Case Number:	Environment and Land Case 599 of 2012
Date Delivered:	12 May 2021
Case Class:	Civil
Court:	Employment and Labour Relations Court at Eldoret
Case Action:	Ruling
Judge:	Stephen Murigi Kibunja
Citation:	Samuel K. Rono & 32 others v Joel Komen & 32 others; Hudson Kiptum Kiplagat & another (Applicant) [2021] eKLR
Advocates:	Mr. Momanyi for Plaintiffs. Mr. Kibii for Defendants and Applicants.
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Uasin Gishu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Applications dismissed with costs to the Plaintiffs.
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 599 OF 2012

SAMUEL K. RONO.....1ST PLAINTIFF

KIPRONO KIMENGICH.....2ND PLAINTIFF

KIPROTICH ROP.....3RD PLAINTIFF

CHRISTINE JEPKOSGEI KIPRONO.....4TH PLAINTIFF

DANIEL KIPTOO KANGOGO.....5TH PLAINTIFF

KIPLAGAT CHESUMER.....6TH PLAINTIFF

JANE TERIKI KAPKONG.....7TH PLAINTIFF

WILLIAM KIPTUM LAGAT.....8TH PLAINTIFF

SIOKWEI TAMINING KIPROTICH.....9TH PLAINTIFF

TECLA JESANG CHIRCHIR.....10TH PLAINTIFF

ERICK K. KIPRONO.....11TH PLAINTIFF

DANIEL KIMUTAI CHIRCHIR.....12TH PLAINTIFF

KIPTANUI C. TAMBEI.....13TH PLAINTIFF

EMILY CHEPTOO.....14TH PLAINTIFF

MIRIAM JEMUTAI KOTUT.....15TH PLAINTIFF

CHEBET KOMEN.....16TH PLAINTIFF

JACKSON KIPTUM MOSS.....17TH PLAINTIFF

KOBILO TABARNO KIPSEREM.....18TH PLAINTIFF

SAMUEL KIPROP KIBOWEN.....19TH PLAINTIFF

BETHWEL KIPMWETICH CHEROP.....20TH PLAINTIFF

KIPROTICH MALAKWEN.....21ST PLAINTIFF

WILLIAM KIPSEWERE BIEGO.....22ND PLAINTIFF

KABON BARSOSIO.....23RD PLAINTIFF

EVERLYNE JEPKOECH KIMAIYO.....24TH PLAINTIFF

TABUTANY CHESEREM.....25TH PLAINTIFF

TAPLELEI TERIKI CHEBIY.....26TH PLAINTIFF

JUSTUS K. KUTTO.....27TH PLAINTIFF

WILLIAM B. NGELEL.....28TH PLAINTIFF

SILAH KIPKEMOI KOSGEI.....29TH PLAINTIFF

KIPKOSGEI ARAP KOECH.....30TH PLAINTIFF

LAWRENCE B. TANUI.....31ST PLAINTIFF

SANIAGO C. KIMAIYO.....32ND PLAINTIFF

LABAN KIPROTICH KANGOGO.....33RD PLAINTIFF

VERSUS

JOEL KOMEN.....1ST DEFENDANT

SIRMA KIGEN.....2ND DEFENDANT

PAUL KIPTOO.....3RD DEFENDANT

JOSEPH C. KOSGEI.....4TH DEFENDANT

EMMY CHELIMO.....5TH DEFENDANT

CLEMENT MAIYO.....6TH DEFENDANT

JOSEPH CHEBII.....7TH DEFENDANT

DANIEL KIMUTAI.....8TH DEFENDANT

JOHN K. KIGEN.....9TH DEFENDANT

THOMAS KIMELI ROTICH.....10TH DEFENDANT

JAMES CHEBOI KIPROTICH.....11TH DEFENDANT

SAMUEL KIPLAGAT.....12TH DEFENDANT

KIPTANUI MUSA KATAMEI.....13TH DEFENDANT

SAMUEL TUMO.....14TH DEFENDANT

JOHN SAMOEI.....15TH DEFENDANT

STEPHEN CHEBOI.....16TH DEFENDANT

WILLIAM KIPLAGAT.....17TH DEFENDANT

NICHOLAS CHEBAIGEI.....18TH DEFENDANT

REUBEN KEMBOI KIPLAGAT.....19TH DEFENDANT

KIRWA SAMOEI.....20TH DEFENDANT

JOHN K. KIPROTICH.....21ST DEFENDANT

LEAH KIPRONO.....22ND DEFENDANT

JOHN KIPKOECH MASWAI.....23RD DEFENDANT

ALEX KIPLAGAT KORIR.....24TH DEFENDANT

SAMWEL TOROITICH.....25TH DEFENDANT

JANE KEMBOI.....26TH DEFENDANT

MICAH CHEBOI.....27TH DEFENDANT

WILSON KIPTOO.....28TH DEFENDANT

LEAH BUSIENEI.....29TH DEFENDANT

JOHN K. KIGEN.....30TH DEFENDANT

REUBEN KEMBOI KIPLAGAT.....31ST DEFENDANT

JOSEPH KITUR.....32ND DEFENDANT

JAMES KIPROTICH CHEBOI.....33RD DEFENDANT

AND

HUDSON KIPTUM KIPLAGAT.....1ST APPLICANT

JANE JEPKEMOI LIMO.....2ND APPLICANT

RULING

[NOTICES OF MOTION DATED 18TH JANUARY 2021, 4TH FEBRUARY 2021 AND 15TH FEBRUARY 2021]

