



Abdullahi & another v National Land Commission & 3 others; Kenya Deposit Insurance Corporation (Receivers of Dubai Bank Kenya Limited) (Interested Party) (Environment & Land Petition 3 of 2017) [2024] KEELC 4514 (KLR) (3 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4514 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 3 OF 2017**

**LL NAIKUNI, J
JUNE 3, 2024**

BETWEEN

MOHAMED SHEIKH ABDULLAHI 1ST PETITIONER

SHEIKH DAIB MOHAMED 2ND PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

BILL KIPSANG ROTICH 3RD RESPONDENT

MASHA BIRYA DENA 4TH RESPONDENT

AND

**THE KENYA DEPOSIT INSURANCE CORPORATION (RECEIVERS OF
DUBAI BANK KENYA LIMITED) INTERESTED PARTY**

RULING

I. Introduction

1. Before this Honourable Court for its determination is the Notice of Motion application dated 2nd April, 2024 filed by the 3rd Respondent/ Cross - Petitioner. It was brought under the Certificate of urgency of even date under the provision of Articles 10 and , 50 (1) read with Article 25 (c) of *the Constitution* of Kenya, 2010, Rules 3,19 & 20 (4) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rule, 2010.
2. Upon effecting service, and while opposing the application the Petitioners filed Grounds of Opposition dated 13th May, 2024. The Honourable Court will be dealing with the said issues at a later stage of



this Ruling. It is instructive to note that, on 5th March, 2024 the Honourable Court reserved 8th July, 2024 as the date to deliver its Judgement accordingly all parties having closed their case. All facts remaining constant, its hoped, and despite of the instant interlocutory application, the Court hopes on maintaining that date in the interest of Justice, Equity and Conscience.

II. The 3rd Respondent/Cross Petitioner/Applicant's case

3. The 3rd Respondent/Cross Petitioner/Applicant's sought for the following prayers are: -
 - a. That for reasons to be recorded this application be certified urgent, service thereof be dispensed with and the application be heard Ex - Parte in the first instance in respect of prayer 2 hereof;
 - b. That an urgent date be issued for hearing of the application in priority of the mention date of 22nd May 2024;
 - c. That the Honourable Court be pleased to review and set aside its directions of 5th March, 2024 declining adjournment for testimony and clarifications of the Director of Land Administration of the Ministry of Lands, and to substitute with an order for a hearing date, and summons for the Director of Land Administration, Ministry of Lands to personally appear before Court and to give evidence and produce documents in relation to the suit property registered as L.R No. MN/I/6589 registered as CR 59150 and L.R No. MN/I/6589 registered as CR 62008;
 - d. That costs of this application be provided for.
4. The Applicant emphasized that they were more concerned on being granted the prayer (c) above. The application was based on the grounds, testimonial facts and the averments on the face of the Supporting affidavit of Miller Wanjala Bwire; an advocate of the high court of Kenya and together with one (1) annexure marked as 'MWB - 1' annexed thereto. He averred that:-
 - a. He was an Advocate of the High Court of Kenya from the Law firm of Messrs. & Bwire Advocate LLP having the conduct of the matter on behalf of the 3rd Respondent/Cross Petitioner herein, hence was conversant with facts and competent to swear this affidavit.
 - b. On 5th March, 2021, the trial Court directed parties to file submissions for mention on 22nd May 2024, to confirm compliance and issuing of a Judgment date.
 - c. One of the parties requested for an adjournment date seeking a date for attendance of the Director of Land Administration Officer Ministry of Lands, to clarify before the Honourable Court the formal status of the Land Record given existence of two titles (registered as L.R No. MN/I/6589 registered as CR 59150 and L.R No. MN/I/6589 registered as CR 62008) subject of the trial.
 - d. The Honourable Court issued orders summoning the Director of Land Administration on 31st March 2022, and the summons were duly extracted and duly served. However, the court did not sit on the said day thereafter the Petitioner informed the respondents of a hearing date of 5th March 2024 which he duly produced and marked as 'MWB - 1' was a copy of the Summon.
 - e. Whilst the hearing notice was served, the Counsel inadvertently noted the date of 5th March 2024 as 6th March 2024 and the hearing was for the interested party's case.
 - f. He duly advised the Director of Land Administration, Mr. Gordon Ochieng of the inadvertently noted date of 6th March 2024 but the same was unavailable on that date since he was due to testify before in Nairobi ELC No. E267 of 2020;



