



**Sampdoria Investments Limited v National Water Harvesting & Storage Authority & 3 others (Civil Suit E023 of 2024) [2024] KEELC 7409 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7409 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
CIVIL SUIT E023 OF 2024  
LL NAIKUNI, J  
NOVEMBER 7, 2024**

**BETWEEN**

**SAMPADORIA INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**NATIONAL WATER HARVESTING & STORAGE AUTHORITY .... 1<sup>ST</sup>  
DEFENDANT**

**MINISTRY OF LANDS & PHYSICAL PLANNING ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. The applications before this Honorable Court for hearing and determination is the Notice of Motion application filed by Sampdoria Investments Limited, the Plaintiff/Applicant herein dated 25<sup>th</sup> March, 2024. The said Plaintiff/Applicant brought it under a certificate of urgency by the Applicant under the dint of the provisions of Sections 1A and 3A of *Civil Procedure Act* Chapter 21 of Laws of Kenya and Order 40 Rules 1 and 2 of the Civil Procedure Rules 2010.
2. Upon service of the Application, the 1<sup>st</sup> Defendant responded to the application through a Replying Affidavit dated 13<sup>th</sup> May, 2024. The Honourable Court shall be dealing with the matter indepth at a later stage.

**II. The Plaintiff/Applicant's case**

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



- a. Spent.
  - b. Spent
  - c. Pending hearing and determination of this application, there be and is hereby issued an order of permanent Injunction to restrain the 5<sup>th</sup> Defendant, its employees, officers, assigns, agents or any other person acting for and authorized by the 5<sup>th</sup> Defendant from conducting investigations and summoning the Plaintiff, its directors, shareholders and officers on account of the Plaintiff's acquisition, title and ownership of the property known as LR No. MN/1/10401 situate at Shanzu in Mombasa County.
  - d. Pending hearing and determination of this suit, there be and is hereby issued an order of temporary injunction to restrain the Defendants, their officers, employees, assigns, agents or any other person acting for them and on their instructions from revoking the Plaintiff's title to the property known as LR No. MN/I/10401 situate at Shanzu in Mombasa County and from in any manner whatsoever interfering with the Plaintiff's ownership and use of the said property.
  - e. Pending hearing and determination of this suit, there be and is hereby issued an order of permanent injunction to restrain the 5<sup>th</sup> Defendant, its employees, officers, assigns, agents or any other person acting for and authorized by the 5<sup>th</sup> Defendant from conducting investigations and summoning the Plaintiff, its directors, shareholders and officers on account of the Plaintiff's acquisition, title and ownership of the property known as LR No. MN/1/10401 situate at Shanzu in Mombasa County.
  - f. Costs of this application be borne by the Defendants jointly and severally
4. The application herein was premised on the grounds, testimonial facts on the face of the application and averments made out under the 37 Paragraphed of Mohamedraza S. Rashid the Director of the Plaintiff Company herein together with thirteen (13) annexures marked as "MR - 1 to 13" annexed thereto. The Applicant averred that:
- a. The Plaintiff was the registered owner of the property known as LR No. MN/1/10401 measuring 2.387 Hectares or thereabout and situate at Shanzu in Mombasa County (Hereinafter referred to as "The Suit Property" or "the Plaintiff's property"). Annexed in the affidavit and marked as "MR - 2" was a true copy of the title deed.
  - b. The Plaintiff held the suit property as a lessee from the Government of the Republic of Kenya for a term of 99 years with effect from 1<sup>st</sup> July 1997. The Plaintiff was allotted and/or allocated the suit property vide a Letter of Allotment Reference No. 61093/1X/24 dated 8<sup>th</sup> July, 1997. Annexed in the affidavit and marked as "MR - 3" was a true copy of the letter of allotment dated 8<sup>th</sup> July, 1997. At the time of allocation and/or allotment of the suit property to the Plaintiff, there were erected thereon some old and dilapidated pre-fabricated houses which were occupied by staff of the 1<sup>st</sup> Defendant's and/or its predecessor in title.
  - c. In consideration of being allotted/allocated the suit property, the Plaintiff paid a total of a sum of Kenya Shillings Two Million One Thirty Seven Thousand Five Hundred (Kshs. 2,137,500.00/=) to the Government of the Republic of Kenya through the defunct office of the Commissioner of Lands which amount was made up as follows:
    - i. Stand premium.....Kshs. 1,000,000.00



