



**Wachiye v Wambua & another (Originating Summons
E018 of 2022) [2023] KEELC 18218 (KLR) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ORIGINATING SUMMONS E018 OF 2022**

**LL NAIKUNI, J
JUNE 13, 2023**

BETWEEN

KENNEDY WANYAMA WACHIYE APPLICANT

AND

VICTOR WAMBUA 1ST RESPONDENT

JOHN WAUDO WANGIA 2ND RESPONDENT

RULING

I. Preliminaries

1. The applications before this Honorable Court for hearing and determination are the Notice of Motion application dated 22nd February 2022 brought under a certificate of urgency. It is brought by Kennedy Wanyama Wachiye, the Applicant herein under the provisions of Sections 1A, 1B, & 3A of the [Civil Procedure Act](#), Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Article 159(2) (d) of [the Constitution](#) and all enabling provisions of the law.
2. At the same time, on 8th March, 2022, the Respondent raised a Preliminary Objection of even date on grounds that the Applicant lacked “Locus Standi” to institute this suit against the Respondents.

II. The Applicant’s case

3. The Applicant sought for the following orders:-
 - a. Spent.
 - b. That there be an interim order restraining the Respondents their successors and assigns from evicting and blocking the Applicants access or in any way interfere with the Applicants quiet possessions of part of MN/II/10744 pending “Inter Parties” hearing of the suit.



- c. That there be a temporary injunction restraining the Respondents their successors and assigns from evicting and blocking the Applicants access or in any way interfere with the Applicants quiet possession on MN/II/10744 pending hearing of the suit.
 - d. That costs of this motion be provided for.
4. The application by the Applicant was premised on the grounds, testimonial facts and averments founded under the 14 Paragraphed Supporting Affidavit of Kennedy Wanyama Wachiye sworn and dated 22nd February, 2022 together with 4 annexures marked as “KWW – 1 to 4” annexed thereto. The Applicant averred that he was the Applicant herein and hence competent to swear this Affidavit. He further stated being aware that sometime in the year 2008, he entered and took possession of part of all that parcel of Land known as Land Reference Numbers MN/II/10744 (hereinafter referred to as “The Suit Property”). He erected his house and cultivated the land on the suit property for over 20 years and resided there with his family and operated his business without any interruption. He claimed that sometime on 1st February, 2022, the Respondent issued him with a 1-month eviction notice to take effect on 1st March, 2022 contrary to the mandatory provisions of Section 152 of the *Land Act* and also Mombasa CMCC No. 4 of 2016 to which the Applicant was never party to as such the Judgment in the notice never affected nor bound the Applicant. He annexed and marked as “KWW – 2” a copy of the eviction notice together with the copy of title and Judgment.
5. Further, Applicant claimed that the Respondent had placed a fence in front of his business premises to block him from accessing his business and had further used police to intimidate him. He annexed and marked as “KWW – 3” pictures of the fence. The suit property had been having paper owners and the more recent paper owners were the Respondents. The Respondents were mere paper owners of the suit property and had actual constructive and or imputed notice of his occupation and possession of the suit property. The Respondents’ rights on the suit property had been extinguished by way of land adverse possession by his rights since the period he had been in possession and occupation of the suit property which was over twelve years. Since he was in possession and occupation of the suit property it was incumbent upon this Honourable court to apply the Doctrines of Equity, and overriding objectives of the court to protect the status quo pending hearing and determination of this matter. He annexed and marked as “KWW – 4” being a copy of the picture of the suit property showing his structures.
6. Therefore, he averred that it was incumbent upon this Honourable Court to issue temporary injunctive orders restraining the Respondents their successors or assigns from transferring, disposing, alienating, subdividing, selling, leasing, licensing, charging, mortgaging, evicting, harassing, intimidating, threatening and or otherwise dealing with part of the suit property or in any way, interfere with his quiet possession, occupation and use of the suit property pending hearing of the application and main suit.
7. He deponed that he would suffer irreparable losses if the temporary injunctive orders were not granted. The irreparable losses would arise in having himself together with his family being evicted and the structures therein demolished leaving them as destitute and homeless. The Defendants would suffer no prejudice if the motion was allowed. In conclusion he urged the Court in the interest of justice and fairness that the prayers sought be allowed.