- g. On the morning of 5th March 2024 Counsel representing the Interested Party, Augustine Wafula informed him that the matter was proceeding to hearing in open court and since he could not attend physically for reason of being based in Nairobi, he requested Mr. Wafula to hold his brief and apprise the court of the aforementioned inadvertence and consequently seek another date for hearing of the testimony of Mr. Ochieng.
 - h. Mr. Wafula informed him that this court had declined to grant an adjournment and instead directed parties to file submissions and gave a mention date of 22nd May 2024 to confirm compliance and issue a Judgement date.
 - i. Accordingly, the absence of the Director of lands Administration in Court on 5th March, 2024 was purely inadvertent, secondly, the said date would in any event have been inconvenient since the Director was preparing for the attendance in Court in Nairobi on 6th March, 2024 in another matter, whence he was bonded before.
 - j. The testimony of the Director of Land Administration was critical in pursuit of a fair trial of the dispute before the Honourable Court. The said person was a Government Officer whose diary was not in control by the 3rd Respondent/Cross Petitioner.
 - k. There were serious questions of fair trial of the suit that resonate under the provision of Article 50 (1) of *the Constitution* which right and issue was illimitable under the provision of Article 25 (c) of *the Constitution* and that the same Article transcended and cured the aforementioned inadvertence in noting the hearing date and communication of the same to the Director of Land Administration.
 - l. He urged this court not to shut out critical evidence from the Government office which was responsible for origination and issuing of Letters of Allotment and titles and hence were responsible for existence of double titles.
 - m. The instant application sought for a review of this court's directions of 5th March 2024 declining to grant adjournment, for clarifications of the Director Land Administration before submissions and Judgement date for sufficient cause.
 - n. As evidenced by the Valuation Reports on record, value of the suit property was at a sum of Kenya Shillings One hundred million (Kshs. 100, 000, 000.00/=). It would thus be critical and indeed in the interests of justice;
 - o. There shall be no prejudice to any party if the clarifications of the Director of Land administration were received by the court and that it would assist this court in making a fair determination.
5. On 3rd April, 2024, this Honourable Court issued the following "Ex Parte" order:-
- a. That the Notice of Motion application dated 2nd April 2024 be and is hereby certified as urgent.
 - b. That the 3rd Respondent/Cross Petitioner directed to serve the Notice of Motion application dated 2nd April 2024 immediately & file proof of service thereof.
 - c. That upon service, the Petitioners; the 1st, 2nd and 4th Respondents and the Interested Party granted 14 days leave to file & serve replies accordingly.
 - d. That there be 'inter parte' hearing on 22nd May 2024 and a ruling to be rendered thereafter.



III. The Respondent's Case

6. While opposing the application, the Petitioners filed grounds of opposition dated 13th May 2024 and relied on the following grounds:
 - a. No necessary documentary evidence had been exhibited in support of the general grounds raised to justify court's intervention.
 - b. The Applicant was granted a fair hearing including opportunity to avail witnesses.
 - c. The 2nd Defendant which was the office that maintained all land records had adduced evidence through witnesses as clear from the court records with opportunity given to all parties to cross examine her.
 - d. Justice delayed is justice denied and hence the application was for dismissal.
7. On 22nd May, 2024, when the matter came up for mention this Honourable court directed as follows:
 - a. That the 2nd Respondent and the Interested Party were granted three (3) days to file and serve replies to the notice of motion application dated 22nd April 2024.
 - b. The application to be orally and virtually argued on 27th May 2024 and thereafter, the court would deliver its ruling in earnest.