1. The Defendants, who are also the Judgment debtors, moved the court through the notice of motion dated 18th January, 2021, seeking for leave for the firm of Limo R. K. & Company Advocates to come on record for them in place of M/s Kipchirchir Komen & Company Advocates; stay of implementation and execution of the judgment delivered on the 2nd March, 2018 pending the hearing and determination of the intended appeal; and costs. The application is based on the ten **(10)** grounds on its face and supported by the affidavit sworn by **Wilson Kiptoo**, the 28th Defendant, on the 18th January, 2021. It is the Defendants' case that they were aggrieved with the judgment delivered on the 2nd March, 2018. That they filed the Notice of Appeal dated 6th March, 2018 and lodged with the Deputy Registrar on the 15th March, 2018. That they also applied for the typed proceedings through the letter dated 7th March, 2018 and continued to follow up with their then Counsel up to 15th January, 2021 when they learnt of the eviction order issued on 3rd December, 2020. That upon enquiring the whereabouts of their advocate, they learnt that the counsel had been admitted at a rehabilitation centre. That they instructed the current Counsel, and upon visiting the registry learnt that M/s Mukabane & Kagunza Advocates had without their instructions filed a notice of appointment dated the 15th March, 2018. That unless their application is granted, their intended appeal will be rendered nugatory. That they are in possession of the suit properties and would suffer irreparably if the judgment is executed. That they are ready and willing to provide reasonable security as the court may deem fit.

2. The application is opposed by the Plaintiffs through the replying affidavit sworn by **Samuel Kiptanui Rono**, the 1st Plaintiff, on the 25th February, 2021. That it is their case that the Counsel immediately on record for the Defendants was M/s Mukabane & Kagunza Advocates, and not M/s Kipchirchir Komen & Company Advocates, and the prayer to replace an Advocate who is not on record cannot be granted. That the Defendants have not met the requisite grounds for stay of execution of the judgment that was delivered three years ago. That the Notice of Appeal and request for proceedings have never been served upon the Plaintiffs' advocates. That the application has been filed after inordinate delay, and is only meant to further delay the enforcement of the eviction order. That the Defendants have been using proxies to make applications in this matter while they do not stand to suffer any prejudice.

3. **Hudson Kiptum Kiplagat** and **Jane Kiptum Kiplagat**, the Applicants, have on their part filed the notice of motion dated the 4th February, 2021 seeking for leave to be joined in this suit as co-defendants; leave to file defence in terms of the draft annexed; variation and or setting aside of the judgment entered in this case and all consequential orders, and costs. The application is based on the fourteen **(14)** grounds on its face and supported by the affidavit sworn by Hudson Kiptum Kiplagat on the 4th February, 2021 and supplementary affidavit by the said Hudson Kiptum Kiplagat and Jane Jepkemoi Limo sworn on the 7th April, 2021. It is the Applicants' case that the Plaintiffs failed to enjoin them in this suit while well aware that they are in occupation of the suit land and now face eviction. That they learnt of the existence of this suit on the 1st February, 2021 from the OCS, Kaptagat who informed them of the eviction order. That they are not proxies of the Defendants who are seeking stay order vide their application dated the 18th January, 2021.

