



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E042 OF 2020

EUNICE GRACE NJAMBI KAMAU1ST PLAINTIFF

DAVID HENRY KARANJA MBUGUA.....2ND PLAINTIFF

VERSUS

KENYA NATIONAL HIGHWAYS AUTHORITY1ST DEFENDANT

THE NATIONAL LAND COMMISSION.....2ND DEFENDANT

THE HON ATOORNEY GENERAL.....3RD DEFENDANT

CHINA ROAD AND BRIDGE CORPORATION.....4TH DEFENDANT

RULING

INTRODUCTION

1. The Ruling herein is in respect of two Applications, namely, the Applications dated the **28th of July 2020**, and the **10th of September 2021**, both of which have been filed by and/or on behalf of the Plaintiffs/Applicants.

2. Vide a Notice of Motion dated **28th July 2020** and supported by the Affidavit of Eunice Grace Njambi Kamau of even date, the Applicants have approached the court seeking the following Orders:

i.Spent.

ii.Spent.

iii. *That Pending hearing and determination of this Application and/or suit, the Honourable Court be pleased to order the commencement of compulsory acquisition procedures as per the Land Act No. 6 of 2012 and Article 40 of the Constitution in respect of the property known as Kiambaa/Ruaka/1588.*

iv. *That Pending hearing and determination of this Application and/or suit, the Honourable court be pleased to issue an order of temporary injunction restraining the Defendants specifically the 4th Defendant by themselves, their agents, employees and/or servants from beginning and/or continuing with construction of the Nairobi Northern By-pass Road to Limuru Road on the suit property known as Kiambaa/Ruaka/1588.*

v. *That the Defendants/Respondents be ordered to pay costs of this Application.*

3. Upon being served with the subject Application the 1st Defendant/Respondent filed a Replying Affidavit through her acting Deputy Director of Survey, namely Eliud Munene and which Affidavit was sworn on the **15th September 2020**.

4. Other than the Replying Affidavit sworn on the **15th September 2020**, the 1st Defendant/Respondent, also filed a Notice of Preliminary Objection dated the 15th September 2020 and which objection is premised on the following grounds;

i. *The Instant Application and suit are incurably defective for want of written and express authority from all the Plaintiffs and is in contravention of Order 1 Rule 13 (1) and (2) of the Civil Procedure Rules 2010.*

ii. *The Applicants' Application and suit is one whose subject matter is a boundary dispute of Plot No. Kiambaa/Ruaka/1588 (arising from the sub-division of Kiambaa/Ruaka/14) and encroachment of the road reserve. The Applicant's Application is premature as it offends Section 18(2) of the Land Registration Act 2012 which mandatorily reserves boundary disputes for determination by the Land Registrar in the first instance, prior to moving to this court.*

iii. *The Applicant challenges the fact that original parcels which were subdivided into Plot No. Kiambaa/Ruaka/1588 were compulsorily acquired via Gazette Notices 3345 and 3346 of 31st October 1969 and 3347 and 3348 of 20th November 1970. The entire Application offends the provisions of Section 13(4) of the Environment and Land Court Act which provides that this court can only exercise appellate and not original jurisdiction over matters relating to compulsory acquisition of land under Section 13(2) (b) of the Environment and Land Court Act.2011.*

iv. *The Application and suit offend Sections 133A, 133B of the Land Act 2012 that establish the Land Acquisition Tribunal to hear and determine Appeals from the decision of the National Land Commission. The instant Application and suit are prematurely before court and this court lacks jurisdiction to entertain the same.*

5. It appears that the rest of the Defendants/Respondents did not file any responses to the said Application.

6. Vide a Notice of motion dated **10th September 2021**, the Applicants moved to court seeking the following orders;

i.Spent.

ii. *That this Honourable Court be pleased to issue directions/orders on the expeditious determination of the main suit filed via the Complaint dated 28th July 2020 within 60 days of the said directions.*

iii. *That this Honourable court be pleased to extend the injunctive orders it issued on 21st September, 2020 until hearing and determination of the main suit.*

iv. *That pending the hearing and determination of this suit, the Honourable Court be pleased to issue an order of injunction restraining the Defendants/Respondents by themselves, their officers, agents and servants from forcible entry, seizure, possession and demolition of the suit property namely Kiambaa/Ruaka/1588.*

7. As pertains to the second Application herein, the 1st Defendant/Respondent filed Grounds of opposition dated the **27th September 2021**, whereby same opposed the Application and contended *inter-alia* that same was an abuse of the due process of the court.

