Ngei v Athumani & 6 others (Civil Suit E039 of 2024) [2025] KEELC 1090 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1090 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KWALE

CIVIL SUIT E039 OF 2024

LL NAIKUNI, J

MARCH 6, 2025

BETWEEN

MUTUKU NGEI .... PLAINTIFF

AND

ALI ATHUMANI .... 1ST DEFENDANT

SAID NYOYO .... 2ND DEFENDANT

SALIM MWAPUMA .... 3RD DEFENDANT

IDDI OMARI .... 4TH DEFENDANT

SAID TSUTSU .... 5TH DEFENDANT

PATRICK MWAYANI .... 6TH DEFENDANT

RASHID TENGURI .... 7TH DEFENDANT

RULING

I. Introduction

1. This Honourable Court was called to make a determination onto the Notice of Motion application dated 10th June, 2024. It was instituted by Mutuku Ngei, the Plaintiff/Applicant herein under the provisions of Order 40 Rule 1, 2 and 4(1), Order 51(1) of the Civil Procedure Rules 2010 and Section 1A, 1B, 3A of the *Civil Procedure Act* and all other enabling provisions of the law.

II. The Plaintiff/Applicant's case

2. The Plaintiff/Applicant sought for the following orders: -

   a. Spent.

b. Spent.

c. That pending the hearing of the main suit, this Honourable Court be pleased to restrain the Defendants either by themselves, their servants, agents and or otherwise from disposing, selling, transferring, charging, leasing, constructing or continuing construction or in any other manner interfering with land in Plot Title No. Kwale/ Pungu Fuel Area/96.

d. That the cost of this application be provided for.

3. The application was premised on the grounds, facts and testimony on the face of the application and further supported made out under the 16 Paragraphed supporting affidavit of ESTHER NDULU MUTUKU, a resident of Machakos and the donee of the Power of Attorney of the Applicant and her husband herein. The Deponent averred that:

a. The Plaintiff/Applicant acquired the suit property on 9th September 2009 and that on acquisition, the land was not in anyone's possession. The Deponent annexed in the affidavit a copy of the Title Deed and marked as 'EMN - 2'.

b. Sometimes this year, together with the Applicant, they visited the suit property and found that the Defendants/Respondents had encroached upon their land and without our authority erected thereon temporary, semi-permanent and even a few permanent structures.

c. They later called the Defendants/Respondents at the offices of the Chief and notified them to vacate their land. This was around March 2024.

d. In May 2024, they again visited the suit property only to discover that the Respondents had erected further structures instead of vacating the property as requested.

e. The 1st to 7th Defendants/Respondents were and were at all materials times to the suit trespassers who took possession of the suit property.

f. The 1st to 7th Defendants/Respondents by themselves, their servants and or agents had invaded the suit property by wrongfully and illegally entering and taking possession of portions of the suit property and have thereafter commenced construction of temporary structures, remained in possession thereof and have thereby trespassed and continued to trespass thereon

g. As a result of the 1st to 7th Defendants/Respondents' trespass and wrongful occupation of portions of the suit property, the Respondents had damaged, wasted, destroyed, polluted and/ or defrauded the suit property by reason of which, the applicant had been deprived of the use and enjoyment of the suit property.

h. She was aware that by reason of the trespass by the 1st to the 7th Defendants/Respondents, the applicant had been denied enjoyment of his private property, and his property rights injured by the respondents' foresaid trespass, and the applicant had suffered loss and damage.

i. The Applicant was apprehensive that the hearing of the main case would take a while before it was concluded and that in the meantime, he was conscious that his property was being misused and damaged, hence this application.

j. Unless restrained by the Court, the 1st to 7th Defendants/Respondents would continue to trespass on the suit property by entering upon, constructing illegal structures and remaining upon the suit property.

k. The Applicant had demonstrated all three basic principles of law to succeed in this application, namely that he had a prima facie case with high probability of success, that damages were not adequate mode of compensation and finally that the balance of convenience favours him.

l. In the substantive suit the Plaintiff/Applicant would be urging the court to issue orders compelling the respondents by themselves, their servants and/or agents to demolish the structures they had constructed and/or were constructing and carry away the debris therefrom.

m. The Applicant was apprehensive that unless this Court intervenes and rants the prayers sought herein, the Respondents would continue with the illegal construction of the unauthorized structures in the Applicant's property.

n. The Applicant was now fairly old and the earlier this issue was closed the better. She annexed in the affidavit copies of Identity card for both the Applicant and she marked them as annexture "ENM - 3".

III. Submissions

4. On 28th January, 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 10th June, 2024 be disposed of by way of written submissions and all the parties complied. Pursuant to that, the Honourable Court was only able to access the submissions by the Plaintiff/Applicant herein filed through the Court CTS. Thus, it proceeded to render a ruling on 6th March, 2025 by Court accordingly.

