



REPUBLIC OF KENYA



**Storelli v Pello & another (Land Case E016 of 2022)  
[2025] KEELC 1347 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1347 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
LAND CASE E016 OF 2022  
LL NAIKUNI, J  
MARCH 13, 2025**

**BETWEEN**

**ANIELLO STORELLI ..... PLAINTIFF**

**AND**

**PIERO PELLO ..... 1<sup>ST</sup> DEFENDANT**

**THURSDAY INVESTMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. The Honourable Court was tasked with the determination of the Chamber Summons dated 7<sup>th</sup> April, 2022 filed by the Aniello Storalli, the Plaintiff/Applicant herein. It was brought pursuant to the provisions under Rule 3 of the High Court [Practice and Procedure Rules] to Section 10 of the *Judicature Act*, Cap. 8, Order 40 Rules 1 & 2 and Order 51 Rule 1 of the Civil Procedure Rules 2010, Sections 1A, 1B, 3, 3A and Section 63 [e] of the *Civil Procedure Act*, Cap. 21, Section 13 of the Environment & Land Court *Act, No. 19 of 2011* and all other enabling provisions of the law.
2. Upon effecting service, the application was opposed vide a Replying Affidavit dated 3<sup>rd</sup> December, 2024. The Honourable Court shall be dealing with it in-depth at a later stage of this Ruling whatsoever.

**II. Plaintiff/Applicant's Case**

3. The Plaintiff/Applicant sought for the following orders before court; -
  - a. That pending the hearing and determination of this application, this honourable court be pleased to order that the status quo at the suit premises referred to as Kwale/Galu Kinondo/1107 be maintained and the Defendants be restrained from interfering with the Plaintiff's occupation of the suit premise.



- b. That costs of this application be in the cause.
4. The application is premised upon the grounds, testimonial facts and the averments made out under the 27 Paragraphs supporting affidavit of Aniello Storelli together with four [4] annexures marked as “AS 1 to 4” annexed thereto. He averred as follows that: -
- a. He was an adult of sound mind and the Plaintiff herein duly authorised to swear this affidavit.
- b. The 1<sup>st</sup> Defendant vide a sale agreement dated 12<sup>th</sup> December, 2004 purported to sell the suit property to the Plaintiff at an agreed purchase price of Seventy-Seven Thousand Four Seventy-Nine Euros (77,479 Euros). Attached was a copy of the said sale agreement and receipt.
- c. He entered into the said transaction on the strength of the 1<sup>st</sup> Defendant’s representation that he had the capacity and authority from the 2<sup>nd</sup> Defendant to transact in the said property on its behalf.
- d. The said property was registered in the names of the 2<sup>nd</sup> Defendant and attached was a copy of the title deed.
- e. It was the term of the sale agreement that a deposit of Seven Thousand Four Seventy-Nine Euros (7,479 Euros) be paid by himself and the balance of the purchase price to be paid within 40 monthly instalments of One Thousand Two Hundred and Fifty Euros (1, 250 Euros).
- f. Further, it was agreed that upon payment of the deposit, the Defendants would grant the Plaintiff possession of the suit property.
- g. The Deponent paid the afore – sated deposit and took possession and which he had been in occupation of the suit property since year 2004 to date.
- h. He averred that he paid the balance of the purchase price in full and he made a demand to the Defendant to facilitate transfer of the proprietary right to him as the bona fide proprietor of it having purchased it.
- i. But several years after making the full payments of the purchase price to the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant instead of obliging decided to institute a Civil Case ELC No. 143 of 2012 claiming vacant possession of the suit property from the Deponent and citing that he had defaulted and breached the terms of the agreement for sale.
- j. In the said suit that the 1<sup>st</sup> Defendant acknowledged that they had received a sum of Twenty Nine Thousand Four and Nine Euros (29,409 Euros) and claimed that the balance of Fourty Eight Thousand and Seventy Euros (48,070 Euros) had not been paid.
- k. The ELC Civil suit no. 143 of 2012 was determined in favour of the 2<sup>nd</sup> Defendant herein and the Court found that the 1<sup>st</sup> Defendant had no capacity and no proper authority to transact over the suit property on behalf of the 2<sup>nd</sup> Defendant and therefore there was no contract between the Plaintiff and the 2<sup>nd</sup> Defendant as per the attached copy of the Judgement marked as “AS – 3”.
- l. The issue of the purchase was not canvassed by the parties nor determined by the Court in the ELC Civil Case No. 143 of 2012.
- m. The 1<sup>st</sup> Defendant was the Director of the 2<sup>nd</sup> Defendant as per a copy of the CR – 12 Form attached and marked as “AS – 4”.



