kenya for the following reasons.
 - ii. That the first issue to deal with is the jurisdictional question of the High Court to deal with the matter and the question comes; does the instant Originating Summons come within the purview of the High Court as contemplated under Article 165(3) (a) of the Constitution of Kenya, 2010.
 - iii. That the High Court lacks jurisdiction over the same matter since the subject matter is the properties vested in the 5th Defendant with specific emphasis to use, management, planning, administration and occupation of, and the title to land for the properties as hereunder particularized.



- a. Eldoret Municipality Block 7/33 measuring 0.0697 Ha and Eldoret Municipality Block 7/34 measuring 0.0678 Ha by the 2nd and 3rd Defendants and the 5th and 8th Interested Party.
 - b. Irong/Iten/1, Irong/Iten/2, LR No 6676/2 measuring 109.4 Ha (Kamalan Farm).
 - c. The 1st-4th Defendants' land use, land administration, land management and title, tenure and contracts and choses in action or other instruments granting any enforceable interest in land vested in the 5th Defendant contemplated in Section 13 of the Environment and Land Court No 18 of 2011.
 - d. Article 165(3)(a) of the Constitution of Kenya, 2010 expressly excludes from the jurisdiction of the High Court issues related to land use and occupation of, and the title to land.
 - e. The Plaintiff ought to institute the suit before the Environment and Land Court therefore the Plaintiff's move to the High Court is contrived, crafted or innovated and lacks legal basis pursuant to Article 162(2)(b) of the Constitution of Kenya and Section 13 of the Environment and Land Court No 18 of 2011.
- iv. That the Plaintiff is advancing allegations of land use, land planning, land administration and management before the High Court. Article 165(3)(a) of the Constitution of Kenya 2010 envisages that not all matters lie to the High Court. Only those causes of action not related with, and to land use, land administration, land management and title, tenure and contracts and choses in action or other instruments granting any enforceable interest in land. It is not mere allegations in pleadings by a party, as is the case herein, that clothes the High Court with the attributes of the Environment and Land Court.
 - v. That the mere reference to the provisions of the Trustees Act and Order 31 of the Civil Procedure Rules, 2010 does not trigger the jurisdiction of the High Court. For the Defendant's part, none of the issues raised by the Plaintiff in the Originating Summons revolve around issues that the High Court has jurisdiction to dispose.
 - vi. That the Plaintiff lacks the locus standi to enjoin the Interested Parties sui moto without leave of the Hon. Court by virtue of Order 31 Rule 1 of the Civil Procedure Rules, 2010.
 - vii. That the Originating Summons dated 23-03-2023 falls squarely within the ambit of Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court No 18 of 2011. Consequently, the High Court is not clothed with the requisite jurisdiction to entertain the Originating Summons dated 23-03-2023. The Originating Summons herein is thus for striking out for want of jurisdiction.
 - viii. That the Plaintiff has failed to establish a foundation for the lodgement of the Originating Summons in the High Court as the High Court of Kenya sitting at Eldoret jurisdiction was not properly invoked.
 - ix. That the Court has in the past signalled the need to exercise caution in admitting cases, as a safeguard for the exercise of their proper jurisdiction by other Courts and tribunals. This Court has held time and again that it must exercise its powers strictly within the jurisdictional limits prescribed and it will be perverse for the High Court to assume jurisdiction which by law is reposed in the Environment and Land Court.



- x. That the Plaintiff lacks the locus standi to commence a suit or claim against any party seeking to enforce contracts between the 5th Defendant and third parties.
 - xi. That the Defendants raise the above points of law pursuant to Order 2 Rule 9 of the [Civil Procedure Rules](#).
 - xii. That the High Court of Kenya jurisdiction is donated from the [Constitution](#) or the statute law or from a rule created on the basis of law. The Plaintiff's invocation of the High Court inherent powers is totally misconceived and otiose. The High Court's original jurisdiction and inherent powers are limited.
4. From its length alone, it is evident that though titled "Preliminary Objection", the above sounds more like substantive written Submissions rather than a simple notice as contemplated under the procedure. I also find the same too verbose and unnecessarily repetitive. It could have been easily abridged and some brevity breathed into it.

