



REPUBLIC OF KENYA



KENYA LAW
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Kasisi & 332 others v Sherman & 9 others (Environmental and Land Originating Summons E001 of 2023) [2025] KEELC 4543 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4543 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023

LL NAIKUNI, J

MAY 30, 2025

IN THE MATTER OF: LAND PARCEL NO. 2473/I/MN (ORIGINAL

NO. 398/I/MN)

AND

IN THE MATTER OF: AN APPLICATION FOR DECLARATION

THAT THE PLAINTIFF/ APPLICANT HAVE

OBTAINED OWNERSHIP OF FOUR EIGHTS

DECIMAL SEVEN SEVEN THREE (48.773)

ACRES OR THEREABOUT OF THE ABOVE

SAID PARCEL OF LAND BY WAY OF

ADVERSE POSSESSION

BETWEEN

KATANA KIBWANA KASISI 1ST PLAINTIFF

HAMERTON MARANI MNAJA 2ND PLAINTIFF

**JOSEPH M KOMBE & 330 OTHERS & 330 OTHERS & 330
OTHERS 3RD PLAINTIFF**

AND

SWALHA OMARA SHERMAN 1ST DEFENDANT

AWADH SALEH SAID SHERMAN 2ND DEFENDANT

SAID SALEH SAID SHERMAN 3RD DEFENDANT

HUSSEIN SALEH SAID SHAERMAN 4TH DEFENDANT

MOHAMED SALEH SAID SHERMAN 5TH DEFENDANT



MOHSIN SALEH SAID SHERMAN	6 TH DEFENDANT
OMAR SALEH SHERMAN	7 TH DEFENDANT
KHADIJA SALEH SHERMAN	8 TH DEFENDANT
ASIA SALEH SHERMAN	9 TH DEFENDANT
ZAKIYA SALEH SHERMAN	10 TH DEFENDANT

RULING

I. Introduction

1. This Honourable Court was called upon to make a determination to the Notice of Motion applications dated 5th September, 2024 by Katana Kibwana Kasisi and Others, the Plaintiffs/Applicants herein. It was brought under the provisions of Articles 40, 47 and 159 of the Constitution of Kenya 2010, Sections 1A,1B and 3A of the Civil Procedure Act, Cap. 21, Order 40 Rules 1, 2, 3 and 4, Order 51 Rule 1 of the Civil Procedure Rules (2010) of the Laws of Kenya, Sections 7,17,37 and 38 of the Limitations Act, and all enabling provisions of the laws.
2. At the same time, the Plaintiffs filed another Notice of Motion application dated 11th September, 2024 herein. It was under the provisions of Orders 8 Rule 3 & 51 Rule 1 of the Civil Procedure Rules of 2010 and Section 1A,1B, 3A & 63 (e) of the Civil Procedure Act(Cap 21) Laws of Kenya and all enabling Acts and Provisions of Laws.

II. The Notice of Motion application dated 5th September, 2024

3. The Applicants sought for the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That this Honourable court be pleased to issue temporary injunction restraining the Respondents/Defendants by their servants, agents, and/or any other person claiming under them from conducting a survey, subdividing, evicting, alienating, dispossessing the plaintiff from the suit land parcel no. 2473/1/MN (Original No.398/1/MN or in any other way interfering with the plaintiffs quiet possession thereof and Mombasa county police commander, Mombasa county criminal investigation officer, Mombasa county commissioner, Kisauni deputy county commander and OCS Bamburi police station to enforce orders pending the hearing and determination the main suit and/originating summons.
 - d. That costs of this Application be provided for.
4. The application by the Applicant was premised on the grounds, facts and testimony on the face of the application and further supported by the 17 paragraphed annexed affidavit of Hamerton Marami Mnjala, the 2nd Plaintiff herein. The Deponent averred that:
 - a. The suit premises herein, being land parcel no. 2473/MN (original no.398/1/MN/) was registered in the names of Saleh Said Sherman also known as Saleh Bin Sherman who was deceased (Appended in the affidavit a certified copy of the Certificate of title and a certified copy of postal search to the above effect marked jointly as “HMM – 3”).



