Nduhiu v Ngomo & another t/a Miritini Sunshine Academy & another (Environment & Land Case E010 of 2024) [2025] KEELC 2846 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2846 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE E010 OF 2024

LL NAIKUNI, J

MARCH 21, 2025

BETWEEN

LYDIA NJAMIU NDUHIU .... PLAINTIFF

AND

KATANU NGOMO & PETER KITALI MUNGURI T/A MIRITINI SUNSHINE ACADEMY .... 1ST DEFENDANT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY NATIONAL CONSTRUCTION AUTHORITY COUNTY GOVERNMENT OF MOMBASA .... 2ND DEFENDANT

RULING

I. Introduction

1. This Honourable Court was called upon to determine the Notice of Motion applications dated 31st July, 2024. It was filed by Katanu Ngomo & Peter Kitali Munguti T/A Miritini Sunshine Academy, the 1st Defendant/Applicant herein under the provisions of Sections 1A, 2A, 3, and 3A of the *Civil Procedure Act*, Cap. 21, Order 5 Rule 1, Order 40 Rule 7 and Order 51 Rule of the Civil Procedure Rules 2010and other enabling provisions of the law.

2. At the same time, the 1st Defendant also filed a Preliminary objection dated 7th August, 2024 seeking to have the Plaintiff's suit struck out.

II. The Notice of Motion application dated 31st July, 2024

3. The Applicant sought for the following orders: -

   a. Spent.

   b. This suit be struck out in its entirety.

c. In the alternative to (b) above, the orders of the court dated 10th July 2024 be set aside pending the hearing and determination of this application, other pending applications, and the main suit.

d. The costs of this application and/or the main suit be borne by the Plaintiff.

4. The application was premised on the grounds, facts and testimony on the face of the application and the averments made out under the 22 Paragraphed annexed affidavit of Katanu Ngomo, the 1st Defendant herein. The Deponent averred that:

a. The Deponent was the proprietor of all that land known as Plot 446 Miritini (hereinafter referred to as "The Suit Property").

b. Peter Kitali Munguti and the deponent decided to construct a school on the suit property under the name and style of Miritini Sunshine Academy. Annexed in the affidavit and marked as "KN -1" was a copy of the Certificate of Registration.

c. The Deponent duly applied for and obtained all the necessary licences from the relevant authorities. Hence he commenced constructing a school on the suit property in earnest. Annexed in the affidavit and marked as "KN - 2"was a bundle of the licences and permits which the Deponent was granted in respect to the construction project.

d. On 10th June 2024, the Plaintiff filed this suit seeking orders for (a) a declaration that the Defendants have violated the Plaintiff's right to clean and healthy environment; (b) an order cancelling all licences and approvals issued to the 1st Defendant in respect to construction of a school on all the suit property; (c) a permanent injunction restraining the 1st Defendant from undertaking further construction on the suit property; (d) damages for violation of the Plaintiff's right to clean and healthy environment; and (e) costs of the suit.

e. On 26th July, 2024, the Deponent received a call from a gentleman who informed the Deponent that he wanted to serve him certain documents and insisted that he would want to effect personal service upon him. Since he was away at the moment, he requested the gentlemen that he served the deponent with the said documents on Monday, 29th July 2024.

f. By an application of even date, the Plaintiff sought for orders for, among others, a temporary injunction restraining the 1st Defendant from continuing with construction over the suit property.

g. By an order dated 13th June 2024, the Honourable Court directed the Plaintiff to serve the pleadings as well as the application on the 1st Defendant, and to file proof of service accordingly.

h. Contrary to the orders of the court, as well as the rules of service stipulated under the Civil Procedure Rules 2010, the Plaintiff failed to effect service upon the 1st Defendant. Consequently, on 10th July 2024, the Honourable Court granted the Plaintiff temporary injunction over the suit property in the absence of the 1st Defendant on the premise that the 1st Defendant had been served but failed to appear in the suit. In fact, the Plaintiff had not been served.

i. The Plaintiff only physically served the 1st Defendant with the pleadings on 29th July 2024, after obtaining temporary injunction which she acquired by misleading the court on the circumstances relating to the service of pleadings and this Court's directions.