SUBMISSIONS BY THE PARTIES:

8. The matter herein came up on the **10th November 2021**, on which date it transpired that there were two Applications, which were filed by and/or at the instance of the Plaintiffs/Applicants and as a result of the existence of the two Applications, the court issued Orders and/or directed that the two Applications be heard and disposed of at the same time, as well as the Preliminary Objection raised on behalf of the 1st Defendant/Respondent.

9. On the other hand, the court gave further directions that the two Applications and the Preliminary Objection, be argued and/or disposed of by way of written submissions, which were to be filed within set timelines.

10. Pursuant to and in line with the directions, the Plaintiffs/Applicants herein filed their written submissions on the **4th February 2022**, whilst the 1st Defendant/Respondent, filed her written submissions on the **10th December 2021**. For clarity, the Submissions by the 1st Defendant/Respondent preceded those filed by the Plaintiffs/ Applicants.

11. On the other hand, it is also worthy to note that the 1st Defendant/Respondent herein had also filed an Application dated the **26th July 2021**, and in respect of which, same sought to have the subject suit struck out, on account of abatement for want of extraction of Summons to Enter Appearance, as well as on the basis of being *Res-judicata*.

12. Nevertheless, I must point out that during the direction stage, no directions were sought for and in respect of the Application dated the **26th July 2021** and in any event, the 1st Defendant/Respondent, did not bring same to the attention of the court.

13. Other than the foregoing, it is also important to point out at the time of making her submissions, the 1st Defendant/Respondent has made extensively submissions on the issue of *Res-judicata*, which is one of the grounds, upon which the Application dated the **26th July 2021** is anchored.

14. However, despite the submissions by counsel for the 1st Defendant/Respondent on the Application dated the **26th July 2021**, I have refrained from dealing with and/or adjudicating upon the said Application, primarily because the Plaintiffs/Applicants, did not address and/or respond thereto.

15. Besides, it would not have been prudent to render a determination on the Application dated the **26th July 2021**, whereas same was not subject to the directions which were given by the court and which directions only affected the two Applications, whose details have been enumerated at the onset of this ruling.

16. Be that as it may, the 1st Defendant/Respondent argued the issues contained at the foot of the Notice of Preliminary objection and pointed out *inter-alia*, the fact that the Plaintiff that was filed by and/or at the instance of the Plaintiffs/Applicants, breached and/or violated the provisions of **Order 1 Rule 13 (1) & (2) of The Civil Procedure Rules, 2010**. In this regard, the 1st Defendant/Respondent sought to have the Plaintiff struck out.

17. On the other hand, the 1st Defendant/Respondent also contended that the dispute beforehand touched on and/or concerned a boundary dispute as pertains to the exact boundary position between **L.R No. Kiimbaa/Ruaka/1588** and the road reserve and therefore same is a dispute that ought to be referred to and dealt with by the Land Registrar.

18. Other than the foregoing, the 1st Defendant/Respondent, also contended that the aspect of the claim, touching on compulsory acquisition and in particular, where the Plaintiffs/Applicants are seeking an order to compel the Defendants/Respondents to commence the process of Compulsory acquisition, does not fall within the Jurisdiction of this Court in the first instance.

19. Finally, on the Preliminary objection, the 1st Defendant/Respondent contended that the Application which is seeking to order the Defendants/Respondents to commence the process of compulsory acquisition is contrary to and in violation of the provisions of **Section 133 A and 133 B of the Land Act, 2012**.

20. On their part, the Plaintiffs/Applicants herein submitted that the Plaintiff filed by and/or on behalf of the Plaintiffs/Applicants has complied with the provisions of **Order 1 Rule 13 (1) & (2) of the Civil Procedure Rules 2010**. In this regard, the Plaintiffs/Applicants have submitted that the 1st Plaintiff/Applicant has sworn the Verifying Affidavit with the authority of the 2nd Plaintiff/Applicant.

