REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 27 OF 2021

FLORENCE NAFULA AYODI AND 5 OTHERS.....APPLICANTS/PLAINTIFFS

VERSUS

JOHN TABALYA MUKITE AND ANOTHER.....DEFENDANTS

AND

BENSON GIRENGE KIDIAVAI & 67 OTHERS.....INTERESTED PARTIES

RULING

The Application

1. By a Notice of Motion dated **16/4/2021** and filed on **19/4/2021**, the Applicants moved this Court under **Section 63 (c)** of the **Civil Procedure Act**, **Order 40 Rules 1** and **4** and **Order 51 Rules 1,** and **3** of the **Civil Procedure Rules 2010** and **Section 3** and **13 (7)** of the **Environment and Land Court Act.**

2. Of importance to note at the inception of this Ruling is that the **1st** to **5th** Applicants are all daughters of the late widow of the late **Joseph Musamia Mukite** who is said to have been married to three wives. The said widow under reference was **Esther Namwacha Musamia** who died on **30/06/2006**. The **6th** Applicant is said to be one of the purchasers of a parcel of land sought to be excised from the Estate of Ester Namwacha Musamia (deceased) while the two Respondents are said to be brothers to or siblings of the Applicants by virtue of being sons of the late Esther Namwacha Musamia. The Interested Parties are said to be among the many people who have allegedly subsequent to the death of the Applicants' and Respondents' father (and perhaps mother) bought various portions of part of the Estate of the late widow. Thus, basically, the dispute herein revolves around a contest as between the surviving children of the late widow by themselves and the alleged buyers of portions of land from part of the Estate of the deceased.

3. Before the instant Application could be heard, the interested parties applied to be enjoined in the suit, vide an Application dated **12/8/2021**. The ruling allowing their Application was delivered on **18/10/2021**. Following it, the Court directed them to take any action they deemed fit, including filing responses to the instant Application if they so wished.

4. The Applicants prayed for the following orders:

> **(1) …spent**
>
> **(2) That while pending the inter-parties hearing of the application herein the court be pleased to issue an *ex parte* interlocutory injunction to restrain the defendants/ respondents, their agents and/or any persons claiming titles through them from signing any transfer documents and/or transferring any portions of land arising from the sub-divisions and/or mutation forms in respect to title Kiminini/Kinyoro Block 3/Siuna/60 (formerly title L.R. No. 12044) Trans-Nzoia County/District) or in any manner whatsoever interfering with the applicants proprietary interest in the said suit land pending the hearing and determination of this application and thereafter the suit.**
>
> **(3) THAT the court do issue such other directions and/or orders as the court may deem just and expedient to grant and the costs of the application.**

5. The Application was premised on eight (**8**) grounds and supported by two (**2**) affidavits, one sworn by **Florence Nafula Ayodi** and another by **Nathan Ayodi Ligure**. Both were sworn and filed on **16/4/2021**. Later, the two deponents swore two other Supplementary

affidavits on **17/8/2021** and filed them on **18/8/2021**, and **Florence Nafula Ayodi** swore a further one on **25/11/2021**.

The Applicants' Case

6. This Court formed the opinion that the grounds of the Application could be collapsed into one, which was that in preparing the sub-division and mutation forms to be presented for issuance of individual title deeds, the Defendants/Respondents omitted the respective portions of land to which the Applicants were entitled. The Affidavits in support of the Application expounded the grounds. In the affidavit sworn on her own behalf and that of the **5th** Plaintiff, one **Florence Nafula Ayodi**, deponed that the **1st** defendant was appointed the administrator of the Estate of their late father, **Joseph Musamia Mukite**. Out of the Estate, their mother **Mrs. Esther Namwacha Musamia** was allocated the suit land herein measuring approximately **140** acres out of which they were entitled to a share each. Through a family meeting held on **2/07/1996**, the **1st, 2nd, 3rd, 4th** and **5th** Applicants were allocated one **(1)** acre each and the late **Serah Mukite** two **(2)** acres. In a further family meeting held on **21/9/2012** the **2nd**, **5th** and **6th** Applicants were allocated one **(1)** acre each while the **1st** and **5th** Applicants were allocated a further a quarter (**¼**) of an acre each. She deponed that the Respondents signed the family agreements to that effect but did not honour them to have the Applicants included in the sub-division plan and mutation forms which were to be presented for the issuance of individual title deeds.