Hearing of the Preliminary Objection

5. It was agreed and I directed that the Preliminary Objection be canvassed by way of written Submissions. Pursuant thereto, the Defendants filed their Submissions on 18/10/2023 while the Plaintiff filed on 8/12/2023.

Defendant's Submissions

6. On the need for the Court to ensure that it possesses jurisdiction to handle a matter, Counsel for the Defendant cited the case of [Benson Ambuti Adega & 2 others v Kibos Distillers Limited & 5 others](#) [2020] eKLR, and also the Supreme Court cases of [R v Karisa Chengo](#) [2017] eKLR and [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR. On the suitability of the issue of jurisdiction being raised as a Preliminary Objection, Counsel cited the case of [Mukisa Biscuits Manufacturing Ltd v West End Distributors](#) (1969) EA 696.
7. Counsel then recounted the matters already set out in the body of the Preliminary Objection. I will not therefore recite the same. She then cited the case of [Boniface Waweru Mbiyu v Mary Njeri & another](#) [2005] eKLR, Supreme Court of Kenya Civil Application No 11 of 2016 [Hon. Lady Justice Kalpana H. Rawal v Judicial Service Commission & others](#) and also [BWM v JMC](#) (2018) eKLR.
8. Counsel also referred to the case of [Re Sir Lindsay Parkinson & Co. Ltd's Trust Deed, Bishop & others v Smith & another](#) [1965] 1 AER 609 and appears to have introduced a fresh kind of objection, namely, that it is inappropriate to commence a suit of the nature herein through Originating Summons.

Plaintiff's Submissions

9. In response, Counsel for the Defendant termed the Preliminary Objection as a delaying tactic. He then cited the case of [Mukisa Biscuits Manufacturing](#) (*supra*) and submitted that the Preliminary Objection does not raise a pure point of law since the facts pleaded require to be ascertained, and that a pure point of law is one which is not be ascertained from the facts of the case but from which it is assumed that the facts are correct.
10. On the issue of jurisdiction, Counsel submitted that the Preliminary Objection is based on a deliberate misapprehension that because the Trustees are managing various properties and assets, including land, then any prayers seeking reliefs against them must be referred to the Environment and Land Court, that while the Defendants quote Article 162(2)(b) of the [Constitution](#), they do not provide details of



how the Plaintiff's prayers in the Originating Summons relate to "the environment and the use and occupation of, and title, to land" or which law permits the Environment and Land Court to grant such prayers, that none of the prayers seek for remedies that can be provided by the Environment and Land Court, that Article 165(3)(a) of the *Constitution* sets out the jurisdiction of the High Court by providing that it shall have "unlimited jurisdiction in criminal and civil matters", that the express grant of jurisdiction to the High Court cannot be taken away except with clear and express words of the *Constitution*. He cited the case of In *Dr. Selina Vukinu Ambe v Ketan Shashikant Khatri* Nrb HCCC No 171 of 2018 [2020] eKLR.