- b. As per annexure “HMM – 3”, above the suit premises herein was original plot no.398/I/MN, but upon subdivision two parcels of land were created therefore, being plot no.2473/I/MN the suit premises herein and plot no. 2474/I/MN, being the property of Danson S. Maingi.
- c. The defendants herein were the beneficiaries and/or defendants and/or heirs and /or legal representatives of the Estate of the late Saleh Said Sherman also known as Saleh Bin Sherman who is the registered owner of the suit premises herein, being land parcel No.2473/I/MN(Original no.398/I/MN) (Appended in the affidavit a certified copy of the certificate of partial confirmation of a grand dated 13th October 2017 to the above effect marked as “HMM – 4”).
- d. All the other Plaintiffs/ Applicants herein had lived and/ or occupied and/ or resided on the suit for over 12 years.
- e. All the other plaintiff/applicants herein have also been residing on the suit premises, since none entered over the year 2001 and further that their entry onto the suit premises was peaceful.
- f. Their entry and/ or occupation on the suit premises was without the authority and/or consent permission of the defendants/respondents herein or their predecessor in title and that they all occupied and/or possessed and/or resided and/or lived on the premises peacefully and/or openly amid /or uninterruptedly and/or continuously and/or exclusively and/or adversely to the title of the registered owner .(Appended in the affidavit were certified copies of scanned photographs of some of their houses or homesteads taken the suit premises to the above effect marked as “HMM – 5”).
- g. On the Deponent’s part her had entered the suit premises in the year 1997 while the rest of the plaintiff entered the suit premises before the year 2001 and that they had been residing on the said parcel of Land up to now and further that they had never been threatened with eviction at any given time, save for the year 2015 when the defendants filed a suit to have them evicted from the suit premises through the assistance of the police administration in ELC petition No. 82 of 2015 (Mombasa), which was heard and determined in their favour on 20th July 2022 (Appended in the affidavit certified copies of the Judgment and the Decree extracted from the Judgment to the effect marked extracted from the Judgment to the above effect marked jointly as “HMM – 6”).
- h. In the said unit suit, they had raised a defence on limitation by the invoking the doctrine of adverse possession but the matter had been commended as a petition, no such orders were made and that they could not have filed counter-claim as the procedure preferred by the defendants did not allow the filling of a counter claim (Appended in the affidavit certified copies of a witness statement filled in the matter dated 17th November, 2018 and a list of names of the interested parties filled therein on 12th April 2017, containing names of the Plaintiffs herein to the above effects marked jointly as “HMM – 7”).
- i. They had also been cultivating and/ or rearing animals on the suit premises for the number of years they had been staying thereon, plating crops and other plants for their subsistence and as a means of eking out a living (refer to annexure “HMM – 5” above).
- j. Since their entry onto suit premises was without anybody’s permission and/or authority and/ or consent and further that that their entry and/or occupation and/ or possession of the suit premises has been peacefully and/or openly and/or continuously and/or uninterrupted and/



or exclusively and above all, adverse to the title of the registered owner, they were entitled to be registered as the owners of the suit premises by way of Adverse Possession.

- k. The Defendants had no single structure or even a tree on the suit premises and above and had never occupied the same at any given time, meaning that they were dispossessed them of their land, while on the other hand they had discontinued their possession of the land, and rightly so as they did not own anything on the suit premises.
- l. Having stayed and/ or occupied and/or resided and/or lived on the suit premises for well over 12 years and having met or fulfilled all the requirements of Adverse Possession claim, they were entitled under the provisions of section 38 of the *limitation of actions act* to seek for the orders of adverse possession against the defendants herein, hence this suit.
- m. The foregoing being the position, they were entitled to the orders of land adverse possession in respect of the suit premises herein.