4. The application is opposed by the Plaintiffs through the replying affidavit sworn by **Samuel Kiptanui Rono**, the 1st Plaintiff, on the 25th February, 2021. It is the Plaintiffs' case that though the Defendants and Applicants are represented by the same Advocates, there are contradictions in the applications dated the 18th January, 2021 and 4th February, 2021 on who is actually in possession of the suit properties. That the Applicants in the application dated the 4th February, 2021 are not on the suit properties, that is parcels 1195 and 1208, which the defendants had admitted to be in occupation of during the hearing. That the Applicants are proxies of the Defendants and their application is aimed at frustrating the enforcement of the decree.

5. The Applicants also filed the notice of motion dated 15th February, 2021, seeking for summons for **Jarion Gitonga**, the OCS, Kaptagat Police Station and **Charles Okwanalo**, the sub-County Commissioner, Keiyo South, the Respondents, to show cause why they should not be committed to civil jail for a period of upto six **(6)** months for blatantly disrespecting the court by disobeying the order issued on 4th February, 2021 and costs. The application is based on the six **(6)** grounds on its face and supported by the affidavit sworn by Hudson Kiptum

Kiplagat, the 1st Applicant, on the 15th February, 2021. Their case is that the Court ordered maintenance of status quo on the 4th February, 2021 but the Respondents have been summoning them with a view of requiring that they vacate the suit land. That the Respondents' action amounts to disregarding the said status quo order. That the Respondents had been served with the order, and affidavit of service sworn by **Vincent Otieno Ogutu** on 9th February, 2021 filed. That the Respondents went to the suit land on 8th February, 2021 and required them to vacate but they resisted. That the Respondents further summoned them to appear in their offices on the 12th February, 2021 in disobedience of the Court order, and they are therefore in contempt.

6. The Plaintiffs opposed the application through the replying affidavit sworn by **Bethwel Kipngetich Cherop**, the 20th Plaintiff, on the 2nd March, 2021. It is the Plaintiffs' case that the application is an abuse of the court's process. That before the status quo order was issued, the OCS had visited the suit properties to notify the Defendants of the eviction order, and to require them to vacate voluntarily. That after the status quo order was issued and explained to the parties that it had the effect of suspending the eviction order, the OCS did not do anything that could constitute violation or disobedience of the status quo order. That the sub-county Commissioner, Keiyo South was not on the suit lands on the alleged date and was not present at the OCS offices. That the application is aimed at intimidating the OCS and sub-County Commissioner with an aim of forestalling the expeditious conclusion of the matter.

7. That following directions issued on the 19th January 2021, 15th February 2021, and 1st March 2021, the learned Counsel for the Defendants and Applicants filed a joint written submissions in respect of the Notices of Motion dated the 18th January, 2021 and 4th February, 2021. The learned Counsel also made oral submissions on the 14th April, 2021 in respect of the Notice of Motion dated the 15th February, 2021. The learned Counsel for the Plaintiffs filed their written submissions both dated 26th February, 2021 in respect of the Notices of Motion dated 18th January, 2021 and 4th February, 2021. The learned Counsel opted not to participate in the open court hearing on the 14th April, 2021 of the Notice of Motion dated the 15th February, 2021.

8. The following are the issues for the Court's determination in respect of the three applications;

(a) Whether the firm of M/s Limo R. K. Advocates should be granted leave to come on record for the Defendants in place of M/s Komen Kipchirchir Advocates.

(b) Whether the Defendants have made out a reasonable case for stay of execution of the judgment delivered on 2nd March, 2018 to issue, pending hearing and determination of the intended appeal.

(c) Whether the two Applicants have made a reasonable case for joinder as Defendants at this stage.

(d) Whether the Applicants should be granted leave to file a defence.

(e) Whether the Applicants have made a reasonable case for the judgment delivered on 2nd March, 2018 to be varied and or set aside.

(f) Whether the Applicants have proved that the two named public officers have disobeyed the Court order issued on 4th February, 2021 to maintain status quo.