j. Furthermore, and more egregious, was the fact that the summons to enter appearance were not properly extracted, signed and sealed as required by the Rules. This suit was thus fatally defective and ought to be struck out.

k. The Orders obtained the orders dated 10th July 2024 by concealing material facts pertaining to the service from the court. Since the temporary injunctive orders which the court granted on 10th July 2024 are discretionary and equitable, and the Plaintiff having conducted herself in an inequitable and unconscionable manner, this court should invoke its powers and set aside the said orders

l. The Plaintiff herein had not fulfilled the conditions for temporary injunction. First, the Plaintiff had not established a prima facie case, since the Deponent obtained all the necessary permits and licences from relevant authorities as demonstrated by the bundle of documents annexed herein as “KN - 1”. Second, the Plaintiff’s case did not disclose any irreparable loss or damage that cannot be remedied by way of damages. Furthermore, the balance of convenience unlike tilted in favour of the Plaintiff. In light of the foregoing, the orders of 10th July 2024 are ripe for setting aside

m. Unless the said orders were set aside, the Deponent was bound to incur colossal losses, especially with respect to third-party contractors, suppliers and developers who he had contracted to supply materials and undertake various works on the suit property.

n. Lastly, prior to filing this suit, the Plaintiff failed to exhaust the internal dispute resolution mechanism provided in statute. The suit was, therefore, premature and fit for striking out.

o. The provision of Section 76 of the *Physical and Land Use Planning Act*, Cap. 303 establishes the County Physical and Land Use Planning Liaison Committees. Pursuant to the provision of Section 78 of the said Act, the said Committee was mandated to, among others, “hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county.” The Committee is further obligated to “hear appeals against decisions made by the planning authority with respect to physical and land use development plans in the county”.

p. The Plaintiff’s suit was premised on the allegation that the 1st Defendant did not obtain change of user from the 4th Defendant, and that the 4th Defendant failed to ensure that the suit property was planned and developed in accordance with the law. The Plaintiff was required to lodge complaints and or appealed to the County Physical and Land Use Planning Liaison Committee of the 4th Defendant for adjudication.

q. It was a cardinal principle of law that where an internal dispute resolution mechanism is established in law, as was the case at hand, such internal mechanisms must be exhausted prior to invoking the jurisdiction of the court. Consequently, the Plaintiff herein invoked the jurisdiction of this court prematurely, and this suit should be dismissed for offending the doctrine of exhaustion.

r. It was, therefore, only proper that this suit be struck out in its entirety. In the alternative, the orders dated 10th July 2024 should be set aside with costs to the 1st Defendant.

III. The Preliminary Objection dated 7th August, 2024

5. The 1st Defendant raised a Preliminary Objection on a point of law to have the Plaintiff’s suit struck out and/or dismissed on the following grounds: -

a. That the suit as filed by the Plaintiff is an abuse of the court process, having been filed prematurely, contrary to the provisions of Sections 61,78, and 80 of the *Physical and Land Use Planning Act*, Cap 303, Laws of Kenya.

b. That Sections 61, 78, and 80 of the *Physical and Land Use Planning Act* provide clear and mandatory procedures and administrative remedies for addressing complaints regarding approvals by physical planning departments, which the Plaintiff has not exhausted.

c. That the Plaintiff is required by law to exhaust all available administrative remedies, including but not limited to seeking redress through the relevant County Government authorities and the CountyPhysical and Land Use Planning Liaison Committee, before invoking the jurisdiction of this Honourable Court.

d. That the Plaintiff's failure to exhaust these statutory remedies and procedures renders this suit incompetent and improperly before the Court, warranting its dismissal in limine.

e. That in view of the forgoing, the Honourable Court lacks jurisdiction to hear and determine this matter and in the circumstances, urged to down its tools.

f. That the Plaintiff's suit dated 10th June, 2024 and the attendant application are, therefore, an abuse of the court process and should be struck out and/or dismissed with costs to the 1st Defendant.

IV. Submissions

6. On 2nd December, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion applications dated 31st July, 2024 and Preliminary objection dated 7th August, 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down this Ruling, the Honourable Court had not been in a position to access any of the written submissions from neither the file nor the Judiciary CTS portal. Pursuant to that a ruling date was reserved on 21st March, 2025 by Court accordingly.

