



**Ochudho & 9 others (Suing on Their Behalf and on Behalf of other 355 Residents of Jogoo Road Phase II Government Estate) v Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development & 2 others (Environment & Land Petition E010 of 2024) [2024] KEELC 3615 (KLR) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3615 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E010 OF 2024**

**JO MBOYA, J**

**MAY 6, 2024**

**IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 165(3), 258 AND 259 OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS IN ARTICLES 24, 26(1), (3), 27(1), (2), 28, 29 ( C ), (D), (F), 35, 40(1) (A), (B), (3), (4), 43 (1) (B), (C), (F), 45(1), 47 (1), (2), 50(1) & 53 ( C ) (D), (2) THE CONSTITUTION OF KENYA AND IN THE MATTER OF: THE INTENDED EVICTIONS OF JOGOO ROAD PHASE 2 GOVERNMENT ESTATE**

**BETWEEN**

**KENNEDY OCHUODHO ..... 1<sup>ST</sup> PETITIONER  
JOSELYN WANGARI ..... 2<sup>ND</sup> PETITIONER  
BERNAD KORIR ..... 3<sup>RD</sup> PETITIONER  
NELSON MUDAKI ..... 4<sup>TH</sup> PETITIONER  
TOM OTIENO SIRAWA ..... 5<sup>TH</sup> PETITIONER  
MICHAEL JENGA ..... 6<sup>TH</sup> PETITIONER  
STANLEY GITONGA ..... 7<sup>TH</sup> PETITIONER  
EVANSON MWAURA MAINA ..... 8<sup>TH</sup> PETITIONER  
KEVIN ARAKA NYACHIO ..... 9<sup>TH</sup> PETITIONER  
NICODEMUS KILONZO MACKENZIE ..... 10<sup>TH</sup> PETITIONER  
SUING ON THEIR BEHALF AND ON BEHALF OF OTHER 355 RESIDENTS  
OF JOGOO ROAD PHASE II GOVERNMENT ESTATE**

**AND**



**CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

## **RULING**

### **INTRODUCTION AND BACKGROUND:**

1. The Petitioners herein [who are civil servants in the employ of the National Government of the Republic of Kenya] have filed the subject Petition, contending that the Notice dated the 29<sup>th</sup> February 2024 and which was issued by the 2<sup>nd</sup> Respondent herein was illegal, unlawful and thus unconstitutional.
2. Contemporaneous with the filing of the Petition, the Petitioners/Applicants filed the Notice of Motion Application dated the 5<sup>th</sup> March 2024 and in respect of which same have sought for the following reliefs;
  - i. ....Spent.
  - ii. THAT Pending the Hearing and Determination of this Application, an ORDER OF TEMPORARY INJUNCTION do issue restraining/prohibiting the 1st and 2nd Respondent, their servants, agents, and/ or such persons claiming under them or working under their instructions from demolishing, evicting the Petitioners, relocating, transferring the Petitioners or in any other way interfering with the Petitioners' peaceful and quiet occupation of the houses at Jogoo Road Phase 2 Government Estate.
  - iii. THAT Pending the Hearing and Determination of the Petition herein, an ORDER OF TEMPORARY INJUNCTION do issue restraining the Respondents jointly and severally, their servants, agents, and / or such persons claiming under them or working under their instructions from demolishing, evicting the Petitioners, relocating, transferring the Petitioners or in any other way interfering with the Petitioners' peaceful and quiet occupation of the houses at Jogoo Road Phase 2 Government Estate.
  - iv. THAT costs of this Application be provided for.
3. The instant Application is anchored on the various grounds which have been enumerated in the body of the Application. Furthermore, the Application beforehand is supported by the affidavit sworn by the 1<sup>st</sup> Petitioner/Applicant on the 5<sup>th</sup> March 2024 and in respect of which the Deponent has attached 10 documents [annexures].
4. Upon being served with the Application beforehand, the Respondents filed Grounds of opposition dated the 18<sup>th</sup> March 2024 and in respect of which, the Respondent[s] herein have contended inter-alia that the Petition by and on behalf of the Petitioners does not disclose any reasonable cause of action and in any event, that the Petitioners have no proprietary rights to and in respect of the suit premises.



