



National Water Harvesting and Storage Authority (Formerly National Water Conservation and Pipeline Corporation) v Adala & another (Environment & Land Petition 33 of 2020) [2022] KEELC 3115 (KLR) (19 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3115 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 33 OF 2020**

LL NAIKUNI, J

MAY 19, 2022

BETWEEN

**NATIONAL WATER HARVESTING AND STORAGE AUTHORITY
(FORMERLY NATIONAL WATER CONSERVATION AND PIPELINE
CORPORATION) APPLICANT**

AND

HEZEKIAH OMONDI ADALA 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

RULING

I. Introduction

1. For its determination, before this honorable court is the notice of motion application dated April 4, 2022 filed by the applicant herein. The notice of motion application is brought under the provision of order 8 rule 3 and 5(1), order 45 rule 1 order 51 rule 1 of the [Civil Procedure Rules](#), 2010 section 3 of the [Environment and Land Court Act](#) 2011 sections 1A and 3A of the [Civil Procedure Act](#) Cap 21.

II. The Applicant's Case

2. The applicant seeks for following orders:-
 - (a) Spend
 - (b) Pending the court sanctioned site visit on the deputed parcels of land slated for May 20, 2022 i.e. Land Reference No. 10121/I/MN and Land Reference No. FR No. 290/112 this honorable court be pleased to allow the applicant to amend and same be deemed to be amended, its application dated September 29, 2021 only to the extent that any reference to



Land Reference No. FR No. 290/112 in the said application be replaced with Land Reference No. RF 290/112 in the said application be replaced with Land Reference No. FR No. 286/112.

- (c) Pending the said site visit slated for May 20, 2022, this honorable court be pleased to review its order, specifically Order 1 (a) and (b) issued on February 8, 2022 only to the extent that the Land Reference No. FR No. 290/112 be replaced with Land Reference No. FR No. 286/112 and that the detailed physical survey slated for May 20, 2022 to feature Land Reference No. FR No. 286/112 and Land Reference No. FR No. 290/112 and . Land Reference No. 10121/I/MN.
 - (d) That costs of this application be provided for.
3. The notice of motion application is presumed on the grounds, testimonials, facts and averments of the 15 paragraphed supporting affidavit of C.S. Sharon Obonyo sworn and dated April 5, 2022 and one annexure marked as “SO-1” annexed hereto.

The deponent averred that he was the Acting Chief Executive Officer of the National Water harvesting and Storage Authority (The successor of the National Water Conservation and Pipeline Corporation) the application in this matter duly and competent and authorized to swear this affidavit being well versed with the facts herein.

4. He stated that on May 24, 2021 this honorable court entered a Judgment in favour of the 1st Respondent declaring the restriction placed on Land Reference No. 10121/I/MN as oppressive, unjustified and unlawful hence the same be removed. He held that this court further issued a prohibitory order prohibiting the 2nd respondent from taking any adverse action and/or interfering in any way whatsoever with the 1st Respondent’s ownership, occupation enjoyment and exercise of his legal rights over the said parcel of lands without due process of the law.

The deponent deposed that flowing from this Judgment the applicant filed an application dated September 29, 2021 seeking a raft of orders key among them an order of stay of execution and temporary injunction against the 1st and 2nd respondent from further dealings in the subject suit property . Land Reference No. 10121/I/MN pending the hearing and determination of the said application “inter - partes” among others.

5. He noted that a number of directions have been given on the matter have been issued culminating into the order of this honorable court issued on February 8, 2022 that mandated parties to undertake a detailed surveying exercise physically on the two (2) disputed parcels Land Reference No. FR No. 290/112 and Land Reference No. 10121/I/MN. There was to be a site visit on April 4, 2022 but was postponed to May 20, 2022.

He deponed that in the course of its independent survey, the applicant realized that contrary to its assertion contained in its earlier application of September 29, 2021 to the effect that the disputed Land Reference No. 10121/I/MN was unlawfully and illegally hived off its Shanzu Ward Station Land Reference No. FR No. 290/112 the same had been established to have been unlawfully and illegally hived off the applicants land reference no. fr no. 286/112 also within the applicants Shanzu Ward Station.