III. The Notice of Motion application dated 11th September, 2024

- 5. The Applicants sought for the following orders: -
 - a. That this Honourable Court be pleased to grant leave to the Plaintiffs/Applicants to amend their joint Originating Summons dated 14th July, 2023.
 - b. That the draft amended Originating Summons annexed hereto be deemed as properly and duly filed with leave of the court upon payment of the requisite filing fees.
 - c. That costs of this application be provided for.
- 6. The application by the Applicant was premised on the grounds, facts and testimony on the face of the application and the averments made under the 6 Paragraphed annexed affidavit of DOMINIC M.KOMBO, the 19th Plaintiff/Applicant herein. The Deponent averred that:
 - a. The Plaintiffs/Applicants filed the present suit vide an Originating Summons dated 14th July, 2023 seeking for orders of adverse possession against the Defendants/Respondents in respect of the suit premises, being Plot No. 2473/1/MN (Original No. 398/1/MN) situate at Bamburi-Utange within Mombasa County.
 - b. Through a bona fide and/or excusable mistake, some lawful occupants and/or residents, residing on the suit premises were left out in these proceedings, while others have moved out of the suit land, making it necessary for amendments to be effected to the pleadings so that the affected residents may not file a separate suit over the same subject parcel of land.
 - c. Unless the prayers sought for herein were granted, the Plaintiffs/Applicants would suffer prejudice, yet the Defendants/Respondents shall not in any way be prejudiced if the present application was allowed as the orders sought for herein are mainly to add and/or substitute parties in the suit.
 - d. The Affidavit was sworn in support of their application filed herein.

IV. Submissions

- 7. On 5th December, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion applications dated 5th September, 2024 and 11th September, 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down this ruling the Honourable



Court had not been able to access any of the filed submissions from neither the Judiciary CTS portal nor elsewhere. Pursuant to that a ruling date was reserved on 14th March, 2025 by Court on its own merit accordingly.

V. Analysis and Determination

8. I have carefully read and considered the pleadings herein and the relevant provisions made by the by the Plaintiffs. In order to arrive at an informed, fair and reasonable decision, the Honorable Court has framed the following three (3) issues for its determination. These are:-
- a. Whether the Notice of Motion dated 5th September, 2024 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.
 - b. Whether the Plaintiffs should be granted leave to amend the originating summons dated 14th July, 2023 as per the draft Amended Originating Summons.
 - c. Who will bear the Costs of Notice of Motion applications dated 5th September, 2024 and 11th September, 2024.

Issue No. a). Whether the Notice of Motion dated 5th September, 2024 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.

9. Under this sub – title, the main issue here is whether the Plaintiffs are entitled to be granted the relief of an interlocutory injunction. The application herein is premised under the provision of Order 40 Rule 1 of the Civil Procedure Rules 2010 amongst the provisions of the law. Which provides as follows: -

Order 40, Rule 1

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.
10. Fundamentally, the principles applicable in an application for an injunction were laid out in the celebrated case of “Giella – Versus - Cassman Brown & Co Limited (1973) EA 358”, where it was stated: -
- “First an applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
11. The three conditions set out in “Giella (supra)”, need all to be present in an application for court to be persuaded to exercise its discretion to grant an order of interlocutory injunction. This was set out



by the Court of Appeal in the case of “Nguruman Limited – Versus - Jan Bonde Nielsen & 2 others [2014] eKLR”: -,

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Limited - Versus - Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. 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. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between”.

12. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition melted down in the famous case “MRAO Limited – Versus - First American Bank of Kenya Limited & 2 others (2003) KLR 125” of: -,

“So, what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would 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”

13. As the Court previously observed in this ruling, all the other Plaintiffs/ Applicants herein had lived and/ or occupied and/ or resided on the suit for over 12 years. All the other Plaintiff/Applicants herein have also been residing on the suit premises, since none entered over the year 2001 and further that their entry onto the suit premises was peaceful. Their entry and/or occupation on the suit premises was without the authority and/or consent permission of the Defendants/Respondents herein or their predecessor in title and that they all occupied and/or possessed and/or resided and/or lived on the premises peacefully and/or openly amid /or uninterruptedly and/or continuously and/or exclusively and/or adversely to the title of the registered owner.
14. On the Deponent’s part her had entered the suit premises in the year 1997 while the rest of the Plaintiff entered the suit premises before the year 2001 and that they had been residing on the said parcel of Land up to now and further that they had never been threatened with eviction at any given time, save for the year 2015 when the defendants filed a suit to have them evicted from the suit premises through the assistance of the police administration in ELC petition No. 82 of 2015 (Mombasa), which was heard and determined in their favour on 20th July 2022.
15. The Defendants had no single structure or even a tree on the suit premises and above and had never occupied the same at any given time, meaning that they were dispossessed them of their land, while on the other hand they had discontinued their possession of the land, and rightly so as they did not own



anything on the suit premises. In the case of “Mbutia – Versus - Jimba credit Corporation Ltd 988 KLR 1”, the court held that;

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.”