- ii. Rent from.....Kshs. 100,000.00
- iii. Conveyancing fees.....Kshs. 1,250.00
- iv. Registration fees.....Kshs. 250.00
- v. Stamp Duty.....Kshs. 44,000.00
- vi. Approval fees.....Kshs. 2,000.00
- vii. Planning fees ..... Kshs. 30,000.00
- viii. Costs of buildings .....Kshs. 960,000.00
- Total.....Kshs. 2,137,500.00

- d. The above figures were itemized in the Letter of Allotment dated 8<sup>th</sup> July 1997 and the Plaintiff duly paid for the same vide cheque number 088687 issued by Kenya Commercial Bank. Annexed in the affidavit and marked as “MR - 4” was a true copy of the said cheque. The houses standing on the suit property at the material time were valued by the Ministry of Lands and Settlement, the 2<sup>nd</sup> Defendant herein at a total of a sum of Kenya Shillings Nine Sixty Thousand (Kshs. 960,000.00/=) and a letter dated 6<sup>th</sup> June 1997 was issued to that effect. Annexed herewith and marked as “MR - 5” a true copy of the letter dated 6<sup>th</sup> June 1997 by Ministry of Lands.
- e. The Plaintiff promptly paid to the Government of the Republic of Kenya the said amount of a sum of Kenya Shillings Nine Sixty Thousand (Kshs. 960,000.00/=) on the agreement and understanding that the government staff who were then occupying the houses would vacate the same forthwith after which the Plaintiff would give vacant possession of the suit property. The Government of the Republic of Kenya and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein have deliberately and without any just or lawful basis declined to give vacant possession of the suit property to the Plaintiff to date despite demand and follow up by the Plaintiff which action is in bad faith, was illegal and in breach of the agreement between the parties.
- f. The action of the Defendants of accepting payment from the Plaintiff but declining to honour their promise to give vacant possession of the suit property amounts to unjust enrichment. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as well as the Government of the Republic of Kenya subjected the Plaintiff to immense loss by accepting money from the Plaintiff as consideration for the grant of the suit property to the Plaintiff but refusing to give vacant possession of the same to the Plaintiff. The amount of a sum of Kenya Shillings Two Million One Thirty Seven Thousand Five Hundred (Kshs. 2,137,500.00/=) which the Plaintiff paid to the Government of the Republic of Kenya as consideration for the allocation of the suit property was a colossal amount of money at the time it was paid in the year 1997 and the same would have generated much interest and/or profit had the Plaintiff invested it elsewhere
- g. By accepting payment of the money, the Defendants subjected the Plaintiff to suffer loss of business/investment opportunity which the Plaintiff holds the Defendants liable for. The said amount would have attracted interest over the years at a minimum simple interest rate of 12% per annum making a total of a sum of Kenya Shillings Six Million Nine Twenty Five Thousand Five Hundred (Kshs. 6,925,500.00/=) which the Plaintiff claims from the Defendants jointly and severally.