5. Be that as it may, the Application beforehand came up for inter-partes hearing on the 19<sup>th</sup> March 2024, whereupon the advocates for the respective Parties covenanted to canvass and dispose of the Application by way of written submissions to be filed and exchanged within set timelines.
6. Pursuant to and in line with the directions, the Petitioners/Applicants proceeded to and filed [2] sets of submissions dated the 21<sup>st</sup> March 2024 and 4<sup>th</sup> April 2024, respectively. On the other hand, the Respondent filed written submissions dated the 24<sup>th</sup> March 2024.
7. For coherence, all the sets of written submissions [details in terms of the preceding paragraphs] forms part of the record of the court.

## **PARTIES' SUBMISSIONS:**

### PETITIONERSS/APPLICANTS' SUBMISSIONS:

8. The Petitioners/Applicants herein filed two [2] sets of written submissions namely, the maiden submissions dated the 21<sup>st</sup> March 2024 and the rejoinder Submissions dated the 4<sup>th</sup> April 2024. Instructively, the Petitioners/Applicants have adopted and reiterated the grounds contained at the foot of the application as well as the averments in the body of the supporting affidavit.
9. Furthermore, learned counsel for the Petitioners/Applicants has thereafter raised, highlighted and canvassed three [3] salient issues for consideration by the court.
10. Firstly, learned counsel for the Petitioners/Applicants has submitted that the Petitioners/Applicants herein comprise of the Low cadre civil servants, employed by the Government of the Republic of Kenya and whose scope of work entail provision of essential and critical service[s] to the Government and the people of Kenya.
11. On the other hand, learned counsel for the Petitioners/Applicants has also submitted that the Petitioners herein by virtue of their employment with the Government, were granted houses situated within the Government quarters along Jogoo Road, namely Phase II Government Estate.
12. In any event, learned counsel for the Applicants has contended that the Applicants herein have been housed in the designated premises for a very long time and thus same accrued legitimate rights and/or expectation that same [Applicants] shall be entitled to reside in the designated premises until retirement.
13. Nevertheless, learned counsel for the Applicants has submitted that without due consultation and public participation, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proceeded to and served the Applicants with a Notice to vacate the designated premises with a view to creating room for construction of affordable housing units.
14. However, learned counsel has submitted that the Notice in question which only gave the Applicants two [2] months, to move out and/or vacate the designated premises was irregular, illegal and unconstitutional, inter-alia for want of public participation and engagement with the Applicants.
15. Arising from the foregoing, learned counsel for the Applicants has therefore submitted that the Applicants' constitutional right to legitimate expectation and entitlement to public participation in decision making, have been violated and/or infringed upon. Instructively, Learned Counsel for the Applicants' has highlighted the provision[s] of Article 10[2] of *the Constitution*, 2010.
16. In addition, learned counsel for the Applicants has cited and relied on inter-alia the holding in the case of *Bridge International Academics vs Mwakio Kalondi* [2019]eKLR, *British American Tobacco PLC*



[Formerly British American Tubaco Ltd] vs The Cabinet Secretary For The Ministry of Health & 5 Others [2019]eKLR, Republic vs Chief Licensing Officer & Another Ex-parte Tom Mboya Onyango [2017]eKLR, Republic vs Vice Chancellor Moi University & 2 Others Ex-Parte Benjamin Gikenyi Magare [2019]eKLR, Pastoli vs Kabale [2008] 2 EA 300 and Oindi Zipeline & 39 Others vs Karatina University and Another [2015]eKLR, respectively.