7. It was her contention that the sub-division plan and mutation forms showed the **2nd** defendant as having been allocated the whole portion of land. She deponed further that by the time of filing the instant Application, the Respondents were in the process of presenting the mutation forms as drawn for processing title deeds. They protested that fact before the Land Control Board and Land Registrar. She deponed further that the Respondents failed to include the portion of the late **Serah Mukite's** minor, one **Emmanuel Musamia**, as agreed in the family meeting of **21/9/2012**. Lastly, she deponed that if an injunction was not issued, the Respondents would perfect the illegal sub-divisions and obtain title deeds, which make them suffer irreparable loss since they would be deprived of their property.

8. The deponent, **Florence Nafula Ayodi**, filed a Supplementary Affidavit sworn on **17/08/2021** in which she deponed that the land which the **1st** Applicant sold did not form part of that allocated to her mother being the **140** acres in issue, but rather it formed part of the Estate of the late **Joseph Mukite** and that she sold it with the consent of the **1st** Respondent. She swore further that the shares the Applicants (the daughters of Esther Namwacha Musamia) claimed formed part of a gift from their mother to them and the Respondents did not challenge the gift given during her life time. Her deposition was that the **1st** to **5th** Applicants occupied portions of land they were gifted by their mother and developed the same. She then contended that the *WhatsApp* communication between the **1st** Defendant and **5th** Applicant was a request from the **1st** Defendant to the **5th** Applicant for funds for the transfer of title. She then stated that the Applicants' parcels of land were available and their claim was for inclusion in the official area list which the Defendants ignored. She deponed that the Applicants' claim was not time barred as they had been in possession of the land since **1996**, only waiting to be issued with title deeds. She stated that she and other Applicants were strangers to the purported area list produced by the **1st** Respondent because they neither signed it nor was it approved by the relevant lands office. She denied having been given land to hold in trust for her other sisters. She also denied the existence of and being a signatory to the agreement of sale marked as **JTM 7(a)** relied on by the **1st** Respondent. She prayed that their Application be allowed.

9. After the interested parties responded to the Application the **1st** Applicant responded to it through her Supplementary Affidavit sworn on **25/11/2021**. Her response was that no individual titles had been issued yet in respect of the suit land. Further, there were good reasons to grant the injunction, one being to preserve the substratum of the suit, the other, it would be costly if the issuance of title deeds was allowed because in the event of the suit succeeding, it would be necessary to **re-do** the sub-division plans and mutation to accommodate the Applicants on the ground. She responded further that it was true the sub-division plans annexed to the interested parties' Replying Affidavit and marked as "**BGK1"** and that annexed to the Applicants' Supporting Affidavit and marked as **"FNA 5"** were not in tandem but she sought to explain that it was because they had been tampered with by the Respondents to deprive them of the land. She deponed further that the sub-division plan marked as "**BGK 1"** did not show the one-acre sizes of land near the tarmac road as exhibited in the one marked as "**FNA 5**".

10. In his supporting affidavit sworn on **16/4/2021** and filed on **18/4/2021**, **Jonathan Ayodi Ligure** deponed that he purchased a parcel of land measuring one (**1**) acre from the late **Serah Mukite.** The parcel formed part of the suit land. His deposition was that the late **Serah Mukite** wrote him a letter expressing her intention to sell to him **1** (**one**) acre of that land and he was surprised to learn that the Respondents prepared a sub-division plan and mutation forms that omitted his share. He stated that the sub-division plan and mutation forms showed his land having been allocated to the **2nd** defendant by the **1st** defendant, a fact which was false. He prayed for an injunction to issue till the case was heard and determined. He stated further in the Supplementary Affidavit he swore on **17/8/2021** that by a family agreement held on **21/9/2012**, **John Tabalya Mukite** acknowledged that he was entitled to the one **(1)** acre of which he was in possession and claimed to have bought from **Serah Mukite** and was to be allocated accordingly. He deponed that **John Tabalya Mukite** was dishonesty, an unreliable litigant and a pathological liar. He then summed it that he had a *prima facie* case with high chances of success.

The Respondents' case

11. The Application was opposed through two replying affidavits. One was filed by the Respondents and the other by the Interested Parties. The Respondents' was sworn on **7/6/2021** and filed on **10/8/2021** by the **2nd** Defendant one **Eliud Syangu Mulite** on his own behalf and that of his co-Respondent.

