



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. E004 OF 2020**

**JAMES MUNG'ARU & 56 OTHERS.....PLAINTIFFS**

**VERSUS**

**KAMULU HOUSING CO-OPERATIVE**

**SOCIETY LTD.....1<sup>ST</sup> DEFENDANT**

**MADUBAT TRADING COMPANY LTD.....2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL .....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect of two Applications. The first Application is dated 23<sup>rd</sup> September, 2020 filed by the Plaintiffs while the second Application is dated 31<sup>st</sup> May, 2021 and filed by the 2<sup>nd</sup> Defendant.

**THE APPLICATION DATED 23<sup>RD</sup> SEPTEMBER, 2020**

2. The Application dated 23<sup>rd</sup> September, 2020 was filed by the Plaintiffs and sought the following orders;

***a. Spent.***

***b. The Plaintiffs be allowed to serve this present Application and summons to enter appearance upon the 2<sup>nd</sup> Defendant by way of advertisement in a Daily Newspaper of wide circulation.***

***c. Spent.***

***d. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents, be restrained from selling, sub-dividing, altering the scheme, disposing, further construction, adversely dealing with and or interfering in any way with the Plaintiffs access to their respective plot within the parcel of land known as L.R. 8485 registered in the name of the 1<sup>st</sup> Defendant pending the hearing and determination of the suit.***

***e. The County Commander Machakos to assist the enforcement of orders herein.***

***f. The costs of this Application be provided for.***

3. The Application is supported by the grounds of its face as well as the affidavit of JAMES MUNG'ARU the first Plaintiff in this matter. The Applicants aver that they purchased plots in L.R. 8485 registered in the 1<sup>st</sup> Defendant's name which cumulatively measures approximately 2,034 acres and the same is situated between Kangundo road to Katani area in Machakos County; that allotment letters were issued to the Plaintiffs by the 1<sup>st</sup> Defendant while the Plaintiffs paid to the 1<sup>st</sup> Defendant fees for transfer, beacons and titles; that hence the Plaintiffs are proprietors of their respective purchased plots; that the 1<sup>st</sup> Defendant failed to complete transfer of the purchased plots to the Plaintiffs and also failed to protect the purchased property from trespassers and that the 2<sup>nd</sup> Defendant has with the connivance of the 1<sup>st</sup> Defendant encroached on the Plaintiffs' plots and constructed a mosque, office premises, residential quarters and drilled a borehole.

4. The Plaintiffs further state that the 2<sup>nd</sup> Defendant has placed people on the suit property to harass and threaten the Plaintiffs and hence

preventing them from peaceful enjoyment of their property and therefore the Plaintiffs need police assistance in enforcing orders of the court as the land falls between jurisdictions of several police stations.

5. The Plaintiffs also contend that the 2<sup>nd</sup> Defendant's offices and whereabouts of their Directors are not known and their representatives are hostile, making it necessary that they be served by advertisement in a newspaper.

6. On 29<sup>th</sup> September, 2020, this court certified the Application herein as urgent, granted the Plaintiffs orders allowing them to serve the instant Application and Summons to enter appearance upon the 2<sup>nd</sup> Defendant by way of advertisement in the Daily Newspaper of wide circulation and granted temporary injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the interim until 13<sup>th</sup> October, 2020. In the said order, the Respondents were granted leave to enter appearance within fourteen (14) days of the date of advertisement.

7. The Application is opposed. The 1<sup>st</sup> Defendant filed a replying affidavit sworn by AUGUSTIN N. MUTUKU on 30<sup>th</sup> October, 2020 where he deposed that the suit property belonged to the 1<sup>st</sup> Defendant who acquired it in the year 1994 and was registered as proprietor thereof on 30<sup>th</sup> June, 2003; that the Plaintiffs though not members of the Society had acquired their plots from legitimate members of the 1<sup>st</sup> Defendant; that the said property measures 2034 acres and was subdivided into 4000 plots for which members balloted and subsequently issued with letters of allotment through the 3<sup>rd</sup> Defendant; that members of the Society took possession of their plots; that the 1<sup>st</sup> Defendant surrendered the original title for L.R 8485 to the Director of Survey and obtained new survey scheme for the plots; that thereafter members were issued with letters of allotment by the 3<sup>rd</sup> Defendant; that the 1<sup>st</sup> Defendant filed ELC NO. 114 of 2018 against trespassers, some of whom were agents of 2<sup>nd</sup> Defendant; that the 2<sup>nd</sup> Defendant forged documents in respect of title L.R No. 8485 and receipts and therefore the 2<sup>nd</sup> Defendant is the trespasser who should be enjoined.