21. As concerns the issue that the suit herein is a Boundary dispute, the Plaintiffs'/Applicants' counsel has submitted that the dispute is not one of a boundary nature, but pertains to and/or concerns threatened unlawful trespass and damage to the suit property, which is Separate distinct from a boundary dispute.

22. On the other hand, the Plaintiffs/Applicants have further submitted that the process of compulsory acquisition has not been commenced and/or began and that no Dispute has since arisen as pertains to the compulsory acquisition, to warrant reference to the land acquisition tribunal or at all. In this regard, the Plaintiffs/Applicants have submitted that the provisions of **Sections 133 A and 133 B of the Land Act, 2012**, are inapplicable.

23. Apart from the Preliminary objection, the Plaintiffs/Applicants also submitted that the Defendants'/Respondents' have threatened to pull down the Plaintiffs/Applicants Property situate on **L.R No. Kiimbaa/Ruaka/1588** and that based on the threat, it would be appropriate to grant the orders of temporary injunction, to protect and preserve the suit property.

24. Secondly, the Plaintiffs'/Applicants' have also submitted that owing to the nature of the case, it is appropriate that the court be pleased to order and/or direct that same be heard on priority basis and at any rate within sixty (60) from the date of directions.

ISSUES FOR DETERMINATION:

25. Having reviewed the two Applications, namely the Application dated the **28th July 2020** and the **10th September 2021**, together with the Supporting Affidavit thereto, the Replying Affidavit in opposition thereto, as well as the Notice of Preliminary Objection, the following issues are germane for determination;

- i. *Whether the Plaintiff filed by and/or on behalf of the Plaintiffs/Applicants violate the provision of order 1 rule 13 of the Civil Procedure Rules,2010 and if so, whether the Plaintiff should be struck out.*
- ii. *Whether the Suit herein touches on and/or concerns Boundary Dispute and thus the Jurisdiction of the Court is ousted.*
- iii. *Whether the Jurisdiction of the court is ousted by the provisions of Section 133A 133B of the Land Act, 2012, (2016).*
- iv. *Whether the Plaintiffs/Applicants are entitled to the orders of Temporary Injunction either as sought or at all.*

ANALYSIS AND DETERMINATION:

ISSUE NUMBER 1

:

Whether the Plaintiff filed by and/or on behalf of the Plaintiffs'/Applicants' violate the Provisions of order 1 rule 13 of the Civil Procedure Rules,2010 and if so, whether the Plaintiff should be struck out.

26. It is true that the subject suit has been filed by and/or on behalf of the two Plaintiffs/Applicants and to the extent that they are the two Plaintiffs/Applicants in this matter, it is imperative that the two Plaintiffs/Applicants ought to swear Verifying Affidavits in verification of the Plaintiff.

27. For the avoidance of doubt, the law that requires that a Plaintiff be verified by a Compliant Verifying Affidavit is contained vide **Order 4 Rule 1(2) of the Civil Procedure Rules 2010**, which provides as hereunder;

Particulars of plaint [Order 4, rule 1.]

(1) *The plaint shall contain the following particulars:*

(a) *the name of the court in which the suit is brought;*

(b) *the name, description and place of residence of the plaintiff, and an address for service;*

(c) *the name, description and place of residence of the defendant, so far as they can be ascertained;*

(d) *the place where the cause of action arose;*

(e) *where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect; and*

(f) *an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff named in the plaint.*

(2) The Plaint shall be accompanied by an affidavit sworn by the Plaintiff verifying the correctness of the averments contained in rule 1(1)(f) above.

28. In respect of the subject matter, there are two plaintiffs/Applicants and consequently, it was incumbent upon the said Plaintiffs/Applicants to swear the relevant Affidavits and have same filed alongside the Plaint.

29. In the alternative, one of the Plaintiffs/Applicants herein could very well swear the Verifying Affidavit on behalf of the other, provided that the person on whose behalf the affidavit is sworn, would be obligated to execute an authority and which authority would need to be filed alongside the Plaint.