- h. The houses on the suit property are currently old, in dilapidated state and in bad state of disrepair. The Defendants are not using the houses for any meaningful purpose. The failure by the Defendants and the Government of Kenya to give the Plaintiff vacant possession of the suit property has inhibited the Plaintiff's access and use of the suit property thereby infringing on the Plaintiff's constitutional right to own and use the property as guaranteed by Article 40 of *the Constitution* of Kenya.
- i. Having been duly allocated/allotted the suit property for valuable consideration, the Plaintiff is entitled to take possession, occupy, use, develop and/or in other way deal with the suit property in any manner the Plaintiff pleases. The Defendants had deliberately violated the Plaintiff's right to use and occupy the suit property. Currently the suit property was valued at a sum of Kenya Shillings Two Sixty Million (Kshs. 260,000,000.00/=). Annexed in the affidavit and marked as "MR - 6" was a true copy of the Valuation Report by Tysons Limited dated 14<sup>th</sup> February 2024.
- j. Despite knowing well or being in a position to know well that the suit property was allocated to the Plaintiff by the Government of Kenya for valuable consideration, the 5<sup>th</sup> Defendant commenced investigations into an alleged illegal demarcation/alienation of the suit property under the guise that the same is public land reserved for the 1<sup>st</sup> Defendant. The 5<sup>th</sup> Defendant invited the Plaintiff to appear before it to record a statement and explain how it acquired the suit property. Annexed in the affidavit and jointly marked as "MR - 7" were true copies of the letters exchanged between the Plaintiff and the 5<sup>th</sup> Defendant regarding the investigations.
- k. After a series of back and forth, the Plaintiff represented by himself-appeared before the 5<sup>th</sup> Defendant's officers at its Coast Region offices situated at ACK Cathedral along Nkrumah Road Mombasa on 25<sup>th</sup> September, 2023 and a statement was duly recorded. Annexed in the affidavit and marked as "MR - 8" was a true copy of the statement.
- l. Immediately he finished the interviewed and statement recording session at the 5<sup>th</sup> Defendant's Mombasa office; he was surprised when the 5<sup>th</sup> Defendant's officer who was in charge of the process pulled a pre-drafted and pre-signed letter written and dated much earlier on 22<sup>nd</sup> September 2023 from a drawer and slapped him with the same. In the said letter, it was alleged that the suit property was illegally and corruptly alienated and acquired by the Plaintiff. Annexed in the affidavit and marked as "MR - 9" was a true copy of the 5<sup>th</sup> Defendant's letter dated 22<sup>nd</sup> September 2023.
- m. The fact that the 5<sup>th</sup> Defendant had an already signed letter in its possession was a clear indication that the 5<sup>th</sup> Defendant had already formed its opinion about the illegality of the Plaintiff's title even before hearing the Plaintiff's side of the story. Accordingly, the purported investigations conducted by the 5<sup>th</sup> Defendant were a sham and a manifestation of sheer bad faith because the 5<sup>th</sup> Defendant had a premeditated outcome of the investigations. Accordingly, the Plaintiff instructed its advocates on record to respond and deny the allegations and demand withdrawal of the 5<sup>th</sup> Defendant's allegations. Unfortunately, the 5<sup>th</sup> Defendant did not comply hence this suit. Annexed in the affidavit and marked as "MR - 10" was a true copy of the letter dated 3<sup>rd</sup> October 2023 by Oluga & Company Advocates.
- n. The purported investigations commenced by the 5<sup>th</sup> Defendant were not genuine but were initiated in bad faith and conducted unprocedurally because of the following reasons:-



- i. The 5<sup>th</sup> Defendant deliberately ignored the fact that although the houses on the suit property were originally being used by the staff of Water Department, the Plaintiff paid a sum of Kenya Shillings Nine Sixty Thousand (Kshs. 960,000.00/=) to the Government in exchange for vacant possession thereof and the interest that the Department of Water had in the same was extinguished.
- ii. The 5<sup>th</sup> Defendant deliberately ignored the fact that the suit property was allocated to the Plaintiff who paid the assessed consideration for the same being a total of a sum of Kenya Shillings Two Million One Thirty Seven Thousand Five Hundred (Kshs. 2,137,500.00/=) to the Government of the Republic of Kenya.
- iii. The 5<sup>th</sup> Defendant deliberately ignored the fact that 1<sup>st</sup> Defendant and the Government of Kenya had surrendered and ceded their interest and rights in the suit property after the Plaintiff paid for the same and the suit property was legally and procedurally allocated to the Plaintiff while the Defendants or the Government no longer had any rights or claim over the suit property.
- iv. The 5<sup>th</sup> Defendant deliberately ignored the fact that Part Development Plan (PDP) Ref. No. 12.4.CT .27.97 was prepared in respect of the suit property on 7<sup>th</sup> May 1997 by one A.K Masinde, the then Coast Provincial Physical Planning Officer which PDP who forwarded the same for approval vide a letter dated 7<sup>th</sup> May 1997. The PDP was duly approved by the Director of Surveys on 21<sup>st</sup> May 1997 and the Commissioner of Lands on 28<sup>th</sup> May 1997. Annexed herewith and marked as “MR - 11” was a copy of the letter by the A.K. Masinde dated 7<sup>th</sup> May, 1997 forwarding the said PDP for approval and marked “MR - 12” was a true copy of approved PDP.
- v. The Grant issued to the Plaintiff over the suit property was duly registered and a letter dated 12<sup>th</sup> November 1997 was duly sent from Nairobi to the Land Registrar, Mombasa directing the Land Registrar Mombasa to register the Grant. Annexed in the affidavit and marked as “MR - 13” was a true copy of the letter dated 12<sup>th</sup> November 1997.
- vi. Accordingly, the investigations commenced by the 5<sup>th</sup> Defendant on behalf of the Defendants based on the allegation that the suit property was illegally demarcated/ alienated had no legal and factual basis as the land in question was voluntarily surrendered by the Government of Kenya and legally allocated to the Plaintiff.
- vii. The 5<sup>th</sup> Defendant herein exhibited bad faith in its purported investigations because it had already formed its mind and had a premeditated outcome of the investigations against the Plaintiff.
- viii. The investigations conducted by the 5<sup>th</sup> Defendant were a sham and were not genuine because the 5<sup>th</sup> Defendant had already formed an opinion that the suit property was corruptly and illegally alienated even before interviewing and hearing from the Plaintiff, a fact that is demonstrated by the fact that the 5<sup>th</sup> Defendant served the Plaintiff with a letter that was pulled from the drawer and which had been prepared in advance before the Plaintiff appeared before the 5<sup>th</sup> Defendant for the interview.
- o. The 5<sup>th</sup> Defendant's allegation that the suit property was illegally and corruptly alienated and acquired by the Plaintiff has no justifiable and/or legal basis because the suit property was