- n. The 1<sup>st</sup> Defendant took advantage of the trust bestowed upon him by the Deponent and misrepresented facts to him. He received the purchase price from him.
- o. Upon invalidation of a contract, the aggrieved party ought to be returned to the position that they were before entering into and signing of the contract.
- p. The Deponent claimed a refund of Twenty-Nine Thousand Four and Nine Euros (29, 409 Euros) that the 1<sup>st</sup> Defendant admitted to have received and it was a fact that was not disputed. He further claimed a sum of Fourty Eight Thousand and Seventy Euros (48, 070 Euros) which was received by the 1<sup>st</sup> Defendant but was not acknowledged.
- q. It was unfair and an act of unjust enrichment on the part of the Defendants to get back the suit property from the Deponent and still continue keeping the money.
- r. Hence from this circumstances it necessitated this suit which seeking for an order of status quo on the suit property pending the hearing of the main suit and a refund of the purchase price paid.
- s. The Defendants would not suffer any prejudice if the orders sought were granted whatsoever.

### **III. The Responses by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents**

- 5. While opposing the application, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants /Respondents herein filed 19 Paragraphed Replying Affidavit sworn by Piero Polli, the 1<sup>st</sup> Defendant/Respondent herein and dated 3<sup>rd</sup> December, 2024. He stated that ‘inter alia; -
  - a. He was the 1<sup>st</sup> Defendant/Respondent herein and a Director of the 2<sup>nd</sup> Director Company thus competent and with the authority from the 2<sup>nd</sup> Defendant/Respondent to swear this affidavit herein.
  - b. Currently he was a resident of Italy.
  - c. Indeed, on 12<sup>th</sup> December, 2004 the Plaintiff/Applicant and himself entered into a private deed of an agreement in relation to Plot Numbers KWALE/GALU KINONDO/1107 which parcel was registered in the names of the 2<sup>nd</sup> Defendants/Respondents names.
  - d. The purchase price was Seventy-Seven Thousand Four Ninety-Nine Euros (77,497 Euros) and the balance of Seventy Thousand Euros (70, 000 Euros) which was to be paid in fourty (40) instalments of euros One Thousand Seven Hundred and Fifty Euros 1750.
  - e. It was one of the terms and conditions of the Private agreement that any default in payment of the purchase price would result in the Plaintiff/Applicant giving vacant possession of the suit property.
  - f. The Plaintiff/Applicant had only paid a sum of Twenty-Nine Thousand for and Nine Euros (29,409 Euros) and defaulted in the payment of Euro Fourty Eight Thousand and Seventy Euros (48, 070 Euros) prompting the 1<sup>st</sup> Defendant to file a suit – ELC (Mombasa) No. 143 of 2012 against the Plaintiff/Applicant for vacant possession.
  - g. The 2<sup>nd</sup> Defendant/Respondent obtained Judgement against the Plaintiff/Applicant from the said afore stated civil suit whereby he was ordered to vacate the suit property within 45 days from 25<sup>th</sup> may, 2018.



