



**Papiyio Investments Limited v Murero & 3 others; Murero & 2 others (Cross Petitioner); Papiyio Investment Limited & 2 others (Respondent) (Environment & Land Petition E006 of 2024) [2025] KEELC 1445 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1445 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ENVIRONMENT & LAND PETITION E006 OF 2024**

**LN GACHERU, J**

**MARCH 20, 2025**

**IN THE MATTER OF THE PREAMBLE TO THE CONSTITUTION OF**

**KENYA, 2010**

**AND**

**IN THE MATTER OF ARTICLES 22, 23, 159, 162(2), 165 AND**

**258 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS**

**AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 3(1), 10, 19,**

**20, 21, 27(1), 40, 47, 48, 50, 60 AND 64 OF THE**

**CONSTITUTION OF KEYA, 2010**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA**

**(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)**

**PRACTICE AND PROCEDURE RULES, 2013**

**AND IN THE MATTER OF SECTION 3 AND 13 OF THE**

**ENVIRONMENT AND LAND COURT ACT, NO. 19 OF 2011**

**AND**

**IN THE MATTER OF SECTIONS 43 AND 150 OF THE LAND ACT,**

**NO.6 OF 2012**

**AND**

**IN THE MATTER OF SECTIONS 30, 35, 37, 79(1) AND 86 OF**



**THE LAND REGISTRATION ACT, NO.3 OF THE 2012**

**-BETWEEN**

**BETWEEN**

**PAPIYIO INVESTMENTS LIMITED ..... PETITIONER**

**AND**

**WILLIAM MURERO ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL MURERO ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR, NAROK ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**WILLIAM MURERO ..... CROSS PETITIONER**

**DANIEL MURERO ..... CROSS PETITIONER**

**WILLIAM MURERO & DANIEL MURERO(SUING AS JOINT  
ADMINISTRATORS OF THE ESTATE OF JOHN TUPENET MURERO-  
DECEASED) ..... CROSS PETITIONER**

**AND**

**PAPIYIO INVESTMENT LIMITED ..... RESPONDENT**

**DISTRICT LAND REGISTRAR, NAROK ..... RESPONDENT**

**ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

1. The matter for determination is the Notice of Motion Application dated 13<sup>th</sup> January 2025, by the 3<sup>rd</sup> Cross-Petitioners/Applicants herein who have sought for these orders: -
  - i. Spent
  - ii. Spent
  - iii. Pending the hearing and determination of this petition herein, an order do issue, that all proceeds collected and/or received by the Petitioner/Respondent to the Cross Petition herein Papiyio Investments Ltd from the operation of the tourism facility on all that land known as Narok/Cis-Mara/Lemek/190, be forthwith transmitted into an escrow account opened within 7 days of the making of this Order in the joint names of the respective parties' Advocates with Kenya Commercial Bank of Kenya, or any other reputable commercial Bank in Kenya agree.
  - iv. The court be pleased to grant the 3<sup>rd</sup> Cross Petitioners/Applicants herein leave to take the inventory of all tenants occupying the suit property, Narok/Cis-mara/Lemek/190, inspect the records of all collected rent and service charge in furtherance of Order Number 3 herein.



