



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO. E059 OF 2021**

**GRACE WANJIRU GITHAIGA.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**PAUL KURIA GITHAIGA.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**(Suing as legal Representative of the Estate of the late JAMES GITHAIGA KURIA)**

**-VERSUS-**

**JOHNSON GITHII KARANJA.....DEFENDANT/RESPONDENT**

**RULING:**

**INTRODUCTION:**

1. This Ruling is in respect of two (2) Applications, namely, the Application dated the 17<sup>th</sup> February 2021, which is filed by and/or on behalf of the Plaintiffs/Applicants and the Notice of Motion Application dated the 30<sup>th</sup> September 2021, the latter which is filed by and/or on behalf of the Defendant.

2. For clarity the Notice of Motion Application dated 17<sup>th</sup> February 2021, seeks the following Orders:

**a. ....(Spent)**

***b. This Honourable Court be pleased to issue a Temporary order of Injunction restraining the Defendant whether by himself, his servants, agents, or any person whosoever from doing any of the following acts, that is to say, evicting the Plaintiffs and their sub-tenants, demolishing the building, selling, leasing, charging or otherwise howsoever interfering with the Plaintiff's/Applicant's quiet, peaceful, actual and exclusive possession, sublease, user, development and enjoyment of parcel of land known as Land Reference Numbers: 209/18279 and 209/18280, Digo Road, Nairobi pending hearing and determination of this Application Inter partes.***

***c. This Honourable Court be pleased to issue a Temporary Order of Injunction restraining the Defendant whether by himself, his servants, agents, or any person whosoever from doing any of the following acts, that is to say, evicting the Plaintiffs and their sub-tenants, demolishing the building, selling, leasing, charging or otherwise howsoever interfering with the Plaintiff's/Applicant's quiet, peaceful, actual and exclusive possession, sublease, user, development and enjoyment parcel of land known as Land Reference Numbers: 209/18279 and 209/18280, Digo Road, Nairobi pending hearing and determination of this Application.***

***d. This Honourable Court be pleased to issue a Temporary Order of Injunction restraining the Defendant whether by himself, his servants, agents, or any person whosoever from doing any of the following acts, that is to say, evicting the Plaintiffs and their sub-tenants, demolishing the building, selling, leasing, charging or otherwise howsoever interfering with the Plaintiff's/Applicant's quiet, peaceful, actual and exclusive possession, sublease, user, development and enjoyment of parcel of land known as Land Reference Numbers: 209/18279 and 209/18280, Digo Road, Nairobi pending hearing and determination of the suit.***

***e. That in the alternative, this Honourable Court be pleased to order the status quo prevailing as at 1<sup>st</sup> December 2020, regarding possession, user, occupation and lease of the parcel of land known Land Reference Numbers: 209/18279 and 209/18280, Digo***

*Road, Nairobi pending hearing and determination of this application inter partes or until further court orders.*

***f. This Honourable Court be pleased to order the Officer Commanding Station/Ward Commander Shauri Moyo Police Station to enforce compliance of orders granted.***

***g. The costs of this application be provided for***

3. The subject Application is premised and/or anchored on the Grounds contained on the face thereof and same is supported by the affidavit of one Grace Wanjiru Githaiga sworn on the 17<sup>th</sup> February 2021 and to which the deponent has attached 4 annextures.

4. The Second Application, namely, the Application dated 30<sup>th</sup> September 2021, seeks the following orders;

***a. ....(Spent)***

***b. The Plaintiffs, their agents be restrained from further collection of rents or further subletting of the premises known as L.R No 209/18279 pending the inter-partes hearing and determination of this suit.***

***c. The Court does proceed to order the Appointment of an Independent Property Manager to manage the Suit property known as L.R No. 209/18279 and Deposit the net rent after expenses to a joint account to be held between the Plaintiffs and the Defendant.***

***d. The Plaintiffs, their agents, be restrained from further collection of rents or further sub-letting of the premises known as L.R No 209/18279, pending the hearing and determination of this suit.***