V. Analysis and Determination

7. I have carefully read and considered the pleadings herein and the relevant provisions made by the by the Plaintiffs. In order to arrive at an informed decision, the Honorable Court has framed the following issues for determination:

a. Whether the Preliminary Objection dated 7th August, 2024 was merited?

b. Whether the Notice of Motion dated 31st July, 2024 meets threshold required for striking out a suit.

c. Who will bear the Costs of Notice of Motion application dated 31st July, 2024 and the Preliminary objection dated 7th August, 2024.

ISSUE No. a). Whether the Preliminary Objection dated 7th August, 2024 is merited.

8. In determining this instant Notice of Preliminary Objection, the Court will first consider what amounts to a Preliminary Objection and then Juxtapose the said description herein and come up with a finding on whether what has been raised herein fits the said description.

9. According to the Black Law Dictionary a Preliminary Objection is defined as being:

> " In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary……."

10. The above legal preposition has been made graphically clear in the now famous case of "Mukisa Biscuits – Versus - Westend Distributor Limited [1969] EA 696", the court observed that: -

> " 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. ".

11. The same position was held in the case of "Nitin Properties Limited – Versus - Jagjit S. Kalsi & another Court of Appeal No. 132 of 1989[1995-1998] 2EA 257" where the Court held that:-

> " A preliminary Objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any facts has to be ascertained or if what is sought is the exercise of Judicial discretion."

12. Similarly in the case of "United Insurance Company Limited – Versus - Scholastica A Odera Kisumu HCC Appeal No. 6 of 2005(2005) LLR 7396", the Court held that:-

> " A preliminary Objection must be based on a point of law which is clear and beyond any doubt and Preliminary Objection which is based on facts which are disputed cannot be used to determine the whole matter as the facts must be precise and clear to enable the Court to say the facts are contested or disputed ."

13. I have further relied on the decision of "Attorney General & Another – Versus - Andrew Mwaura Githinji & another [2016] eKLR":- as it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection inter alia:-

    i. A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.

    ii. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and

    iii. The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

14. Therefore from the above holdings of the Courts, it is clear that a Preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere. See also the case of "In the matter of Siaya Resident Magistrate Court Kisumu HCCMisc. App No. 247 of 2003" where the Court held that:-

> " A Preliminary Objection cannot be raised if any facts has to be ascertained."

15. Taking into account the above findings and holdings of various Courts on what amounts to a preliminary Objection, the Court now turns to the grounds raised by the 1st Defendant raised a

Preliminary Objection on a point of law to have the Plaintiff's suit struck out and/or dismissed on the following grounds: -

a. That the suit as filed by the Plaintiff is an abuse of the court process, having been filed prematurely, contrary to the provisions of Sections 61,78, and 80 of the *Physical and Land Use Planning Act*, Cap 303, Laws of Kenya.

b. That Sections 61, 78, and 80 of the *Physical and Land Use Planning Act* provide clear and mandatory procedures and administrative remedies for addressing complaints regarding approvals by physical planning departments, which the Plaintiff has not exhausted.

c. That the Plaintiff is required by law to exhaust all available administrative remedies, including but not limited to seeking redress through the relevant County Government authorities and the County Physical and Land Use Planning Liaison Committee, before invoking the jurisdiction of this Honourable Court.

d. That the Plaintiff's failure to exhaust these statutory remedies and procedures renders this suit incompetent and improperly before the Court, warranting its dismissal in limine.

e. That in view of the forgoing, the Honourable Court lacks jurisdiction to hear and determine this matter and in the circumstances, urged to down its tools.

f. That the Plaintiff's suit dated 10th June, 2024 and the attendant application are, therefore, an abuse of the court process and should be struck out and/or dismissed with costs to the 1st Defendant.

16. It is trite that jurisdiction is everything. The significance of jurisdiction was succinctly captured by Nyarangi, J.A. in "Owners of Motor Vessel 'Lillian S' – Versus - Caltex Oil (Kenya) Limited [1989] KLR 1":

> "Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction….Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

17. Additionally, the Court of Appeal in the case of "Kakuta Maimai Hamisi – Versus - Peris Pesi Tobiko & 2 Others [2013] eKLR" had the following to say on the centrality of the issue of jurisdiction: -

> "So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cui-de-sac. Courts, like nature, must not sit in vain."