16. Similarly, in the case of “Edwin Kamau Muniu – Versus - Barclays Bank of Kenya Ltd” the court held that;

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”

17. In the present case, it is clear that the Plaintiffs feel threatened by the actions of the Defendants/ Respondents, who according to the Plaintiffs were trying to deprive the Plaintiffs of the suit property. Regarding this first condition though, the Plaintiffs/ Applicants have demonstrated a prima facie case with a probability of success at the trial as enunciated in the case of “Giella -Versus - Cassman Brown & Co. Ltd (Supra)”.

18. The court has further considered the annexures on record against the second principle for the grant of an injunction, that is, whether the Plaintiffs/ Applicants might suffer irreparable injury which cannot be adequately compensated by an award of monetary damages. With regards to the second limb of the Court of Appeal in the case of:- “Nguruman Limited (supra)”, held inter alia:-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury 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.”

19. On the issue whether the Applicants will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicants must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. It is not hidden that the Applicants’ property. The Applicants averred that this is the only home they know. The Plaintiffs/Applicants has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of “Pius Kipchirchir Kogo – Versus - Frank Kimeli Tenai (2018) eKLR” provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”



20. Quite clearly, the Applicants would not be able to be compensated through damages being that this was their home. The Applicants have therefore satisfied the second condition as laid down in “Giella’s case”.

21. Thirdly, the Applicants have to demonstrate that the balance of convenience tilts in their favour. In the case of “Pius Kipchirchir Kogo – Versus - Frank Kimeli Tenai (Supra)” which defined the concept of balance of convenience as:

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

22. In the case of “Paul Gitonga Wanjau – Versus - Gathuthis Tea Factor Company Limited & 2 others (2016) eKLR”, the court dealing with the issue of balance of convenience expressed itself thus:-

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

23. The balance of convenience tilts in the favour of the Applicants who will be prejudiced if the Defendants elect to remove them from the suit premises before the suit herein is heard and determined on merit. The decision of “Amir Suleiman – Versus - Amboseli Resort Limited [2004] eKLR” where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated;-

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

24. The balance of convenience lies with the Plaintiffs/ Applicants in this case. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as the Court waits to hear the suit on its merits. This is especially so because the Court has not had opportunity to interrogate all the documents that might be relevant in providing a history and/ or chronology of events leading to the claim of the Applicants and it will be in the interest of both the Applicants and the Respondents that the suit property as reserved until the hearing and determination of the suit.



25. In the case of:- “Robert Mugo wa Karanja – Versus - Ecobank (Kenya) Limited & Another [2019) eKLR” where the court in deciding on an injunction application stated;

“circumstances for consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to grant a temporary injunction to restrain such acts...”

26. I am convinced that if orders of temporary injunction are not granted in this suit, the property in dispute might be in danger of being dealt in the manner set out in the application and apprehended by the Plaintiffs/Applicants. In view of the foregoing, I strongly find that the Plaintiffs/ Applicants have met the criteria for grant of orders of temporary injunction.

Issue No. b). Whether the Plaintiffs should be granted leave to amend the originating summons dated 14th July, 2023 as per the draft Amended Originating Summons.

27. The law relating to amendment of pleadings is in Order 8 of the Civil Procedure Rule, 2010. This application is expressed to be brought pursuant to the provisions of Order 8 Rule 3 and 5. The general power to grant orders for amendment is in the provision of Order 8 Rule 1. The wording of the said provisions are as follows:

Order 8, rule 1.

1. Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.

Order 8, rule 3.

An amendment to correct the name of a party may be allowed under sub rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

Order 8, rule 5.

(5) An amendment may be allowed under sub rule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.