12. On their part, the Respondents deponed that the parcel of land registration No. **L.R. No. 12044** was subdivided into **L.R No. Kiminini/Kinyoro Block 3/ Siuna/60** which formed the suit land. It was then sold to over **70** third parties who had thereby acquired interest in it. They stated that the subdivision was done pursuant to the Certificate of Confirmation of grant issued in **1989**, annexed and marked as **JTM 1** and **EMM 1** through which **140** acres out of the Estate was to be succeeded or subdivided by the sons of the late Esta (*sic*) Namwacha Musamia. He then stated that the Certificate of Confirmation in **Eldoret High Court Succession No. 7** of **1984** awarding his late mother **140** acres was implemented and closed.

13. His further deposition was that the Grant for the Estate of his late mother was specifically limited to the money she left in the bank and was confirmed on **15/11/2007**. He then swore that the Applicants were present during and informed of and involved in the sub-division process. The Respondents' contention was that the Applicants do not fall under the meaning of a **"sons"** as indicated in the Certificate of Confirmation, and the **6th** Applicant who was their brother-in-law was a stranger to the proceedings and had no legitimate or recognizable interest in any apart of the Estate of their late father. The deponent denied there being a family agreement that allocated the **1st** to **6th** Applicants land measuring one acre each. He also denied there being family meetings in **1996** and **2012** whose resolutions awarded the Applicants one acre each.

14. He then stated that the documents annexed to the Supporting Affidavit were a forgery designed to deprive them of their rightful entitlement. He then deponed that the land the Applicants claimed did not exist any longer. He stated that if there was an agreement which granted the Applicants one acre each, it offended the provisions of law and was time barred hence unenforceable. He swore that the suit land was subdivided by their mother when alive and upon her demise, all her children, the **1st** to **5th** Applicants and the Respondents, commenced succession proceedings through **Kitale High Court Succession Cause No. 211 of 2006** only in terms of the money held in banks and other movable assets but not the suit land. He deponed that if the Applicants had a complaint, they should have raised it in the succession proceedings but did not.

15. Further, he stated specifically at **paragraph 21** of the Affidavit that the family had resolved matters through family meetings held over time (*emphasis mine*). He deponed further that the Applicants claimed over and above their entitlement from the estate of their late mother, and the **1st** Applicant was given **10** acres of which she sold a part measuring **8** acres to one **Sheldon Washington Muchilwa** and later to third parties thus denying Muchilwa the parcel purchased. He then gave a list of the third parties to whom the land was sold and their respective shares totaling to **13.5** acres. He deponed that **Muchilwa** filed a suit for specific performance against the **1st** Applicant but did not succeed, after which he filed another one for recovery of the purchase money but failed too. He deponed that the extra **3.5** acres was to be held by the **1st** Applicant in trust for her other sisters and that all the purchasers of the **13.5** acres had been included in the area list and consents for transfer thereof obtained. He then averred that the Applicants were systematic liars hell bent on profiting where they ought not to. He then stated that the **1st** Applicant failed to disclose that she held the **3** acres in trust for her sisters but in turn gave it to her two sons, namely, Masden Awori and Benard Mutaki, as shown in the area list and that the four sisters should pursue Florence who held the land in trust for them. His deposition was that the **1st** Applicant had a total of **16.5** acres for and on behalf of herself and that of her other sisters. Further, it was stated that their last-born sister, one Serah Mukite, was allocated **2** acres and sold them to Mary Stellah Nekoye Sikanga and John Augustine Simiyu who bought one acre each. He also deponed that if at all the late Serah Mukite was indebted to the **6th** Applicant, he should have enforced the same from her when she was alive over **11** years prior to her demise and his claim was long extinguished at Serah Mukite's death or he should have claimed it from her Estate: the deponent was not an administrator of the Estate. His deposition was that the **6th** Applicant was indolent and had sat on his right (*sic*) for long. He then swore that the Applicants' claim was misdirected, fatally defective and time barred, and the over **70** people who had acquired interest in the land should not be held hostage indefinitely in their quest to obtain their title deeds.