6. He held that both the Parcels Land Reference No. FR No. 290/112 and Land Reference No. FR No. 286/112 belong to the applicant as contained in the survey sheet annexed in the notice of motion application dated September 29, 2021 save to add that the disputed Land Reference No. 10121/I/MN had been hived off Land Reference No. FR No. 286/112 as opposed to Land Reference No. FR No. 290/112. For this reason he urged court to allow the Applicant pending the court sanctioned site visit on the disputed parcels of land slated for 20th May, 2022 Land Reference No. 10121/I/MN and Land



Reference No. FR No. 290/112 to amend and the same to be deemed as duly amended – whereby Land Reference No. FR No. 290/112 in the said application to be replaced with Land Reference No. FR No. 286/112. In other words prior to the site visit the Court to review its order – No. 1(a) and (b) issued on February 8, 2022 only to the extent that Land Reference No. FR No. 290/112 be replaced with Land Reference No. FR No. 286/112 and that the detailed physical survey slated for May 20, 2022 to feature Land Reference No. FR No. 286/112 and Land Reference No. 10121/I/MN.

7. He stated that unless the notice of motion application was urgently heard and orders issued the scheduled site and physical surveying exercise slated for May 20, 2022 would proceed to the detriment and the inherent prejudice of the applicant. He held the matter was for public interest which superseded individual interest. He held that 1st respondent would not suffer any prejudice should the Notice of Motion application be allowed as he still had other recourse and remedies to pursue as an individual Citizen. He averred that the orders would assist the court to arrive at a just and expeditious outcome.

He argued that the applicant was apprehensive that should this survey exercise happen before the error apparent on the face of its Notice of Motion application dated September 29, 2021 not corrected and the order of this court issued on February 8, 2022 reviewed to capture the right parcels the applicant would suffer prejudice that could only be cured at this stage before the exercise. He prayed for the notice of motion application to be allowed.

II. The 1st Respondent/Petitioner's Grounds of Opposition.

8. On April 27, 2022, the Learned Counsel for the 1st respondent the Law firm of Messrs. Musa, Boaz & Thomas Advocates for the 1st respondent/petitioner filed a short three (3) points grounds of opposition dated 27th April, 2022. In summary the grounds were that:-
 - a) The applicant never attached any documents of title and/or any evidence to lay claim on land captured under FR No. 286/112. Therefore, the application was misplaced.
 - b) The application defeated the whole purpose of the survey order issued in clear terms of the land captured under FR No. 290/112 vis - a - vis land known as Land Reference 10121/I/MN, the applicant having clearly stated that it was FR. No. 290/112 that belonged to it and which the respondent never laid any claim to it.
 - c) The suit by the petitioner was clear on the orders sought against the Land Registrar. Thus this application was only a ploy to muddy an otherwise clear course of action and which the court had identified and determined.

III. The Submissions.

9. On April 14, 2022, when the applicant filed the notice of motion application dated April 4, 2022 under the Certificate of urgency the honorable court while. Certifying it as urgent, directed that it be disposed off by way of written submissions. All parties were granted a stringent timelines upon which to have filed and served both replies and written submissions. Upon full compliance, the honorable court in order to be in tandem with the date for the physical survey exercise and site visit of May 20, 2022 to deliver its ruling on May 18, 2022.

A. The Written Submissions by the Applicant.

10. On April 27, 2022 the Learned Counsel for the Applicant, the law firm of Messrs. Doris Mwangi Advocates filed their written submissions dated April 25, 2022. M/s. Mwangi Advocates submitted



that by filing the notice of motion application dated April 4, 2022, it sought to amend its notice of motion application dated September 29, 2021 as well as an order of review of this court issued on February 8, 2022. She submitted that the notice of motion application dated September 29, 2021 sought a raft of orders, key among them an order to be joined in this suit to be able to protect its interest. The Applicant contended that the Land Reference No. 10121/I/MN which in the disputed property was illegally and unlawfully hived off from Land Reference No. FR No. 290/112 which belonged to it. According to the Learned Counsel, as its replying affidavit dated October 29, 2021 the 1st respondent acknowledged that the main suit that gave rise to the Applicant's application of September 29, 2021 was not about ownership. She averred that going by the issues raised by the applicant in the said application, the Honorable Court saw the need to protect the substratum of this suit by ordering that a detailed background survey be physically conducted on the Land Reference No. FR No. 290/112 and Land Reference No. 10121/I/MN in order to assist this court make a fair and just determination of the dispute substantively. The exercise is slated for 20th May, 2022.