8. Further, the 1<sup>st</sup> Defendant filed a Preliminary Objection dated 9<sup>th</sup> October, 2020 contending that the suit offends Section 76(1) (a) (b) and (c) of the Cooperative Societies Act and this matter ought to have been referred to the Tribunal and therefore this court lacks jurisdiction to determine the suit, hence the Application and the suit ought to be dismissed with costs.

9. In response to the Application, the 2<sup>nd</sup> Defendant filed a replying affidavit sworn by one CHARLES KYALO a Director of the 2<sup>nd</sup> Defendant on 12<sup>th</sup> October, 2020. They stated that the 2<sup>nd</sup> Defendant are the registered proprietor with title of all that land known as L.R 8485 I.R No. 10656 situate in Kamulu/Syokimau Machakos County measuring about 2034 acres; that the 2<sup>nd</sup> Defendant has diligently been paying rents and rates in respect of the suit land and have been in peaceful quiet possession until 8<sup>th</sup> September, 2020 when the Plaintiffs and their agents attempted to invade the land; that the 2<sup>nd</sup> Defendant is a stranger to the relationship between the Plaintiffs and the 1<sup>st</sup> Defendant; that the title attached to the Application is illegible and that the Plaintiffs' invasion and trespass on the suit property is in breach of the 2<sup>nd</sup> Defendant's right to property under Article 40 of the Constitution.

10. The 2<sup>nd</sup> Defendant further stated that they are apprehensive that unless the court restrains the Plaintiffs and their agents from trespassing on the suit property, the property will be wasted and the 2<sup>nd</sup> Defendant shall suffer substantial loss; that it is in the interest of justice that the interim orders issued on 29<sup>th</sup> September, 2020 be vacated and the case heard on merit as the orders were obtained through non-disclosure of material facts.

## **SUBMISSIONS**

11. The Application was canvassed by submissions and on record are the Plaintiffs' submissions filed on 10<sup>th</sup> February, 2021, the 1<sup>st</sup> Defendant's submissions filed on 4<sup>th</sup> November, 2020 the 2<sup>nd</sup> Defendant's submissions filed on 14<sup>th</sup> October, 2021 and the Plaintiffs' submissions filed on 8<sup>th</sup> November, 2021 replying the 2<sup>nd</sup> Defendant's submissions.

12. The Plaintiffs' counsel submitted that the Plaintiff has established a *prima facie* case. Counsel contended that the Plaintiffs had proved that the 1<sup>st</sup> Defendant's members had sold the suit land to the Plaintiffs which fact was conceded to by the 1<sup>st</sup> Defendant at paragraph 40 of their replying affidavit. Counsel pointed out that the Plaintiffs had produced sale and transfer documents as well as letters of allotments, which documents were not challenged by anyone.

13. Counsel further contended that the Plaintiffs had been in possession of their respective plots until recently when the 2<sup>nd</sup> Defendant prevented them from accessing their respective plots. Counsel emphasized that indeed, the 1<sup>st</sup> Defendant had supported the Plaintiffs' claim and stated that the 2<sup>nd</sup> Defendant was a trespasser to the suit property, which means that the Plaintiffs have the necessary *locus standi* and proprietary interest in respect to the claim.

14. It was contended that both the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant claim to have been issued with a title in respect of the same property and therefore it appears there is fraud by one party. Counsel argued that the 1<sup>st</sup> Defendant's title having been issued first, then the 2<sup>nd</sup> Defendant's title issued in 2018 is fraudulent. Besides, counsel stressed the fact that the 2<sup>nd</sup> Defendant had not shown any evidence of how they acquired the suit property from Dallo Investments Limited. Counsel averred that the rates payment by the 2<sup>nd</sup> Defendant were for a different property known as L.R 8485/2 and the 2<sup>nd</sup> Defendant had in suit ELC 114 of 2018 exhibited another title from what they have presented in this suit, which points to fraud.