legally allocated to the Plaintiff who paid the due consideration for the same as assessed by the 2<sup>nd</sup> Defendant.

- p. The 5<sup>th</sup> Defendant's entry into the scene under the guise of investigations is a clever ploy calculated to abet and perpetrate the refusal by the 1<sup>st</sup> Defendant to vacate the suit property and to cow the Plaintiff to cede its rights over the suit property.
- q. The 5<sup>th</sup> Defendant was abusing its statutory powers to achieve ulterior purposes which is to help the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and the Government of the Republic of Kenya to forcefully take back the suit property from the Plaintiff even after receiving handsome payment from the Plaintiff for the suit property.
- r. Having received and accepted hefty payment of consideration from the Plaintiff, the Defendants are estopped from alleging that the Plaintiff's title was illegal.
- s. In any event, if the Plaintiff's title was illegal as alleged nothing would have been easier than to terminate the lease, a step which the Government has never been taken to date and hence the lease remains valid to date.
- t. In light of the foregoing, the Plaintiff's properties deserve to be protected by this Honourable Court from the Defendants' illegal actions by granting the orders sought herein.
- u. If the orders sought were not granted, there was a real danger that the Defendants will revoke the Plaintiff's title to the suit property and revert the same to the Government without compensation and without following due procedure.
- v. It was in the interest in justice that this application filed herewith be allowed and he urged the Honourable Court to allow the same.

### III. The Response to the Notice of Motion application

- 5. The 1<sup>st</sup> Defendant responded to the application through a 29<sup>th</sup> Paragraphed Replying Affidavit sworn by Benson Muindi who was the Assistant Director Surveyor working for the 1<sup>st</sup> Defendant with two (2) annexures marked as "BM-1 (a) and (b)" annexed thereto. The 1<sup>st</sup> Defendant through its representative averred that:
  - a. He urged this Honorable Court to take Judicial Notice of the fact that there exists before this same Court; "ELC Civil Case No. E023 of 2023; EACC – Versus - Sampdoria Investment Limited and 6 others" touching on the same subject matter that was filed by the 5<sup>th</sup> Defendant against the Plaintiff sometimes in October 2023 and the same is slated for mention on 4<sup>th</sup> June, 2024 before the Honourable Court.
  - b. The instant suit was therefore an abuse of the process of this Honorable Court as it gave rise to multiplicity of suits since the instant suit property is the same subject of ELC E023/2023 above where the 5<sup>th</sup> Defendant herein was seeking for revocation of the title of the suit property for among other reasons; fraudulent, illegal, and irregular acquisition of the title by the Plaintiff in collusion with the other Defendants.
  - c. For the reasons that there existed a similar suit over the same subject property with substantially similar parties, that the instant suit, having been filed later, ought to await the outcome of ELC Case No.E023 of 2023 pending before this Honourable Court.
  - d. The foregoing notwithstanding, and in direct response to the Application, in the 1970's, the ten Ministry of Water and Resources, through the Water department, was in charge of water



infrastructure within the Republic. To enable the Water department, undertake this critical function, various parcels of land across the country were set aside for water infrastructure activities.

