



**Zahir & 2 others v Mwachiunda & 2 others (t/a. Swiftway Auctioneers); Alavi (Suing on His Own Behalf and on Behalf of the Estate of Mohammed Farouk Alavi) (Interested Party) (Environment & Land Case E059 of 2021) [2024] KEELC 5468 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5468 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E059 OF 2021**

**LL NAIKUNI, J  
JULY 10, 2024**

**BETWEEN**

**TARIQ MOHAMED ZAHIR ..... 1<sup>ST</sup> PLAINTIFF  
HALEENA ZAHIR ALAVI ..... 2<sup>ND</sup> PLAINTIFF  
HANNAH ZAHIR ALAVI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SALIM YUSUF MWACHIUNDA ..... 1<sup>ST</sup> DEFENDANT  
ZAINABU HAHULA KOFA ..... 2<sup>ND</sup> DEFENDANT  
MICHAEL MULWA ..... 3<sup>RD</sup> DEFENDANT  
T/A. SWIFTWAY AUCTIONEERS**

**AND**

**DR. MOHAMED ZAHIR ALAVI (SUING ON HIS OWN BEHALF  
AND ON BEHALF OF THE ESTATE OF MOHAMMED FAROUK  
ALAVI) ..... INTERESTED PARTY**

**RULING**

**I. Introduction: -**

1. This is a short Ruling made by this Honourable Court pursuant to an oral application made before it on 25<sup>th</sup> June, 2024 by Mr. Asige Advocate, the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants herein.
2. The nature of the aforesaid application was that the proceedings in this matter on diverse dates of 4<sup>th</sup> May, 2023, 2<sup>nd</sup> May 2024 and 10<sup>th</sup> June, 2024 whereupon the Plaintiff and the 1<sup>st</sup> Defendant testified



and the Honorable Court reserved 29<sup>th</sup> July 2024 to render its Judgment accordingly were prejudicial to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants herein and thus tantamount to travesty of Justice. Resultantly, there was great need to have them set aside and cause the matter to proceed on afresh. At the same time, there was a fervent argument to the effect that this matter was directly related to another ELC. No. 81 of 2022 and hence the need to have the consolidation of these two (2) cases.

## II. The 1<sup>st</sup> and 3<sup>rd</sup> Defendant's Case:-

3. In his oral submission, the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants averred that the matter proceeded Ex - Parte on the said dates without them getting any notice whatsoever. It was his contention that there had been no Pre - Trial Conference conducted prior to the matter being set down for hearing as required under the provisions of Order 11 of the Civil Procedure Rules 2010. The Learned Counsel held that there was a gross error as the court was never provided with proper information and as a result of this non-disclosure of material facts the matter proceeded on for hearing in absence of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. To the Counsel, should this be allowed to prevail, definitely this would led to a miscarriage of justice and a waste of judicial resources as it would tantamount to parties pursuing to set aside the Judgment eventually thereof.

## III. The Responses by the Plaintiff:-

4. The oral application by the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants was vehemently opposed by the Learned Counsel for the Plaintiff. M/s. Gatimu Advocate argued that the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants was misleading the court on the issue of non-disclosure of the material facts and/or information to the Honorable Court by the Plaintiff. In saying so the Learned Counsel held that on 4<sup>th</sup> May, 2023 the Learned Counsels for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants Mr. Asige & Mr. Kebaso were both present in Court. During the said session, the said Counsels sought for the leave of the court to fully comply with the Pre - Trial Conference and which they were granted. Indeed, according to the Learned Counsel, on the material date the Honorable court proceeded to fix the matter for full trial on 20<sup>th</sup> July, 2023. Thus, arising from that development, she averred that there would be no need for the Plaintiff to once more serve the Defendants with any hearing notices as it was deemed they were already notified of the date.
5. For these reasons, she urged the Honorable Court to disregard the application to set aside the proceedings and instead to proceed to render its Judgment as scheduled on 29<sup>th</sup> July, 2024.  
Further, she was opposed to having this matter consolidated with the Civil Case ELC No. 81 of 2022. Essentially, she argued that there was no formal application placed before the Honourable court to enable it be in a better position to make such a decision.