IV. Submissions

8. On 27th May 2024, the three (3) Learned Counsels – Mr. Bwire, Mr. Mogaka and Mr. Wafula Advocates on behalf of the 3rd Respondent/Cross Petitioner/Applicant, Petitioner and Interested Party, were present. The Learned Counsel effectively executed their duties and mandate so professionally. They argued orally from 12.30 pm as per the above directions of this court. The Honourable Court reserved the 3rd June, 2024 as the date to deliver its Ruling accordingly.

A. The Oral Submissions by the 3rd Respondent/Cross Petitioner in the Cross Petition.

9. As indicated above, Mr. Bwire Advocate argued on behalf of the 3rd Respondent/Cross Petitioner in the Cross Petition in support of the Notice of Motion application dated 2nd April 2024. Particularly, he sought to be granted prayer no. 3 to allow Mr. Gordon Ochieng or any other official in the office of the Director of Land Administration to personally appear to testify on the matter. He averred that this officer was an important witness and the suit being a Constitution Petition. His/Her evidence was critical under the provision of Article 159 (1) and (2) of *Constitution of Kenya, 2010* where there were two titles – being Land Reference Numbers MN/I/6589 registered as CR 59150 and LR. NO MN/1/6589 CR 62008 that had been brandished and issued supposedly from that offices. To buttress on this point, he relied on the Supreme Court case of “Dina Management Limited – Versus - County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment). The Learned Counsel averred that he was not in control of the diary of Mr. Ochieng.

B. The Oral submissions by the Petitioner.

10. Although vehemently opposing the application, Mr. Mogaka Advocate but asserted that at no point had the Petitioner ever opposed the summons being issue against this witness, the Director of Land Administration. On the contrary, he averred it was the 3rd Respondent/Cross Petitioner's fault for failing to avail the said witness at all opportune moment accorded to him by this Honourable Court.



11. Specifically, the Learned Counsel picked an issue as averred from the contents under Paragraph 4 of the supporting affidavit dated 2nd April 2024. According to him, there was a contradiction on these averments to the ones under the contents of Paragraphs 5 and 6 of the same. He observed that while the annexure marked 'MWB - 1' indicated that the summons issued by Court were for the Director of Land and Administration to appear in court on 31st March 2022, yet the Counsel alleged and informed Court that the witness had been expected to appear in Court on 6th March 2024. This was utter contradiction to say the least. Furthermore, the Learned Counsel submitted that the aforementioned neither the diary nor its extract of Mr. Ochieng had been annexed taking that that information was important and ought to have been attached as part of the annexures in support of this application.
12. The Learned Counsel asserted that the said Mr. Ochieng was not even listed as one of the witnesses to be summoned from the list of witnesses filed by the 3rd Respondent herein. He implied it was all an afterthought. Furthermore, his contention was that after all a witness from the Lands office who are the custodians of land records had already testified as a witness and thus it was pointless to summon yet another officer from the Land offices. To him, the Learned Counsel for the 3rd Respondent in his submissions had not committed to avail Mr. Ochieng.
13. In conclusion, the Learned Counsel opined that the grounds of opposition by the Petitioner were sufficient to cause the Honourable Court to disallow the application. He urged Court to dismiss the application with costs. In the unlike event that Court be inclined to allow it, the 3rd Respondent should be given very stringent timeline of say ten (10) days to avail this witness taking into account that the matter already had a Judgement date of 8th July, 2024. Thus, time was of essence.

C. The Oral Submissions by the Interested Party's

14. While opposing the application, Mr. Wafula informed Court that he never filed any replies to the instant application. He asserted that it was not the first time the Learned Counsel for the 3rd Respondent had attempted to summon Mr. Ochieng without success. He informed Court that there were two title deeds over the same suit land. As far as he was concerned, an officer from the land office had already testified and indicated that the 3rd Respondent must have gotten his title from somewhere else and not the land offices.
15. According to the Learned Counsel, should the Honourable Court be inclined to grant the Counsel for the 3rd Respondent an opportunity, he should expedite to do so before date for the delivery of the Judgment which was already scheduled for 8th July, 2024. Indeed, this suit has been heard and is awaiting final Judgment.