15. Counsel also argued that the pictorial evidence of the 2<sup>nd</sup> Defendant's activities that they were doing on the suit property demonstrated the need for injunctive orders in favour of the Plaintiffs. Counsel therefore argued that the Plaintiffs had satisfied the condition of having demonstrated a *prima facie* case.

16. On the question of the nature of injury likely to be suffered by the Plaintiffs, Counsel contended that the harm occurring against the Plaintiffs cannot be adequately compensated by damages. Counsel argued that as the Plaintiffs had been denied access to their plots, they could not enjoy the fruits of their proprietorship and thereof their constitutional rights to property under Article 40 of the Constitution had been violated.

17. Counsel argued further that the 2<sup>nd</sup> Defendant's activities on the suit property will result in altering the suit land and hence no amount of damages may restore the same.

18. It was also the Plaintiffs' counsel's argument that the balance of convenience tilted in favour of the Plaintiff. Counsel contended that the trespassers had prevented the Plaintiffs from accessing their land. Counsel argued that unless an injunction is granted, the Defendants will continue to deal with the suit land adversely, which may make it extremely difficult for the Plaintiffs to recover the same.

19. Counsel concluded that as all the parties concede that there are people on the premises who continue to harass the parties, it is necessary that the police are involved to maintain peace.

20. Counsel for the 1<sup>st</sup> Defendant in opposing the Application submitted that the 1<sup>st</sup> Defendant was not guilty for failure to protect the suit property from invaders as they had swiftly filed ELC. NO. 114 of 2018 and obtained orders to preserve the property when the 2<sup>nd</sup> Defendant threatened to invade the suit property; that the 1<sup>st</sup> Defendant served the orders on the OCS Kamulu/Mlolongo for enforcement, pulled down illegal structures, hired security services; set aside land for construction of a police post at a cost of Kshs. 5,000,000/=; applied for 5 police officers to man the station; repulsed the 2<sup>nd</sup> Defendant and submitted all documents for processing of individual titles to the officers of the 3<sup>rd</sup> Defendant. Counsel argued that the 1<sup>st</sup> Defendant has no control over the 3<sup>rd</sup> Defendant's pace of issuance of titles.

21. Counsel also contended that the 1<sup>st</sup> Defendant had discharged its obligations by obtaining the necessary approvals from Director of Surveys in relation to the subdivision of the suit property, allotting the property accordingly, securing the scheme and permitting individual members and those who purchased from members to develop their plots.

22. Counsel relied on Order 40 Rule 1 (a) and (b) of the Civil Procedure Rules to argue that the acts complained of by the Plaintiffs as against the 1<sup>st</sup> Defendant do not fall within the ambit of Order 40 Rule 1 and 2 of the Civil Procedure Rules.

23. It was contended for the 1<sup>st</sup> Defendant that the 2<sup>nd</sup> Defendant forged the 1<sup>st</sup> Defendant's title L.R No. 8485, which it claims to have bought on 14<sup>th</sup> June, 2018 at an incredulous sum of Kshs. 20,000,000/= for 2034 acres, despite the fact that the 1<sup>st</sup> Defendant had obtained injunctive orders on 31<sup>st</sup> May, 2018. Counsel pointed out that the 2<sup>nd</sup> Defendant were in disobedience of the court orders issued since 2018. Counsel argued that the 2<sup>nd</sup> Defendant was guilty of forcible entry, interference, meting out violence, removing beacons and unlawfully redefining boundaries on an already surveyed, subdivided and allotted scheme to the members of the 1<sup>st</sup> Defendant

24. Reliance was placed on the case of *Giella vs. Cassman Brown & Company* for the proposition that the court can only issue a temporary injunction where the Applicant has proved that:

**a. He has a prima facie case with a probability of success,**

**b. He will suffer irreparable damage which cannot be compensated by damages if the injunction is declined.**

**c. In the event of any doubt, the court should decide on the balance of convenience.**

25. On the question as to whether the Plaintiffs have a *prima facie* case, counsel contended that they filed a Preliminary Objection on 14<sup>th</sup> October, 2020 where they argued that the Plaintiffs suit as against the 1<sup>st</sup> Defendant offends the provisions of Section 76 (1) (a) (b) and (c) of the Cooperative Societies Act as the matter ought to have been referred to the Tribunal and not this court. Counsel argued that in so far as their claim was ownership of the suit land as third party purchasers for value from the 1<sup>st</sup> Defendant's members, they were barred by statute. Counsel cited the case of *Joseph Muthuri IKinyua & 32 others vs. Co-operative Bank of Kenya & 14 others Meru HCCC No. 8 of 2018*.