III. The Respondents case

8. On 8th March 2022, the Respondents filed a preliminary objection with the reason that the Applicant lacked the locus standi to institute the instant proceedings against the Respondents and that the Applicant’s claim as presented was fatally defective.



IV. Submissions

9. On 14th June 2022 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 22nd February 2022 be disposed of by way of written submissions. Pursuant to that all the parties obliged and a ruling date was reserved for the 28th September 2022 by Court accordingly. From the records, it appears only the Respondents filed their written submissions.

A. The Written Submissions by the Respondents.

10. On 18th June, 2022, the Learned Counsel for the Respondents, the Law firm of Messrs. Ngonze & Ngonze Advocates filed their written submissions dated 16th June, 2022. Mr. Ngonze Advocate commenced his submission by stating that the Applicant had filed a Notice of Motion application dated 22nd February, 2022 seeking to be granted injunctive orders against the Respondents from evicting and blocking the Applicants having access to the suit had a costs. He informed court that the Applicant had instituted an Originating Summon dated 22nd February, 2022 against the Respondents seeking for Land Adverse Possession. Both the application and the suit were opposed in reply sworn on 16th February, 2022.

11. The Learned Counsel averred that as deponed to at Paragraphs 4 to 7 of the said Affidavit that:-

- a. The Respondents were the sole, lawful, registered proprietor of the suit land.
- b. The suit property earlier been encroached upon by two (2) trespassers – “Hamisi Said Babu and Munga Ndegwa Chimera which led to the initialization of:-
 - i. “CMCC (Mbsa) No. 4 of 2016 – Victor Wambua & Another – Versus- Hamisi Said Babu and Another whereby Judgment was delivered on 9th October, 2019 in favour of the Respondents
 - ii. “CMCC (ELC) Misc. Civil application No. 488 of 2019 Victor Wambua and Another –Versus- Hamisi Said Babu & Another matter was still pending before court.

12. The Learned Counsel informed court that from the judgment delivered on 9th October, 2019 the Respondents sought to executive against the subject trespassers who fled from the suit property with the Applicant herein taking their place and lodging objection. Throughout the purchase of the suit property by the Respondents the Applicant herein had never been in possession and/or occupation of the suit property.

13. Nonetheless, the Learned Counsel argued that assuming the Applicant entered upon the suit property in the year 2008, his claim for Land Adverse Possession would only have crystalized in the year 2020 by which time the Respondents had been registered as lawful proprietors of the land in year 2010 and Judgment had been entered in 9th October, 2019. Hence the claim for Land Adverse Possession was not available. Based on the provisions of Section 38 of the *Limitation of Actions Act* Cap. 22, Order 37 & 40 of the Civil Procedure Rules, 2010 Sections 107, 109, 119 and 120 of the *Evidence Act* Cap 80 and Section 13 of ELC Act 2011.

To buttress his argument, he cited several cases of Moses Chepkonga Cherono –Versus- Margaret Njoki Kinyanjui 2017 (eKLR), Samuel Kipngeno Koech – Versus- Agnbes Wambui Gitonga (2016) eKLR, Stephen Mwangi Gitonga –versus- Edwin Onesmus Wanjau 2022 eKLR Court of Appeal (Maindi) Misc. Appl. No. 56 of 2014 Mtana Lewa – Versus- Kahinbdi Ngala Mwangadi (2015) eKLR.



14. The Learned Counsel argued that the Applicant was not entitled to be granted injunction orders as he had not fulfilled the 3 conditions founded in the famous case of “Geilla –Versus- Cassman Brown (Supra) E.A. Industries Ltd. – Versus - Trufoods Ltd. (1972) E.A. 420 Techno Holdings Ltd. & 4 Others – Versus- National Social Security Funds Board of Trustees (2018) eKLR.
15. In conclusion the Learned Counsels submitted that the Applicant should bear the costs of the application and the objection. To buttress his point, he relied on the Provisions of Section 27(1) of [Civil Procedure Act](#) Cap 21 Order 51 Rule 11 of the Civil Procedure Rules and the decision of Osopul –Versus- KADDU 2001 E.A. 193, Cecilia Kamuru Ngayu –Versus Barclays Bank of Kenya & Another (2016) eKLR