C. The reply by the 3rd Respondent to the Petitioner's and Interested Party's submissions

16. In a quick rejoinder, Mr. Bwire Advocate pointed out that the content of Paragraph 5 of the Supporting affidavit meant sworn 5th March, 2024 as it was "inadvertently" used. The correct position was under Paragraph 6. He indicated that what he stated as an officer of court was the correct position. He went ahead to state that, he bore an electronic diary and not the hard copy version. He had requested for summons to issue against the Director of Land administration, Ministry of Lands as one of the prayers of the application. It was prayer number 3



V. Analysis and Determination

17. I have keenly considered the issues raised from the application, the grounds of opposition and the oral submissions thereto by the Learned Counsels, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
18. In order to reach an informed, fair and reasonable decision the Honourable Court has crafted the following three (3) issues for determination are as follows:
 - a. Whether the Notice of Motion application dated 2nd April, 2024 has any merited?
 - b. Whether the parties are entitled to the reliefs sought.
 - c. Who will bear the costs of the application?

Issue No. a). Whether the Notice of Motion application dated 2nd April, 2024 has any merited?

19. The Honourable Court decipheres that the main substratum of this matter rather straight forward. It is on the reviewing and set a side of Court orders based on the interest to sustain the fundamental rights for fair hearing. Thus, under this sub – title, the Court will be assessing whether the application before it has merit or not. In so doing, the legal principles of fair hearing, review and setting aside of Court orders are pari material.
20. To begin with on the law. Specifically, fair hearing is enshrined under the provisions of Articles 25 (c), 47 and Article 50 (1) and (2) of *the Constitution* of Kenya. Article 25 (c) provides:-

“Despite any other provision in this Constitution the following rights and fundamental freedoms shall not be limited:

- (c) the right to a fair trial.

Article 47 (1) holds:

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”

Article 50 (1) states:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

21. While setting aside, varying and reviewing of Court orders are governed by several provisions of the law. These are found mainly under the provisions of Section 80 of the *Civil Procedure Act*, Cap. 21 which is on the power to review court orders while Order 45 sets out the rules on doing it. The provision of Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -

“Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

22. The provision of Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“ 1.

- (1) Any person considering himself aggrieved—
 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

The other provisions are under Orders 10 Rule 11; Order 12 Rule 7 for setting aside Judgements entered in default and 40 Rule 7 of the Civil Procedure Rules, 2010 which states:-

“ Any order for an injunction may be discharged or varied, or set aside by court on application made thereto by any party dissatisfied with such order”

On this front, I wish to cite a few cases in support of these legal principles. These are the case of:- “Republic – Versus - Public Procurement Administrative Review Board & 2 others [2018] eKLR” it was held: -

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

Further, in the case of:- “Sarder Mohamed – Versus - Charan Singh Nand Sing and Another (1959) EA 793” where the High Court held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.



23. From the stated provisions, it is quite clear that they are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably. To qualify for being granted the orders for review, varying and/or setting aside a Court order under the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required.
- a. There should be a person who considers himself aggrieved by a Decree or order;
 - b. The Decree or Order from which an appeal is allowed but from which no appeal has been preferred;
 - c. A decree or order from which no appeal is allowed by this Act;
 - d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or
 - e. On account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order.
 - f. The review is by the Court which passed the decree or made the order without unreasonable delay.
24. Now applying these legal principles to the instant case. The 3rd Respondent/Cross Petitioner Applicant moved Court urging it to refer to the above provisions of law read together with Rules 3,19 and 20 (4) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. Rule 3 states as follows:

“These rules shall be interpreted in accordance with Article 259(1) of *the Constitution* and shall be applied with a view to advancing and realising the—

- (a) rights and fundamental freedoms enshrined in the Bill of Rights; and
- (b) values and principles in *the Constitution*”.