The Interested Parties' Case

16. The interested parties filed their joint Affidavit in response to the Application. It was sworn by **Benson Girenge Kidiavai** on **2/11/2021** on his own behalf and that of the **67** others and filed on **15/11/2021**. Their case was that the Applicants' claim was for **7** acres adjacent to the tarmac road along Kitale-Kimilili Highway out of the **140** acres which forms the suit land. They stated that the Applicants had sworn earlier that they were in possession of the land they claimed and that their claim was against the defendants only and not against the Interested Parties. They then stated that the resultant parcel numbers from the subdivisions of the suit land had already been issued and the parcels of land the Applicants laid claim on were plot Nos**. 400, 399, 427, 398, 397** and **425** as indicated in the plan marked **BGK1**. Thus, he deponed that as per the members' list duly authenticated by the **1st** defendant's signature and endorsed by the County Land Surveyor which formed the basis upon which the suit property was to be shared, plot **No. 400** measuring approximately **2.452** Ha was earmarked to be registered in the name of the **2nd** defendant, plot **No. 399** measuring about **0.16** Ha was for Elkana Nyambati Momanyi the **41st** interested party, plot No. **427** measuring about **0.809** Ha for Dr. Evans Majani Liyosi the **42nd** interested party, plot No. **398** about **0.304** Ha for Benard Mutaki not a party, plot No. **397** measuring about **0.487** Ha for Marystella N. Sikinga the **23rd** interested party while plot No**. 425** measuring approximately **0.303** Ha for Marsden Awori who was not a party. He deponed again that the aforementioned member list corresponded with both the disputed sub-division plan and mutation forms and that the dispute was basically about the sharing and distribution of only the **7** acres along the tarmac hence the issues should have been narrowed down accordingly in order to facilitate the just, expeditious, proportionate and affordable resolution of the case. He urged the Court to limit the injunction to the **6** parcels of land he referred to, namely, plot Nos. **400, 399, 427, 398, 397** and **425**. He then deponed that they were bona fide purchasers for value of land from both the Plaintiffs and Defendants and wished to acquire title deeds to their individual since a majority of them had been granted consents for transfer.

Submissions

17. The Court directed that the Application disposed of by way of written submissions. The Applicants filed theirs on **11/5/2021** while the Respondents did not although they informed Court on **30/11/2021** that they had done so. The Interested parties opted not to submit.

Analysis, Issues and Determination

18. I carefully considered the Application, the supporting affidavits thereof, the replying and supplementary affidavits, and all the annextures thereto. I also analyzed the submissions on record, the case law and provisions relied on. I found that the issues for determination were:

a) Whether the Applicants met the requirements for the grant of an injunction;

b) What orders to issue and who to bear the costs of the Application?

19. It has always been the practice of this Court to analyze the issues step by step and that I do now. The first issue is **whether the Applicants met the requirements for the grant of an injunction**. As I determine the issue, it is worth reiterating that the dispute herein as I understand it in summary is about the intended issuance of title deeds resultant from the distribution of the Estate of the late **Joseph Musamia Mukite** following the conclusion of **Eldoret High Court Succession No**. **7 of 1984** wherefrom the late **Esther Namwacha Musamia** was to obtain approximately **140** acres. Following her death, her children applied for Grant of Letters of Administration in **Kitale High Court Succession No. 211 of 2006.**

20. As stated earlier, the Application was brought under of **Section 63 (c)** of the **Civil Procedure Act, Order 40 Rules 1** and **4** and **Order 51 Rules 1,** and **3** of the **Civil Procedure Rules 2010** and **Section 3** and **13 (7)** of the **Environment and Land Court Act** (herein referred to as the **ELC Act**). It bears to reiterate that where there exist express provisions regarding an issue or procedure, a party need not cite other provisions of the law which would either be irrelevant or redundant in regard to the issue. Be that as it may, **Section 63** of the **Civil Procedure Act** is provides for Supplemental Proceedings and **Sub-Section (e)** thereof gives the Court power to make any interlocutory order as may appear just and convenient to so as to prevent the ends of justice from being defeated. **Section 3** of the **ELC Act** gives the overriding objective of this Court which is the facilitation of the just, expeditious, proportionate and accessible resolution of disputes which the Court has power to handle under the Act. **Section 13(7)** gives the reliefs the Court may grant when determining disputes and they include the grant of injunctions.

21. Order 51 Rule 1 of the **Civil Procedure Rules** provides for the form of an Application while **Rule 3** deals with the need to serve an Application unless for reasons to be given to the satisfaction of the Court the Court is of the view that irreparable harm or mischief may result in the interim in which case it may make an *ex parte* order. **Order 40 Rule 1** is in regard to cases where an injunction may be granted while **Rule 4** provides for the notice of the Application for injunction in like manner as **Rule 3** of **Order 51** and also the duration of an *ex parte* injunction and the number of times and manner it may be extended. The Applicants did not expound on the provisions as I have done or relate their Application to the relevance thereof.