***e. The Plaintiff be ordered to give an Accounts of all proceeds collected from the premises since the 1<sup>st</sup> December 2020 and the same be placed in a joint account to be held between the Plaintiffs and the Defendants pending the hearing and determination of the suit.***

***f. The Plaintiffs be ordered to disclose the status of their statutory obligations towards taxes, including VAT and other utilities, including water and electricity in the premises known as L.R No. 209/18279.***

***g. The costs of the application be provided for.***

5. The subject Application is premised on the Grounds contained on the face thereof and same is further supported by the affidavit of the Defendant sworn on the 30<sup>th</sup> September 2021, and to which the Defendant has attached one annexure, namely, the Lease Document, which was entered into between himself and one James Githaiga Kuria, now deceased.

#### **DEPOSITIONS BY THE PARTIES:**

#### **DEPOSITION BY THE PLAINTIFF**

#### **(In Support of the Application dated 17<sup>th</sup> February 2021)**

6. Vide Supporting Affidavit sworn on the 17<sup>th</sup> February 2021, Grace Wanjiru Githaiga has averred as hereunder;

7. The Deceased, namely James Githaiga Kuria, was survived by two widows and six children. Besides, the deceased passed on and/or died on the 9<sup>th</sup> December 2020, after a short illness and same was ultimately buried on the 22<sup>nd</sup> December 2020.

8. It has further been averred, that subsequently we, (*albeit not specified*) petitioned for Grant of Letters of Administration which was granted on the 12<sup>th</sup> February 2021 for purposes of filing of this suit.

9. Further, the deponent has averred that the deceased who was a business man entered into a lease agreement with the Defendant herein whereby the Deceased rented a Business premises situate on L.R No's 209/18729 and 209/18280, along Digo Road, Nairobi, hereafter referred to as the suit property.

10. It has further been averred that the Lease Agreement between the Deceased and the Defendant herein was for a period of 5 years and three (3) months and that same commenced on the 30<sup>th</sup> June 2015 up to and including September 2020.

11. However the deponent has averred that prior to the death of the deceased, the Lease under reference was renewed for a further five (5) years and three (3) months.

12. On the other hand, it has also been averred that by the time the deceased passed on, the Rents for November and December 2020 had not been paid. Nevertheless, the deponent avers that come January 2021, she was able to pay and/or settle the outstanding rents for November 2020, December 2020 and January 2021.

13. Be that as it may, the deponent has averred that on or about the January 2021, the Defendant herein approached the 2<sup>nd</sup> Plaintiff and

informed same that the term of the lease agreement between himself and the deceased had lapsed and that same had not been renewed. Consequently, the Defendant demanded that the 2<sup>nd</sup> Plaintiff commence the process of engagement with a view to renewing the terms of the lease.

14. It has also been averred that the Defendant herein indicated and/or signified that same would be amenable to renew the lease, albeit on increased and/or enhanced monthly rents, which were to be increased from Kes.230, 000/= only to Kesh.900, 000/= only per month.

15. Finally, the deponent has averred that the Defendant pointed out that in the event of failure to renew the lease term, same shall require that the Plaintiffs' vacate and/or move out of the suit premises.

### **DEPOSITION BY THE DEFENDANT**

#### **(In Support of the Application dated 30<sup>th</sup> September 2021)**

16. Vide Supporting Affidavit sworn on the 30<sup>th</sup> September 2021 by one Johnson Githii Karanja, same has averred as hereunder;

17. He, the Defendant is the registered proprietor of all that property known as I.R No 209/18279 located along Digo Road Nairobi.

18. Further, the deponent has averred that on or about the 30<sup>th</sup> June 2015, same entered into a Lease agreement with one known as James Githaiga Kuria, now deceased, whereby same leased to and in favor of the deceased the suit premises for a duration of 5 year 3 months which was sub-sits up to and including September 2020.