## IV. Analysis & Determinations

6. I have keenly heard the Learned Counsels assessed and considered the proceedings in the two (2) matters – ELC. No. E059 of 2022 and E081 of 2022 the oral submissions by the Learned Counsels for both the Plaintiff, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, here, the provisions of *the Constitution* of Kenya 2010, and the statutes.
7. For the Honorable Court to reach an informed, fair, reasonable and equitable decision, it has considered the subject matter into the following (3) salient issues for determination. These are: -
  - a. Whether the oral application by the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to set aside the proceedings of this court held on 4<sup>th</sup> May, 2023, 4<sup>th</sup> March, 2024, 2<sup>nd</sup> May, 2024 and 10<sup>th</sup> June, 2024 respectively to be set aside has any merit.



- b. Whether the two Civil Suits – E059 of 2022 and E081 of 2022 being of the same subject matter and parties should be consolidated.
- c. Who will bear the costs of these applications?

**Issue No. (a) Whether the oral application by the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to set aside the proceedings of this court held on 4<sup>th</sup> May, 2023, 2<sup>nd</sup> May, 2024 and 10<sup>th</sup> June, 2024 respectively to be set aside has any merit.**

8. The main substratum of this matter is two - fold. This is namely whether to have the proceedings of this court be set aside or not; and secondly, court should consider the consolidation of the two (2) suits.

Under this sub-heading the Honorable Court will deal on the issue of the setting aside of the proceedings, be it an interlocutory application or Judgment entered in default. It is now well established that setting aside proceedings are governed by several provisions of the law and a myriad of authorities. These include the provisions of Order 10 Rule 7 and 10 Order 12 Rule 7 and Order 40 Rule 7 of the Civil Procedure Rules. The provision of Order 10, of the Civil Procedure Rules, 2010, addresses the issue of consequences of non-appearance, default of defence and failure to serve by a party. While Rule 11 empowers the court to set a side or vary a Judgment that has been entered under Order 10 of the Rule.

Order 12 Rule 7 of the Rule which is discretionary depending on the circumstances of the case states as follows:-

“Where under this Order judgment has been entered or the suit has been dismissed, the Court, on application, may set aside or vary the judgment or order upon such terms as may be just”.

9. The discretion of the court to set aside ex - parte proceedings is unfettered by virtue of Order 12 Rule 7 of the Civil Procedure Rules, 2010. However, it must be exercised judiciously and not capriciously for the interests of justice. In the case of “Shah – Versus - Mbogo & Another (1967) EA 116”, the East African Court of Appeal stated as follows;

“This discretion (to set aside ex - parte proceedings) is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought out whether by evasion or otherwise, to obstruct or delay the course of justice.”

10. Therefore, it follows that the discretion to set aside ex - parte proceedings and orders ought to be exercised for purposes of furthering justice and not to obstruct or delay justice. Hence, it behooves an applicant for such orders to demonstrate the justification for such application by showing that there is sufficient cause why they failed to attend court and that their application is made in good faith and not meant to delay the course of justice. This was the position that was adopted in the case of:- “Rayat Trading Company Limited – Versus - Bank of Baroda & Tetezi House Limited [2018] eKLR” where the court listed the matters to be considered in the exercise of this discretion as follows: -

- i. the Defendant has a real prospect of successfully defending the claim; or
- ii. it appears to the court that there is some other good reason why;
- iii. the Judgment should be set aside or varied; or
- iv. the Defendant should be allowed to defend the claim.



11. Similarly, in the case of, “Thorn PLC – Versus - Macdonald [1999] CPLR 660”, the Court of Appeal highlighted the following guiding principles:
- i. while the length of any delay by the Defendant must be taken into account, any pre-action delay is irrelevant;
  - ii. any failure by the Defendant to provide a good explanation for the delay is a factor to be taken into account, but is not always a reason to refuse to set aside;
  - iii. the primary considerations are whether there is a defence with a real prospect of success, and that justice should be done; and
  - iv. prejudice (or the absence of it) to the claimant also has to be taken into account.

12. In the Indian case of “Parimal – Versus - Veena Bharti (2011)”, the Supreme Court of India had the following to say;

“Sufficient cause means that the parties had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been “not acting diligently.....”

Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight jacked formula of universal application. Thus, the Defendant must demonstrate that he was prevented from attending court by a sufficient cause.

