



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi & 3 others v Ndunyu & 2 others (Civil Case 95 of 2024)  
[2025] KEELC 1121 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1121 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
CIVIL CASE 95 OF 2024**

**LL NAIKUNI, J  
MARCH 7, 2025**

**BETWEEN**

**AGNES WANJIRU MWANGI ..... 1<sup>ST</sup> PLAINTIFF  
CAROLINE WANJIKU WANJIRU ..... 2<sup>ND</sup> PLAINTIFF  
CECILIA MUTHONI WANJIRU ..... 3<sup>RD</sup> PLAINTIFF  
JENIFFER WAMUYU NDEGWA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**ANDREW THUKU NDUNYU ..... 1<sup>ST</sup> DEFENDANT  
MARTIN MITHAMO NDUNYU ..... 2<sup>ND</sup> DEFENDANT  
LYDIA KABUCHI NDUNYU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. This Honourable Court was tasked with the mandate to make a determination of the Notice of Motion application dated 30<sup>th</sup> October, 2024. It was by Agnes Wanjiru Mwangi, Caroline Wanjiku Wanjiru, Ceceilia Muthoni Wanjiku and Jeniffer Wamuyu Ndegwa, the Applicants herein brought under a Certificate of Urgency and under the provisions of Order 40 of the Civil Procedure Rules, 2010, Sections 1A and 3A of the *Civil Procedure Act*, Cap. 21, Section 3 of the *Environment and Land Court Act*, No. 19 of 2011, Articles 40 (1) and 46 (c) of *the Constitution* of Kenya, 2010.
2. Despite of the Application having been served upon the Respondents, there was no response elicited. However, the Honorable Court will proceed to render Ruling on its own merit.



## II. The Applicants' case

3. The Applicants sought for the following orders:-
  - a. Spent.
  - b. Spent.
  - c. That a temporary Order of Stay of Execution of Judgment In High Court Mombasa Environment Land Case Number 182 Venasio Muriuki Kanyana Vs Tabitha Waruguru. Martin Mithamo Ndunyu & Lydiah Kabuchu Ndunyupending the determination of the suit.
  - d. Spent.
  - e. That a temporary Order of Injunction be issued restraining the Respondents from interfering with the suit property and the estate of the late Gabriel Mithamo Ndunyu pending the determination of the suit
  - f. That costs of this application be costs in the cause.
  
4. The application is premised on the grounds, facts and testimony on the face of the application and the averments made out under the 20 Paragraphed annexed affidavit of Caroline Wanjiku Wanjiruth the 2<sup>nd</sup> Plaintiff/Applicant herein together with ten (10) annexures marked as "CWW 1 to 10". The Applicant averred that:
  - a. The 1<sup>st</sup> Applicant was the wife of the late Gabriel Mithamo Ndunyu the owner of a house without land on plot number 281/I/MN (Bombolulu). Annexed in the affidavit and marked as "CWW - 2" was a copy of the Chief's Letter and a copy of Eulogy of the late Gabriel Mithamo Ndunyu.
  - b. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants were children of the late Gabriel Mithamo Ndunyu the owner of a house without land on plot number 281/I/MN (Bombolulu) which forms part of the estate of the deceased.
  - c. The Respondents were the children of the late Gabriel Mithamo Ndunyu the owner of a house without land on plot number 281/I/MN (Bombolulu).
  - d. The Applicants herein instituted a succession case in the High Court Karatina to wit; Succession Cause No 150 of 2017 wherein they listed all the heirs of the late Gabriel Mithamo Ndunyu including the Respondents herein. (Annexed in the affidavit and marked as "CWW - 3" were pleadings emanating from the said suit)
  - e. The Respondents herein instituted a succession case in the High Court in Nairobi to wit Succession Cause No. 718 of 2017 wherein they knowingly and willfully omitted to list the Applicants herein as heirs and beneficiaries of the estate of the late Gabriel Mithamo Ndunyu. Annexed in the affidavit and marked as "CWW - 4" were copies of proceedings emanating from the said suit.
  - f. The Karatina Succession Cause No. 150 of 2017 was subsequently transferred to Nairobi to be heard jointly with Nairobi High Court Succession case number 718 of 2017. Annexed in the affidavit and marked as "CWW - 5" was a copy of the Order of Hon. Muchelulu J.