19. It has been averred that pursuant to the terms of the lease agreement, the deceased was to occupy the suit premises and same was at liberty to build and/or to construct structures therefrom and that upon termination of the lease term, the Deceased was to remove the Structures and/or building and same was to restore the premises into the state in which same were leased and/or demised unto him.

20. It was further averred that prior to the death of the deceased, the Defendant herein entered into and engaged in negotiations with a view to renew the terms of the lease that had already lapse, but unfortunately, the negotiations did not culminate into a renewal.

21. Nevertheless, the deponent has further averred that even though the lease between the deceased and himself (read the Defendant) was never renewed, the Plaintiffs herein have continued to be in possession of the suit property and same have even continued to lease portions thereof to various sub-tenants, albeit without any authority.

22. Further, the Defendant has averred that the Plaintiffs have gone ahead to engage a management company known as Honour Agencies Limited to manage the premises and collect rents thereof and that the appointment of Property manager was done without his authority and/or consent.

23. Finally, the deponent has averred that the Plaintiffs' herein have no capacity and/or authority to remain in the premises and/or to continue collecting rents therefore in any manner whatsoever after the lease agreement which was entered into between the Deceased and himself terminated in December 2020.

### **SUBMISSIONS:**

24. The matter came up for the hearing of the two Applications namely, the Application dated the 17<sup>th</sup> February 2021 and 30<sup>th</sup> September 2021 on the 15<sup>th</sup> December 2021, when it was agreed that the two Application be disposed of and/or be canvassed by way of written submissions. Consequently, the court proceeded to and set timelines for the filing and exchange of the written submissions.

25. Pursuant to the directions of the court, the Parties herein proceeded to and filed their respective written submissions, which submissions are on record. For clarity, the court has considered and taken into account the submissions that have been filed.

### **ISSUES FOR DETERMINATION:**

26. Having reviewed the two Applications, namely, the Application dated the 17<sup>th</sup> February 2021, the Supporting Affidavit thereto, the Application dated the 30<sup>th</sup> September 2021 and the Supporting Affidavit thereto and having considered the written submissions filed by the Parties, the following issues arise and are germane for Determination;

*a. Whether the Plaintiffs' herein have the requisite locus standi to mount, originate and/or prosecute the subject suit on behalf of the Estate of the Deceased.*

*b. Whether the Plaintiffs' suit discloses a Prima facie case with overwhelming Chances of Success.*

*c. Whether the Plaintiffs are disposed to suffer Irreparable loss.*

*d. Whether the Defendant is entitled to the Reliefs sought vide the Application dated the 30<sup>th</sup> September 2021.*

### **ANALYSIS AND DETERMINATION**

## ISSUE NUMBER 1

### **Whether the Plaintiffs' herein have the requisite locus standi to mount, originate and/or prosecute the subject suit on behalf of the Estate of the Deceased.**

27. From the pleadings herein and in particular the Supporting affidavit, it is apparent and/or evident that the lease over and in respect of the suit property was indeed entered into and executed between the deceased and the Defendant herein, on the 30<sup>th</sup> June 2015.

28. To the extent that the lease was entered into and executed between the deceased on one hand and the Defendant on the other hand, following the death of the deceased, any claim and/or rights arising from and on behalf of the estate of the deceased can only be propagated and/or ventilated by the duly appointed administrator and/or administratrix of the estate of the deceased.

29. In this case, the Plaintiffs herein have duly described themselves as the legal administrators/representatives of the estate of the deceased and besides same have further gone ahead to even indicate that same applied for and obtained grant of letters of administration ad litem on the 12<sup>th</sup> February 2021, to facilitate the filing of the subject suit.

30. True to it, if the Plaintiffs herein, have since procured and obtained the requisite Grant of letters of administration ad litem, the same would be possessed and/or seized of the requisite locus standi, to commence, maintain and/or otherwise originate the subject suit.

31. Nevertheless, one would have expected the Plaintiffs herein to show and/or exhibit a copy of the Grant of letters of administration ad litem, which has allegedly been referred to at paragraph 3 of the supporting affidavit, but which for convenience, has not been annexed.