The mentioned article 259 (1) states as follows:

“This Constitution shall be interpreted in a manner that—

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance”

The said rule 19 states as follows:

“A formal application under these rules shall be by Notice of Motion set out in Form D in the schedule and may be supported by an affidavit.”



The said rule 20 (4) states as follows:

“The Court may on its own motion, examine any witness or call and examine or recall any witness if the Court is of the opinion that the evidence is likely to assist the court to arrive at a decision.”

25. Fundamentally, the Applicant seeks to have the Honourable Court review and set aside its directions of 5th March, 2024 declining adjournment for testimony and clarifications of the Director of Land Administration of the Ministry of Lands, and to substitute with an order for a hearing date. In its place, the Court to summon for the Director of Land Administration, Ministry of Lands to personally appear before Court and to give evidence and produce documents in relation to the suit property registered as L.R No. MN/I/6589 registered as CR 59150 and L.R No. MN/I/6589 registered as CR 62008 respectively.
26. In a nutshell, the Court finds itself in this situation arising from issues of miscommunication, human error and/or missing out some steps by the parties. It is imperative to note that the statements by the Learned Counsel for the Applicant in his said affidavit dated 2nd April 2024 where he stated that he inadvertently diarized a hearing date for 6th March 2024 instead of 5th March 2024 is supported by an excerpt from his (electronic) diary or any other documentary evidence. This court has only been provided with a summons annexed as ‘MWB - 1’ which is for a date of 31st March 2022. The court finds that this annexure has no probative value and hence the instant application is only left with statements from Mr. Bwire’s affidavit to stand on. The provision of Section 109 of The *Evidence Act*, Cap 80 states that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

27. In all fairness, interest of natural Justice, Conscience and Equity, these are errors or misadventure that the law and so to speak the Court should be able to cure from various available provisions of including Article 159 (1) and (2) of *the Constitution* of Kenya, 2010 and the Overriding Objectives. Particularly so, this being a land matter with its sensitivities. In this regard, the application must succeed.

Issue No. b). Whether the parties herein are entitled to the reliefs sought

28. Under this sub heading, the Honourable Court feels it would have ended here but it would be disservice without divulging on the issue of fair trial. As already stated, this concept is a constitutional right under the provision of Article 50 of *the Constitution* of Kenya which lists all the sub rights under this main right. An example of the sub rights is article 50 (2) (c) which states:

“to have adequate time and facilities to prepare a defence;”

and article 50 (2) (k) which states as follows:

“to adduce and challenge evidence”.

29. I wish to refer to the case of:- “Manchester Outfitters Limited - Versus - Pravin Galot 4 others [2021] eKLR the Court expressed itself as follows:-

“From the foregoing provisions, it is clear that a court suo moto, can summon any person it deems is a necessary witness either for purposes of giving a testimony or for producing a



document(s). An application in this regard can also be made by a necessary party. What this implies is that notwithstanding our finding that no basis has been laid for the summoning of Ms. Latita Galot, the court on its own motion, may summon any person it deems fit as a necessary witness to aid it in arriving at the determination. A witness summoned by the court may also be intended to fill any void identified in the course of the proceedings and which void, if not filled, may undermine a just, objective and concise determination.”