- h. Nonetheless, from that date to date, the Plaintiff/Applicant had defied to vacate the Plot and had continued to occupy the premises six [6] years after the Judgement.
- i. The 2<sup>nd</sup> Defendant only came to know of the current suit when the 2<sup>nd</sup> Defendant/Respondent was in the process of evicting the Plaintiff/Applicant as per the order from the ELC No. 143 of 2012.
- j. The Plaintiff/Applicant had deliberately left the house on the suit property in ruins and in a poor state – with a gaping roof to the detriment of the Defendants/Respondents.
- k. He was advised by his Advocate that the 2<sup>nd</sup> Defendant/Respondent having obtained Judgement in his favour it was only proper and just that the Plaintiff/Applicant vacated the house so that the dignity of the court can be maintained.
- l. The Plaintiff/Applicant had placed the 2<sup>nd</sup> Defendant/Respondent in cross – roads as on one hand he had a Judgement in his favour ordering the Plaintiff/Applicant to vacate the suit premises while on the other hand he was seeking for ordered of status quo to be maintained.
- m. The current suit never touched on the ownership and occupation of the suit property but for the refund of the monies pad in the Private agreement.
- n. The 1<sup>st</sup> Defendant/Respondent further stated that it would be proper for the court to vacate the orders issued on 11<sup>th</sup> November 2024 to enable the 2<sup>nd</sup> Defendant proceed with the execution proceedings against the Plaintiff as decreed by the court in ELC No 143 of 2012.
- o. The 1<sup>st</sup> Defendant prayed that the Chamber Summons application dated 7<sup>th</sup> April 2022 be dismissed as the same amounted to an abuse of the court process.

#### **IV. Submissions**

- 6. On 28<sup>th</sup> January, 2025 while in the presence of all parties, the Honourable Court directed that the application be disposed of by way of written Submissions. Pursuant to that all the parties obliged and the Honorable Court reserved 13<sup>th</sup> march, 2025 as the day to deliver its Ruling accordingly.

##### **A. The Written Submissions by the Plaintiffs/Applicants**

- 7. The Plaintiff/Applicant through the Law firm of Messrs. S. M. Otunga & Company Advocates filed the written submissions dated 3<sup>rd</sup> February 2025. M/s. Otunga Advocate commenced the submission in support of the application seeking for injunctive orders by stating that what was being sought in the suit was specific performance. The Learned Counsel argued that the Plaintiff/Applicant had been in occupation of the suit property for over twenty (20) years. For that reason, it was important that the orders were granted to restrain the Defendants/Respondents from eviction the Plaintiff/Applicant as they were intending to do.
- 8. The Counsel submitted that that the prayers in Civil suit no 143 of 2012 sought for eviction of the Plaintiff/Applicant and vacant possession, Judgement was made in favour of the 2<sup>nd</sup> Defendant but the same was silent on the way forward with regard to the Plaintiff's investment into the property purchase. The Plaintiff had paid a substantial portion of the purchase price hence the need to have the same registered in his names or in the alternative a refund of the purchase price.
- 9. On the matter of Law, the Plaintiff averred that the orders sought were injunctive in nature and that a prima facie case for specific performance of the sale agreement would best suffice in this scenario. That the Plaintiff was willing and able to complete the transaction based on the findings on the court in



ELC 143 of 2012 and the impending eviction would profoundly disrupt his life whereas permitting completion would satisfy the interests of both parties.