V. Analysis and Determination

16. I have carefully read and considered the pleadings herein – being the Notice of Motion application dated 22nd February, 2022 by the Applicant herein, the Preliminary Objection dated 8th March, 2022 by the Respondents, the written submissions, cited authorities and the relevant provisions of [the Constitution](#) of Kenya, 2010 and the statutes. In order to arrive at an informed decision, the Honorable Court has crafted four (3) framed issues for its determination. These are:
 - a. Whether the Preliminary Objection dated 8th March, 2022 raised by the Respondents meets the standards of such objection in law and precedents.
 - b. Whether the Notice of Motion dated 22nd February 2022 meets threshold required of a temporary injunction under Order 40 Rules 1 Civil Procedures Rules, 2010.
 - c. Whether the parties herein are entitled to the reliefs sought.
 - d. Who will bear the Costs of Notice of Motion application 22nd February 2022.

Issue No. a). Whether the Preliminary Objection dated 8th March, 2022 raised by the Respondents meets the standards of such objection in law and precedents.

17. Under this Sub – heading, the Respondents have raised a Preliminary object and hence its important that the Court deliberates on the concept slightly in details. 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.....”

Additionally, this legal preposition has been made graphically clear in the now famous case of Mukisa Biscuits Manufacturing Co. Limited – Versus- West End Distributors Limited. [1969] E.A. 696. Where Lord Charles Newbold P. held that a proper preliminary objection constitutes a pure points of law. The Learned Judge then held that:-

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.....”



...a Preliminary Objection consists a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may disposed of the suit. Examples are on objection to the jurisdiction of the court or plea of limitation or a submission that the parties are bound by contract giving rise to the suit to refer the dispute to arbitration.””

18. The “Classicus locus” case demands that the objection must consist of a point of law, must have been pleaded or arises from the pleadings and if argued may dispose of the suit. Where a court is asked to look outside the pleadings or for evidence to come up with a decision on the objection, then the same does not fit to be termed as a preliminary objection but to call for either viva voce or affidavit evidence. Further, I wish to cite the case 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.
19. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter.
20. In the case of “Artar Singh Bhamra & Anor – Versus - Oriental Commercial Bank – Civil Suit No. 53 of 2004 – High Court Kisumu the Court held:

“ A preliminary objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”
21. In the instant case, the Respondent averred that the Applicant lacks “Locus Standi” and that the suit should be dismissed. Undoubtedly, this is a pure matter of law. The court will deal with the two issues simultaneously. It is the Applicant’s assertion that the Plaintiffs did not have locus standi on the ground that the suit land belongs to them as the Respondents. Certainly, in my own view, there will be need for evidence to be tendered to disprove that assertion. It should be noted that the said suit deals with the ownership of the property, the Applicant stating that the Respondents have lost the rights to the land by way of doctrine of Land Adverse possession.
22. Having now considered the objections raised by the Respondents, the Court finds that lack of “locus standi” can dispose of the matter preliminarily without having to resort to ascertaining of facts. The Preliminary Objection raised by the Respondents fits the description of Preliminary Objection as stated in the case of “Mukisa Biscuit case (Supra).
23. While the Court has already held and found that the issue of “locus standi” is a Preliminary Objection rightly raised, in this instant suit, the Respondents have averred that firstly, although the Applicant has filed this suit, it has failed to demonstrate having any proprietary interest whatsoever over the suit property. According to the Respondent, the Applicant has not produced any documentation that shows any interest it may be having over the suit property. Secondly, the Respondent argues that the



Applicant has not illustrated or provided any reason why the owners of the suit property could not file the suit by themselves.

24. Be that as it may, this Honorable Court has taken cognizance to the fact that while the Applicant is claiming beneficial interest over the suit and the Respondents allegedly claims to be having a title deed to the said property. That means therefore that the issue as to whether or not the Applicant has any beneficial interest over the suit property. From the face value, these are pure matters of facts requiring parties to produce empirical oral and documentary evidence. Ideally, the only conducive legal forum for doing so is during a full trial and determination on the legal and registered owner of the suit land made thereof. The Court would be required to interrogate evidence produced before it and ascertain the facts in order to come into that conclusion. In saying so, the Honorable Court is ably guided by the legal reasoning from the decision of: “Presbyterian Foundation & Another – Versus - East Africa Partnership Ltd & Another [2012] eKLR:-