While the provision of Order 40 Rule 7 provides:

“Any order for an injunction may be discharged or varied or set aside by the Court on an application made therein by any party dissatisfied with such order”

13. In the case of “Kenya Wildlife Service – Versus - James Mutembei (2019) eKLR”, Gikonyo J held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.

14. Further, in the persuasive authority in the case of “Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000” Ringera J, (as he then was) stated that: -

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity



and optimum utilization of judicial time and whether the application has been brought expeditiously”.

15. Additionally, in the case of:- “Kenya Wildlife Case (Supra)”, Gikonyo J quoted Halsbury’s Law of England, 4<sup>th</sup> Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.

16. I am persuaded by the above authorities which lay down the clear principles that stay of proceedings is a grave matter to be entertained only in the most deserving cases as it impacts the right to expeditious trial. It is a discretionary power exercisable by the court upon consideration of the facts and circumstances of each case. As stated by the Court of Appeal in the case of “David Morton Silverstein – Versus - Atsango Chesoni (2002) eKLR”: -

“The Court is not laying down any principle that no order for stay of proceedings will ever be made; that would be contrary to the provisions of rule 5 (2) (b) of the Court’s own rules. But as the court pointed out in the case we have already cited, each case must depend on its own facts and the facts of this particular case before us, as were the facts in the earlier case, do not show that the appeal will be rendered nugatory if we do not grant a stay”.

17. In the instant case, the suit was commenced by way of Plaint dated 31<sup>st</sup> May, 2022 and filed on the same date by the Plaintiff. From the pleadings the Plaintiffs are the beneficiaries of the estate of the Late Mohamed Farouk Alavi (hereinafter referred as “The Deceased”) who died on 5<sup>th</sup> August, 2018. Through a settlement Agreement executed between the deceased and the 4<sup>th</sup> Defendant it was agreed that the 4<sup>th</sup> Defendant would transfer the property known as Mombasa/Block XI/271 Tudor to the Plaintiff when they turned the age of majority. Unfortunately, this never happened and hence the gist of this case whereby they sought for a raft of orders.

18. From the record, the court wishes to keenly trace the proceedings of the court on the alleged dates. On 4<sup>th</sup> May, 2023, Mr. Mwanzia Advocate for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and M/s. Shamsa Advocate holding brief for Mr. Kebaso Advocate for the 2<sup>nd</sup> Defendants were all present in court. The intended purpose for the said mention was for conducting a Pre - Trial Conference pursuant to the provision of Order 11 of the Civil Procedure Rules 2010. This process proceeded satisfactorily. It is instructive to note that there had been a Ruling delivered on 6<sup>th</sup> February, 2023 which directed that the matter proceeds on 20<sup>th</sup> July, 2023. Parties were granted an extension of 30 days to fully comply taking that they had not done so. The Hearing date of 20<sup>th</sup> July, 2023 was affirmed.