17. Secondly, learned counsel for the Applicant[s] has submitted that by virtue of the tenancy agreements which were entered into and executed between the Applicants on one hand and the Respondents on the other hand, the Applicants were entitled to partake of and reside in the designated premises.
18. In any event, learned counsel has submitted that the tenancy agreement under reference did not contain any termination clause and in this regard, the issuance of the two months' Notice by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was therefore illegal and unlawful.
19. Furthermore, learned counsel for the Applicants has submitted that the impugned Notice which was issued and served by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is intended to defeat the Applicants right to affordable housing and hence same [Notice] violates the Applicants constitutional rights in terms of Article 43 of *the Constitution* 2010.
20. Arising from the foregoing, learned counsel for the Applicant[s] has thus submitted that the Applicants have therefore established and demonstrated a prima facie case, with overwhelming chances of success.
21. In support of the submissions that the Applicants have established and demonstrated a prima facie case with probability of success, learned counsel for the Applicants has cited and relied on inter-alia the holding in the case of Mrao Ltd vs First American bank Ltd [2003]eKLR.
22. Thirdly, learned counsel for the Applicants has submitted that other than the existence of a prima facie case, the Applicants herein have also demonstrated that same [Applicants] shall be disposed to suffer irreparable loss, if the orders of temporary injunction are not granted.
23. In this respect, learned counsel for the Applicants has submitted that the Applicants herein earn little amount of monies on account of house rents and hence it would be difficult, nay impossible for same [Applicants] to procure decent houses with the meagre house allowances being paid by the Government.
24. Additionally, learned counsel for the Applicants has also submitted that other than the meagre house allowance, the Applicants herein also have school going children, who are currently enrolled in various school situate within the neighborhood of Jogoo Road Phase II Government Estate.
25. Arising from the foregoing, learned counsel for the Applicants has therefore contended that unless the impugned vacation notice is stayed vide an Order of Temporary Injunction, there is a likelihood that the children's rights to education will be infringed upon and/or violated. In this regard, learned counsel has invited the court to take cognizance of Article 53 of *the Constitution* 2010.
26. On the other hand, learned counsel has also cited and relied on the holding in the case of Pius Kipchirchir Kogo vs Franc Kimeli Tenei [2018]eKLR, as pertains to the meaning and import of what constitutes irreparable loss.
27. Premised on the foregoing, learned counsel for the Applicants has therefore implored the court to find and hold that the Applicants herein have established a legal basis to warrant the issuance of the orders sought at the foot of the Application dated the 5<sup>th</sup> March 2024.

SUBPARA b.



## RESPONDENTS' SUBMISSIONS:

28. The Respondent[s] filed written submissions dated the 24<sup>th</sup> March 2024 and in respect of which same have adopted and reiterated the Grounds of opposition dated the 18<sup>th</sup> March 2024.
29. Additionally, Learned counsel for the Respondents has thereafter highlighted and amplified three [3] salient issues for consideration and determination by the court.
30. Firstly, learned counsel for the Respondents has submitted that the Applicants herein are indeed civil servants in the employment of the Government and who have been housed in the Government quarters, namely, Jogoo Road Phase II Government Estate, within the City of Nairobi.
31. Furthermore, learned counsel for the Respondent has submitted that the Applicants herein are in any event housed in the said Government quarters as tenants, who pay rents to the Government. For good measure, learned counsel for the Respondent has added that the fact that the Applicants are tenants is not in dispute.
32. On the other hand, learned counsel for the Respondents has also submitted that by virtue of being tenants, the Applicants herein have a tenancy relationship with the Government and thus same [tenancy] is liable to termination upon issuance of appropriate and reasonable notice.
33. Other than the foregoing, learned counsel for the Respondents has also submitted that the suit premises constitute Public land and hence the Applicants herein cannot be heard to stake any entitlement to and/or prescriptive rights in respect of same.
34. Premised on the foregoing, learned counsel for the Respondents has therefore submitted that the Applicants herein have therefore not demonstrated the existence of any prima facie case or at all, to warrant the grant of an order of temporary injunction.
35. In support of the foregoing submissions, learned counsel for the Respondent has cited and relied on inter-alia the case of Mrao Limited vs First American Bank of Kenya Ltd [2003]eKLR, Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014]eKLR and Sisto Wambugu vs Kamau Njuguna [1983]eKLR, respectively.
36. Secondly, learned counsel for the Respondents has also submitted that insofar as the Applicants are paid house allowances, same can very well procure and/or obtain alternative accommodation, befitting their [Applicants] status.
37. Furthermore, learned counsel for the Respondents has also submitted that the suit premises are required by the Government for purposes of constructing affordable housing, which housing when complete, shall be available to inter-alia the Applicants herein.
38. Notwithstanding the foregoing, learned counsel for the Respondents has submitted that the Respondents have not demonstrated that same shall suffer any irreparable loss or at all, if the orders sought are not granted.
39. To buttress the foregoing submissions, learned counsel for the Respondents has also cited and relied on the decision in the case of Pius Kipchirchir Kogo vs Franc Kimeli Tenai [2018]eKLR, where the court endeavored to define the meaning of irreparable loss.
40. Finally, learned counsel for the Respondents has also submitted that the balance of convenience tilts against the issuance of the order of temporary injunction, insofar as the intended construction of affordable housing unit is meant to facilitate, foster and promote the realization of the constitutional right to housing.