18. What is clear from the foregoing is that jurisdiction is a crucial aspect that when raised must be determined at the onset of the proceedings. It is potentially dispositive because if the Court is to find that it has no jurisdiction, it will have no option but to terminate proceedings. The question as to whether the doctrines of exhaustion and constitutional avoidance have been contravened are pure questions of law as well because one needs to only look at the pleadings to ascertain the same and there

is no need, so to speak, to receive evidence. The Court therefore finds that the question of jurisdiction as brought by the 1st Defendant is a proper preliminary objection.

19. The doctrine of exhaustion requires a party to exhaust any alternative dispute resolution mechanism provided by statute and/or law before resorting to the courts. Indeed, it is now generally accepted that a party is required to exhaust any alternative dispute resolution mechanism before filing a matter in court as a matter of law. To this end, the Court of Appeal in the case of "Geoffrey Muthinja & Another – Versus - Samuel Muguna Henry & 1756 Others[2015]eKLR" observed as follows:-

> " It is imperative that where a dispute resolution mechanism exists outside courts, the same must be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution."

20. The question of what invokes the doctrine of exhaustion before embarking on the Court process was aptly discussed in the case of "William Odhiambo Ramogi & 3 others – Versus - Attorney General & 4 Others: Muslims for Human Rights & 2 Others(Interested parties) [2020]eKLR" by a five-judge bench as follows: -

> " The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts…"

21. The Court went on to outline the exceptions to the rule as follows:

> " As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.
>
> The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in Night Rose Cosmetics (1972) Ltd – Versus - Nairobi County Government & 2 others [2018] eKLR.
>
> In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of

exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court."

22. Pursuant to Section 2 of the Physical Land Use Planning Act, 2019, the County Executive Committee is the authority responsible for development control and planning within the county, meaning that they are responsible for, amongst other things, the issuance of development approvals, compliance and licenses. Section 61(3) of the Act provides for a complaint mechanism against a decision of the County Executive Committee;

> " An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed."

23. The provision of Section 76 of the *Physical and Land Use Planning Act*, 2019 provides as follows:-

> " There is established a County Physical and Land Use Planning Liaison Committee for each county."

24. While the provision of Section 78 outlines the functions of the Liaison Committees as follows:

> 78. The functions of the County Physical and Land Use Planning Liaison Committee shall be to —

a. hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county;

b. hear appeals against decisions made by the planning authority with respect to physical and land use development plans in the county;

c. advise the County Executive Committee Member on broad physical and land use planning policies, strategies and standards; and

d. hear appeals with respect to enforcement notices.

25. Whereas the provision of Section 80 under the head- Appeal to a County Physical and Land Use Planning Liaison Committee provides;

1. A person who appeals to County Physical and Land Use Planning Liaison Committee shall do so in writing in the prescribed form.

2. A County Physical and Land Use Planning Liaison Committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.

3. The Chairperson of a County Physical and Land Use Planning Liaison Committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a Judgment of the court Procedure of the County Physical and Land Use Planning Liaison Committees. Appeal to a County Physical and Land Use Planning Liaison Committee 653 2019 Physical and Land Use Planning and published in the Gazette or in at least one newspaper of National circulation."

26. The aforementioned sections clearly set out the procedure for complaints against the approval permissions issued by the county which involve EIA Licences. The suit raises breaches of rights and other matters thus falling outside of the powers of the Liaison Committee set out in the Physical Land Use and Planning Act, 2019. Undoubtedly, its now a know fact that there does not exist a Liaison Physical Committee established by the County of Mombasa. In such a situation, this Court is clothed with the Jurisdiction to take over such disputes as provided for under the provision of Section 93 of PLUPA. Section 93 holds as follows:-

> " All disputes relating to physical and land use planning, before establishment of the national and county Physical and land use planning liaison committee shall be heard and determined by the Environment & land Court".
>
> Thus, for these reasons, I am persuaded by the above findings. I proceed to hold that this court has primary jurisdiction to hear and determine this matter being a dispute that goes beyond being aggrieved with an application for a development. Furthermore, the dispute involves issues on constitutional rights which can only be dealt within the Court forum and not before the County Physical and Land Use Planning Liaison Committee. Hence, the preliminary objection is dismissed.
>
> ISSUE No. b). Whether the Notice of Motion dated 31st July, 2024 meets threshold required for striking out a suit.