10. The Learned Counsel contended that the Plaintiff/Applicant who had been in occupation of the suit property for 20 years, thus the eviction from his long term residence would cause him irreparable harm. On the contrary, the Defendants/Respondents would not suffer any comparable harm taking that they retained contractual right to the full purchase price.
11. The Learned Counsel submitted that the balance of convenience was overwhelmingly in his favour in preserving the status quo which order is minimally disruptive. The Plaintiff/Applicant stated that the Defendants were keen on unjustly enriching themselves without due consideration of the payments that had been made towards purchase of the suit property. To buttress on the point that equity favoured permitting a purchaser in possession to complete the transaction as was held in the case of: - “Mukua & Another – Versus -Kariuki & 2 Others [2022] keELC 3243[KLR]”. The Court’s prior acknowledgement of partial payment supported treating the Plaintiff/Applicant herein as a purchaser with an equitable interest and not a mere tenant. The Plaintiff/Applicant’s partial payment and long term occupation of the suit property constituted part performance, reinforcing his equitable claim. It was noteworthy that the Plaintiff/Applicant and the Defendant herein entered into a sale agreement around April 2004 and the Plaintiff/Applicant had upto December, 2004 to complete the transaction.
12. That the previous Judgement in favour of the defendants regarding non completion should not preclude the Plaintiff/Applicant from asserting his rights to complete the transaction given that he has been in occupation of the suit property for a long time.
13. In conclusion, it was submitted that it would be in the interest of justice and equity that the Plaintiff/Applicant be allowed to resolve this matter by specific performance through completion of the sale without threat of immediate eviction.

#### **B. The Written Submissions by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents.**

14. While opposing the Chamber Summons application dated 7<sup>th</sup> April, 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/ Respondents herein through the Law firm of Messrs. Okanga & co Advocates filed their written submissions dated 4<sup>th</sup> February, 2025. Mr. Okanga Advocate commenced by providing a detailed background of the matter from its inception to date.
15. The Learned Counsel submitted that the Plaintiff/Applicant herein had failed to disclose to court that Judgement was obtained against him in the ELC Case No 143 of 2012 where he was ordered to vacate the suit property on 25<sup>th</sup> May 2018. However, despite of this order, he had not complied with the said order 4 years down the line. It was stated further that there were ongoing eviction procedures against the Plaintiff in line with the judgement of the court.
16. On the issue of refund of the purchase price allegedly paid, the Defendants/Respondents submit that the suit lodged by the Plaintiff/Applicant together with the application never stated anywhere that the 2<sup>nd</sup> Defendant/Respondent did receive any monies from the Plaintiff/Applicant for the purchase of the suit properties. Thus, it was only fair and just that the Honourable Court vacated the status quo orders and to further down its tools as the suit does not relate to occupation, use and title to land but a money claim.
17. While further expounding on the issue of the suit being a monetary claim, the Learned Counsel averred that this court lacked the jurisdiction to entertain the current suit as it never related to the environment and the use and occupation of land and title to land as envisaged under the provision of Article 162



[2][b] of the Constitution and Section 13 of the Environment and Land Court Act, No. 19 of 2011. To them Jurisdiction was everything.

18. That from the prayers in the Plaint by the Plaintiff dated 7<sup>th</sup> April, 2024 and the statement of the Plaintiff, they were seeking for a refund of the purchase price together with interest and damages. The Plaintiff/Applicant was not seeking for the occupation and use of the suit property. That the issue of use and occupation had already been dealt with by the court and the orders being sought in the instant suit were based on misrepresentation of facts. Lastly, the Learned Counsel submitted that the suit by the Plaintiff/Applicant was an abuse of the court process and ought to be dismissed.

## V. Analysis and Determination

19. I have keenly assessed and considered the filed Chamber Summons application dated 7<sup>th</sup> April 2024, the Replying Affidavit in response to it, the rival written submissions, the cited authorities and the relevant provisions of the Constitution of Kenya, 2010 and the law.
20. For the Honourable Court to arrive at an informed, fair and reasonable decision, it has framed the following three (3) issues for its determination. These are: -
- a. Whether this court is clothed with the requisite jurisdiction to determine this suit.
  - b. Whether the Plaintiff has made a case for grant of the status quo orders sought.
  - c. Who bears the costs of the application?