41. Notably and for good measure, learned counsel for the Respondents has invited the Honourable Court to take cognizance of Article 43 of *the Constitution*, 2010 which underpins the right to adequate housing.
42. In view of the foregoing, learned counsel for the Respondents has thus invited the court to find and hold that the Applicants herein are not entitled to the reliefs sought at the foot of the Application beforehand.

#### **ISSUES FOR DETERMINATION:**

43. Having [considered], the Application beforehand, the Grounds of opposition filed in response filed thereto and the written submissions on behalf of the respective Parties, the following issues commend themselves for determination;
  - i. Whether the Applicants herein have established and demonstrated a prima facie case with probability of success or otherwise.
  - ii. Whether the Applicants herein shall suffer irreparable loss or otherwise, if the orders sought are not granted.
  - iii. Whether the orders of temporary injunction sought can issue as against the Respondents herein or otherwise.

#### **ANALYSIS AND DETERMINATION**

##### ISSUE NUMBER 1

Whether the Applicants herein have established and demonstrated a Prima facie case with probability of success or otherwise.

44. It is common ground that the Petitioners/Applicants herein are civil servants, in the employment of the Government of Kenya. Furthermore, it is also common ground that the Applicants herein by virtue of their employment status, have been variously housed in the Government quarters, namely, Jogoo Road Phase II, Government Estate.
45. On the other hand, there is also no dispute that even though the Petitioners/Applicants are housed in the Government quarters, same [Applicants] are indeed tenants paying contractual/agreed rents to the Government.
46. Instructively, the Applicants herein have conceded as much at the foot of ground two [2] of the Application wherein same have stated as hereunder;

That the Respondent, an organ of Kenyan Government, collects rents from the Petitioners and the other residents of the said Phase II Estate and manages the said houses on behalf of the National Government for the benefit of the Public.
47. Quiet clearly, the Applicants herein confirm and acknowledge that their occupation of the designated premises [ Government Quarters] is on the basis of a tenancy agreement between themselves [Applicants] and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and not otherwise.
48. Furthermore, it is also not lost on the court that the Applicants themselves concede that the rental income derivable from the designated premises; and by extension the designated premises, are meant for the benefit of the public.



