**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAIROBI**

**E.L.C APPEAL NO……………. OF 20….**

**AAA……………..……………………………………………………………………..APPELLANT**

**-VERSUS-**

**BBB………………………………………..…………………………………….…..RESPONDENT**

**PPP………………...……………………………….INTENDED INTERESTED PARTY/APPLICANT**

**REPLYING AFFIDAVIT**

**I, AAA** of post Office Box Number ………….., Nairobi in the Republic of Kenya do hereby make Oath and state as follows:

1. **THAT** I am the Appellant herein fully conversant with the matter and issues in this suit and in…… **ELC No. ……………,** wherein I am the Plaintiff and duly competent to swear this Affidavit.
2. **THAT** I have read and understood and where necessary, had explained to me by my Advocates on record, the contents of the intended interested party/Applicant’s Chamber Summons Application dated…………….. and filed on……………………, together with the supporting Affidavit sworn by **PPP** on even date and Annextures thereto, and wish to respond as hereunder;
3. **THAT** I oppose the Application in its entirety as it is devoid of merit, misconceived, vexatious, frivolous, an afterthought and otherwise an abuse of legal process and ought to be dismissed with costs to the Appellant for the following reasons, *inter alia*;-
4. **THAT** by way of background, the fate of the Appeal herein was determined by the Consent recorded on ………………., which consent has never been set aside or appealed against and a Decree extracted on ……………. *(****Annexed herewith and marked as “AAA-1” is a copy of the Decree issued on ………………****).*
5. **THAT** the dismissal of the Appeal herein on……………. by **Honourable MMM, J** was misinformed and the same was later set aside by an Order of this Court on ………………, wherein the File was marked as closed as appears at Annexture produced as “**ZZZ”** in the Applicant’s Supporting Affidavit.
6. **THAT** upon the suit being marked as closed, my Advocate on record moved the Court for Orders to commence execution and indeed this Honourable Court in its Ruling delivered on ………………….., allowed initiation of execution proceedings. (***Annexed herewith and marked as “AAA-2” is a copy of the Ruling of this Court (Honourable KKK,J) delivered on………..***)
7. **THAT** therefore the prayer for joinder of the intended Interested party in a Suit that has since been withdrawn and marked as closed amounts to abuse of Court process.
8. **THAT** I am advised by my Advocates, which advise I verily believe to be sound, that joinder of parties as envisaged under Order 1 rule 10 of the Civil Procedure Rules, 2010 is *a matter of trial*. We are passed trial and as such, the Applicant has no audience before this Court.
9. **THAT** I am aware that the Applicant’s interest/claim in the suit premises if any, was pursued in **ELC No………………..**, (state Case Name & Parties) wherein on…………………., this Honourable Court (**Hon. Lady Justice CCC)** delivered Judgment in my favour against the Defendant (now Applicant in instant Application) in the following terms;. *(****Annexed herewith and marked “AAA-3” is a copy of the Judgment of this Court (Hon Lady Justice CCC) delivered on …… at 2.00pm);***
10. *The Plaintiff’s against the Defendant succeeds;*
11. *The Defendant’s Counterclaim is dismissed with costs to the Plaintiff;*
12. *The Defendant’s claim against the Third Party succeeds and I make the following* ***FINAL ORDERS****;*
13. *It is hereby declared that the Plaintiff is the Owner of Plot No…………, located at ……………;*
14. *A perpetual Prohibition injunction Order is hereby issued against the Defendant, by himself, his servants, employees, agents and/or anyone claiming through or acting on his behalf to restrain him/them from erecting buildings, structures and/or remaining in the suit premises and/or in any manner whatsoever from encroaching, intruding, trespassing and or remaining in the suit premises and/or in any manner/ howsoever from interfering with the Plaintiff’s ownership and peaceable and quiet enjoyment of the suit premises;*
15. *A mandatory injunction is hereby issued commanding the Defendant either by himself, his servants, employees, agents and/or anyone claiming through or acting on his behalf to vacate and/or demolish, pull down and remove any buildings, structures, improvements, building materials and/or objects from the suit premises* ***NOT LATER THAN 180 DAYS*** *from the date of this Judgment;*
16. *The Third Party shall pay the costs of demolition and removal of structures from the suit property;*
17. *The Third Party shall pay costs of the Suit and Counterclaim to the Plaintiff;*
18. *The Third Party shall pay the Defendant costs of the Third Party claim together with interest thereon;*
19. *Any party shall be at liberty to apply.*
20. **THAT** I am advised by my Advocates on record which advise I verily believe to be correct that the Applicant has no interest whatsoever in the suit property as rightly found by the Court in its Judgment delivered on 23rd May, 2019 that indeed the suit property belongs to me and not the Applicant herein.
21. **THAT** any interest so claimed by the Applicant (**which** **is hereby denied**) has since extinguished by the aforementioned Judgment and as such the Application herein is a non-starter but couched in such terms to delay the process of execution which has commenced.
22. **THAT** I am aware that I am the successful litigant entitled to enjoy the fruits of a successful litigation but am being restricted by the Applicant while in pursuit for the same.
23. **THAT** I am advised by my Advocates on record which advise I verily believe to be sound that the Applicant’s failure to prove interest and or ownership of the Suit property in **Nairobi ELC NO……………** is enough, by its own, to warrant dismissal of the instant Application. The Applicant needs to embrace the fact that litigation must come to an end in one way or another.
24. **THAT** the instant Application is a belated attempt by the Applicant to have a second bite at the Cherry having made a similar Application in this suit on **………………** as appears on the Court record but the same was overtaken by events as the Applicant herein abandoned the same.
25. **THAT** it is unnecessary at this stage to enjoin the intended Interested Party, as so doing will cause unnecessary delay to the execution process and visit costs on the parties in this Suit.
26. **THAT** I swear this Affidavit in opposition to the Applicant’s Application herein and pray that the same be dismissed with costs.
27. **THAT** what is deponed herein is true to the best of my knowledge, belief and information save for whose sources, information has been duly disclosed.

**SWORN** at **NAIROBI** by the said **]**

**AAA**   **]**

day of 20… **]..............................................**

**] DEPONENT**

**BEFORE ME: ]**

**]**

**]**

**COMMISSIONER FOR OATHS ]**

**DRAWN & FILED BY:**

**CM ADVOCATES LLP**

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**TO BE SERVED UPON:-**

**PLAINTIFF’S ADVOCATES**

ADDRESS

**DEFENDANT’S ADVOCATES**

ADDRESS