### Issue No. a). Whether this court is clothed with the requisite jurisdiction to determine this suit.

21. Under this sub – title it’s a critical legal issue which the Honourable Court ought to squarely deal with from the very onset. The issue is on Jurisdiction. It is trite law that Jurisdiction is everything. In so doing, the Honourable Court proposes to first deal with this primary subject matter as it touches on the legal mandate, power, authority and legitimacy of this court to determine the dispute before it. Our courts have extensively deliberated on the matter and hence there will be no point to re – invent the wheel. Firstly, the ‘locus classicus’ on the question of jurisdiction is the case of “Owners of the Motor Vessel “Lillian S” – Versus - Caltex Oil (Kenya) Limited [1989] KLR 1” where Nyarangi. JA (as he then was) famously stated:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

22. Additionally, the Court of Appeal in the case of: - “Nakuru Civil Appeal No. 119 of 2017 Public Service Commission & 2 Others – Versus - Eric Cheruiyot & 16 Others consolidated with Civil Appeal No. 139 of 2017 County Government of Embu & Another vs. Eric Cheruiyot & 15 Others (unreported) in a decision rendered on 8<sup>th</sup> February, 2022 expressed itself on the doctrine of jurisdiction in general as follows: -

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases



Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows: By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

23. Further, it was held in the case of “Samuel Kamau Macharia & Another – Versus - Kenya Commercial Bank Limited & 2 others [2012] eKLR”, that a court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. A court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
24. In the instant case, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents herein have contended that this court lacks the jurisdiction to entertain the suit which according to them from the nature of dispute in question, the substratum is mainly recovery of a monetary claim or refund from a breach of a contract – the sale of land. Be that as it may, the Honourable Court perceives the argument totally differently. I wish to demonstrate that as herein below.
25. Firstly, the provisions of Article 162 (2) (b) of the Constitution provide for the jurisdiction of this court. The ELC is a constitutional creature. The provision provides: -
  - “(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
  - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
    - a) employment and labour relations; and(b)
    - b) the environment and the use and occupation of, and title to, land.
26. Secondly, the provision of Section 13 (1) & (2) of the Environment and Land Court Act, No. 19 of 2011 which is the statute envisaged in sub-article 2 (b) above provides that: -
  - “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes—



- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

25. From the preamble of the Act, it mandates the Court to deal on all matters emanating from the use, occupation and title of the land. Without wanting to belabour the point herein, the facts of this case are graphically clear that the suit land and the breach of the terms and conditions stipulated in the sale agreement is the integral part of the dispute. The Plaintiff and the 1<sup>st</sup> Defendants entered into a land sale agreement with regards to the suit property herein. It is alleged by the 1<sup>st</sup> Defendant/Respondent that the Plaintiff/Applicant failed to pay the full purchase price as agreed despite taking possession of the suit property. That the breach of contract led to the filing of ELC Case No 143 of 2012 where the court in its Judgement ordered the Plaintiff/Applicant to vacate the suit property on 25<sup>th</sup> May 2018 but to date the said order has not been complied with. The Defendants/Respondents state that the instant suit is over refund of the purchase price and the same is not within the purview of the ELC Court. According to the Plaintiff, the cause of action in the instant suit arises from the land sale transaction over the suit property herein. Therefore, he seeks for refund of the purchase price paid to the 1<sup>st</sup> Defendant/Respondent and this court is the correct avenue lay his claim.
26. Critically, I discern that the first point of call to resolve the matter is this Court and nowhere else. On the contrary, while challenging the Jurisdiction of this Court, apart from merely stating that this was allegedly a money claim, the Defendants failed to indicate where else the Plaintiffs/Applicant would have to turn to for legal remedy. The afore stated provisions of Section 13 of the [Environment and Land Court Act](#) gives this court a wide jurisdiction subject matter. of utmost importance to note is that the refund sought by the Plaintiff arises from the land transaction between him and the Defendants. It is therefore difficult if not impossible to delink the two.
27. Thus, the court is of the opinion that the Defendants have failed to prove that the suit is purely based on a commercial transaction and has nothing to do with land. Time and again the courts have held that in situations where the jurisdiction of a matter falls within the jurisdiction of multiple courts, the question of which court is best suited to determine it is addressed by applying the predominant purpose test. The test was explained in the case of “Suzanne Butler & 4 Others – Versus - Redhill Investments & Another [2017] eKLR as follows: -

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works. The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the



predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.

Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.”

29. The predominant issue herein is the alleged failure by the Plaintiff/Applicant to honour the terms of the land sale agreement between the parties herein and which falls squarely under the jurisdiction of this court. See Philip Jalang'o – Versus - Ryan Properties Limited [2020] eKLR.
30. For the foregoing legal reasoning herein, I hold that this Court has Jurisdiction to hear and make determination of the issues pertaining to the subject matter herein.

**Issue No. b). Whether the Plaintiff has made a case for grant of the status quo orders sought.**

31. Under this sub - heading, the Honourable Court shall endeavour to assess whether the Plaintiff/Applicants are entitled to the reliefs sought. The Black's Law Dictionary, Butter Worth's 9<sup>th</sup> Edition, defines status quo as a Latin word which means 'the situation as it exists'. The purpose of an order of status quo has been reiterated in a plethora of decisions. I will enumerate but just a few of them. In the case of "Republic – Versus - National Environment Tribunal, Ex - Parte Palm Homes Limited & Another [2013] eKLR, Odunga J. stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”

32. Additionally, in the case of “Kenya Airline Pilots Association (KALPA) – Versus – Co - Operative Bank of Kenya Limited & another [2020] eKLR”, the purpose of a status quo order was explained as follows: -

“... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

33. Further, in the case of: - “TSS Spinning & Weaving; Company Limited – Versus - Nic Bank Limited & another [2020] e KLR, the unpacked the purpose of a status quo order as follows: -

“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.’

34. The Honourable Court has elaborately spelt out the concept of the status quo and deliberated the cause of action in the suit. It is now imperative, to chat out a way forward through its decision on the fate of the suit property. This can only be effectively done during a full trial. Eventually, it's the outcome of the hearing that will determine whether or not there was breach of contract and who



between the parties and who will be entitled to ownership and occupation of the suit property. As it stands, the Defendants/Respondents are keen on having the Plaintiff/Applicant evicted from the suit property while the Plaintiff/Applicant is determined to continue with his occupation of the same. In the meantime, there will be need to sustain a balance in order to safeguard the interest of all parties and preserve the property.

35. As has been stated by the authorities cited above, the main purpose of status quo orders is to preserve the suit property pending the determination of the suit. In the given circumstances, therefore, the best option is to grant the orders of status quo orders to be maintained pending the hearing and determination of this suit. The application must succeed.

#### **Issue No. c). Who will bear the costs of the application?**

36. It is trite that costs are at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of the legal action or proceedings. The Proviso of Section 27 of the *Civil Procedure Act*, cap. 21 holds that costs follow an event. By an event it means the outcome or result of the legal action or proceedings thereof.
37. However, the circumstances of this case have led the court in believing that it will be in the interest of justice, equity and conscience to have each party bear its own costs. Parties are further encouraged to continue pursuing alternative dispute resolution methods in having this matter settled.

#### **VI. Conclusion & Disposition**

38. Consequently, having caused an in-depth analysis to the framed issue herein, the Honourable Court based on the principles of Preponderance of Probabilities and the balance of convenience proceeds to grant the following orders: -
- a. That an order of the status quo to be maintained at the suit premises referred to as Kwale/Galu Kinondo/1107 whereby the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents shall be restrained from interfering with the Plaintiff/Applicants use and occupation of the suit premise pending the hearing and determination of this suit.
  - b. That for expediency sake, there be a mention on 16<sup>th</sup> June, 2025 for purposes of conducting a Pre – Trial conference pursuant to the provision of Order 11 of the Civil Procedure Rules, 2010. There shall be a hearing date of the suit on 31<sup>st</sup> July, 2025 by virtual means.
  - c. each party to bear its own costs.

It is ordered accordingly.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

.....

**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT AT  
KWALE.**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. M/s. Otunga Advocate for the Plaintiff/Applicant.



c. Mr. Okanga Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents.

**HON. JUSTICE L.L NAIKUINI**