28. The principles for consideration in an application for amendment of pleadings are set out in Court of Appeal decision of “Ochieng and Others – Versus - First National Bank of Chicago Civil Appeal Number 147 of 1991”. They are as follows: -

- a. the power of the court to allow amendments is intended to determine the true substantive merits of the case;
- b. the amendments should be timeously applied for;
- c. power to amend can be exercised by the court at any stage of the proceedings;



- d. that as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;(emphasis is more)
 - e. the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the Plaintiff the Defendant would be deprived of his right to rely on Limitations Act subject however to powers of the court to still allow an amendment notwithstanding the expiry of current period of limitation.
29. Bramwell, LJ in “Tildesley – Versus - Harper (1878), 10 Ch.D. at p.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.”
30. Having set out the law relating to amendment of pleadings, it is now important to apply the said principles to the present suit. The Plaintiffs/Applicants explained that they filed the present suit vide an Originating Summons dated 14th July, 2023 seeking for orders of adverse possession against the Defendants/Respondents in respect of the suit premises, being Plot No. 2473/1/MN (Original No. 398/1/MN) situate at Bamburi-Utange within Mombasa County.
31. Through a bona fide and/or excusable mistake, some lawful occupants and/or residents, residing on the suit premises were left out in these proceedings, while others have moved out of the suit land, making it necessary for amendments to be effected to the pleadings so that the affected residents may not file a separate suit over the same subject parcel of land. Unless the prayers sought for herein are granted, the Plaintiffs/Applicants will suffer prejudice, yet the Defendants/Respondents shall not in any way be prejudiced if the present application is allowed as the orders sought for herein are mainly to add and/or substitute parties in the suit.
32. In order for this court to arrive at a logical and just determination of this matter, and taking into consideration the explanation offered by the Plaintiffs/Applicants, I am of the view that an amendment the names of some lawful occupants and/or residents, residing on the suit premises were left out in these proceedings, while others have moved out of the suit land, making it necessary for amendments to be effected to the pleadings so that the affected residents may not file a separate suit over the same subject parcel of land. In any event, the matter has not proceeded to hearing and the Defendants will have opportunity to amend their pleadings if they deem it necessary in due course.

Issue No. c). Who will bear the Costs of Notice of Motion applications dated 5th September, 2024 and 11th September, 2024.

33. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.



34. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased) [2022] eKLR”, that:

“ 58. The Black Law Dictionary defines “Cost” to means, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021.”

35. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects to have the costs in the cause

VI. Conclusion and Disposition

36. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Clearly, the Plaintiffs/ Applicants has a case as per the Applications they have filed.

37. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-

- a. That both the Notice of Motion applications dated 5th September, 2024 and 11th September, 2024 be and are hereby found to have merit, thus allowed.
- b. That an order of Temporary injunction do issue restraining the Defendants/Respondents either by themselves, their servants, agents, and/or any other person claiming under them from conducting a survey, subdividing, evicting, alienating, dispossessing the plaintiff from the suit land parcel no. 2473/1/MN (Original No.398/1/MN or in any other way interfering with the plaintiffs quiet possession thereof and Mombasa County Police Commander, Mombasa County Criminal Investigation Officer, Mombasa County Commissioner, Kisauni Deputy County Commander and OCS Bamburi Police Station to enforce orders pending the hearing and determination of the main suit and/or originating summons.
- c. That the Plaintiffs/ Applicants are granted leave to amend their joint Originating Summons dated 14th July, 2023.
- d. That the draft amended Originating Summons annexed in the Notice of Motion application dated 11th September, 2024 be and is hereby deemed as properly and duly filed with leave of the court upon payment of the requisite filing fees.
- e. That the Defendants be and are hereby granted corresponding leave to amend, file and serve their amended defence within 14 days from the date of this Ruling hereof.



- f. That for expediency sake the matter to be mentioned on 14th July, 2025 before Justice Olola for further direction as the Court shall deem suitable and fit to do.
- g. That the cost of the Notice of Motion applications dated 5th September, 2024 and 11th September, 2024 shall be in the cause.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 30TH DAY OF MAY 2025.

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HON. MR. JUSTICE L. L. NAIKUNI
ENVIRONMENT AND LAND COURT
AT MOMBASA

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, Court Assistant.
- b. Mr. Egunza, Mr. Okanga & Mr. Kenga Advocates for the Plaintiffs/Applicants.
- c. M/s. Kemunto Advocate for the 6th Defendant/Respondent.
- d. No appearance for the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th & 9th Defendants/Respondents.

HON. JUSTICE LL NAIKUINI (ELC JUDGE)