11. As a result of this, the applicant decided to engage its own independent surveyor in the company of other government agencies. Who was able to establish that the disputed Land Reference No. 10121/I/MN was illegally and unlawfully hived off from Land Reference No. FR No. 286/112 instead of all that parcel known as Land Reference No. FR No. 290/112 as contained in the land survey sheet annexed to the notice of motion application dated September 29, 2021.

According to the Learned Counsel both parcels Land Reference No. FR No. 290/112 and Land Reference No. FR No. 286/112 belong to the applicant. The Learned Counsel stated that it's a result of this background that she moved court orally on April 4, 2022 to be allowed to amend its application dated September 29, 2021 and as well as a review of the order of this court issued on February 8, 2022 to reflect the right parcel of land, which was opposed culminating to the filing of this notice of motion application formally.

12. The Learned Counsel raised only one issue to be considered as to whether the Applicant should be allowed to amend its application and review this court order as stated above. To advance their argument on amendment of pleadings, they cited the provisions of Order 8 rule 3 of the Civil Procedure Rules 2010.

To buttress its point she relied on the cases of "St. Patrick's Hill School limited –Versus- Bank of Africa Kenya Limited (2018) eKLR, Tildesley –Versus- Harper (1878) 10, Chi D. at page 296 Ochieng and Others –versus- National bank of Chicago, Civil Appeal No. 147 of 1991

In the instant case, the Learned Counsel submitted that both parcels Land Reference No. FR No. 290/112 and Land Reference No. FR No. 286/112 belong to the Applicant, however according to the Learned Counsel owing to the strict timelines that the 2nd Respondent had given the Applicant to show cause why they should not proceed to remove the restrictions and register a transfer over the disputed property, the Applicant urgently filed an application in a move to protect its interests, in so doing it inadvertently indicated that the disputed parcel of land was Land Reference No. 10121/I/MN was illegally hived off from parcel Land Reference No. FR No. 290/112 but later on upon conducting a further background check, it established that instead of Land Reference No. FR No. 290/112, the Parcel number Land Reference No. 10121/I/MN was illegally hived off from parcel Land Reference No. FR No. 286/112 – both parcels Land Reference No. FR No. 286/112 and FR No. 290/112 belong to the Applicant.

She argued that the amendment sought would help this court determine the true substantive merits of the case as the amendment are geared towards ensuring that this honorable court reached a just and expeditious outcome.



Further, her contention was that by the said amendment sought the 1st Respondent would not suffer any prejudice or injustice as the

13. On the second limb pertaining to the review of its orders of February 8, 2022, the Learned Counsel cited the provisions of order 45 rule 1 of the *Civil Procedure Rules* 2010. Nonetheless, the Learned Counsel admitted that the applicant was not seeking for the orders of review per se as once the prayer for amendment was allowed then it would automatically follow that the order of court made on February 8, 2022 be corrected to capture the right parcel of land. She urged court to consider the applicant's notice of motion application dated April 4, 2022 and grant the orders prayed.

B. The 1st Respondent Written Submissions

14. The 1st respondent never filed any written nor made oral submission to the application dated April 4, 2021 filed by the applicant. Therefore, the honorable court will just have to rely on the pleadings filed hereof.

IV. Analysis and Determination

15. I have keenly considered all the filed pleadings being the supporting affidavit and the written submissions, cited authorities by the applicant on the one hand and the grounds of opposition by the respondent/petitioner on the other hand with reference to the filed notice of motion application dated April 4, 2022, the precedents and the relevant provisions of the law and *the Constitution* of Kenya, 2010.