32. I am not alive to the reason why same has not been exhibited and/or annexed, but the assumption belying the non-exhibition, is that the said purported Grant of letters of administration ad litem is non-existent.

33. In my humble view, if the Plaintiffs herein proceeded to and caused the subject suit to be filed and/or prior for the procurement of letters of administration ad litem or otherwise, then the entire suit is invalid and does not disclose any reasonable cause action.

34. For the avoidance of doubt, the Decision in the case of **Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & another (1987) eKLR**, still holds sway and is good law. For clarity, the Court of Appeal held as hereunder;

***“ The administrator is not entitled to bring an action as administrator before he has taken out letters of administration. If he does, the action is incompetent at the date of inception.”***

35. I must point out that I suspect that no Grant of Letters of Administration, either Ad Litem or otherwise, have been taken out and/or issued in respect of the estate of the deceased herein because at paragraph 5 of the supporting affidavit, the 1<sup>st</sup> Plaintiff has stated inter-alia as hereunder;

*Para 5:*

*...I undertake to furnish this Honourable court together with payment exhibits once we have obtain the letters of administration together with Alice Wanjiku Murigi.*

36. My understanding of the foregoing averment is that the 1<sup>st</sup> Plaintiff is confirming that no Grant of letters of administration have been issued and/or granted over and in respect of the Estate of the deceased and therefore certain Documents shall only be availed to the court, once the grant shall be issued to her, that is the 1<sup>st</sup> Plaintiff and Alice Wanjiku Murigi.

37. In short, I entertain Doubts in my mind as to the Plaintiffs capacity, to commence and/or originates the subject suit, not unless there is evidence of the Grant of letters of administration, which so far have been concealed and withheld from the court.

## ISSUE NUMBER 2

### **Whether the Plaintiffs' suit discloses a Prima facie case with overwhelming chances of success.**

38. The relationship between the Defendant and the deceased, was regulated and or better still governed on the basis of the lease entered into and/or executed on the 30<sup>th</sup> June 2015 and which was for a term of 5 years 3 months. For clarity, the term of the lease commenced on the 30<sup>th</sup> June 2015 and determined on the 30<sup>th</sup> September 2020.

39. Though there is admission by the Defendant that prior to the death of the deceased, there were negotiations, which were aimed at renewing the terms of the lease, the bottom line is that the lease was never renewed up to and including the time when the deceased passed on in December 2020.

40. Be that as it may, the Plaintiff herein purported that the Lease under reference was renewed as between the deceased and the Defendant herein, but, other than making that blunt allegation, no evidence, including a copy of the alleged renewed lease, was ever exhibited and/or made available.

41. Suffice it to say, that the Plaintiffs' suit touches on and/or concerns disposition of an Interest in land, which is governed by the provisions of Section 3(3) of the Law of Contract Act, Chapter 23, Laws of Kenya which provides as hereunder;

***(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—***

***(a) the contract upon which the suit is founded—***

***(i) is in writing;***

***(ii) (ii) is signed by all the parties thereto; and***

***(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:***

***Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.***

42. Given that the Plaintiffs' suit touches on and/or relates to an interests in land, same ought to be premised and/or predicated upon a written memorandum and/or document, which contains the various terms agreed upon by the Parties and which must then be signed by the Parties chargeable therewith and whose signatures must be attested by a witness who is present and witnessing the execution the memorandum and/or agreement.

43. Notwithstanding the foregoing, I have endeavored to point out that the lease agreement, which was hitherto entered between the deceased and the Defendant herein determined on the 30<sup>th</sup> September 2020 and that same was appears not to have been renewed and that in this regard, the Plaintiffs suit appears prima facie, to be at variance with the provisions of Section3(3) of Law of Contract Act.

44. In the premises, the question that then arises is whether the facts as presented by the Plaintiffs herein, raise and/or disclose a prima facie case, either as known to law or at all.