(g) Who pays the costs in each application"

9. The Court has carefully considered the grounds on each of the three applications, affidavit evidence filed, written submissions by the learned Counsel, the superior courts' decisions cited thereon, the record and come to the following findings;

(a) That the record confirms that M/s Komen Kipchirchir Advocates were on record for the Defendants up to the time of delivery of the judgment on the 2nd March, 2018. That they thereafter filed the Notice of Appeal dated 6th March, 2018 and lodged with the Deputy Registrar on the 15th March, 2018. That indeed, M/s Mukabane & Kagunza Advocates later on filed the Notice of Appointment of Advocate dated the 16th March, 2018 to act for the Defendants, ***"in this suit alongside the firm of M/s Komen Kipchirchir & Company Advocates."*** That clearly shows that M/s Mukabane & Kagunza Advocates' Notice of Appointment was not meant to replace the firm of M/s Komen Kipchirchir Advocates at all. The issue now being raised by the Defendants that M/s Mukabane & Kagunza Advocates filed the notice of appointment without their instructions is a matter between them and the said firm. The court says so as M/s Mukabane & Kagunza Advocates were not served with the relevant applications for them to get the opportunity to address the court on the matter. The Court leaves the matter to the Defendants to follow up and resolve and thereafter, file the appropriate notification in accordance with the law. That in any case, two or more Advocates can represent the same party or parties in a suit in view of **Rule 7 of the Advocates (Practice) Rules**. In the case of ***Belgo Holdings Limited Vs Wilson Birir [2010] eKLR***, the Court held that ***"A litigant is entitled to representation by an Advocate of his choice. It is clear that Order III Rule 1 and 8 each speak of "an advocate"***. In my view, however, it is possible for a party to be represented in court by more than one Advocate. This view derives its force and effect from **Rule 7 (1) of the Advocates (Practice) Rules**, which states as follows;

"An Advocate may act for a client in a matter in which he knows or has reason to believe that another Advocate is then acting for that client only with the consent of that other Advocate."

In the absence of such consent, the second Advocate would have no locus to act for such a client. It would appear from **Rules 1 and 8 of Order III**, as well as **Rule 7 of the Advocates (Practice) Rules**, that the law envisages the appointment of one Advocate but allows such an Advocate to be joined by another Advocate with the consent of the former".

That as there is no representation received or presented to the Court that M/s Komen Kipchirchir Advocates had protested the filing of the Notice of Appointment of M/s Mukabane & Kagunza Advocates to act alongside them, the matter is left to the Defendants and their incoming Counsel to make a follow-up.

(b) That further to the finding in **(a)** above, the Court take notice of the proceedings of 19th January, 2021 where *Odeny, J* ordered that ***"Limo R. K. Advocates are hereby allowed to come on record for the Defendants in place of Komen Kipchirchir Advocates…"*** That though that order was made at the exparte stage, it has not been challenged and the Court now confirms the same, and that prayer is granted.

(c) That stay of execution pending determination of appeal is guided by **Order 42 Rule 6 of the Civil Procedure Rules**. That for an applicant to succeed in such an application he\she must satisfy the Court that first, substantial loss may result unless the execution is stayed, and secondly, the application has been brought without unreasonable delay and thirdly, provide security for due performance of the decree. That there are many superior court decisions expounding on this provision including ***Masisi Mwita Vs Damaris Wanjiku Njeri (2016) eKLR***, ***Stephen Wanjohi Vs central Glass Industries Ltd Nairobi Hccc No. 6726 of 1991***, and ***Lucy Waithera Kimainga and 2 Others Vs John Waiganjo Gichuri (2015) eKLR***, all of which the court has given due considerations. That it is not the practice of the courts to deprive a successful litigant of the fruits of his\her judgment unless for good cause. The Defendants seeks to have stay order issued in respect of the judgment delivered on the 2nd March, 2018 which is about three years ago. That for the Defendants to have stayed or sat cosy for the three years without filing the application that they only filed in January, 2021 clearly shows that they had unreasonably delayed. The Defendants have not tendered any reasonable explanation or justification for the three years delay. The Defendants cannot claim to have been unaware of the judgment having been delivered on the 2nd March, 2018, when it is clear their Counsel on record then timeously filed the Notice of Appeal referred to earlier.