In order to arrive at an informed, just and fair decision, I have framed the following two (2) issues for consideration. These are:-

- (a) Whether the Notice of Motion application dated April 4, 2022 meets the fundamental threshold of amendment of pleadings under order 8 rule 3 of and review of court order made on February 8, 2022 under section 80(1) and order 45 (1) and (2) of the *Civil Procedure Rules*
- (b) Who will meet the costs of the notice of motion application dated April 4, 2022

ISSUE NO. (a) Whether the Notice of Motion application dated April 4, 2022 meets the fundamental threshold of amendment of pleadings under order 8 rule 3 of and Review of Court order made on 8th February, 2022 under Section 80(1) and Order 45 (1) and (2) of the Civil Procedure Rules

16. The facts of this matter are well stated out and therefore, the honorable court need not recount them at this state of the interlocutory application.

The gist of the application by the applicant is basically on two fold prong aspects. These are Pending the court sanctioned site visit on the deputed parcels of land slated for May 20, 2022 i.e. Land Reference No. 10121/I/MN and Land Reference No. FR No. 290/112 for this this honorable court to: -

- a) allow the applicant to amend its application dated September 29, 2021 only to the extent that any reference to Land Reference No. FR No. 290/112 in the said application be replaced with Land Reference No. RF 290/112 in the said application be replaced with Land Reference No. FR No. 286/112.
- b) review its order, specifically order 1 (a) and (b) issued on February 8, 2022 only to the extent that the Land Reference No. FR No. 290/112 be replaced with Land Reference No. FR No. 286/112 and that the detailed physical survey slated for May 20, 2022 to feature Land



Reference No. FR No. 286/112 and Land Reference No. FR No. 290/112 and . Land Reference No. 10121/I/MN.

17. Suffice it to say, this court wishes to point out that, the applicant is very much within their legal right in seeking for the said relief though with due respects courts have tended to guard their orders so jealously.

It is imperative that I spend a little bit of time on the substratum and the legal position regarding review, varying, setting aside of court orders and amendment of pleadings per se. This jurisprudence is founded under the Provisions of order 40 rule 7 if its an injunction order, order 45 (1) (2) & (3) of the Civil Procedure Rules, 2010 and section 80 (a) & (b) of the Civil Procedure Act, cap. 21 and order 8 (3) of the Civil Procedure Rules, 2010 in relation to the amendments of pleadings generally. Section 80 provides:

any person who considers himself aggrieved:-

- a) By a Decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b) By a decree or order from which no appeal is allowed by this Act, may apply for a review of Judgement to Court which passed the decree or made the Order and the Court may make such order thereto.

Order 45 (1). States as follows:- Any person considering himself aggrieved:-

- a) By a Decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b) By a decree or order from which no appeal is allowed by this Act, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of Judgement to the Court which passed the decree or made the order without unreasonable delay”.

Order 40 (7) “Any Order for Injunction may be discharged, or varied or set aside by the Court on an application made thereto by any party dissatisfied with such order.

18. From the afore stated provisions, it is quite clear that the orders for review, varying or setting side court orders are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably by the honourable court. To qualify for being granted the orders for review, varying and/or setting aside acourt order for the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required:-

- a) There should be a person who considers himself aggrieved by a decree or order;
- b) The decree or order from which an appeal is allowed but from which no appeal has been preferred;
- c) A decree or order from which no appeal is allowed by this Act;



- d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or
- e) On account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order.
- f) The review is by the court which passed the decree or made the order without unreasonable delay.

The power of review is available only when there is an error apparent on the face of the record discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made. Indeed, this court emphasizes that a review is not an appeal. The review must be confined to error apparent on the face of the record and re – appraisal of the entire evidence or how the Judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is permissible.

Discussing the scope of the review, the Supreme Court of India in the case of “*Ajit Kumar Rath – Versus – State of Orisa*, 9 Supreme Court Cases 596 at Page 608. had this to say:-

“The power can be exercised on application of a person on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier; that is to say the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason”.....means a reason sufficiently analogous to those specified in the rule...”