“The fourth issue is that the 2nd Plaintiff has no proprietary interests in the subject properties and is hence not entitled to the orders under Order 40 of the Civil Procedure Rules. That may be so. However, that determination can only be made at the hearing of the application as it goes to the merit of the application itself. Since I cannot make any conclusive findings with respect to the 2nd Plaintiff’s position vis-à-vis the 1st Plaintiff, I cannot say that the 1st Plaintiff’s suit is non-existent. It is further submitted that since the Church has registered officials and the 1st Defendant has directors, a suit on their behalf can only be brought by the said agents. That submission is largely correct since a suit which is brought without the blessing of the said entities is a non-starter. Whereas the Church is not a party to this suit and therefore the issue of its filing suit does not arise, with respect to the 1st Plaintiff, whether or not it sanctioned the filing of the suit is a matter of evidence. If the suit was filed without the 1st Plaintiff’s authorization, that would be something else. However, that is not an issue that, properly speaking, can be the subject of a preliminary objection.

Had this objection been raised by way of a formal application supported by an affidavit, that would have been a different story since the Plaintiff would have had an opportunity to explain the discrepancies raised whose failure would have possibly led to a finding in favour of the Defendants. In the result it is my view and I so hold that the issues raised in the notice of preliminary objection dated 28th June 2012 do not meet the threshold for

Preliminary Objections. The same are accordingly dismissed with costs to the Plaintiffs.”

25. Taking into account the above findings of the court, this Honorable Court finds that since the Applicant’s suit is based on beneficial interest over the suit property, making a determination as to whether or not they hold such interest over the suit property at this stage will be draconian as the Applicant suit would have been determined via a Preliminary Objection and it would mean that the Court would not have had an opportunity to ventilate on the issues that would have been raised by the Plaintiff. Further, it is the Court’s holding that the instant issue while it goes to the Jurisdiction of this Court, in the interest of natural Justice, Equity and Conscience, certain facts must be ascertained and therefore the issue at hand cannot be merely determined via a Preliminary Objection. I reiterate, the Court will have to take evidence to determine the same. Likewise, this position was arrived at from the



decisions of:- “Wilmot Mwadilo, Edwin Mwakaya, Amos Nyatta & Patrick Mbinga – Versus - Eliud Timothy Mwachungu & Sagalla Ranchers Limited [2017] eKLR, where the Court held that:-

“Upholding the said Preliminary Objection at this stage would be draconian as there appeared to be substantive issues that had emerged that needed to be heard and determined at the time of the hearing of the said Notice of Motion application.

Indeed, the question of whether they have a cause of action against the Defendant and if they can sustain the same against him ought to be considered during the hearing of their Notice of Motion application when this court will consider whether or not leave should be granted for them to continue with the derivative action against him. The said question cannot be considered at this stage as there is potential of the court inadvertently delving into the merits or otherwise of their said application”.

26. For these very legal reasons adduced herein, it is my own view that the Preliminary Objection thought based on matters of law, but erroneous and draconian method to determine a suit of this magnitude touching on ownership of land. Thus, the Preliminary Objection must fail outrightly.

Issue No. b). Whether the Notice of Motion dated 22nd February 2022 meets threshold required of a temporary injunction under Order 40 Rules 1 Civil Procedures Rules, 2010.

27. Under this Sub - heading, the Court wishes to state that temporary injunctions are governed by certain legal parameters as deliberated on herein under. Ideally, the application herein is premised under Order 40 Rule 1 of the Civil Procedure Rules 2010 amongst the provisions of the law. Which provides as follows: -

Order 40, Rule 1

Where in any suit it is proved by affidavit or otherwise—

- a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or y g wrongfully sold in execution of a decree; or
 - b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
28. The principles applicable in an application for an injunction were laid out in the celebrated case of “Giella – Versus - Cassman Brown & Co Ltd (1973) EA 358, where it was stated:-

“First an applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”



29. The three conditions set out in *Giella*, need all to be present in an application for court to be persuaded to exercise its discretion to grant an order of interlocutory injunction. This was set out by the Court of Appeal in the case of:- “*Nguruman Limited – Versus - Jan Bonde Nielsen & 2 others* [2014] eKLR,

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Limited - Versus - Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between”.

30. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition melted down in the case of:- “*MRAO Limited – Versus - First American Bank of Kenya Ltd & 2 others* (2003) KLR 125,

“So what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

31. The Applicant avers that sometime in the year 2008, he entered and took possession of part of MN/II/10744. He erected his house and cultivated the land on the suit property for over 20 years and reside there with his family and operates his business from the suit property. The Applicant pleads adverse possession of the suit property. The Respondent has placed a fence in front of his business premises to block him from access to his business and has further used police to intimidate him. He annexed and marked KWW 3 pictures of the fence.