49. Other than the foregoing, it is also worth recalling that the Applicants herein, [like all other civil servants] , are paid house allowances. For good measure, the payments of the house allowances is tailor-made to enable the beneficiary thereof [the Applicants not excepted] to find suitable housing for themselves and families.
50. Arising from the foregoing factual position, the question that the court must grapple with is whether the Applicants herein [who are admittedly tenants of the Government], have any proprietary rights to and in respect of the suit property, wherein same resides or otherwise.
51. To start with, it is common knowledge that the suit property is Public land and hence reserved for public utilities and use, as maybe designated by the National land Commission, who is bestowed with the mandate to administer and manage public land on behalf of the National and County Government, respectively. See Article 67[2] of [the Constitution](#) 2010. [ See also the Decision of the Supreme Court in the case of National Land Commission versus The Cabinet Secretary, Ministry of Lands, Housing and Urban Development and Another [2015] eKLR].
52. In respect of the instant matter, it has been pointed out that the suit property has been earmarked for purposes of the construction of affordable housing units towards and in realization of the right to adequate housing. [ See the provisions of Article 43 of [the Constitution](#), 2010].
53. At any rate, it has also been pointed that upon the completion of the affordable housing units, the Applicants herein and the rest of Kenyans shall be at liberty to be housed therein.
54. Notwithstanding the foregoing, the Applicants are before the court and same are contending that they [ Applicants] have legitimate expectation to the suit houses, situate within the Government quarters.
55. Despite the contention by the Applicants, I am afraid that the Applicants beforehand on the basis of being tenants, do not have any proprietary rights to and or in respect of the Government houses, which are currently being occupied by same.
56. To the contrary and on the basis of the tenancy agreements, which were admittedly signed between the applicants and the Government, same are entitled to be issued with reasonable Notice and upon issuance and service of reasonable notice, the tenancy relationship [like any other tenancy], shall be determined and/or terminated.
57. Furthermore, though the Applicants herein contend that same [Applicants] have legitimate expectation to the suit property, however, it is my humble finding and holding that the concept of legitimate expectation cannot be applied with a view to defeating the express provision of the law and in particular [the Constitution](#). [ See the Decision of the Court of Appeal in the case of Kalpana H. Rawal versus Judicial Service Commission [2016] eKLR].
58. Simply put, the Applicants' contention to have legitimate expectation cannot defeat public purposes and/or interests.
59. On the other hand, there is also no gainsaying that insofar as the Government Houses are situate on public land, the Applicants herein cannot be heard to contend that same have acquired and/or accrued such rights, which are akin to prescriptive rights or at all. For good measure, no such rights arise and/or attach to public land. [See Section 41 of the Limitation of Action Act, Chapter 22 Laws of Kenya].
60. Arising from the foregoing discourse, it must have become crystal clear, nay, apparent that the Applicants herein have not demonstrated any prima facie rights [whether legal or equitable] to and in respect of the suit property or at all.



61. In the absence of a prima facie case, as known to law, it is common ground that an order of temporary injunction cannot be issued and/or be granted. Instructively, the existence of a prima facie case is the launchpad [ precursor] to pursuing and/or obtaining an order of temporary injunction.
62. In this respect, it suffices to adopt and reiterate the holding in the case of Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. Where the court of appeal stated and held thus;

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.

63. In a nutshell, my answer to in respect of issue number one [1] is to the effect that the Applicants herein have neither established nor demonstrated a prima facie case. [See Mrao Limited vs First American Bank of Kenya Ltd [2003]Eklr].

## **ISSUE NUMBER 2**

Whether the Applicants herein shall suffer irreparable loss or otherwise, if the orders sought are not granted.

64. Having found and held that the Applicants herein have neither established nor proved the existence of a prima facie case with probability of success, I would have been obligated to terminate the ruling and render the final proclamation.
65. However, despite the foregoing findings, it is worthy to venture forward and discuss whether or not the Applicants herein have demonstrated a likelihood of irreparable loss arising and/or accruing, whatsoever.
66. To start with, the Applicants herein admits that same [Applicants] are tenants of the Government. In this respect, the relationship between the Applicants and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is that of Tenants and landlord.
67. Secondly, the Applicants also conceded and admit that though occupying the Government quarters, same [Applicants] do pay monthly rents to the Government.
68. On the other hand, the Applicants have also conceded that like other civil servants, same [Applicants] are paid house allowances.
69. Premised on the foregoing, what thus comes to mind is what would have happened, if the Government had not housed the Applicants. No doubt, the Applicants, [like the rest of Kenyans], would have been constrained to procure and obtain appropriate housing for themselves and families.
70. First forward, if the Applicants vacate the suit premises, [which are required for construction of affordable housing] then where is the irreparable loss that same [Applicants] shall suffer.