- g. On the 14<sup>th</sup> December, 2022 a Grant of Letter of Administration intestate were issued to the Respondents in Nairobi High Court Succession Cause No. 718 of 2017 which were due for confirmation on 23<sup>rd</sup> July, 2023. Attached hereto and marked as "CWW - 6' was a copy of the Grant of Letters of Administration intestate.
- h. The Revocation proceedings had a high likelihood of success with overwhelming evidence including an email from the Milimani Family Court division Nairobi High Court Succession cause No. 718 of 2017 to the advocates in acknowledging a gross omission on their part which resulted to the issuance of the Grant of Letters of Administration intestate. Annexed in the affidavit and marked as "CWW - 7" was a copy of the email from Milimani court family division to the Advocates in Nairobi High Court Succession Cause No. 718 of 2017.
- i. Upon issuance of the Grant of Letters of Administration intestate to the Respondents, the 1<sup>st</sup> Applicant herein instituted revocation of Grant proceedings in Nairobi High Court Succession Cause No. 718 of 2017 which proceedings are still on going before Justice Ogola and are scheduled for hearing on 12<sup>th</sup> November 2024. Annexed in the affidavit and marked as "CWW - 8" was an extract from the Judiciary CTS as extracted on the 30<sup>th</sup> October 2024.
- j. The Applicants recently found out that the Respondents herein were involved in a case with another party to wit; Mombasa ELC No. 182 of 2018 involving their late father's property a house without land on plot number 281/I/MN (Bombolulu) wherein the Court conferred ownership of the house to the Respondents to the exclusion of all the rightful heirs as the Respondents failed to disclose to the Honourable Court of the ongoing Revocation proceedings in Nairobi High Court Succession Cause No. 718 of 2017. Annexed in the affidavit and marked as "CWW - 9" was a copy of the Judgment.
- k. The Respondents had previously obtained orders for proclamation of properties for distress of land on the suit property against a third party on the suit proper to wit; House on Plot No. 281/I/MN which was successfully challenged in Mombasa MCCC No. E057 of 2024 wherein the Honourable Court issued dismissed the Respondents Preliminary Objection and Issued an Order of stay pending the determination of the suit and the Revocation proceedings in Nairobi Succession Cause No. 718 of 2017. Attached hereto and marked as "CWW - 10" was a copy of the Order by Honourable Noelyne Akee.
- l. The Applicants were apprehensive that unless the Judgment in the High Court Mombasa Environment Land Case number 182 - Venasio Muriuki Kanyana – Versus - Tabitha Waruguru, Martin Mithamo Ndunyu & Lydia Kabuchu Ndunyu (the Respondents herein) was stayed pending the determination of the Revocation Proceedings in Nairobi Succession Cause No. 718 of 2017 then the substratum of the latter case stood to be rendered superfluous.
- m. The Applicants were apprehensive that unless this Honourable Courts issues an Order barring the Respondents herein from barring the Respondents from carting, disposing off and interfering with the suit property and the estate of the late Gabriel Mithamo Ndunyu by extension before confirmation of the Grant of Letters of Administration intestate and/or the conclusion of the Revocation proceedings then substratum of the instant suit & that of Nairobi Succession cause No. 718 of 2017 stood to be defeated
- n. Unless the court issues an injunction against the Defendants/Respondents the Plaintiff stood to suffer irreparable damage.
- o. The Plaintiffs had a strong case with a prima facie case coupled with high probability of success.



- p. Unless the court issues an Order for the Stay of judgment & Injunction against the Defendants/Respondents herein, the Plaintiffs stand to suffer irreparable damage.
- q. The Defendants/Respondents would suffer no real prejudice if the prayers sought in the instant application are granted.
- r. This Honourable Court had wide and unfettered discretion to grant the orders sought.

### III. Submissions

- 5. On 19<sup>th</sup> November, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 30<sup>th</sup> October, 2024 be disposed of by way of written submissions and all the parties complied. Unfortunately, by the time of penning down this Ruling, the Honourable Court had not managed to access the submissions neither from the file nor the Judiciary CTS portal. Pursuant to that the Honourable Court reserved the delivery of the ruling on 7<sup>th</sup> March, 2025 accordingly.