32. In the case of “*Mbuthia – Versus - Jimba credit Corporation Ltd* 988 KLR 1, the court held that:-

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.”

33. Similarly, in the case of “*Edwin Kamau Muniu – Versus - Barclays Bank of Kenya Ltd* the Court held that:-

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”

34. In the present case, it is evident that the Applicant’s beneficial interests over the suit property is anchored on the fact that he has been staying on the said suit property for over 20 years and over years has attained land adverse possession. There is no doubt in the mind of Court that there is a dispute



between the parties that can only be determined by entertaining and maintaining the conduct of this suit. The Court may only be able to determine the ownership of the suit property where evidence is adduced and all parties. In the circumstances, I find that the Applicant has established that he has a prima facie case with a probability of success.

35. On the second limb of the Court of Appeal in case of “Nguruman Limited (supra), held that,

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

36. On the issue whether the Applicant will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. It is not hidden that the Applicant’s family and life has been spent of this particular suit property. He has built a home, a business and cultivated the said suit property. The Applicant has demonstrated to court, that the loss he stands to lose has no standard by which their amount can be measured with accuracy.

Issue No. c). Whether the parties herein are entitled to the reliefs sought.

37. Consequently, having elaborately stated the issues on the principles of Law herein, the Honorable Court holds perhaps at this juncture, it would be imprudent to dismiss the Applicant’s Application and originating summons dated 22nd February 2022. The main reasoning behind this is that it is critical and in the interest of justice Equity and Conscience that the suit ought to be heard and facts ascertained to arrive at a just determination.

38. Clearly, from the surrounding facts and inferences, both parties have interest in land and are invested in it as seen from their pleadings, at this point, this Honorable court cannot make a clear determination on which of the parties has interest in the land and if the title deed produced is genuine or not unless evidence is adduced, and until both parties are subjected into an intensive hearing during a full trial.

39. Be that as it may, in the meantime court is called upon to preserve the title to the suit land and protect the interest of all parties, herein who stand to suffer hardship if the suit land is alienated by either of them. The wisest way to do that is to grant the temporary injunctive orders sought by the Applicant herein.

Issue No. d). Who will bear the Costs of Notice of Motion application 22nd February, 2022.

40. It is trite law that the issue of costs is at the discretion of the Court. Costs mean the award that a party is granted after the conclusion of any legal action and/or proceedings of litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event, it means the result or outcome of the legal action.



41. In this case, as Court finds that the Applicant has fulfilled the conditions set out under Order 40 Rule 1 of the Civil Procedure Rules, 2010, this application shall be deemed to have merit. Thus the Applicant is entitled to costs of the Application and the objection herein.

VI. Conclusion & Disposition

42. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. 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 Preliminary Objection dated 8th March, 2022 by the Respondents herein be and is hereby dismissed.
- b. That the Notice of Motion dated 22nd February, 2022 is meritorious and is hereby allowed.
- c. That an order of temporary injunction made in favour of the Applicants and against the Respondents, their successors and assigns are hereby ordered and restrained from evicting and blocking the Applicant access or in any way interfere with the Applicant's quiet possession of part of MN/II/10744 pending hearing and determination of the Originating Summons filed on 22nd February, 2022.
- d. That for the sake of expediency, this suit should be fixed for hearing and be disposed of within the next One Hundred and Eighty (180) days from this date. There should be a mention on 18th July, 2023 for purposes of taking direction of the Originating Summons dated 22nd February, 2022 under the provision of Order 37 Rules, 11, 13 and 16 of the Civil Procedure Rules, 2010, conducting an intensive Pre – Trial Conference and fixing an appropriate hearing date thereof.
- e. That the Costs of this application and the objection to be granted to the Applicant herein.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 13TH DAY OF JUNE 2023.

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HON. JUSTICE L. L. NAIKUNI, (JUDGE)
ENVIRONMENT AND LAND COURT AT
MOMBASA

Ruling delivered in the presence of:

- a. M/s. Yumna, the Court Assistant.
- b. No appearance by the Applicant.
- c. No appearance by the Respondents