- e. In the Coastal region, the Government of Kenya through the Department of Water under the Ministry of Water and Resources reserved all parcel of Land L-shaped delineated in the approved Development Plan No. CT/12/25/88/1 dated 15<sup>th</sup> January 1988 and Development plan No. 12. CT.25.1.76 dated 14<sup>th</sup> July 1974 measuring approximately 18.3 Hectares at Shanzu area, section 1 Mainland North of Mombasa Municipality for public use and construction of Government staff houses for employees working on the Coastal Water supply project on behalf of the people of Kenya.
- f. In the year 1978, the then Department of water started the construction of the Baricho-Mombasa and Coastal Water projects and also completed the construction of over Twenty-Seven (27) timber houses consisting of two-and three-bedroom units on an approximate area measuring 7.5 Hectares for occupation by the employees and staff of different cadres working in the Coastal Water project including those from the Ministry and agencies. The remaining part of the parcel measuring around 10.8 Hectares was retained for expansion and development of water infrastructures in anticipation of a rapid population growth.
- g. Vide Legal Notice Number 270 of 24<sup>th</sup> June 1988, the 1<sup>st</sup> Defendant was established under the Auspices of the State Corporations Act Chapter 446 of the Laws of Kenya as National Water Conservation and Pipeline Corporation before the name was changed to National Water Harvesting & Storage Authority under the Water Act, 2016.
- h. The 1<sup>st</sup> Defendant's founding mandates were among others; to take over the water infrastructure function in Kenya from the Ministry of Water; management of majority of the Government operated water supply systems that could be run on commercial basis; development of water infrastructure and supply of water in bulk throughout the Republic of Kenya with the aim of improving water sector operations.
- i. As a result of its establishment and the attendant mandates vested upon it, the said houses together with the entire delineated L-shaped property parcel that had been set aside for development of water infrastructure including the suit property in the Coastal region of Shanzu area as contained in Development Plan No. CT/12/25/88/1 dated 15<sup>th</sup> January 1988 and Development plan No.12.CT.25.1.76 and others across the Country were vested upon the 1<sup>st</sup> Defendant for purposes of furthering its mandate, managing and maintenance of the same. The 1<sup>st</sup> Defendant then set up regional offices in all parts of the Country to enable it implement it was mandated effectively. Annexed and marked as BM -1 (a) and (b) were true copies of the said PDPs.
- j. As such, the parcels of land of the then water department in the Coastal region were handed over and inherited by the 1<sup>st</sup> Defendant to enable it set up its offices, staff houses, water infrastructure projects and facilities. This is clearly shown by the L shaped block measuring approximately 18.3 Hectares in the development plan No.CT/12/25/88/1 of 1988 approved Number 143 for the entire Shanzu area in Mombasa County where the land reserved for Coastal water Supply project staff houses is coded as "05" which when interpreted from the legend "05" stood for Coastal Water Supply Project staff houses and he confirmed that the land indicated as reserved and coded in the development plan of Shanzu was the same piece of land that was inherited by the 1<sup>st</sup> Defendant for staff houses from the Ministry of Water and Resources.