45. In my humble view, having calibrated the facts of this case, taking into account my consideration on issue number one herein before and juxtaposing same as against the observations in terms of the preceding paragraph, I come to the conclusion, albeit reluctantly, that the Plaintiffs herein have not placed before the court materials to warrant a finding of disclosure of Prima facie case with overwhelming chances of success.

46. As pertains to the import, meaning and tenor of what constitute a Prima facie case, I wish to take refuge in the Decision in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others**[2003] eKLR, where the Court of Appeal observed as hereunder;

***“A prima facie case in a civil application includes but is not confined to a genuine and arguable case.” It is a case 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.”***

### **ISSUE NUMBER 3**

#### **Whether the Plaintiffs' are disposed to suffer Irreparable loss:**

47. Before venturing to discuss whether the Plaintiff herein shall be disposed to suffer Irreparable loss, that is, if the orders of temporary injunction that have been sought are not granted, it is important and worthwhile to understand what then does the term Irreparable loss denote.

48. To understand the meaning and import of the term irreparable Loss, one needs to pay homage to the Decision in the case **Nguruman Limited v Jan Bonde Nielsen & 2 others** [2014] eKLR, where the Court of Appeal had occasion to define Irreparable loss and held as held as follows;

***“Irreparable injury(read loss) is that which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant.***

***The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy”. (emphasis supplied)***

49. In respect of the Plaintiffs' case, same have neither pleaded nor stated in the Supporting Affidavit the incidence of Irreparable loss or at all. For clarity, the entire of the affidavit in support of the Application of injunction, does not allude to incidence of Irreparable loss, whatsoever and/or howsoever.

50. On the other hand, even though there has been no deposition on the issue of Irreparable loss, on my own, I have evaluated the Plaintiffs'

case and I am unable to find whatever irreparable loss that same may suffer or may accrue, if the orders of temporary Injunction are not granted.

51. In any event, what I hear the Plaintiffs' to be complaining about is that the Deceased built and/or constructed a building worth Kshs. 40, 000, 000/= Only, and that it was agreed that upon the determination of the lease period, same was to recover and recoup the cost of the building either from the rents and/or from the Defendant herein.

52. Nevertheless, despite that averment which have been made by the Plaintiffs, my reading of clause 2 paragraph (e) of the lease agreement dated 30<sup>th</sup> June 2015, is that the deceased was not to construct any building and/or structures on the suit premises, but in the event he did so, he was to remove same at the determination of the lease and restore the lease property to the status-ante.

53. Based on the foregoing, I do not understand the basis upon which the Plaintiffs herein can lay a claim to or seek the alleged building and/or construction that is said to be worth over Kshs.40, 000, 000/= only, built and/or constructed on the Suit property.

54. Notwithstanding the foregoing, it is worthy to point out that whatever claim that the Plaintiff herein may have over and in respect to the suit property, such a claim is quantifiable and ascertainable in Monetary terms and hence payable. In this regard, same cannot therefore found a basis for a Temporary Injunction.

55. In support of the forgoing observation, the Decision in the case of **Kenya Commercial Finance Co. Ltd V. Afraha Education Society** [2001] Vol. 1 EA 86, is spot on. For clarity, the Honourable Court held as hereunder;

***“In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage.”***

#### **ISSUE NUMBER 4**

#### **Whether the Defendant is entitled to the Reliefs sought vide the Application dated the 30<sup>th</sup> September 2021.**

56. The Defendant herein is the registered owner and/or proprietor of the suit property and by virtue of being the registered proprietor of the suit property, same is entitled to exclusive and absolute possession and use thereof, as envisaged and/or underlined by Sections 24 and 25 of the Land Registration Act, 2012.

57. For the avoidance of doubt, the Provisions of Sections 24 and 25 of the Land Registration Act, 2012, provide as hereunder;

#### ***24. Interest conferred by registration Subject to this Act—***

***(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and***

***(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.***

#### ***25. Rights of a proprietor***

***(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—***

***(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and***

***(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.***

***(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.***

58. Based on the foregoing provisions, the Defendant herein is therefore obliged to access and use of the suit property, unless the Plaintiffs herein can show that they have a legitimate and/or legal basis to occupy and/or remain in occupation and/or otherwise restrict the Defendant’s access thereto.