22. Be that as it may, next I discuss the principles for the grant of an injunction and consideration as to whether the Applicants satisfied them. The principles are now well settled. In our jurisdiction, they were first stated in the seminal case of ***Giella v Cassman Brown and Another (1973) EA 358***. In it, the Court held in summary that for an injunction to be granted, an Applicant should establish that:-

> **1. He/she has a *prima facie* case with high probability of success**
>
> **2. He/she cannot be adequately compensated by an award of damages and**
>
> **3. In case the court is in doubt, the matter be decided on a balance of convenience.**

23. By now the parties herein know that these principles have been stated over and over in cases where injunctions have been sought. It is not worthy repeating the cases here. But in ***Stek Cosmetics Limited v Family Bank Limited & another [2020] eKLR*** my brother Mwita J stated as follows:-

> ***"This being an application for interlocutory injunction, the law is settled that an applicant must demonstrate that he has a prima facie case with probability of success, that he will suffer irreparable loss that cannot be adequately compensated by damages or that the balance of convenience is in his favour. In that regard, it is the applicant's duty to demonstrate that it meets the test set in various decisions, leading among them, Giella V Cassman Brown & Company Limited."***

24. The burden of proof has never been shifted to a Respondent to demonstrate that an Applicant has not met the requirements of the ***Giella v. Cassman Brown*** decision. The burden always lies on the Applicant but even then it must be discharged on a balance of probabilities. Thus, as to whether or not the Applicants demonstrated that they had a *prima facie* case with high probability of success, there is need to understand what amounts to a *prima facie* case in civil cases. In my view such a case consists of circumstances where the Applicant(s) find themselves in by virtue of the Respondents, and not any other parties, which put them in a position where his/their right is breached or about to be so breached and when the Court considers them in totality it is left with no option than to intervene by issuing an order to the Respondents to give reasons why they have or are about to do so, and for that reason the continuance or permission of those circumstances ought to be halted first. By the Court being ready to halt the circumstances it does not mean that it has set its mind that the issue is merited, it simply wishes to have chance to investigate the issue further by hearing the other side also. Of course, this process does not imply that the finding that there is a *prima facie* case will lead to an automatic grant of an injunction, the Applicant must then satisfy the next conjoined limb that irreparable harm would be suffered if the Court did not intervene. The establishment of a prima facie case is only the first stop point at the quest for an inquiry into the infringement or otherwise of a violation of a right.

25. The definition by the Court of Appeal sitting in Mombasa in the case of ***MRAO LTD V FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS CIVIL APPEAL NO 39 OF 2002*** summarizes my view better. The Court stated thus:-

> ***"… in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will 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."***

26. This Court had to be satisfied that the Applicants placed before it facts that, as it directed its mind to them, would make it call for an explanation or rebuttal by the Respondents that they had infringed a right due to the Applicants. The Applicants contended that the Respondents, who are their siblings, prepared subdivision plans and mutation forms which omitted and or varied the shares they were entitled to the estate of their late mother, Esther Namwacha Musamia. It was not in dispute that following the death of their father, one Joseph Musamia Mukite, succession proceedings were taken out on his Estate and a portion thereof measuring approximately **140** acres or thereabout was found due under the distribution thereof, to the late Esther Namwacha Musamia. Out of that, the Applicants and Respondents were to share the devolved Estate as per Certificate of Confirmation of grant issued on **19/07/1989**. It was annexed to the Affidavit sworn on

16/04/2021 by Florence Nafula Ayodi and marked as **FNA 1**. The Administrator of the Estate was John Tabalya Mukite, one of the sons of the late Joseph Musamia Mukite. The Respondent claimed in his Affidavit at paragraph **21** that family meetings had resolved the issue of distribution of the Estate to the heirs of the deceased Esther Namwacha Musamia. However, he did not provide evidence on when and how the said family meetings resolved that. Thus, when the Applicants deponed that there were family meetings on **02/07/1996** and **21/09/2012**, it led to the Court to draw in inference that, on a balance of probabilities, these if not more might have been the family meetings wherein issues were resolved. But since that was disputed the existence or otherwise and content of the meetings would be a matter of evidence at the hearing of the case. For now, the inference is only sufficient to lead the Court to find that the first principle has been proven on a balance of probabilities.