### IV. Analysis and Determination

- 6. I have carefully read and considered the pleadings herein, the written submissions and the myriad of authorities by the Learned Counsels, the relevant provisions by *the Constitution* of Kenya, 2010 and the statutes. In order to arrive at an informed, fair and reasonable decision, the Honorable Court has framed three (3) the following issues for determination.
  - a. Whether a stay of Execution of Judgment in High Court Mombasa - Environment Land case number 182 - Venasio Muriuki Kanyana – Versus - Tabitha Waruguru, Martin Mithamo Ndunyu & Lydiah Kabuchu Ndunyu should issue pending the determination of the suit.
  - b. Whether the Notice of Motion dated 30<sup>th</sup> October, 2025 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.
  - c. Who will bear the Costs of Notice of Motion application 30<sup>th</sup> October, 2025.

#### **Issue No. a). Whether a stay of Execution of Judgment in High Court Mombasa - Environment Land case number 182 - Venasio Muriuki Kanyana v Tabitha Waruguru, Martin Mithamo Ndunyu & Lydiah Kabuchu Ndunyu should issue pending the determination of the suit.**

- 7. Under this sub title and in the instant Application, the Applicants seek stay execution of the decree in the High Court Mombasa - Environment Land case number 182 - Venasio Muriuki Kanyana v Tabitha Waruguru, Martin Mithamo Ndunyu & Lydiah Kabuchu Ndunyu pending the determination of this suit. Critically speaking, unless some measure of protection is given to the Applicants, his suit as presently framed may well be an academic exercise. To that limited extent I agree with the reasoning in the case of “Charles Makenzi Wambua v Africa Merchant Assurance Co. Limited & Another [2014] eKLR” where the court stated as follows: -

“Secondly, that unless such stay is granted, the intended suit shall be rendered nugatory. In my analysis, I have found that if stay is not granted, the court will be assisting the defendant to avoid a contract whose terms are dictated by statute, to compensate the interested parties herein then revert to the plaintiff to recoup any extra sums that they may have paid to third(interested) parties...I must also consider whether granting the stay sought will in any way prejudice the interested parties who have opposed this application. The interested parties being persons covered under Section 4 (1) of the Act-Cap 405 Laws of Kenya,



the liability of the defendant is preserved as against them and they could as well, sue the defendant by way of a declaratory suit to recover the sums due as per the decrees in their favor...However, the plaintiff has opted to carry that burden on their behalf. If the suit herein is determined in favor of the plaintiff, then the interested parties stand to benefit directly.”

8. It is my view that in these circumstances, justice would be done to all the parties if there was a stay of execution for a short period to enable the Applicant prosecute his case. Accordingly, I hereby grant an order staying execution of High Court Mombasa - Environment Land case number 182 - Venasio Muriuki Kanyana – Versus - Tabitha Waruguru, Martin Mithamo Ndunyu & Lydia Kabuchu Ndunyu

**Issue No. b). Whether the Notice of Motion dated 30<sup>th</sup> October, 2025 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.**

9. The main substrata of the application here is rather straight forward. It is on whether to grant interim injunction orders or not. The application herein is premised under 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. The principles applicable in an application for an injunction were laid out in the celebrated case of “Giella (Supra)”, 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 (Supra)”,

“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 v 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 *MRAO Limited v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125,

"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, the 1<sup>st</sup> Applicant was the wife of the late Gabriel Mithamo Ndunyu the owner of a house without land on plot number 281/l/MN (Bombolulu). The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants were children of the late Gabriel Mithamo Ndunyu the owner of a house without land on plot number 281/l/MN (Bombolulu) which forms part of the estate of the deceased. The Respondents were the children of the late Gabriel Mithamo Ndunyu the owner of a house without land on plot number 281/l/MN (Bombolulu).

14. The Applicants herein instituted a succession case in the High Court Karatina to wit; Succession cause No.150 OF 2017 wherein they listed all the heirs of the late Gabriel Mithamo Ndunyu including the Respondents herein. The Respondents herein instituted a succession case in the High Court in Nairobi to wit Succession Cause No. 718 OF 2017 wherein they knowingly and willfully omitted to list the Applicants herein as heirs and beneficiaries of the estate of the late Gabriel Mithamo Ndunyu. The Karatina Succession case No. 150 of 2017 was subsequently transferred to Nairobi to be heard jointly with Nairobi High Court Succession case number 718 of 2017.

15. On the 14<sup>th</sup> December, 2022 a Grant of Letter of Administration intestate were issued to the Respondents in Nairobi Court Succession High Court Succession Cause No. 718 of 2017 which were due for confirmation on 23<sup>rd</sup> July, 2023. The Revocation proceedings had a high likelihood of success with overwhelming evidence including an email from the Milimani Family Court division Nairobi High Court Succession Cause No. 718 of 2017 to the advocates in acknowledging a gross omission on their part which resulted to the issuance of the Grant of Letters of Administration intestate.