71. I repeat, like the rest of civil servants, who are on house allowance but are not housed by the Government, same [Applicants] would be called upon to utilize their house allowances for the designated purpose.
72. To my mind, the Applicants herein, who are paid monthly house allowance, like other civil servants would be able to procure and obtain appropriate and adequate housing for themselves and families.
73. In any event and for good measure, it is not lost on the court that it is the primary obligation of the Applicants to house themselves and their families. [ See the provisions of Article 20[5] of *the Constitution*, 2010; which also highlights the horizontal application of the Right to Housing].
74. Without belaboring the point, I come to the conclusion that the Applicants herein have similarly failed to establish and prove the likelihood of irreparable loss. For good measure, it is imperative to underscore that irreparable loss must be real [ not remote] and one such loss, that is not compensable in monetary terms.
75. To this end, it suffices to adopt and reiterate the succinct definition that was supplied by the Court of Appeal in the case of Nguruman Limited vs Jan Bonde Nielsen [2014]eKLR, where the court held as hereunder;

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.

76. Simply put, my answer to issue number two [2] is that the Applicants have neither demonstrated and/or proved any scintilla of irreparable loss. To the contrary, the inconvenience, [if any], to be experienced by the Applicants is well taken care of and indemnified by payment of house allowance.

### **ISSUE NUMBER 3**

Whether the orders of temporary injunction sought can issue as against the Respondents herein or otherwise.

77. It is worth recalling that the reliefs which are being sought by the Applicants herein relate to the grant of a temporary order of injunction directed against the Respondent[s] herein, who are essentially Government agencies.
78. To the extent that what is sought is an order of temporary injunction, two [2] things do arise. Firstly, the orders of temporary injunction are being sought against the Government as pertains to the suit property which is undeniably public land.
79. The question which must be grappled with is whether an equitable order of temporary injunction can issue as against the lawful owner and proprietor of the land. For good measure, public land is held by the Government, through National land Commission for the benefit of the public.
80. Can the Government thus be restrained by an order of temporary injunction., over and in respect of what is undeniably her[s]. The answer is certainly in the negative.



81. Furthermore, the position that an order of Temporary injunction cannot issue against registered/legitimate owner of the land [irrespective of the tenure] was amplified by the Court of Appeal in the case of *Nguruman Limited vs Jan Bonde Nielsen* [2014]eKLR, where the court held as hereunder;

It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.

82. Finally, there is the provisions of Section 16 of the *Government Proceedings Act*, Chapter 40, Laws of Kenya, which prohibit the issuance of an order of injunction as against the Government or Government Department[s]. For good measure, there is a distinction between a temporary injunction and a Conservatory order, the latter which avails as a public Law remedy. [See the ratio decidendi in the case of *Gitarau Peter Munya versus Dickson Mwenda Kithinji and Others* [2013]eklr]
83. Notably, the provisions of Section 16 of the *Government Proceedings Act*, [supra] provides as hereunder;

16. Nature of relief

- (1) In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise give such appropriate relief as the case may require: Provided that—
- i. where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
  - ii. in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property, or to the possession thereof.
- (2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.

84. Arising from the foregoing, there is no debate that no order of temporary injunction can issue as against the Respondents herein [Government agencies].

**FINAL DISPOSITION:**



85. From the discourse, [enumerated in the preceding paragraphs], it is crystal clear, nay evident, that the Applicants herein are not deserving of the orders sought.
86. Consequently and in the premises, the Application dated the 5<sup>th</sup> March 2024, be and is hereby dismissed, albeit with no orders as to costs.
87. Taking into account the foregoing observation[s], it may be necessary for the Applicants herein to reconsider the subject Petition. However, it is a matter that squarely falls within the mandate and competence of the Applicants and not otherwise.
88. Save for the foregoing observation, the orders of the court are as posited [ postulated] in terms of paragraph [86] hereinabove.
89. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF MAY, 2024.

**OGUTTU MBOYA,**

**JUDGE.**

***In the presence of:***

*Benson – Court Assistant*

Mr. Ndege for the Petitioners/Applicants

Mr. Motari [Principal Litigation Counsel] for the Respondents.

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