26. On the question as to whether the Plaintiffs stood to suffer irreparable damage, the 1<sup>st</sup> Defendant's counsel argued that indeed, the Plaintiffs stand to suffer irreparable damage not capable of being compensated in damages if the injunction is declined; but that an injunction should issue as against the 2<sup>nd</sup> Defendant who were unlawfully interfering with the Plaintiffs' claim.

27. On the question of the balance of convenience, counsel argued that the balance of convenience tilted in favour of the Plaintiff and the 1<sup>st</sup> Defendant as against the 2<sup>nd</sup> Defendant.

28. Counsel for the 2<sup>nd</sup> Defendant submitted that this court lacks jurisdiction as contended by the 1<sup>st</sup> Defendant hereinabove. Counsel relied on the cases of *Owners of M/U Lillian "S" vs. Caltex Oil Kenya Ltd (1989) KLR 1* and *Sonyaco Housing Co-operative Society Ltd & 3 Others vs. South Nyanza Teachers Co-operative Savings & Credit Society & 3 Others (2020) eKLR*.

29. Counsel further contended that the Plaintiffs had not established a *prima facie* case as against the 2<sup>nd</sup> Defendant. Counsel argued that under Section 24(a) of the Land Registration Act, the registered proprietor of land has absolute right of ownership over his land. Counsel argued that both titles of the Plaintiff and the 2<sup>nd</sup> Defendant were issued by the 3<sup>rd</sup> Defendant, and therefore at this interim stage, it is not safe to conclude that one of the parties has a fake title. Counsel argued that the 2<sup>nd</sup> Defendant is not a trespasser. Counsel cited the case of *Ngorika Farmers Co-operative Society vs. John Kiarie & 2 Others*, which I have considered.

30. Further, counsel contended that the Applicants had failed to disclose that they had carried out massive demolition of the 2<sup>nd</sup> Defendant's property, hence they approached the court with unclean hands. Counsel therefore argued that the Plaintiffs have not demonstrated a *prima facie* case with a likelihood of success.

31. In addition, counsel argued that the Applicants had not demonstrated that they were likely to suffer irreparable damage should the injunction be declined. Counsel urged that the damage can be compensated as each plot owner has a distinct plot. Counsel argued that the Plaintiffs had not stated the injury they were likely to suffer that they had not suffered when the 2<sup>nd</sup> Defendant had been in charge of the suit property. Counsel relied on the case of *East African Development Bank vs. Hyundai Motors Kenya Limited (2006) eKLR*, which the court has considered.

32. On the balance of convenience, counsel argued that the same tilted in favour of the 2<sup>nd</sup> Defendant. Counsel placed reliance on the case of one *Juma vs. Julius Totona (2007) eKLR* and argued that as the 2<sup>nd</sup> Defendant was in occupation, the balance of convenience tilted in their favour.

### **ANALYSIS AND DETERMINATION**

33. I have considered, the Application, the responses, parties submissions cited authorities and the pleadings on record. The issues that arise for determination are;

***a. Whether this court has jurisdiction to determine this matter and***

***b. Whether the Plaintiff/Applicants have met the threshold for grant of temporary injunction.***

34. On the issue of jurisdiction, the Defendants have argued that by virtue of Section 76(1) (a) (b) and (c) of the Cooperative Societies Act, the jurisdiction to determine this matter is vested in the Tribunal. The said provision states as follows:

***“If any dispute concerning the business of a Cooperative Society arise;***

***a) among members, past members and persons claiming through members, past members and deceased members; or***

***b) between members, past members or deceased members and the Society, its Committee or any officer of the Society; or***

***c) between the Society and any other Co-operative Society it shall be referred to the Tribunal.”***

35. In the instant suit the dispute does not just concern the business of a Cooperative Society in respect of persons claiming through members. The 2<sup>nd</sup> Defendant having not been a member of the 1<sup>st</sup> Defendant means that the dispute is not just among persons claiming through members.