A. The Written Submissions by the Plaintiff/Applicant

5. The Plaintiff/Applicant through the Law firm of Messrs. Munyithya, Mutugi, Umara & Muzna Company Advocates filed their written Submissions dated 3rd March, 2025. Mr. Munyithya Advocate commenced his submissions by stating that it was in support of the Notice of Motion Application dated 10th June 2024. It was brought under the provision of Order 40 Rules 1, 2 and 4 and Order 51 Rule 1 of the Civil Procedure Rules,2010. The Plaintiff/Applicant also invoked the oxygen principle under Sections 1, 1A, & 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya. The Applicants sought the afore stated orders.

6. The Learned Counsel posited that the foundation of this application had been summarized in the grounds of the application. It broadly stated in the affidavit deponed on 11th June 2024 by Esther Ndulu Mutuku. According to the Counsel, the main issue for determination was whether the Plaintiff/Applicant had made out a case for the granting of orders of injunction. He stated that the provision of Order 40 Rule 1 of the Civil Procedure Rules provides for the conditions under which orders of temporary injunction can be granted by the Court. The principles governing the granting of orders of injunction were stated in the case of "Giella – Versus - Cassman Brown [1973] E.A 358 as follows: -

> " The settled principles therein are firstly that the applicant must show a prima facie case with probability of success at the trial. Secondly, an interlocutory injunction will not normally be granted unless the applicant can show an irreparable injury which cannot adequately be compensated by damages. Thirdly, if the court is in doubt, it should decide the application on a balance of convenience". [Emphasis Ours]

7. On the Prima facie case. The Learned Counsel averred that the Plaintiff/Applicant had demonstrated that he was the owner of the Plot Title No.Kwale/Pungu Fuel Area/96 (Hereinafter referred as

"The Suit Property"). The Plaintiff/Applicant acquired vacant possession of the suit property on 9th September 2009. The same could be proved by the Title deed registered under the name of the Plaintiff/Applicant and marked as "ENM – 2" on the supporting affidavit. He informed Court that sometime in the early months of the year 2024, the Plaintiff/Applicant and Esther Ndulu Mutuku visited the suit property and found people had encroached into their land. They later came to establish that those in encroachment were the Defendants/Respondents herein. They reported the matter to the area Chief and all the Defendants/Respondents were notified to vacate the Plaintiff/Applicant's property.

8. Despite having been notified of the need to vacate the suit property, the Defendants/Respondents had continued encroaching onto and gone further to erect structures in utter disrespect to the rights of the owner. The Counsel argued that it was trite that to establish a prima facie case, the applicant needed to establish a clear right that needed to be protected by this Honourable Court. To buttress on this point, he cited the case of" "Nguruman Limited – Versus - Jan Bonde Nielsen & 2 Others [2014) eKLR" where the Court of Appeal stated as follows in relation to Prima Facie case:

> " The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."

9. The Counsel averred that the applicant's right to property was threatened. Further, that the Defendants/Respondents had commenced and continued construction of permanent and semi-permanent structures on the applicant's suit property without the authority of the Plaintiff/Applicant. Their continued stay on the suit property had caused damage to the property. That the suit property had been wasted, destroyed, polluted by the Defendants/Respondents. The Plaintiff/Applicant risked being deprived of the exclusive use and enjoyment of the suit property.

10. He invited this Honourable Court to peruse through the affidavit deponed on 11th June 2024 in support of the application. It had been clearly and unmistakably demonstrated that should the order sought not be granted, the Plaintiff/Applicant would be at risk of losing their rightful property to another party. With clear and sequential steps demonstrated by the Plaintiff/Applicant in the supporting affidavit deponed on the 11th June 2024 and the annextures attached thereto, it had been demonstrated to the required standard that the Plaintiff/Applicant had a prima facie case with a high likelihood of success. Therefore, the Counsel prayed that this Court affirmed that the first test stated in "Giella – Versus - Cassman Brown case (Supra)" had been satisfactory established.

11. On the second limb. The suit property was a symbol of security to the Plaintiff/Applicant and his family. The Defendants/Respondents had not shown any willingness to let the true owner of the suit property enjoy what was rightfully his. This was despite being notified to vacate. The Plaintiff/

Applicant was apprehensive that if this Court never issued the orders sought in this application the Defendants/Respondents might dispose off the suit property to a third party and deprive him of ever getting the chance to use his land.The suit property being a land, it bore more than physical value to the Plaintiff/Applicant. It was a family treasure and security. If the same was disposed off to the detriment of the Plaintiff/Applicant, the injury caused would not only be felt by the Plaintiff/Applicant but by every member of his family. The attachment the Applicant had to the property was incapable of being compensated. The loss of the suit property would likely cause an irreparable injury to the Plaintiff/Applicant. On this point, he invited the Court to be guided by the case of"- "Paul Gitonga Wanjau – Versus - Gathuthis Tea Factor Company Limited & 2 Others [2016] eKLR" where the Court stated as follows: -

> "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 injury 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..."

12. The Learned Counsel contended that the Defendants/Respondents had barely anything to lose. This was because their actions were clearly in violation of the rights of the Plaintiff/Applicant to exclusive ownership of the suit property. Neither did they get any permission from the Plaintiff/Applicant nor have title over the land they had trespassed into.