11. Counsel submitted further that this matter relates to a Trust, that Section 2 of the *Trustee Act*, Cap. 167 provides that "Trust" does not include the duties incident to an estate conveyed by way of mortgage but extends to implied and constructive trusts and to cases where the trustee has a beneficial interest, that Section 2 of the *Trustees Act* provides that "Court" means the "High Court", that the prayers sought are for orders of accounts and transparency with regard to the Trust which is akin to the duties of a personal representative under Section 83 of the *Law of Succession Act*, that in fact, the Plaintiff is a cestui qui trust (a beneficiary of the Trust). He then cited the case of *Albert Kigera Karume & 2 others v Kung'u Gatabaki & Margaret Nduta Kamithi (sued as trustees of the Njenga Karume Trust) and 5 others* [2015] eKLR.
12. Counsel contended further that Section 2 of the *Civil Procedure Rules* provides that "suit" means "all civil proceedings commenced in any manner prescribed", that suits arising from issues related to "Trusts" are prescribed under Order 37 Rule 1 of the *Civil Procedure Rules*, that the prayers sought relate to the mismanagement of trust properties by the Defendants and not to any alleged dispute(s) relating to the ownership of property.
13. In regard to the joinder of interested parties, Counsel submitted that a person can be sued as an interested party as long as the presence of such party is necessary to enable the Court to effectively adjudicate upon and settle all questions involved in a suit and that a party can be added at any time. He cited Order 1 Rule 10(2) of the *Civil Procedure Rules*, Order 41 Rule 5 and also HCCom/628/2015 - *Jamii Bora Bank Ltd v Rapid Communication Ltd, Anwar Majid Hussein & Benson Ndeta Sande*.
14. In conclusion, Counsel cited the fact that the 1st Defendant is a Trustee herein and his law firm also represents the Trustees in this case and that therefore, presumably, the law firm earns legal fees. According to Counsel therefore, the Preliminary Objection is another avenue for delaying and prolonging the case for the benefit of the law firm.

Determination

15. The issue for determination in this matter is whether this Court has the jurisdiction to hear and determine this suit. Before I deal with that issue however, I must first satisfy myself that the challenge raised herein meets the threshold of what should constitute a Preliminary Objection.
16. Counsel for the Defendant termed the Preliminary Objection as a delaying tactic and submitted that the same does not raise a pure point of law since the facts pleaded require to be ascertained. What constitutes a Preliminary Objection was explained in the locus classicus case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, in the following terms:

"...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit."

.....



A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion

17. From my assessment, I find that the issue whether this Court has the jurisdiction to determine this suit is a matter that can be gleaned purely from the pleadings herein alone. I find the same to be a pure point of law and one which does not require to be ascertained from extrinsic facts. I am therefore satisfied that the challenge raised herein fits well within the limits contemplated for what should fall within a Preliminary Objection.

18. Regarding the issue of jurisdiction, in the oft-cited case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, Nyarangi JA held as follows;

“With that I return to the issue of jurisdiction and to the words of section 20(2) (m) of 1981 Act, I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before. Jurisdiction is everything. Without it a court has no power to make one step. Where act has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

19. Similarly, in the case of *Samuel Kamau Macharia and another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No 2 of 2011, the Supreme Court held as follows:

“[68]. A Court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.”

20. It is therefore trite law that the limits of the Court in exercising a particular jurisdiction must be ascertained before the Court can proceed with the matter any further. Regarding the jurisdiction of the High Court, the *Constitution* has elaborately set out the same and provides in Article 165(3) as follows:

- “(3) Subject to clause (5), the High Court shall have —
- (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;



- (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
- (6) The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior Court.”
21. Article 162(2) on the other hand empowered Parliament to “establish Courts with the status of the High Court to hear and determine disputes relating to:
- (a) employment and labour relations; and
 - (b) the environment and the use and occupation of, and title to, land.
22. Article 162(3) thereof then authorized Parliament to “determine the jurisdiction and functions of the Courts contemplated in clause (2).” Pursuant to Article 162(3), Parliament enacted the [Environment and Land Court Act](#), No 18 of 2011. Section 13(1) thereof outlines the jurisdiction of the Environment and Land Court (ELC) as follows:
- “(2) In exercise of its jurisdiction under Article 162(2) (b) of the [Constitution](#), the Court [the ELC] shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
- “(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom



relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.”

23. Article 165(5) then provides that: -

“The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2).”

24. The basis of the Defendants’ Preliminary Objection is that the High Court lacks jurisdiction over this suit because the subject matter is the properties vested in the 5th Defendant with specific emphasis to use, management, planning, administration and occupation of, and the title to land for the properties listed in the Originating Summons. According to the Defendants, the 1st-4th Defendants’ land use, land administration, land management and title, tenure and contracts and choses in action or other instruments granting any enforceable interest in land vested in the 5th Defendant are matters contemplated in Section 13 of the Environmental and Land Court (ELC).