19. In the case of “*Nyamongo & Nyamongo – Versus – Kogo*” (2001) EA 170 discussing what constitutes an error on the face of the record, the Court rendered itself as follows:-

“An error apparent on the face of the record cannot be defined or exhaustively, there being an element of definitiveness inherent in its very nature and it must be determined judicially on facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning on points where there may conceivably in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong is certainly no ground for review though it may be one for appeal.....”

In the instant case, undoubtedly there exists land dispute involving the Applicant and the Respondents over the ownership, use and occupation of the suit property. The Applicant contends that the Land Reference No. 10121/I/MN which was illegally and unlawfully hived off from Land Reference No. FR No. 290/112 which belonged to it. While the 1st Respondent claims the legal ownership to part of the suit land. For these reasons the Applicant filed its pleadings in Court seeking certain raft of orders against the Respondent. The Applicant avers that going by the issues raised by the Applicant in the



of 29th September, 2021, the Honorable Court saw the need to protect the substratum of this suit by ordering that a detailed background survey be physically conducted on the Land Reference No. FR No. 290/112 and Land Reference No. 10121/I/MN in order to assist this court make a fair and just determination of the dispute substantively. The exercise is slated for 20th May, 2022.

19. As a result of this, the Applicant decided to engage its own independent surveyor in the company of other government agencies. Who was able to establish that the disputed Land Reference No. 10121/I/MN was illegally and unlawfully hived off from Land Reference No. FR No. 286/112 instead of all that parcel known as Land Reference No. FR No. 290/112 as contained in the land survey sheet annexed to the Notice of Motion application dated September 29, 2021.

According to the Learned Counsel both parcels Land Reference No. FR No. 290/112 and Land Reference No. FR No. 286/112 belong to the Applicant. The Learned Counsel stated that it's a result of this background that she moved court orally on April 4, 2022 to be allowed to amend its application dated September 29, 2021 and as well as a review of the order of this court issued on February 8, 2022 to reflect the right parcel of land, which was opposed culminating to the filing of this notice of motion application formally.

20. The Learned Counsel raised only one issue to be considered as to whether the applicant should be allowed to amend its application and review this court order as stated above. To advance their argument on amendment of pleadings, they cited the provisions of order 8 rule 3 of the *Civil Procedure Rules* 2010.

She further argued that the amendment sought would help this court determine the true substantive merits of the case as the amendment are geared towards ensuring that this Honorable Court reached a just and expeditious outcome.

Further, her contention was that by the said amendment sought the 1st respondent would not suffer any prejudice or injustice as the

21. On the second limb pertaining to the review of its orders of February 8, 2022, the Learned Counsel cited the Provisions of order 45 rule 1 of the *Civil Procedure Rules* 2010. Nonetheless, the Learned Counsel admitted that the Applicant was not seeking for the orders of review per se as once the prayer for amendment was allowed then it would automatically follow that the order of court made on February 8, 2022 be corrected to capture the right parcel of land.

Juxtapose, on the other hand the 1st respondent only filed a

a short three (3) points grounds of opposition dated April 27, 2022 which in summary stated as follows:-

- a) The applicant never attached any documents of title and/or any evidence to lay claim on land captured under FR No. 286/112. Therefore, the application was misplaced.
- b) The application defeated the whole purpose of the survey order issued in clear terms of the land captured under FR No. 290/112 vis - a - vis land known as Land Reference 10121/I/MN, the Applicant having clearly stated that it was FR. No. 290/112 that belonged to it and which the respondent never laid any claim to it.
- c) The suit by the petitioner was clear on the orders sought against the Land Registrar. Thus this application was only a ploy to muddy an otherwise clear course of action and which the court had identified and determined. For this reason, though the court fully concurs with the Learned Counsel for the applicant.