30. Nevertheless, I have observed that only the 1st Plaintiff/Applicant herein filed a Verifying Affidavit in verification of the Plaint and that even though it is stated that same has been sworn on behalf of the co-Plaintiff/Applicant, no such authority has been exhibited, annexed and/or filed, as required under the law.

31. However, the question that arises for determination is whether such breach and/or infraction of the provisions of **Order 1 Rule 13 of the Civil Procedure Rules, 2010**, would automatically culminate into the striking out of the offending Plaint.

32. I must point out that Parties ought to comply with the procedural aspects of the law and that in situations where same has been breached and/or violated, the Party at fault needs to move with haste to remedy the default.

33. On the other hand, I also need to point out that even though it was obligatory upon the 1st Plaintiff/Applicant to procure and obtain the authority of the 2nd Plaintiff/Applicant and to ensure that same was filed, which was not done, I must say that there are certain breaches for which the court has a discretion, on whether to strike out the offending Pleadings or to allow the offending Party the latitude to remedy the default.

34. In my humble view, the Plaint on behalf of the 1st Plaintiff/Applicant is duly and properly verified by the Verifying Affidavit and the only bit of the Plaint that is not verified is the one on behalf of the 2nd Plaintiff/Applicant.

35. Though the 1st Plaintiff/Applicant has stated on oath that same procured and obtained authority of the 2nd Plaintiff/Applicant to swear the Verifying Affidavit, such a statement alone, is not enough. It behooves the 1st Plaintiff/Applicant to file the requisite authority in court in line with **Order 1 Rule 13(2) of the Civil Procedure Rules 2010**.

36. Clearly, there is evident breach and/or infringement of the law. However, I do not think that this breach and/or non-compliance, is such that it ought to attract the infliction of a draconian punishment by way of striking out the Plaint.

37. In my humble view, the breach and/or non-compliance alluded to herein, is one that is remediable by the invocation and application of the provisions of **Article 159 (2) (d) of the Constitution 2010**.

38. At any rate, the issue of failure to file the authority in compliance with Order 1 Rule 13(2), and whether same is fatal, was considered by the court of Appeal in the case of **Research International East Africa Ltd v Julius Arisi & 213 Others [2007] eKLR**, where the court stated as hereunder;

In our view, the true construction of rule 1 (2) of Order VII Civil Procedure Rules is that even in cases where there are numerous plaintiffs, each plaintiff is required to verify the correctness of the averments by a verifying affidavit unless and until he expressly authorizes any of the co-plaintiffs or some of them in writing, and, files such authority in the case, to file a verifying affidavit on his behalf in which case such a verifying affidavit would be sufficient compliance with the rule. Moreover, the Grace Ndegwa's case (supra) and rule 12(1) of Order I CP Rules leave no doubt that one or more of the co-plaintiffs can validly file an affidavit verifying the correctness of the averments of the plaint on behalf of the other co-plaintiffs with their authority in writing.

Having come to the conclusion that the verifying affidavit of Julius Arisi was filed without authority of the other 213 plaintiffs, it follows that the other 213 respondents have not complied with mandatory provisions of rule 1 (2) of Order VII Civil Procedure Rules and that their suit was liable to be struck out by the superior court under rule 1 (3) of Order VII CP Rules.

The superior court however had a discretion. It had jurisdiction instead of striking out the plaint to make any other appropriate orders such as giving the plaintiffs another opportunity to comply with the rule.

ISSUE NUMBER 2

Whether the suit herein touches on and/or concerns Boundary dispute and thus the Jurisdiction of the Court is ousted.

39. The Plaintiffs/Applicants claim before the court is that the Defendants/Respondents are keen to trespass upon and/or demolish the developments that are standing on the suit property, under the pretext that the suit property lies on the path or the link road connecting Nairobi Northern- Bypass to Limuru Road.

40. According to the Plaint, it is contended that the ground location on which the suit property stands falls on the path of the link road and not that same shares a common boundary with the link road, to warrant the ascertainment and/or demarcation of the Boundary line before-hand.

41. Despite the averments contained in the Plaint, the 1st Defendant/Respondent has now come up with an allegation that the subject suit touches on and/or concerns a boundary dispute between the suit property and the Nairobi Northern bypass road, which issue is not alluded to in the Plaint.