- v. In default of the 1<sup>st</sup> Respondent to the Cross Petition herein, (Papiyo Investments Limited) complying with the terms of Order 2 and/or 3 herein issued, an eviction order do forthwith issue directing that the 1<sup>st</sup> Respondent, Papiyo Investments Limited by themselves, their agents, licensees, or otherwise occupying the suit land be evicted forthwith from all that land known as Narok/Cismara/Lemek/190.
  - vi. The costs of this Motion be awarded to the 3<sup>rd</sup> Cross-Petitioners/Applicants herein William Murero & Daniel Murero (suing as Joint Administrators of the Estate of John Tupenet Murero(deceased)).
2. The application is supported by various grounds set out on its face, and on the Supporting Affidavit of William Rakita Murero, one of the administrators of the estate of John Tupenet Murero. Among the grounds in support of the Application are; that the Petitioner/1<sup>st</sup> Respondent has no existing or valid lease agreement with the estate of the deceased John Tupenet Murero over the suit property known as Cis-Mara/Lemek/190, and is illegally operating a tourism business and generating income thereon.
  3. Further that the said Petitioner/1<sup>st</sup> Respondent without taking cognizance of the estate of the deceased John Tupenet Murero rights under the Succession Act, over the suit property have used the said land as a tourism Camp, and has been unlawfully making money out of the deceased's estate, from the said land Cis-Mara/Lemek/190.
  4. Therefore, the 3<sup>rd</sup> Cross-Petitioners/Applicants seek the protection of the law as envisaged by the provisions of Article 27(1) of the Constitution, and which protection is urgent as the said Petitioner/1<sup>st</sup> Respondent has failed to vacate the suit property.
  5. Further the 3<sup>rd</sup> Cross-Petitioners/ Applicants averred that they are the registered proprietors of suit land, Narok/Cis-Mara/Lemek/190 pursuant to the Certificate of Confirmed Grant dated 15<sup>th</sup> September 2006, issued in Nairobi Succession Cause No. 95 of 2006(in the re-estate of John Tupenet Murero (deceased), and under Articles 40(3) of the Constitution, they are entitled to the court's protection of their proprietary interest on the suit property, and hence this application.
  6. Further, that the Petitioner/ 1<sup>st</sup> Respondent has continued to operate a tourist resort on the suit property deriving income therefrom, and not a shilling is remitted to the estate of the deceased, unless the Petitioner/ 1<sup>st</sup> Respondent is restrained by this court by directing that such proceeds be deposited into an escrow account as prayed in the application, to mitigate losses incurred by the estate of the deceased.
  7. It was their contention that by reasons of the said illegal operation of the business by the Petitioner/ 1<sup>st</sup> Respondent on Narok/Cis-Mara/Lemek/190, the Respondent ought to be evicted, and unless restrained by this court, it will continue to conduct the illegal unauthorized and impermissible business on the suit property, that will decimate the value of the suit property in a manner that is injurious to the interest of the estate of the deceased.
  8. In his Supporting Affidavit, William Rakita Murero, reiterated most of the grounds in support of the application, and further averred that he is one of the joint administrators of the estate of John Tupenet Murero vide a Nairobi Succession Cause No.95 of 2006, wherein on 25<sup>th</sup> October 2006, the suit property was transmitted to both of them to hold in trust for the beneficiaries of the deceased estate. He also averred that they hold the title to the suit land not in their private capacity, but as trustees over the said parcel of land.



9. He claimed that the Petitioner/1<sup>st</sup> Respondent has no lawful proprietorship of the suit property and that the suit property was never lawfully or legally transferred to it by the estate of John Tupenet Murero(deceased).
10. He further averred that the Petitioner/1<sup>st</sup> Respondent has unlawfully and without any authority or colour of right from the deceased's estate or the Applicants as the administrators of the deceased's estate herein has purported to construct on the suit property a permanent structure which it has continued to operate as a tourist resort, deriving income therefrom, and not a penny is remitted to the estate of the deceased, unless directed by the court.
11. Further, that by reason of the said illegal occupation of the suit land, the Petitioner/1<sup>st</sup> Respondent ought to be evicted from the suit land, and unless restrained by this court, the Petitioner will continue to conduct the illegal unauthorized and impermissible business on the suit property, which will reduce the value of the suit property in a manner that is injurious to the interests of the estate of the deceased.
12. The application is vehemently opposed by the Petitioner/1<sup>st</sup> Respondent herein, who filed grounds of opposition dated 27<sup>th</sup> January 2025, and averred;
  1. The Application is frivolous, vexatious and otherwise an abuse of the process of the court;
  2. An application under Order 36 of the Civil Procedure Rules, 2010 falls outside the jurisdiction of this Court in proceedings under Article 22 where the procedure is set out in the [Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013;
  3. Alternate, and without prejudice to (2), an application under Order 36 of the Civil Procedure Rules, 2010 is untenable in the present proceedings as the Petitioner has duly defended the claims set out in the cross-petition through its petition, the supporting affidavit and supplementary affidavit;
  4. The petitioner is fully compliant with pre-trial directions having filed and served its supplementary affidavit dated 4<sup>th</sup> July, 2024;
  5. The application is fatally defective as it seeks final orders at an interlocutory stage;
  6. The application offends the overriding Objective of the Court as it is clearly aimed at delaying the hearing of the petition.
13. The 1<sup>st</sup> Respondent further filed a Replying Affidavit sworn by Patel Gopal Dhanji Velji dated 29<sup>th</sup> January 2025. The deponent averred that the instant application is an attempt to have the court sit on review of the conservatory orders that were issued by this court on 29<sup>th</sup> October 2024.
14. Further, he averred that his advocate has advised him that this court as presently moved under the provisions of Article 22 of the [Constitution](#), is limited to the granting the reliefs set out in Articles 23, which do not envision the grant of the prayers sought in the present application.
15. He also averred that as further advised by his advocate, the application as couched is being brought under Order 36 of the Civil Procedure Rules which is a prerequisite for the court exercising the powers set out in that provision where the counter party or Defendant has failed to file a Defence, which is not the case herein.
16. It was his further averment that the Petitioner/ 1<sup>st</sup> Respondent herein filed its Petition seeking protection of its constitutional rights, and the Respondents now applicants herein filed a Cross-Petition, which in its nature is an attempt to defend as against the Petitioner's claim. Subsequently, the