59. To my mind, the Plaintiffs have not placed before the court any such basis and in this regard, I am of the considered view that the Defendant therefore would be entitled to the prayers contained on the face of the Application date 30<sup>th</sup> September 2021 particularly, prayers

2, 3, 4 and 5 thereof.

60. In terms of prayer 6 of the said Application, I must point out that the Defendant herein has not laid out a basis to warrant the grant of same. For clarity, Article 35 of the Constitution, 2010, which gave rise to the enactment of the Access to Information Act, 2016, has not been complied with or at all.

61. For the avoidance of doubt, a person seeking to procure and obtain information that is possessed or under the custody of another is enjoined to comply with and/or adhere to the Provisions of Access to Information Act, 2016.

62. Other than the failure to comply with or adhere to the provisions of Access to Information Act, in terms of first writing to the persons and/or authority concerned to provide the information sought, (*which has not been exhibited*), there is also the Question of Jurisdiction.

63. In my humble view, a claim founded and/or anchored on breach and/or violation of provision of Articles 35 of the Constitution 2010 and or where a Party seeks provision and/or disclosure of information held by a third party and/or state agency, such claims can only be ventilated before the High Court in accordance of the provision of Articles 165 (3) of the Constitution 2010.

64. In a nutshell, I am afraid I do not have the requisite Jurisdiction to engage in and/or to entertain prayer 6 of the Application dated 30<sup>th</sup> September 2021. In this regard, Prayer 6 of the said Application is destined to Fail.

## **FINAL DISPOSITION**

65. Having reviewed the two Applications that are the subject of the instant Ruling, as well as having evaluated the issues that were outlined hereinbefore, I am now minded to make the following orders;

***a. The Notice of Motion Application dated 17<sup>th</sup> February 2021 is Devoid of Merits and same be and is hereby Dismissed.***

***b. The Notice of Motion Application dated 30<sup>th</sup> September 2021 is Meritorious and is granted in the following terms;***

***I. A temporary injunction be and is hereby issued restraining the Plaintiffs from further collection of rents or further subletting of the premises known as L.R No 209/18279 pending hearing and determination of this suit.***

***II. An independent property manager be and is hereby appointment to manage the suit property known as L.R No. 209/18279 and deposit the net rent after expenses to a joint account to be held in a joint interest earning account in the names of the Advocates for the Plaintiffs and the Defendant respectively. For clarity, the property manager to be identified and appointed by the Advocate for the Plaintiff and the Defendant and same be appointed with thirty (30) days from the date hereof.***

***III. In default of an agreement on the appointment of the property manager, the Plaintiff and the Defendant herein, to propose two (2) Names each of the preferred property managers which shall be forwarded to the Deputy Registrar within 14 days from the date of disagreement and the deputy registrar shall designate and/or otherwise appoint anyone from the proposed Names of the property managers, who shall thereafter be assigned the task and/or duty to manage the subject property, pending further orders and/or direction of the court.***

***IV. The Plaintiff be and are hereby ordered to give an account of all the proceeds collected from the premises and such accounts shall be provided and/or availed within thirty (30) days from the date hereof. For clarity, the accounts shall be filed in court vide an affidavit.***

66. Cost of the Application dated the 17<sup>th</sup> February 2021 and the 30<sup>th</sup> September 2021, be and are hereby awarded to the Defendant.

67. It so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH 2022.**

**HON. JUSTICE OGUTTU MBOYA**

**JUDGE**

In the Presence of;

**June Nafula      Court Assistant**

**Mr. Oruenjo for the Plaintiffs/Applicants.**

**Mr. Makhandia H/B for Mr. Thuita for the Defendant/Respondent.**

**Mr. Wahome for Interested Party.**