42. Having generated the issue pertaining to and/or concerning the boundary dispute, the 1st Defendant, has thereafter raised a Preliminary objection based on the provisions of **Section 18(2) of the Land Registration Act, 2012**.

43. Suffice it to note, that a Party who is keen to generate and/or ventilate a Preliminary objection, must do so on the basis that the facts contained in the Pleadings of the adverse Party are deemed as admitted and not in contest.

44. Contrarily, a Preliminary objection cannot be raised and/or ventilated where the Party raising the Preliminary objection contests and/or is contesting the factual position and/or averments or pleadings filed by the adverse Party and in which case, the facts are therefore disputed and must thus await the plenary hearing.

45. In respect of the subject matter, the 1st Defendant/Respondent cannot self-generate the issue of a boundary Dispute, which is not contained in the Plaint and having generated same, seek to anchor a Preliminary objection thereon. Such a practice is unknown to law and is otherwise unorthodox.

46. Be that as it may, the circumstances where a Preliminary objection can be raised or ventilated were well delineated in the decision in the case of **Mukisa Biscuits Manufacturing Co. Ltd –Vs- West End Distributors Limited (1969) EA. 696** in which Sir Charles Newbold P observed as follows:-

“ The first matter related 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 demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.”

47. Other than the aforesaid decision, the circumstances under which preliminary objection can be raised and/or amplified, were also considered in the case of **Oraro v Mbaja [2005] eKLR**, where the court stated as hereunder;

‘ I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. I am in agreement with learned counsel, Mr. Ougo , that “where a Court needs to investigate facts, a matter cannot be raised as a preliminary point.” This legal principle is beyond dispute, as there are divers weighty authorities carrying the message.’

48. Simply put, the contention that the subject claim touches on and/or concerns the Boundary Dispute, which in any event, is contrary to the contents of the Plaint, is an issue that cannot be addressed vide a Preliminary objection.

ISSUE NUMBER 3

Whether the Jurisdiction of the Court is ousted by the Provisions of Section 133A 133B of the Land Act, 2012(2016).

49. The 1st Defendant/Respondent has also contested the Jurisdiction of the court based on the provisions of **Section of 133A and 133B of the Land Act, 2012**.

50. Based on the aforesaid provisions, the 1st Defendant/Respondent has submitted that this Honourable court only has Appellate Jurisdiction on matter touching on or concerning compulsory acquisition. For clarity, the 1st Defendant has therefore posited that this court does not have original jurisdiction.

51. First and foremost, the provisions of **Section 133A and 133B of the Land Act, 2012** only deal with the establishment of the land Acquisition Tribunal and also set the terms of office of the members of the tribunals and not otherwise.

52. On the other hand, **Section 133C of the Land Act, 2012** provides for the functions and the powers of the tribunal to hear Appeals from decisions of the National Land Commission in matters pertaining to and/or concerning compulsory acquisition. However, the 1st Defendant/Respondent herein has not invoked the provision of Section 133C of the Land Act, while ventilating the preliminary objection.

53. Notwithstanding the foregoing, I beg to point out that the contention by the 1st Defendant that this court does not have original jurisdiction on matters pertaining to compulsory acquisition of land, is not well founded. For clarity, the said submissions have missed the import and tenor of **Section 13(2) b of the Environment and Land Court Act**, which provides as hereunder;

13. Jurisdiction of the Court

(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.

54. Similarly, I am not persuaded that the Preliminary objection based on the issue of lack of original jurisdiction to attend to and/or deal with an issue of Compulsory acquisition is sound.

ISSUE NUMBER 4

Whether the Plaintiffs/Applicants are entitled to the orders of Temporary Injunction either as sought or at all.

55. The Plaintiffs/Applicants herein have sought for the grant of orders of temporary injunction, effectively to bar and/or restrain the Defendants/Respondents from continuing with the construction of Nairobi Northern Bypass Road to Limuru Road, on the suit property, namely Kiambaa/Ruaka/1588.