- Petitioner/1<sup>st</sup> Respondent filed a supplementary affidavit sworn on 4<sup>th</sup> July 2024, which refuted the claim in the Cross-Petition. Therefore, the Petitioner has fully complied with Order 11 contrary to the assertion by the applicants that it has failed to comply with the Pre-trial directions.
17. Further, that his advocate has advised him that no directions have been issued as to whether the matter would proceed by way of Affidavits evidence or viva voce evidence, and thus the action of the Petitioner to file its supplementary affidavit closed the pleadings with regard to the Petition.
  18. It was his further contention that his advocate has also advised him that the request to preserve the suit property in question under the provision of Section 45 of the Law of Succession Act is untenable, granted that the jurisdiction to deal with testate and intestate succession proceedings exclusively falls within the High Court and Magistrates courts.
  19. Further, he contended that the allegations that the Petitioner is a trespasser on the suit property is denied, as the Petitioner has a title to the suit property, which is being protected by the conservatory orders issued by this court.
  20. He further contended that the Petitioner has invested millions of shillings into the suit property on the basis of its ownership of the said property, whereas the applicants have not invested into any development on the suit property. Therefore, the Petitioner/1<sup>st</sup> Respondent is rightly enjoying the fruits of its investments on the suit property, which it owns and which it does not plan to dispose of as alleged by the applicants.
  21. He also deposed that the orders sought by the applicants cannot be granted at the interlocutory stage given their far-reaching effects. He urged the court to dismiss the instant application with costs.
  22. The 3<sup>rd</sup> Cross-Petitioners/applicants filed a Supplementary Affidavit, and averred that contrary to the allegations made by the deponent in his Replying Affidavit, they have not sought to either bar the Petitioner from presenting their case before this court or sought to strike out the Petition.
  23. Further, the applicants denied that the 3<sup>rd</sup> Cross-Petitioners/Applicants are seeking to review the ruling of the court that was rendered on 29<sup>th</sup> October 2024, and therefore the Petitioner misapprehended the tenor and thrust of their application.
  24. Further, it was averred that the basis of the instant application is the Cross-Petition, and not the Petitioner's Petition. It was further averred that the applicants advocate has informed them that the court has jurisdictions to issue the orders sought.
  25. Further, the deponent deposed that their Cross-Petition was not their response to the Petition, but it was a case against the Petitioner, and therefore the Petitioner misapprehended their Cross-Petition, and to date there is no response to their Cross-Petition.
  26. Further, that their advocate has advised them that no issues were drawn by the Petitioner's legal representation and/or served on their advocates, in readiness to the Petition herein to be heard and hence the Petitioner cannot claim that the Petition was ripe for trial as at 13<sup>th</sup> January 2025.
  27. Further, the deponent vehemently denied that they have invoked the provisions of section 45 of the Law of Succession Act, in the instant Notice of Motion Application. He also denied the illegality of the entries in the search documents that were produced to allege that the Petitioner is not a trespasser on the deceased land. He claimed that the Petitioner has not demonstrated the legality of the root of its alleged title to the suit property. He urged the court to allow the application.
  28. The application was canvassed by way of written submissions. The 3<sup>rd</sup> Cross-Petitioners/Applicants filed their written submissions through J. Harrison Kinyanjui & Co. advocates, and urged the court to