13. On the third limb. The Learned Counsel submitted that from the above two principles, this Honourable Court had sufficient grounds to grant the orders sought. However, should the Court wish to interrogate the third principle, he averred that the balance of convenience tilted in favour of the Plaintiff/Applicant. The Plaintiff/Applicant was currently the owner of the suit property as shown by the annexture to the supporting affidavit. The applicant had no intentions of allowing anyone enter the suit property without his express instructions or that of the holder of the general power of attorney donated by him. On the contrary, the Defendants/Respondents herein decided to enter the applicant's property and commenced constructions without any authority from the owner of the suit property.

14. In conclusion, the Counsel stated that the application was merited. He urge this Honourable Court to allow it as prayed.

IV. Analysis and Determination

15. I have carefully read and considered the pleadings herein and the relevant provisions made by the by the parties. In order to arrive at an informed decision, the Honorable Court has framed the following issues for determination.

    a. Whether the Notice of Motion dated 10th June, 2024 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.

    b. Who will bear the Costs of Notice of Motion application 10th June, 2024.

ISSUE a). Whether the Notice of Motion dated 10th June, 2024 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.

16. 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.

17. Fundamentally, the principles applicable in an application for an injunction were laid out in the celebrated case of "Giella – Versus - Cassman Brown & Co Limited (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."

18. 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 (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 - 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".

19. 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"

20. As the Court previously observed in this ruling, the Plaintiff/Applicant acquired the suit property on 9th September 2009 and that on acquisition, the land was not in anyone's possession. The Deponent annexed in the affidavit a copy of the Title Deed and mark it as 'EMN - 2'. Sometimes this year, together with the Plaintiff/Applicant, they visited the suit property and found that the Defendants/ Respondents had encroached upon their land and without our authority erected thereon temporary, semi-permanent and even a few permanent structures. They later called the Defendants/Respondents at the offices of the Chief and notified them to vacate their land. This was around March 2024.

21. In May 2024, they again visited the suit property only to discover that the Defendants/Respondents had erected further structures instead of vacating the property as requested. The 1st to 7th Defendants/ Respondents were and were at all materials times to the suit trespassers who took possession of the suit property. In the case of "Mbuthia – 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."

22. 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."

23. In the present case, it is clear that the Plaintiff feel threatened by the actions of the Defendants/ Respondents, who according to the Plaintiff was trying to deprive the Plaintiff of the suit property. Regarding this first condition though, the Plaintiff/ Applicant has 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)".

24. The court has further considered the annextures on record against the second principle for the grant of an injunction, that is, whether the Plaintiff/Applicant 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 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."

25. 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 1st to 7th Respondents by themselves, their servants and or agents have invaded the suit property by wrongfully and illegally entering and taking possession of portions of the suit property and have thereafter commenced construction of temporary structures, remained in possession thereof and have thereby trespassed and continued to trespass thereon. As a result of the 1st to 7th Defendants/ Respondents' trespass and wrongful occupation of portions of the suit property, the Respondents have damaged, wasted, destroyed, polluted and/or defrauded the suit property by reason of which, the applicant had been deprived of the use and enjoyment of the suit property. The Plaintiff/ Applicant 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."

26. Quite clearly, the Applicant 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".

27. Thirdly, the Applicant has 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".

28. In the case of "Paul Gitonga Wanjau – Versus - Gathuthis Tea Factor Company Ltd & 2 others (Supra)", 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."

29. The balance of convenience tilts in the favour of the Applicants who will be prejudiced if the defendants evicts and demolishes their houses 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."

30. The balance of convenience lies with the Plaintiff/ Applicant 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 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 and it will be in the interest of both the Applicants and the Respondents that the suit property is preserved until the hearing and determination of the suit.

31. 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 a grant a temporary injunction to restrain such acts..."

32. 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 Plaintiff/Applicant. In view of the foregoing, I strongly find that the Plaintiff/Applicant has met the criteria for grant of orders of temporary injunction.

ISSUE c). Who will bear the Costs of Notice of Motion application 10th June, 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

V. 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 Plaintiff/ Applicant has a case against the Defendants/ Respondents.

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 the Notice of Motion application dated 10th June, 2024 be and is hereby found to have merit and is allowed.

    b. That an order of Temporary injunction do issue restraining the Defendants/Respondents either by themselves, their servants, agents and or otherwise from disposing, selling, transferring, charging, leasing, constructing or continuing construction or in any other manner interfering with land in Plot Title No. Kwale/ Pungu Fuel Area/96 pending the hearing of the main suit.

    c. That for expediency sake the matter to be mention on 9TH June, 2025 for purposes of conducting the Pre – Trial Conference in accordance with the provision of Order 11 of the Civil Procedure Rules, 2010.

    d. That the cost of the Notice of Motion application dated 10th June, 2024 shall be in the cause.

    It is so ordered accordingly.

RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT KWALE THIS 6TH DAY OF MARCH 2025.

HON. MR. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT

KWALE

Ruling delivered in the presence of:

a. Mr. Daniel Disii, Court Assistant.

b. M/s. Umara Advocate for the Plaintiff/ Applicant.

c. No appearance for the Defendants/ Respondents