27. Under this sub – title the Court shall examine the striking out of the Plaint dated 10th June, 2024. The motion is expressed to be brought under the provision of Order 2 Rule 15 of the Civil Procedure Rules, 2010 which deals with striking out of pleadings and provides as follows:

> " Rule 15. (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

a. It discloses no reasonable cause of action or defence in law; or

b. It is scandalous, frivolous or vexatious; or

c. It may prejudice, embarrass or delay the fair trial of the action; or

d. It is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be."

28. Striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. The Court of Appeal in the case of "Blue Shield Insurance Company Limited – Versus - Joseph Mboya Oguttu [2009] eKLR" restated these principles as follows: -

> " The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan J.A. (as he then was) in his judgment in the case of D.T. Dobie and Company (Kenya) Ltd – Versus - Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 Rule 13 (1) (a) which was seeking striking out a Plaint on grounds that it did not disclose a reasonable cause of action against the Defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows:-

"The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case."

29. In that judgment, the learned Judge quoted Dankwerts L.J in the case of "Cail Zeiss Stiftung – Versus - Ranjuer & Keeler Ltd and others (No.3) (1970) ChpD 506", where the Lord Justice said: -

"The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading."

30. Madan J.A, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable. The long line of decisions above demonstrates one thing; that the court should always allow a party the latitude to have his case heard and decided on merit unless it is so hopeless that even an amendment cannot rescue it. A careful consideration of the facts placed before this Court reveals that the Plaintiff's suit has an array of issues that this Honourable Court needs to examine and not just give a summary deduction at the interception of the suit.

31. A perusal of the Respondent's Plaint and the relief he seeks cannot lead to a conclusion that it is hopeless, frivolous or vexatious. It seeks specific reliefs which are capable of being granted depending on the evidence to be placed before the court. Certainly, it raises triable issues.The fact that the Applicant has challenged the soundness of the suit, that is not on its own a ground for striking out the suit as not raising a reasonable cause of action. Further, the reasons given by the Applicant for seeking to strike out the suit are not compelling to drive the Respondent from the seat of justice and deny her an opportunity to be heard on the merits.

32. For these reasons, therefore, I discern that, the Notice of Motion application by the 1st Defendant dated 31st July, 2024 is found to lack merit and the same is dismissed.

ISSUE No. c). Who will bear the Costs of Notice of Motion application dated 31st July, 2024 and the Preliminary objection dated 7th August, 2024.

33. It is now well established that the issue of Costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of "Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and "Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.

34. I have well stated in previous precedence and most especially in "Sagalla Lodge Limited – Versus - Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased) [2022] eKLR", that:

"58. The Black Law Dictionary defines "Cost" to means, "the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other".

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021."

35. In the case of "Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects to have the costs to be in the cause.

VI. Conclusion and Disposition

36. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. Clearly, the Plaintiffs/Applicants has a case as per the suit they have filed.

37. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-

    a. That the Notice of Motion application dated 31st July, 2024 be and is hereby found to lack merit and the same is dismissed.

    b. That the Preliminary Objection dated 7th August, 2024 be and is hereby found to lack merit and the same is overruled.

    c. That for expediency sake the matter to be mentioned on 8th April, 2015 before Hon. Justice Olola for further direction on the disposal of the case accordingly.

    d. That the cost of the Notice of Motion application dated 31st July, 2024 and the Preliminary Objection dated 7th August, 2024 shall be in the cause.

It Is So Ordered Accordingly.

RULING DELIEVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 21ST DAY OF MARCH2025.

……………………………………

HON. MR. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT

MOMBASA

Ruling delivered in the presence of:

a. M/s. Firdaus Mbula, the Court Assistant.

b. M/s. C. Mango Advocate for the Plaintiff/Respondent.

c. Mr. Akude Jura holding brief for Mr. Oringe Advocate for the 1st Defendant/Applicant.