30. The Honourable Court strongly holds that the Applicant is entitled to fair trial by allowing the prayers sought from the application. Although rule 20 (4) gives this court the right to summon the Director of Lands Administration, Ministry of Lands I have to consider the purpose or the probative value of the testimony of the same. From the record, it is not disputed that the Land Registrar has already tendered evidence in this part heard case as pertaining the suit property. The main contestation in the matter is that there exists tow titles deeds for the same suit property - MN/I/6589. While on one hand the Petitioners claim having bought it as innocent purchasers for value without notice from the 4th Respondent but on the other hand the 3rd Respondent also claims to have obtained the title. These are not easy issues but one that requires the Solomonic wisdom as captures in the Holy Scriptures of 1 Kings 3 Verses 13 to 18 in relation to his decision regarding the case of the claim of one child by two harlots. In as much as the evidence by the Land Registrar was extremely valuable in this regard, but also that of the Director of Land Administration where the Letters of Allotment and Certificate of Leases on public land to private land originate is inevitably critical and significant to this Court. Certainly, it would be a travesty of Justice to lock the evidence away and particularly where an effort has been emphatically made by a party in this suit who is likely to be affected adversely by the final decision of this Court.
31. All said and done, an underlying issue has been raised by the Petitioner with regard to the witness not being part of the ones in the list of witnesses, the timings and issuance of witness summons. These are issues which may not be easily wished away. In saying so, I wish to cite the case of:- “Kibuna – Versus - County Government of Nairobi & 4 others (Environment & Land Case 529 of 2018) [2024] KEELC 894 (KLR) (22 February 2024) (Ruling) the court declined to issue fresh summons as it was too late in the day as is the case before the court. Additionally, in the case of:- “George Kimani Njuki – Versus - National Lands Commission & 2 others [2022] eKLR the court declined in issuing summons because the witnesses were not mentioned in the list of witnesses and had not filed witness statements. Ideally, numerous authorities seem against the instant application on this aspect. However, I wish to apply the words of Justice James Edwin Horton in the Scottsboro Boys where he aptly put it “fiat Justitia ruat caelum” let justice be done though the heavens fall. I reiterate on the umpteenth times here that it is the court’s utmost belief that justice will not be done without the participation of the Director of land Administration or any officer working under that department. The only means to get them to appear in Court to tender this important evidence is none other than through issuance of summons. I discern the matter should be expedited taking that its already part heard and concluded only awaiting delivery of Judgement on 8th July, 2024.

Issue No. c). Who will bear the Costs of the application.

32. It is now well established that costs is an issue of the discretion of the Court. Costs mean an award granted to a party at the conclusion of the legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the event. By the evet it means the result or outcome of the legal action.



33. In the instant case the application by the Applicant succeeds. Principally, the Applicant would be entitled to costs but from the prevailing circumstances of the matter the Court is of the view that it is better and reasonable that each party bear their own costs.

VI. Conclusion and findings

34. In conclusion, having caused a detailed analysis to the framed issues, the Honourable Court makes the following specific orders:-

- a. That the said Notice of Motion application dated 2nd April, 2024 be and is hereby allowed.
- b. That in conformity with the provision of Section 3A of the *Civil Procedure Act*, Cap. 21 the 3rd Respondent's case strictly for the hearing of the Director of Land Administration, Mr. Gordon Ochieng or any officer working under him and the Court to appear in Court on 17th June, 2024 to tender evidence pertaining to the issues in dispute on the subject matter without fail.
- c. That witness summons to issue against the Director Administration
- d. That immediately thereafter parties to file and serve their written submissions as follows:
 - i. The Petitioner in the main Petition granted 21 days to comply.
 - ii. The 1st, 2nd and 3rd Respondents and Interested Party granted 14 days to do so.
 - iii. In the given circumstances the Judgement date for 8th July, 2024 to be deferred to 31st July, 2024.
- e. That further, that any document to be relied on that was not listed in the supporting affidavit dated 24th March 2017 and supplementary list of documents dated 7th December, 2017 will not be admissible.
- f. That each party to bear their own costs.

It is so ordered accordingly.

RULING DELIVERED THROUGH MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA ON THIS 3RD DAY OF JUNE 2024

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

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. Mr. Mogaka Advocate for the Petitioner.
- c. Mr. Bwire Advocate for the 3rd Respondent/Cross Petitioner/Applicant.
- d. Mr. Wafula Advocate for the Interested Party.
- e. No appearance for 1st & 2nd Respondents.