36. In my view, the dispute herein being a claim for land acquired from the members of the 1<sup>st</sup> Defendant and being allegedly trespassed upon by the 2<sup>nd</sup> Defendant cannot be termed as a dispute concerning the business of a Cooperative Society. It is my finding that this dispute falls outside the purview of Section 76 (a) (b) and (c) of the Cooperative Societies Act. I therefore find and hold that this court has jurisdiction to hear and determine this suit and especially because it falls within Article 162(3) (b) of the Constitution and Section 13 of the Environment and Land Court Act.

37. On whether the Applicant has met the threshold for grant of temporary injunction, the law governing grant of temporary injunction is provided in Order 40 Rule 1 of the Civil Procedure Rules as follows:

***“Where in any suit it is proved by affidavit or otherwise-***

***a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree or***

***b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit;***

***The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”***

38. It is clear that where there is a threat to the property subject of a suit, with the likelihood of the suit property being wasted or alienated by the Defendant with the consequence of defeating, obstructing or delaying execution of a decree that may be passed against the Defendant, then a temporary injunction may issue.

39. In the case of *Giella vs. Cassman Brown (1973) EA 358*, the conditions for grant of temporary injunction were stated as follows:

*a) The Applicant must demonstrate a prima facie case with a probability of success.*

*b) The Applicant must demonstrate that he stands to suffer irreparable injury that may not be compensated by damages, if the injunction is declined.*

*c) If the court is in doubt, it ought to decide the application on a balance of convenience.*

40. In the instant suit, the Applicants have stated that they purchased their respective plots from members of the 1<sup>st</sup> Defendant who is the registered proprietor of land known as L.R. 8485 measuring approximately 2034 acres. They have produced letter of allotments, sale agreements, receipts and the grant showing that the suit land was registered in the name of the 1<sup>st</sup> Plaintiff on 30<sup>th</sup> June, 2003. They allege that the 2<sup>nd</sup> Defendant has trespassed on their land. The 1<sup>st</sup> Defendant confirmed the Applicants' allegations that the suit land is registered in the 1<sup>st</sup> Defendant's name and that the Applicants purchased the same from the 1<sup>st</sup> Defendant's members; and that the 2<sup>nd</sup> Defendant is a trespasser thereon.

41. On the other hand, the 2<sup>nd</sup> Defendant contended that they are the registered proprietors of the suit land having purchased the same from the previous owner thereof. They produced a copy of the grant, rates payment documents, and photographs showing possession of the suit land. As both 1<sup>st</sup> and 2<sup>nd</sup> Defendants parties have shown to be registered proprietors of the suit land, it is clear that one title must have been obtained illegally as one parcel of land can only have one title thereto. At this stage, without hearing the parties at trial, it is not possible to confirm whose title is genuine.

42. I also note from the Plaintiff that the Plaintiffs have sought for orders of vacant possession and eviction of the 2<sup>nd</sup> Defendant, their servants, agents and associates from L.R 8485. It appears that both parties are in possession of the suit land. It is therefore necessary that the suit property is preserved pending the hearing and determination of this suit.

43. In the premises therefore, I make the following orders:

*a. That the status quo obtaining on land known as L.R No. 8485 in Machakos County as at 16<sup>th</sup> March, 2022 be maintained so that there should be no eviction or invasion thereon and there should be no further development, construction, sale, alienation, charge, lease, transfer or any other dealings in any manner whatsoever in respect of the said property pending hearing and determination of this suit.*

*b. The County Commander Machakos to assist in the enforcement of orders herein.*

#### **THE APPLICATION DATED 31<sup>ST</sup> MAY, 2021**

44. In the Application dated 31<sup>st</sup> May, 2021, the Defendant/Applicant sought for the following orders:

*a) Spent.*

*b) Spent.*

*c) That pending the hearing and determination of this suit, the Honourable Court be pleased to grant an interim order restraining the Plaintiffs and the 1<sup>st</sup> Defendant by themselves, their servants and/or the agents from dispossessing, alienating or disturbing or in any way interfering with the Applicant's suit property Land Reference Number 8485 situate in Mavoko Municipality in Machakos District.*