19. Unfortunately, on 20<sup>th</sup> July, 2023 Court was not sitting having been engaged in some official tasks. On the material date, Mr. Mwanzia for the Plaintiff and Mr. Asige Advocate for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants who were present in Court, took a further hearing date being 4<sup>th</sup> March, 2024 by consensus from the Court registry. The Court expects that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants should have taken trouble to find out what transpired on this date. Accordingly, on 4<sup>th</sup> March, 2024 Mr. Mwanzia Advocate for the Plaintiff and M/s. Shamsa for the 2<sup>nd</sup> Defendant appeared. There was no representation for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants for no apparent good reason nor justifiable reason. The matter proceeded as scheduled whereby subsequently the Plaintiff closed its case. Court fixed the 2<sup>nd</sup> May, 2024 for the Defendant's case. On 2<sup>nd</sup> May, 2024, Mr. Mwanzia Advocate for the Plaintiff and M/s. Shamsa Advocate appeared whereby the matter proceeded on for the 2<sup>nd</sup> Defendant to a point where they closed its case. Once more the 1<sup>st</sup> and 3<sup>rd</sup> Defendants were not represented for no apparent good nor justifiable reason. Pursuant to that the Court provided directions on filing of written submissions and reserved 29<sup>th</sup> July, 2024 for the delivery of the Judgment and a mention on 10<sup>th</sup> June, 2024 to confirm the compliance of these directions.
20. Resultantly, from the foregoing proceedings there is no doubt that all the parties were fully aware of the hearing date of 20<sup>th</sup> July, 2023 and the further date of 4<sup>th</sup> March, 2024. However, for no clear reasons nor justifiable cause the 1<sup>st</sup> and 3<sup>rd</sup> Defendants failed to attend the proceedings on 4<sup>th</sup> March, 2024 and 2<sup>nd</sup> May, 2024. I reiterate and find it hard to appreciate why the Counsel would remain in the darkness all along on a matter he/she is involved. The Court case is the responsibility of the Counsel and the party. At least the Learned Counsel would have contacted the Counter parts or perused the court file to find out of the actual development of the matter. I will not hesitate to discern that the whole issue revolves on the mistake of the Learned Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and no one else. Thus to argue that for the matter to have proceeded without the presence for lack of notice and that it would tantamount to travesty of Justice is unfounded, misplaced and illogical to say the least but being mere apportionment of blame game unnecessarily.
21. However, this being a land matter and its sensitively and in the interest of natural justice, equity and conscience the Honorable Court wishes to invoke its unfettered discretion vested on it under the inherent provisions of Sections 3 and 13 of the *Environment and Land Court Act* No. 19 of 2011, Section 101 of the *Land Registration Act*, No. 3 of 2012, Section 150 of the *Land Act* No. 6 of 2012 and Article 159 (1) and (2) of *the Constitution* of Kenya 2010 and allow the 1<sup>st</sup> and 3<sup>rd</sup> Defendants oral application but upon fulfilling certain pre condition to be stated herein below. Owing to the nature of the case, which appears to be a straightforward claim of monies owed, I direct that the matter be heard expeditiously so that justice can be seen to have been done. Considering the balancing interest of all parties, the application will be allowed but on condition that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants pays the Plaintiff and the 2<sup>nd</sup> Defendant some thrown away costs in the Interest of Justice, Equity and Conscience.

**Issue No. (b) Whether the two Civil Suits – E059 of 2022 and E081 of 2022 being of the same subject matter and parties should be consolidated.**

22. Under this Sub-heading the Honorable Court shall consider the issue of consolidation of the two (2) matters – E059 of 2022 and E081 of 2022. Accordingly, the law governing the consolidation of files is founded under Section 80 (h) of the *Civil Procedure Act*, Cap. 21. Further, the Civil Procedure Rules mandates courts are to consider consolidations of suit. In so doing, courts are to be guided by the following three (3) legal parameters. These are:-
- a) Do the same question of law or fact arise in both cases?



- b) Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transactions?.
- c) Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?.
23. I will be considering these principles indepth hereinbelow. In the meantime, I have taken judicial notice of the myriad of Court cases and the underlying guidelines enshrined thereof on the issue of Consolidation of cases. These include in the case of “Law Society of Kenya – Versus – The Centre for Human Rights & Democracy, Supreme Court of Kenya Petition No. 14 of 2013 the SOK held that:-
- “The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it”
- While Maraga J, as he then was, held in “Municipal Council of Mombasa – Versus - Municipal Council of Mombasa [2004] eKLR that:-
- ‘Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.
- The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:-
1. some common question of law or fact arises in both or all of them; or
  2. the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
  3. for some other reason it is desirable to make an order for consolidating them.
24. On this legal ratio, I wish to cite the case of: “Stumberg & Anor – Versus - Potgeiter 1970 EA 323”, where the court stated thus, ‘Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered. ...the object of consolidation is to avoid multiplicity of litigation between the same parties whenever the matter in issue is substantially and directly the same.’
25. From the filed pleadings this suit was instituted by the Plaintiff through a filed Plaint dated 25<sup>th</sup> July, 2022. The Plaintiff is the duly appointed Legal Administrator and Legal Representative of the estate of Mohamed Farouk Alavi – (the deceased). The facts of the case are that all material times the deceased had been the registered proprietor and beneficial owner to all that property known as Mombasa/Block XI/271 a freehold title for the said property was issued by the Land Registrar at Mombasa the 3<sup>rd</sup> Defendant on 31<sup>st</sup> October, 1972. The deceased died on 5<sup>th</sup> August, 2018 leaving the suit property to form part of his estate. At the time of the deceased’s death, the Plaintiff who was already running his medical practice on the suit property was in physical possession of it and continued to run the said practice on it. On or about the 6<sup>th</sup> May, 2022, the Plaintiff along with the Clinic’s patients were forcefully and illegally evicted from the property by the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant claimed ownership arising from an alleged sale by auction pursuant to a court order allegedly issued in the Civil Case of “CMCC (Mombasa ) No. 710 of 2017, Salim Yusuf Mwachiunde –Versus - Madiha Alwy Khalifa. Upon inquiry at the Civil Court registry Mombasa where the suit was filed. In the long run