16. In the case of "*Mbuthia v 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."

17. Similarly, in the case of "*Edwin Kamau Muniu v Barclays Bank of Kenya Limited*" 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."



18. In the present case, the Applicants were apprehensive that unless the High Court Mombasa - Environment Land case number 182 - Venasio Muriuki Kanyana v Tabitha Waruguru, Martin Mithamo Ndunyu & Lydiah Kabuchu Ndunyu (the Respondents herein) is stayed pending the determination of the Revocation Proceedings in Nairobi Succession Cause Number No. 718 of 2017 then the substratum of the latter case stand to be rendered superfluous. Ownership of land and proof of title regarding this first condition though, the 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. Limited (Supra)”.
19. The court has further considered the evidence on record against the second principle for the grant of an injunction, that is, whether the 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 “Nguruman Limited (supra)”, held that:-
- “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 facie, 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.”
20. On the issue whether the Applicant 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 is at risk. The Applicants were apprehensive that unless this Honourable Courts issues an Order barring the Respondents herein from barring the Respondents from carting, disposing off and interfering with the suit property and the estate of the late Gabriel Mithamo Ndunyu by extension before confirmation of the Grant of Letters of Administration intestate and/or the conclusion of the Revocation proceedings then substratum of the instant suit & that of Nairobi Succession Cause No. 718 of 2017 stand to be defeated. A Court had to ensure justice is seen to be done and the Court processes are not abused. The judicial decision of “Pius Kipchirchir Kogo v 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.”
21. Quite clearly, the Applicants would not be able to be compensated through damages as it has shown the court that their rights to the suit property as Legal Administrators and that the Respondents ought to be stopped until such a time the acquire the affected portion(s) in a procedural manner. The Applicants have therefore satisfied the second condition as laid down in “Giella’s case”.



22. 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”.

23. In the case of “Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 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.”

24. The balance of convenience tilts in the favour of the Plaintiffs/ Applicants. The decision of “Amir Suleiman v 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.”

25. The suit property should be preserved and conserved pending the determination of the Plaintiffs/ Applicants’ claim and after hearing the Defendants/ Respondents in their defences. In this case, the balance of convenience tilts to the Applicants as the legal proprietors of the suit property.
26. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have 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.



27. In the case of:- “Robert Mugo wa Karanja v 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...”

28. 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 Applicants. In view of the foregoing, I find that the Applicants have met the criteria for grant of orders of temporary injunction.

29. Therefore the Honourable Court finds the Application by the Applicants dated 30<sup>th</sup> October, 2024 meritorious and hereby allows it entirely.

#### **Issue No. c). Who will bear the Costs of Notice of motion application dated 30<sup>th</sup> October, 2024**

30. 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 v Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers v 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. In the case of “Hussein Muhumed Sirat v 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.

31. In the present case, the Honourable Court elects to have the costs in the cause.

#### **V. Conclusion & Disposition**

32. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Clearly, the Applicants have a case against the Respondents.

33. 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 the Notice of Motion application dated 30<sup>th</sup> October, 2024 be and is hereby found to have merit thus allowed entirely.
- b. That the Honourable Court be and is hereby pleased to issue a temporary Order of stay of execution of Judgement in High Court Mombasa - Environment Land case number 182 - Venasio Muriuki Kanyana v Tabitha Waruguru, Martin Mithamo Ndunyu & Lydia Kabuchu Ndunyu pending the determination of the suit



- c. That the Honorable Court be and is hereby pleased to issue an order of temporary injunction restraining the Respondents from interfering with the suit property and the estate of the late Gabriel Mithamo Ndunyu pending the determination of the suit.
- d. That for expediency sake there be a mention on 26th March, 2025 before Hon. Justice Olola for direction on the disposal of the suit herein.
- e. That the cost of this application will be in the cause.

It is so Ordered Accordingly.

**RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 7TH DAY OF MARCH 2025.**

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

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. Mr. Baraka Advocate for the Plaintiffs/Applicants.
- c. No appearance for the Defendants/Applicants.

RULING: CIVIL CASE NO. 95 OF 2024 Page 5 of 5 **HON. LL NAIKUINI (JUDGE)**