*d) That pending the hearing and determination of this Application there be a vacation of the Orders given by Hon. Justice O. A. Angote on the 13<sup>th</sup> day of October, 2020 and extended on the 26<sup>th</sup> April, 2021.*

*e) That the Honourable Court be pleased to order the Plaintiffs, 2<sup>nd</sup> Defendant and their members to repair and replace all the destroyed structures and beacons demolished from the Applicants property.*

*f) That the Honourable Court be pleased to restrain the District Commissioner the Area District Officer, OCS Mlolongo Police Station and the OCS Kamulu Police from interfering and meddling in the affairs of the suit property.*

*g) That the Machakos County Commissioner and the Machakos County Commander be asked to ensure compliance and enforcement of the orders.*

*h) That the costs of this Application be provided for.*

45. The Application is supported by the grounds on its face and the affidavit of CHARLES KYALO a Director of the 2<sup>nd</sup> Defendant. He states that the 2<sup>nd</sup> Defendant is the rightful owner of the suit property; that the Plaintiffs have no ownership documents; that the 1<sup>st</sup> Defendant obtained orders of 13<sup>th</sup> October, 2020 by non-disclosure of material facts; that the 1<sup>st</sup> Respondent is in breach of the said orders; that the Plaintiffs destroyed beacons and the fence of the 2<sup>nd</sup> Defendant and that the Plaintiffs and the police have threatened to dispossess the Applicant of the suit land.

46. The Application is opposed. The 1<sup>st</sup> Plaintiff swore an affidavit dated 22<sup>nd</sup> June, 2021 and deposed that the Application is an abuse of the court process; that the question of who has title to the suit land is subject of the Plaintiff's Application of 23<sup>rd</sup> September, 2020; that the 2<sup>nd</sup> Defendant has no Counter-claim; that there are no grounds to vacate the orders of 13<sup>th</sup> October, 2020; that the Applicant has been in contempt of the said orders; that none of the Plaintiff is engaged in constructions complained of.

#### **ANALYSIS AND DETERMINATION**

47. I have considered the Application, the affidavit in reply, together with submissions filed. The issue for determination is whether the Applicants are entitled to the orders sought. The Applicant has sought for orders of injunction. For a party to be entitled to an order of injunction, they must demonstrate that they have a *prima facie* case with chances of success. The Defendant has not filed any Counter-claim against the Plaintiffs' claim. I therefore hold that they have no suit upon which injunctive orders can be issued. As the order of 13<sup>th</sup> October, 2020 was issued in relation to the Plaintiffs' Application dated 23<sup>rd</sup> September, 2020, the said prayer is overtaken as the said Application has been determined herein. Since the question of the genuine ownership of the suit land is yet to be determined, the order of repairing and replacing destroyed structures is declined.

48. Besides, the Applicant has sought for injunctive orders against the District Commissioner, Area District Officer, OCS Mlolongo Police Station and the OCS Kamulu Police Station. I note that the said persons are not parties to this suit. Besides, the 2<sup>nd</sup> Defendant has no suit upon which injunctive orders may be anchored. I therefore decline to grant orders of injunction against them.

49. In the premises, I find and hold that the 2<sup>nd</sup> Defendant's Application dated 31<sup>st</sup> May, 2020 lacks merit and the same is dismissed with costs.

50. For avoidance of doubt, upon determination of the Applications dated 23<sup>rd</sup> September, 2020 and 31<sup>st</sup> May, 2021, this court makes orders as follows:

***a) The status quo obtaining on L.R. No. 8485 in Machakos County as at 16<sup>th</sup> March, 2022 be maintained so that there should be no eviction or invasion thereon and there should be no further development, construction, sale, alienation, charge, lease, transfer or any dealings in any manner whatsoever in respect of the said property pending hearing and determination of this suit.***

***b) The County Commander Machakos, to assist in the enforcement of orders herein.***

***c) The Application dated 31<sup>st</sup> May, 2021 is hereby dismissed with costs.***

51. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 16<sup>TH</sup> DAY OF MARCH 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of:**

Mr. Onduso for 1<sup>st</sup> Respondent

Mr. Makhandia holding brief for Thuita Guandaru for Plaintiff

Mr. Bundi for 2<sup>nd</sup> Respondent

Ms Josephine Misigo – Court Assistant