- allow the instant application. They relied on various provisions of law, and several decided cases which this court has read and considered.
29. The Petitioner/1<sup>st</sup> Respondent also filed its written submissions dated 11<sup>th</sup> February 2025, and urged the court to dismiss the said application. The Petitioner also relied on Mutunga Rules and various decided cases which this court has considered.
  30. Having considered the instant application, the relevant provisions of law and the rival written submissions, the court finds the issue for determination is whether the instant application and/ or the orders sought by the 3<sup>rd</sup> Cross Petitioners/Applicants are s merited. -
  31. From the court record, it is evident that the Petitioner/1<sup>st</sup> Respondent herein filed this Petition dated 28<sup>th</sup> May 2024, and sought for various declarations; among them a declaration that the Petitioner is the legal and rightful owner of all that parcel of land known as Cis-Mara/Lemek/190, and a further declaration that the registration of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as the owner of the said parcel of land Cis-Mara/Lemek/190, was unfair administrative action among other prayers.
  32. It was the Petitioner's further claim that the suit land though transferred to the name of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, having been appointed as trustees of their late father estate, they were to hold the suit land in trust for the children of the deceased, and therefore, the title deed No.365487 was issued in their names.
  33. Further the Petitioner claimed that the said land was transferred to itself on 26<sup>th</sup> July 2007, by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and title deed No.5178, was issued to itself on 27<sup>th</sup> July 2007.
  34. However, on 12<sup>th</sup> October 2012, there was a court order registered against the title which halted all the transactions on the said suit land and title until the full determination of the Succession Cause No. 95 of 2006. On 18<sup>th</sup> October 2013, an entry was made on the Green card which showed that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had been registered as the proprietors of the said parcel of land vide title deed No.050551.
  35. The Petitioner further claimed that in the year 2022, it received information that there were speculations on selling of the suit land, and that the potential buyers had visited the land. Thereafter the Petitioner registered a caution through Patel Gopal Dhanji Velji, who is a Director of the Petitioner. Through an official search, the Petitioner confirmed that it was still the registered proprietor of the suit land. However, in 2023, the Petitioner received information that there were attempts to sell the suit property, and they instructed their advocate to lodge a caution.
  36. It was averred that to the Petitioner's shock on 13<sup>th</sup> September 2023, when a search was carried out, the said search showed that the land was registered in the name of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as the registered proprietors from 18<sup>th</sup> October 2013, and thus the filing of this Petition.
  37. However, the instant Petition is objected to by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents vide their Replying Affidavit sworn by William Rakita Murero who averred that the suit property initially belonged to their father John Tupenet Murero, but was transmitted to them vide Certificate of Confirmation of Grant Nairobi HC Succession Cause No.95 of 2006.
  38. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents denied that they ever conveyed the suit land to any one, let alone the Petitioner herein. It was their claim that the said Nairobi High Court Succession Cause No.95 of 2006 (in the restate of John Tupenet Murero(deceased) remains undetermined, and the said file was transferred to Narok High Court vide a letter dated 30<sup>th</sup> November 2023.
  39. It was the 1<sup>st</sup> and 2<sup>nd</sup> Respondents allegations that the Petitioner has been unlawfully trespassing on the suit land which is contrary to the law, and urged the court to dismiss the Petition in its entirety.



40. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents further filed a Cross-Petition on their behalf and also as administrator of the estate of John Tupenet Murero who were named as 3<sup>rd</sup> Cross-Petitioners.
41. In their Cross-Petition, the Petitioners thereon reiterated that the suit property Narok/Cis-mara/Lemek/190 was transferred to the administrators of the estate of John Tupenet Murero vide a confirmed grant on 1<sup>st</sup> September 2006, in Nairobi High Court Succession Cause No. 95 of 2006.
42. It was their claim that upon transfer of the suit property to the 3<sup>rd</sup> Cross-petitioners, they became the lawful proprietors of the suit land, and therefore the Petitioner in the main Petition is a trespasser, and should be estopped from denying the Cross-Petitioners full and affectual passage over the suit land.
43. Further they claimed that the Petitioner in the main Petition colluded with the 2<sup>nd</sup> Respondent to have the title to the suit land issued in the name of the Petitioner.
44. Simultaneous to the Petition, the Petitioner/1<sup>st</sup> Respondent filed a Notice of Motion Application dated 28<sup>th</sup> May 2024, wherein the Petitioner sought for conservatory orders staying all dealings and proceedings with relation to the suit property.
45. The said application was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and after canvassing the same, the court rendered a Ruling on 29<sup>th</sup> October 2024, wherein it issued an order of status quo pending the hearing and determination of the Petition herein, in respect of the suit property known as Cis-mara/Lemek/190.
46. Thereafter, the parties were directed to comply with Order 11 and a date for Pre-trial Conference was set for 29<sup>th</sup> January 2025. Before the date of Pre-trial conference, the 3<sup>rd</sup> Cross-Petitioners/Applicants filed the instant Application dated 13<sup>th</sup> July 2025, which is the subject of the Ruling.
47. The 3<sup>rd</sup> Cross-Petitioners have sought for various orders among them an order to issue to the effect that all proceeds collected and/or received by the Petitioner/ 1<sup>st</sup> Respondent be deposited in an escrow account in the joint names of the parties advocates. This prayer seeks to compel the Petitioner to deposit the money in the intended escrow account, and thus it is a mandatory order that has been sought at this interlocutory stage.
48. Further the 3<sup>rd</sup> Cross-Petitioners/ Applicants sought for leave of the court to take inventory of all the tenants occupying the suit property, and inspect the records of all the rent collected and in default, the Petitioner/1<sup>st</sup> Respondent be evicted from the suit land.
49. From the main Petition, what is clear is that the Petitioner/ 1<sup>st</sup> Respondent has alleged that it is the lawful proprietor of the suit property, having purchased the same from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (Applicants herein) and it attached a copy of a title deed in its name dated 27<sup>th</sup> July 2007.
50. On the other hand, the 3<sup>rd</sup> Cross-Petitioners/ Applicants have also alleged that the suit property was transmitted to them vide a Certificate of Confirmation of Grant dated 15<sup>th</sup> September 2006. They also annexed a copy of a title deed dated 25<sup>th</sup> October 2006.
51. Therefore, there are two titles herein one being held by the Petitioner, and the other by the Cross-Petitioners. These are competing interests, and the issue of who is the lawful owner of the suit property, or who is holding a valid title can only be determined after hearing of the main Petition and the Cross Petition, through calling of evidence and production of exhibits.
52. Further, from the main Petition, the Petitioner alleged that after the suit property was registered in its name, it took possession and has been in occupation of the said property all through, and a Four-star hotel was established thereon, and has been in operation since 2007.



53. The 3<sup>rd</sup> Cross-petitioners/ Applicants have not denied that the Petitioner/ 1<sup>st</sup> Respondent has been in occupation of the suit property since 2007, and has been running a Four-star hotel thereon. The 3<sup>rd</sup> Cross-Petitioners/Applicants now urges this court to direct that the proceeds from the said establishment be deposited in an escrow account in the joint names of the advocates herein.
54. The 3<sup>rd</sup> Cross-Petitioners/Applicants have not claimed that they ever participated in the development and or construction of the said Four-star hotel or any other establishment on the suit property. They have not claimed that they own the tourism business established on the suit property. If they did not develop the said structures on the suit land, and/ or purchased them, how can they claim that the proceeds and revenue from the said establishment be deposited in an escrow account; and which establishment they did not participate in developing it or even running it.
55. The question as to who is the rightful owner of the suit land can only be determined after taking evidence in the main hearing of both the Petition and Cross-Petition. In the event the 3<sup>rd</sup> Cross-Petitioners/ Applicants would be found to be entitled to the suit property, of course they may be compensated through award of damages and/or costs.
56. At this juncture, this court finds no good reasons to allow prayer No.3 of the instant application. In said prayer, the Applicants have sought for mandatory orders, which Mandatory orders can only be granted at the interlocutory stage in very special circumstances.
57. In Halsbury Laws of England 4th Edition Volume 24 at Paragraph 948 it states as follows: -
- “A mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can be easily remedied, or if the appellant attempts to steal a march on the respondent, a mandatory injunction will be granted on an Interlocutory application”.
58. In the case of Kenya Breweries Ltd & another vs Washington Okeyo the court held as follows: -
- “A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the Plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
59. The 3<sup>rd</sup> Cross-Petitioners/Applicants herein have not demonstrated any special circumstances existing herein that would persuade this court to issue such a mandatory order. There was no evidence at all adduced to suggest that the Applicants ever at any time collected the proceeds from the said property or benefitted from any revenue, and that the same has now stopped after the Petition was filed, and thus the mandatory orders now sought.
60. The 3<sup>rd</sup> Cross-Petitioners/Applicants have also sought to be allowed to take inventory of all the tenants occupying the suit property, inspect the record of collected rent and service charge. The Applicants have not laid basis for seeking this prayer. As this court pointed earlier, the 3<sup>rd</sup> Cross-Petitioners did not participate in the development of the establishment on the suit property. They claim to own the land,



but not the development thereon, and if they do not own the development on the suit land and/or did not contribute in their establishment, why should they be allowed to take inventory of the tenants occupying the suit land.