(d) That the issue of substantial loss has been the subject of many superior court decisions including ***Mukuma Vs Abwogei (1988) KLR 645, Kenya Shell Ltd Vs Kibiru (1986) KLR 410***, and ***Muchira t\a Muchira & Company Advocates Vs East African Standard (No. 2) (2002) KLR 63***. The Defendants needed to show the substantial damages they would suffer for the Court to determine whether they warrant or justifies the Plaintiffs being denied the fruits of their judgment pending the appeal. That though the Defendants allege that the substantial loss they are likely to suffer includes the loss of investments on the properties upon which they have lived for many years, the Court finds that the fact that they waited for about three years without moving the Court can only be taken to mean that they were either indolent or had nothing of value to lose should the judgment be executed. That further, their application filed almost three years later is merely a tactic to delay the Plaintiffs from enjoying the fruits of the judgment. That in the case of ***Charles Wahome Gethi Vs Angela Wairimu Gethi Nairobi Civil Appeal No. 302 of 2007,*** the Court held;

"It is not enough for the applicants to say that they live or reside on the suit land and that they will suffer substantial loss. The applicants must go further and show the substantial loss that the Applicants stand to suffer if the Respondents execute the decree in this suit against them".

That a similar position was taken in ***Minudi Okemba Lore Vs Lucy Wangui Gacharua (2015) eKLR***. That the mere claim by the Defendants herein that they will suffer substantial loss without substantiation or particulars does not amount to the substantial loss envisaged under the law.

(e) That in view of the Defendants failing to establish substantial loss, and the Court finding that there was unreasonable delay in filing the application for stay of execution, then the issue of provision of security for due performance of the decree is not of much use. That condition would have become important or vital for consideration had the Defendants succeeded in showing that they moved the court without undue delay, and proved that they stand to suffer substantial loss unless the stay order is issue.

(f) That on the Applicants' application for joinder, **Order 1 Rule 10 (2) of the Civil Procedure Rules** provides as follows;

"The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as a plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely, to adjudicate upon and settle all questions involved in the suit, be added."

That grounds for joinder were stated in ***Kenya Medical Laboratory Technicians and Technologists Board & 6 Others Vs Attorney General & 4 Others (2017) eKLR***, as the establishment of an identifiable interest or stake in the matter, and the need to aid the court in reaching a just determination. That the Court of Appeal in the case of ***JMK Vs MWM & Another (2015) eKLR, addressed Order 1 Rule 10 (2)*** and held as follows;

"We would however agree with the respondents that Order 1 Rule 10 (2) counterplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar's code (Supra) quoting authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10 (2) of the Civil Procedure Rules in Tanga Gas Distributors Ltd Vs Said & Others (2014) E. A. 448, stated that the power of the Court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceedings has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable…"

That for an applicant to succeed, he\she must prove their interest in the subject matter of the suit, and failure to do so renders the application devoid of merit. The Applicants before the Court filed the joinder application indicating their interests to be Defendants almost three years after the final judgment on merit was delivered on the 2nd March, 2018. That having considered what they have presented before the court, they have failed to demonstrate their interest in the suit as required under the law. In the case of ***Robert Githua Thuku Vs William Ole Nabala & 9 Others (2018) eKLR***, the Court of Appeal held that;

"Nonetheless, as with any inclusion to a suit, the party seeking to be enjoined must demonstrate an interest in the matter. The circumstances of the suit must justify the joinder. In addition, the joinder should not be intended to vex the other parties or convolute the matter (see Attorney General Vs Kenya Bureau of Standards & Another (2018) eKLR. Consequently, the appellant was in this case required to first and foremost, demonstrate that he had an actionable interest and a right to be in the suit; what is otherwise known as locus standi. As per the decision of this Court in the case of Alfred Njau & 5 Others vs City council of Nairobi (1983) eKLR, locus standi was defined thus;

"The term locus standi means the right to appear in court and conversely, as is stated in Jolowitt's Dictionary of English Law, to say a person has no locus standi means that he has no right to appear or to be heard in such and such a proceeding."