25. In answering the above question, I note the suit herein is expressed to be brought under the Trustee Act, Chapter 167 and alas Order 37 Rule 4 of the Civil Procedure Rules which provides as follows:

“ 1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions

- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
- (b) the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
- (c) the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
- (d) the payment into court of any money in the hands of the executors, administrators or trustees;
- (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
- (f) the approval of a sale, purchase, compromise or other transaction;



(g) the determination of any question arising directly out of the administration of the estate or trust.” [Emphasis mine]

26. Upon assessing the matter, I agree with the Plaintiff that the Preliminary Objection is based on a misapprehension. The Objection presumes that the matter should be placed before the Environment and Land Court simply because amongst the properties and assets managed by the Defendants, as Trustees, includes parcels of land. As submitted by the Plaintiff, I agree that the Defendants have not sufficiently explained or provided any details of how the prayers made in the Originating Summons relate to “the environment and the use and occupation of, and title, to land”. There is also no provision of the law cited as empowering the Environment and Land Court to grant the prayers sought. I have carefully gone through each one of the prayers and I am unable to find any that can be granted under the jurisdiction donated to the Environment and Land Court. To my mind, the prayers sought relate to the alleged mismanagement of trust properties and not to any dispute(s) relating to ownership or land use or occupation.
27. As correctly submitted by the Defendant, the express grant of jurisdiction to the High Court by the Constitution cannot be taken away except with clear and express words of the same Constitution. The objection herein therefore fails.
28. In regard to the joinder of parties as interested parties, my view is that at the time of filing a suit, a Plaintiff is at liberty to join any person as an interested party. At that stage, the Plaintiff does not require the leave of the Court to join any interested party. Once joined, whether or not the presence of such person so joined as an interested party is necessary is a matter that can then be canvassed in the course of the suit filed. To make a determination, the Court will consider whether the person so joined is “a necessary party” whose presence will enable the Court to effectively adjudicate upon and settle all questions involved in the suit.
29. In this case, the Plaintiff cannot therefore be faulted for joining the interested parties herein at the time of filing of this suit. It is only where a suit has already been filed and a person subsequently wishes to be joined as an interested party thereto that he is then required to apply for the Court’s leave under Order 1 Rule 10(2) of the Civil Procedure Rules to be so joined as an interested party. This objection also therefore fails.
30. As aforesaid, the Defendants also, in their submissions, belatedly introduced a fresh kind of objection, namely, that it is inappropriate to commence a suit of the nature herein through Originating Summons. Personally, I do not find any omission or defect or violation of the rules in the filing of this suit through Originating Summons but in any event, no prejudice that may be suffered by the Defendants out of the procedure adopted has been cited.
31. Further, I am of the firm view that the overriding objective in litigation is a policy issue which the Court invokes to obviate hardship, expense and delay and instead, places focus on substantive justice. Apart from the Court’s inherent powers, there is also Article 159(2)(d) of the Constitution of Kenya, 2010, whose introduction changed the way in which Courts operate. By introducing the overriding objective principle in litigation, the Court is now enjoined to consider aspects like the delay likely to be occasioned and the cost and prejudice to the parties when called upon to summarily reject actions. In short, the Court has to weigh one position against another for the benefit of the wider interests of justice before coming to a decision one way or the other. Article 159(2)(d) makes it clear that the Court ought to render justice “without undue regard to technicalities of procedure”. The Court has to therefore weigh the prejudice that is likely to be suffered and before sending away a litigant from the



seat of justice without hearing him on merits. This is how a Court is enjoined to exercise its judicial discretion.

32. In the circumstances, the Defendants' Notice of Preliminary Objection amended on 26/09/2023 is hereby dismissed with costs to the Plaintiff.
33. Directions shall now be taken in respect to the hearing and disposal of the Originating Summons herein.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 26TH DAY OF APRIL 2024

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WANANDA J. R. ANURO

JUDGE