61. On prayer No.5, the Cross-Petitioners/Applicants urged the court to issue an eviction order directing the 1<sup>st</sup> Respondent to vacate the suit property and or be evicted forthwith. It is evident that eviction order is a final order which cannot be issued at an interlocutory stage.
62. Both the Petitioner/1<sup>st</sup> Respondent and the 3<sup>rd</sup> Cross-Petitioners/Applicants are claiming ownership of the suit land. There is a court order for status quo to be maintained. How then could this court issue an order of eviction when there is a clear court order to maintain the status quo. By allowing an eviction order, then in essence this court will have reviewed or overturned the orders of maintaining the status quo without an application for such review and/or setting aside.
63. Further if an eviction order is granted, then the 3<sup>rd</sup> Cross-Petitioners/Applicants will have stolen a march against the Petitioner herein. See the case of of Locabail International Finance Ltd vs Agro Export & Another (1986), ALI ER 901 the court held that; -

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can easily be remedied, or if the Defendant attempted to steal a march on the Plaintiff..... a mandatory injunction will be granted on an interlocutory application.”
64. The Petitioner/1<sup>st</sup> Respondent raised various pertinent issues in its Replying Affidavit and the submissions. The Petitioner /1<sup>st</sup> Respondent submitted that this court is currently constituted as a Constitutional Court under the provisions of Article 22 of the *Constitution*, and the rules of procedures that applies in determining such constitutional Petition are the Mutunga Rules.
65. It was their submissions that the rules of the Civil Procedure do not apply in Constitution Petitions, and this court cannot agree more. The claim by the 3<sup>rd</sup> Cross-Petitioners/Applicants is brought in a Petition and not a Civil suit, and therefore, the Mutunga Rules apply herein, and NOT the Civil Procedure rules.
66. The Cross-Petition by the 3<sup>rd</sup> Cross-Petitioners/Applicants cannot be isolated from the main Petition and the said Cross-Petition is opposed and therefore Order 36 of Civil Procedure Rules cannot apply. The said order 36 which is on summary judgement provides;
  1. In all suits where a plaintiff seeks judgment for—
    - (a) a liquidated demand with or without interest; or
    - (b) the recovery of land, with or without a claim for rent or mesne profits, by a landlord from a tenant whose term has expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser, where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or mesne profits.
  2. The application shall be supported by an affidavit either of the plaintiff or of some other person who can swear positively to the facts verifying the cause of action and any amount claimed.



3. Sufficient notice of the application shall be given to the defendant which notice shall in no case be less than seven days.
67. Further in seeking to have the proceeds deposited in an escrow account, and taking of inventory of tenants the 3<sup>rd</sup> Cross-Petitioners/Applicants are seeking to preserve the estate of the deceased John Tupenet Murero. The said orders can only be issued by a succession court under sections 45 and 47 of the *Law of Succession Act*.
68. Having considered the instant Application, the pleadings in general and the rival written submissions, this court finds that the prayers sought by the Applicants are not tenable because the court is yet to determine who between the Petitioner/ 1<sup>st</sup> Respondent and the 3<sup>rd</sup> Cross- Petitioners the valid title holder and / or proprietor of the suit property.
69. In a nutshell, the court finds and holds that the instant application dated 13<sup>th</sup> January 2025, is not merited and is fatally defective. Consequently, arrive at a conclusion that the said application cannot stand and is dismissed entirely with costs to the Petitioner/1<sup>st</sup> Respondent.

It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 20<sup>TH</sup> MARCH, 2025.**

**HON. L. GACHERU**

**JUDGE**

**20/3/2025**

Delivered online in the presence of

Elijah Meyoki – Court Assistant

Mr Harrison Kinyanjui for the Cross- Petitioners/ Applicants

Mr Michuki for the Petitioner/ 1<sup>st</sup> Respondent

N/A for the other Respondents

**HON. L. GACHERU**

**JUDGE**

**20/3/2025**