27. The Interested Parties joined the fray by contending that they too, although being rightful buyers of portions of land from the Estate of the late Esther Namwacha Musamia, had been left out of the sub-division plans and mutations prepared by the Respondents. They stated although the Applicants had issues with the Respondents, they did not have any claims against them. Their position and claims were challenged by both the Applicants and Respondents who indicated that if the Interested Parties had any claim to part of the **140** acres forming part of the Estate of the late Esther Namwacha Musamia, theirs had been catered for other ways.

28. I have carefully considered all the issues raised in the Affidavits in support and opposition to the Application. I have summarized the pertinent ones to the instant Application. All the parties seem to agree that they are in occupation of respective portions of land forming part of the **140** acres of the Estate of the late Esther Namwacha Musamia. The contention is that some of them, such as the Applicants who were entitled to some shares of the **140** acres have been left out of the intended subdivision of the parcel of land. The **1st** Respondent does not dispute the fact that he was appointed Administrator of the Estate of the late Joseph Musamia Mukite and was thereby to administer it in accordance with the Certificate of Confirmation of the Grant issued on **19/07/1989** but what is in issue is the completion of and the manner of the distribution of the Estate. The Applicants and Interested Parties cases hang on this. The totality of the analysis is that the Applicants have established a *prima facie* case with a probability of success.

29. The next principle to be considered is whether the Applicants would suffer irreparable harm which might not be compensated by damages if the injunction was not granted. I considered the fact that it was evident from the Affidavits by the Applicants, the Replying Affidavits of both the Respondents and Interested Parties and the Further and Supplementary Affidavits by the parties that although the parcel of land in question formed part of the Estate of the late Esther Namwacha Musamia, a good portion of it had been sold out to the Interested Parties and other persons not named as parties in the suit. Additionally, none of the intended beneficiaries of the respective parcels of land that were to be resultant from the sub-division plan and mutations attached and marked as annextures **FNA 4(a)** and **(b)** and **5** to the Affidavit of Florence Nafual Ayodi sworn on **16/04/2021**, and were acknowledged by the Respondents and interested parties in their respective Affidavits, gave a specific undertaking to the effect that once the titles deeds were prepared in their names they would take care of the respective beneficiaries' interests without prejudicing the other parties' rights thereto. Again, there were serious disputes as to the acreage due to the Applicants in relation to that which the **1st** Respondent, the Administrator of the Estate of their late father claimed to have distributed to them. In the circumstances, the Court was of the view that there was a likelihood of irreparable harm occurring should the immediate beneficiaries of the already prepared sub-division plans and mutations receive title deeds in their respective names and, for instance, transfer them to third parties or charge or lease them to the exclusion of the rightful beneficiaries (to be agreed upon amongst themselves or determined by Court process). That harm, if it occurred, might not be compensated by way of damages.

30. The case of ***Giella v Cassman*** gave guidance on the third principle as to what Court should do if it is in doubt. It should decide the matter on a balance of convenience. I considered the circumstances of this case. Given that the suit property related to the distribution of the Estate of the late Esther Namwacha Musamia, and it pitted the siblings of their late mother as against each other and by extension against the Interested Parties who claimed to have bought part of the parcel of land that comprised her Estate, and most of the parties were in occupation of the parcels they laid claim on, the balance of convenience tilted in favour of the Applicants and the Interested Parties.

b) *What orders to issue and who to bear the costs of the Application?*

31. The conclusion of the whole Application is this: that this court is satisfied that the Applicants made out a case for the grant of an injunction and it is hereby granted as prayed in **prayer No. (2)** of the Application dated **16/04/2021** to the extent that, in terms of **Order 40 Rule 6** of the **Civil Procedure Rules**, it shall last for **twelve (12)** months unless otherwise extended by the Court for reasons to be advanced at the appropriate time.

32. Given that the dispute herein pits siblings as against each other in the first place and draws in the Interested Parties, in the interest of justice and spirit of encouraging the parties to negotiate the matter out of Court, although costs follow the event, each party shall bear its own costs of the Application.

33. For ease of the management of the case, this Suit shall be mentioned in the physical Court, in presence of the Applicants, the Respondents, and Representatives of the Interested Parties, together with the parties' respective learned counsel, on **2/02/2022** for further directions. Meanwhile the Parties are directed to file and exchange paginated trial bundles before then but they ensure that the copies of the documents filed are clear and legible in all parts and do not "cut out" any line or words.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 25TH DAY OF JANUARY, 2022.

HON. DR. *IUR* FRED NYAGAKA

JUDGE, ELC, KITALE