56. Nevertheless, despite seeking the orders of temporary injunction, in the manner pointed out vide the preceding paragraph, the Plaintiffs/Applicants are aware that same sought for and/or obtained orders of Permanent injunction vide **ELC 976 of 2012**, between the same Plaintiffs/Applicants and Defendants/Respondents, save for the 4th Defendant/Respondent herein.

57. For the avoidance of doubt, the orders which were issued vide **ELC Civil Suit No. 976 of 2012**, were as hereunder;

a) That the acquisition by the Petitioners of Land Parcel LR No Kiambaa/Ruaka/1588 was lawful and in accordance with the law and therefore deserving of protection under Article 40 of the Constitution.

b) That the forcible entry, seizure, possession and impending demolition of the Petitioner's premises on LR No Kiambaa/Ruaka/1588 amount to violation of their rights to protection of property under Article 40 of the Constitution, 2010.

c) That an order of prohibition be and is hereby issued to prohibit the Respondents severally and jointly from entry, seizure, confiscation, occupation and alienation and from taking possession of land parcel LR No Kiambaa/Ruaka/1588 unless and until there has been compliance with compulsory acquisition provisions of the Land Act No.6 of 2012 and Article 40 of the Constitution.

58. Given that the Plaintiffs/Applicants herein already have orders of Permanent injunction, which are to exist in perpetuity, there is no basis upon which the Plaintiffs/Applicants can now come back to court vide a separate suit and seek for an order of temporary injunction.

59. Whatever fears that the Plaintiffs/Applicants may have, same can be addressed, redressed and/or attended to by the invocation and application of the orders, which were issued in **ELC Civil Suit No. 976 of 2012** and not otherwise.

60. In my humble view, the prayer for temporary injunction, which have been sought by and/or at the instance of the Plaintiffs/Applicants herein amount to duplicity and are therefore tantamount to abuse of the court process.

61. Consequently, I am not inclined to grant the orders of temporary injunction, either in the manner sought or at all. For clarity, to do so would amount to acting in vanity and a court of law, like nature does not act in vain.

62. In support of the foregoing observation, I take guidance in the holding in the case of **Eric V.J. Makokha & 4 Others vs. Lawrence Sagini & 2 Others Civil Application No.20 of 1994 (12/94 UR)**, where the Court Of Appeal stated as hereunder;

“Equity, like nature, will do nothing in vain”. On the basis of this maxim, courts have held again and again that it cannot stultify itself by making orders which cannot be enforced or grant an injunction which will be ineffective for practical purposes...”

63. Before I reach the conclusion in respect of the subject matter, there are two, outstanding issues, which I have not dealt with or addressed and same are as hereunder;

a. Whether the subject suit is Res-judicata on the basis of the proceedings and decision in ELC Civil Suit No. 976 of 2012.

b. Whether the subject suit offends the provisions of Section 34 of the Civil Procedure Act, Chapter 21 Laws of Kenya.

64. I must point out that though this two issues are pertinent and may impact on the validity of the subject suit, same were not addressed by the Parties and in this regard, the court shall upon delivery of the ruling, invite the Parties and their advocates to address same vide further submissions.

FINAL DISPOSITION:

65. I have considered and evaluated the topical issues that were raised herein and having resolved all the said issues, it is now appropriate to render a determination and in this regard, I come to the conclusion as hereunder;

i. The Preliminary objection dated the 15th September 2020, is Devoid of Merits.

ii. The Applications dated the 28th July 2020 and the 10th September 2021, seeking temporary injunction, whereas there are already in existence orders of Permanent injunction vide ELC Civil Suit No. 976 of 2012, amounts to an abuse of the Due process of the court.

66. Consequently, the subject Applications herein be and is hereby dismissed with costs to the 1st Defendant/Respondent. However, costs of the preliminary objection, shall abide the determination of the two outstanding issues pointed out herein before.

67. It is so Ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY 2022.

HON. JUSTICE OGUTTU MBOYA

JUDGE

IN THE PRESENCE OF;

JUNE NAFULA COURT ASSISTANT

MR. BRIAN OCHIENG FOR THE 1ST DEFENDANT/RESPONDENT

MR. MWATHE H/B FOR MR. KIBE FOR THE PLAINTIFFS/APPLICANTS

N/A FOR THE REST OF THE DEFENDANTS/ RESPONDENTS