he sought for a declaration order to effect that the deceased is the lawful registered owner of the suit property. the application for consolidation was opposed by Mr. Okongo Advocate for the Plaintiff in E089 of 2022.

26. I have had a chance of reading through a very comprehensive Ruling by my brother Justice S.M. Kibunja delivered on 11<sup>th</sup> October, 2023. At no point did the Judge make a direction to have the suit consolidated. Indeed, what the Judge stated was that: -

“So as to protect the integrity of the Court and ensure efficient use of judicial resources this suit is hereby transferred before ELC. No. 3 (Naikuni (Judge) before which ELC. No. E059 of 2022 Tariq Mohamed Zahri & 2 Others –Versus Salum Yusuf Mwachiunde and 4 Others is pending, for further directions”.

Nonetheless, the above notwithstanding its my own assessment that the subject matter being land known as Mombasa/Block XI/271 is identical, and so are the parties. On a more critical state of affairs it makes no valuable sense to have these two (2) suits proceed on separately and/or distinctly. On the contrary the most plausible thing to do is to cause the consolidation of the matters. For these reason, I direct that the two matter be consolidated henceforth.

#### **Issue No. (c): Who will bear the costs of these applications?**

27. The issue of costs is at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of legal action or proceedings. The Proviso of Section 27 (1) of the *Civil Procedure Act*, cap. 21 holds that costs follow the event. By the event it means the result or outcome of the said legal action whatsoever.
28. In the instant case, although the oral application made by the 1<sup>st</sup> and 3<sup>rd</sup> Defendant herein has not been successful, taking that this matter is still proceeding on and its peculiarity, it is just reasonable and fair that each party to bear their own costs.

#### **V. Conclusion and findings.**

29. In the long run and having caused an indepth analysis to the framed issues herein, on the Preponderance of Probability, I do hereby order as follows:-
- a. That the application to cause the setting aside the proceedings onto E059 of 2022 for the 4<sup>th</sup> May, 2023, 4<sup>th</sup> March, 2024 and 2<sup>nd</sup> May, 2024 be and is hereby partially allowed upon fulfilment of the following Pre - Conditions: -
    - i. The Plaintiff and 1<sup>st</sup> Defendant witnesses who have already testified to be recalled for purposes of Cross Examination and Re - Examination pursuant to the Provisions of Section 146 (4) of the *Evidence Act* Cap 80 and Order 18 Rule 10 of the Civil Procedure Rules
    - ii. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants directed to pay a throw away costs of Kenya Shillings Ten Thousand (Kshs. 10,000/=) to the Plaintiff and Kenya Shillings Ten Thousand (Kshs. 10,000/=) to the 3<sup>rd</sup> Defendant before the next hearing date.
  - b. That the Judgment date for 29<sup>th</sup> July 2024 be vacated until further notice based on the ensuing proceedings to take place herein.



- c. That an order for consolidation of the two (2) suits – ELC No. 059 of 2022 and ELC No. 081 of 2022 being of the same subject matter and same parties be and are hereby be allowed to one suit.
- d. That file on the suit ELC No. 059 of 2022 to be the lead file where all the filings of pleadings will be done and the proceedings be recorded from now henceforth.
- e. That for expediency sake, there be a hearing of the consolidate case on the two (2) days - 27<sup>th</sup> and 28<sup>th</sup> November, 2024 consecutively.
- f. That Each party to bear their own costs.

IT IS SO ORDERED ACCORDINGLY.

**RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 10<sup>TH</sup> DAY OF JULY 2024.**

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

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. Mr. Mwanzia Advocate for the Plaintiff.
- c. Mr. Asige Advocate for the 1<sup>st</sup> & 3<sup>rd</sup> Defendants.
- d. Mr. Kebaso Advocate for the 2<sup>nd</sup> Defendant.