That as the Applicants have no tangible evidence presented to the court to substantiate their interest on the suit properties in terms of the documents, sale agreements or other documents as proof of their proprietorship or interest thereof, the court finds they have failed to establish an actionable claim or standing upon which their joinder as Defendants could stand on or be founded upon. That in any case, the issues for determination in this suit were finally determined on the 2nd March, 2018 and there is nothing pending for determination before this court.

(g) That the Applicants having failed to be enjoined as Defendants in the suit have therefore no locus standi to seek for leave to file defence or to vary or set aside the judgment delivered on the 2nd March, 2018. That the Applicants are indeed strangers in this suit.

(h) That the power of the Court to punish for contempt is provided for first under **Section 5(1) of the Judicature Act Chapter 8 of Laws of Kenya** as follows;

"The High Court and the Court of appeal shall have the same powers to punish for contempt of court as is for the time being possessed by the High Court of Justice of England and the power shall extend to upholding the authority and dignity of the subordinate courts."

That **Section 29 of the Environment and Land Court Act No. 19 of 2011** provides for the offences in respect of any person who refuses, fails or neglects to obey an order or direction of the Court which, on conviction carries a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years or to both. That **Black's Law Dictionary (9th Edition)** defines contempt of court as "***conduct that defies the authority or dignity of a court. Because such conduct interferes with the Administration of justice, it is punishable usually by fine or imprisonment."*** That in the Court of Appeal, case of ***Mutitika Vs Baharini Farm Ltd (1995) KLR 229***, the Court stated that;

"In our view, the standard of proof in contempt proceedings, must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs to wit, in criminal cases. It is not safe to extend it to an offence that can be said to be quasi criminal in nature."

The same court had the following to say in ***Shimmers Plaza Ltd Vs National Bank of Kenya – Civil Appeal No. 33***

of 2012 (2015) eKLR:

"No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience of the law is demanded as a right not as a favour".

That **Order 40 Rule 3 of the Civil Procedure Rules** provides for the consequences of contempt to include in case of disobedience or breach of any terms of the court order, an order for the property of the person guilty of such disobedience or breach to be attached, and being detained in prison for a term not exceeding six months. The foregoing provision of the law goes to show that punishment for contempt is not light as it may result to the contemnor's liberty being at stake in addition to attachment of property. That in order for the Applicants to succeed in their application, they are required to prove that the terms of the order were clear and unambiguous, that they were binding on the Contemnors, and that the Contemnor had knowledge of, or proper notice of the terms of the order; that the Contemnors have acted in breach of the terms of the order; and that the Contemnors' conduct was deliberate.

(i) That there is no doubt that the court issued the status quo order on the 4th February, 2021. The order required all parties to comply with it. The Applicants have alleged that the Respondents visited the suit properties severally, and specifically on 8th February, 2021 and thereafter summoned the Applicants to their offices. That their message during those interactions was that the Applicants should vacate the suit premises. The Plaintiffs have through the replying affidavit sworn by the 20th Plaintiff disputed the Applicants' claim and deponed that the parties were briefed on the terms of the status quo order, and its effect on the eviction order issued earlier. That having considered the grounds, affidavit evidence and oral submissions by Counsel for the Applicants, the Court finds that the applicants have failed to meet the threshold of proof required in contempt proceedings. That in any case, the applicants' prayer to be enjoined in this proceedings and for varying or setting aside the judgment has failed and they do not have any locus to sustain the contempt proceedings.

(j) That as the Defendants and Applicants have all failed in their respective applications, then under **Section 27 of the Civil Procedure Act, Chapter 21 of Laws of Kenya**, they should pay the Plaintiffs costs.

(k) That for avoidance of doubt, the status quo order of 4th February, 2021 is hereby vacated.

10. That flowing from the foregoing, the Court finds no merit in the three applications dated the 18th January 2021, 4th February 2021 and 15th February, 2021. That the said applications are hereby dismissed with costs to the Plaintiffs.

Orders accordingly.

DELIVERED VIRTUALLY AND DATED AT ELDORET THIS 12TH DAY OF MAY, 2021.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiffs: Absent.

Defendants: Absent.

Applicants: Absent.

Counsel: Mr. Momanyi for Plaintiffs.

Mr. Kibii for Defendants and Applicants.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.