22. The legal principles on amendment of pleadings are provided for under order 8 rules 1,2 and 3 of the *Civil Procedure Rules*, 2010. Before the close of pleadings, the leave of court is not required as opposed to when there has been closure of pleadings. The principles upon which a court acts in an application to amend pleadings before/during trial are well settled and succinctly stated in several cases. These includes the case of “*Eastern Bakery – Versus – Castelino* (1958) E.A 461 (U) at Page 462 and Civil case No. 7 of 2017, *St. Patrick’s Hills School Limited - Versus - Bank of Africa Kenya Limited*” eKLR (2018) where courts held, inter alia:

“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearings should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice to be if the other side can be compensated by costs...”

23. The same was later on buttressed by Bramwell, LJ in “*Tildesley – Versus – Harper*” (1878), 10 Ch. D. at Page 296 stated as under:

“My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder he has done some injury to his opponent which could not be compensated by costs or otherwise...”

It is clear that from the above principles which I endeavor to import to this case that an amendment of pleadings in general should be allowed before the final Judgement is delivered. Pursuant to the above position, this court agrees with the applicant and it concurrently follows, the power to amend pleadings is discretionary. In that case the court must act judicially in the exercise of its discretion within the ambit of the Principles of natural justice. The honorable court has taken notice that the 1st respondent only filed the above stated grounds of opposition basically arguing that the appellant never attached any title deed documents nor surveying evidence to lay any claim on to the suit land. Thus, the court sees no reason not to grant the leave for an amendment of the Notice of motion application by the applicant dated December 29, 2021 for the reasons given which court find to be inevitably vital and of cardinal importance for the purposes of determining the real question in controversy between the parties.

24. In any case, the court notes that the instant suit is still at its hearing stage and the pleadings had not closed hence the application was bona fide, timeously brought and meritorious as the amendment will not be introducing a new cause of action which is substantially different from the already existing one not offending order 8 rule 3(5) of the *Civil Procedure Rules*, 2010. Besides, the court will allow the 1st respondent/petitioner corresponding leave and the opportunity to respond to the amendment if they so wished to do. Thus, under this sub – heading the application for the applicant succeeds.

VI. Conclusion and Disposition

25. Therefore, based on the above detailed analysis, I now proceed to grant the following orders with stringent timelines. These are:-

a. That the notice of motion application dated April 4, 2022 by the Applicant be and is hereby allowed in terms of:-

i. Pending the court sanctioned site visit on the deputed parcels of land slated for May 20, 2022 i.e. Land Reference No. 10121/I/MN and Land Reference No. FR No. 290/112 this honorable court be pleased to allow the Applicant to amend and same be deemed to be amended, its application dated September 29, 2021 only to the extent that any reference to Land Reference No. FR No. 290/112 in the said application be



replaced with Land Reference No. RF 290/112 in the said application be replaced with Land Reference No. FR No. 286/112.

ii. Pending the said site visit slated for May 20, 2022, this Honorable Court be pleased to review its order, specifically Order 1 (a) and (b) issued on February 8, 2022 only to the extent that the Land Reference No. FR No. 290/112 be replaced with Land Reference No. FR No. 286/112 and that the detailed physical survey slated for May 20, 2022 to feature Land Reference No. FR No. 286/112 and Land Reference No. FR No. 290/112 and . Land Reference No. 10121/I/MN.

b. That an order be and is hereby made granting the 1st and 2nd respondents corresponding seven (7) days leave to make any amendments onto its pleadings as it will deem fit and suitable to do.

c. That an order be and is hereby made that the planned physical surveying planned during the Site Visit for May 20, 2022 proceeds on as scheduled vide the order of this court and all the directions made on the April 4, 2022 accordingly.

d. That the costs of the notice of motion application to be in the cause.

It is so ordered Accordingly.

DATED, DELIVERED, SIGNED AND READ IN OPEN COURT AT MOMBASA THIS 19TH DAY OF MAY 2022.

HON. JUSTICE L.L. NAIKUNI (JUDGE)

ENVIRONMENT & LAND COURT

AT MOMBASA

In presence of:-

M/s. Yumna, Court Assistant.

Mr. Mollo Advocate for the Applicant.

Mr. Adalla Advocate for the 1st Respondent/Petitioner.