- k. The 1<sup>st</sup> Defendant under its mandates operated piped water supply systems in over 21 urban centers. Among these projects was the large Baricho-Mombasa and Coastal Water supply. Thus, one of the biggest regional offices established by the 1<sup>st</sup> Defendant was the Coastal province regional office.
- l. However, those parcels of land that the 1<sup>st</sup> Defendant inherited and rightfully owned started to find themselves in the hands of private individuals through illegal, irregular and fraudulent acquisition in collusion with some Government officials. One such parcel the subject of such illegal and unlawful acquisition is the suit property.
- m. As a result of these unlawful and irregular acquisition of the 1<sup>st</sup> Defendant's parcels, several caveats were placed on some of these parcels in the year 2016 and most of the attendant disputes have been determined in favor of the 1<sup>st</sup> Defendant while others are still pending before various Courts across the country for determination, including some before this Honorable Court.
- n. Contrary to the Plaintiff's assertion that it was the registered proprietor and title holder of Land Reference Number MN/I/10401, the 1<sup>st</sup> Defendant contends that it was the Legal and rightful owner of the said parcel and that any such title held by the Plaintiff was irregularly and unlawfully acquired. The 1<sup>st</sup> Defendant maintained that the suit property was irregularly, illegally and fraudulently hived off the 1<sup>st</sup> Defendant's larger Shanzu L-shaped parcel as shown in the above development plan annexed.
- o. The 5<sup>th</sup> Defendant, in the rightful exercise of its mandate to recover public property belonging to the Government of Kenya, took over some of these illegal and fraudulent acquisition cases through investigations to establish the truth behind them. One of the many cases that the 5<sup>th</sup> Defendant actively investigated and concluded that it was illegally, unlawfully and fraudulently acquired is the instant suit property involving the Plaintiff and other Government individuals who have been sued in the civil case of ELC No. E023 of 2023 pending before your Lordship for determination.
- p. According to the investigations by the 5<sup>th</sup> Defendant, the Plaintiff, in collusion with some Government officials, irregularly, illegally and fraudulently, in total disregard of the alienation for public use and the public outcry of the existing public staff houses, excised part of the 1<sup>st</sup> Defendant's L-shaped land in Shanzu and purported to illegally create property Land Reference MN/1/10401 measuring approximately 2.387 Hectares through approval of deed plan dated 24<sup>th</sup> October, 1997.
- q. It was worth noting that the investigations also established that the letter of allotment issued to the Plaintiff which formed the basis of issuance of the impugned title of the suit property was issued on 8<sup>th</sup> July, 1997 whereas the records at the Business Registration Services requested and availed to the 5<sup>th</sup> Defendant as filed before this Court as one of the documents in the civil case of ELC No. E023 of 2023 above shows that the Plaintiff was registered on 24<sup>th</sup> July, 1997 pointing to a possible fraud as one would wonder how a letter of allotment was issued to the Plaintiff even before it was registered.
- r. It was equally worth noting that the Plaintiff was alleging that the Part Development Plan Ref. 12.4.CT.27.97 in respect of the suit property was prepared on 7<sup>th</sup> May 1997 by one A.K Masinde, the then Coast Provincial Physical Planning Officer and duly approved on 21<sup>st</sup> May 1997 by the Commissioner of Lands yet in response to the 5<sup>th</sup> Defendant's letter as to whether the said PDP Ref.12.4.CT.27.97 was approved, A.K Masinde, who was currently the



National Director of Physical Planning in a letter dated 21<sup>st</sup> March, 2023 which was part of the documents filed in this Court in ELC No. E023 of 2023 above confirms that the said PDP was not available in the records of approved development plans held in his office.

- s. The houses that the Plaintiff alleged that were dilapidated were actively occupied by Government employees as tenants with rent payable to Coast Water Development Agency, a sister institution of the 1<sup>st</sup> Defendant with the consent of the 1<sup>st</sup> Defendant as shown by the various witness statements, letters of offer and pay slips as filed by the 5<sup>th</sup> Defendant in its list of documents in ELC No. E023 of 2023 above.
- t. The 1<sup>st</sup> Defendant, never, at any point in time ceded any part of its original L-shaped land within Shanzu area for creation of other parcels. Neither was it consulted for approvals for transfer of any nature to any third party. As such, the 1<sup>st</sup> Defendant maintains that any such creation of parcels out of its original parcel was fraudulently and illegally done and the same must be revoked.
- u. In conclusion, the Deponent averred that as earlier indicated, 1st Defendant maintained that the issues raised in this instant Application and suit will depend on the outcome of ELC Civil Case No.E023 of 2023; EACC – Versus - Sampdoria Investment Limited and 6 others which touches on the same suit property between similar parties that was filed earlier and was coming before the Honourable Court on 4<sup>th</sup> June, 2024.
- v. The 1<sup>st</sup> Defendant equally maintains that it was the legal and rightful owner of the suit property and that any such title held by the Plaintiff was a result of fraudulent, irregular and illegal acquisition. The 1<sup>st</sup> Defendant maintained that the suit property was irregularly, illegally and fraudulently hived off the 1<sup>st</sup> Defendant’s larger Shanzu L-shaped parcel as shown in PDP Ref; CT/12/25/88/1 dated 15<sup>th</sup> January 1988.
- w. Most fundamentally, the 1<sup>st</sup> Defendant maintains that it never, at any point in time, ceded any part of its original L - shaped land within Shanzu area for creation of other parcels. Neither was it consulted for approvals for transfer of any nature to any third party. As such, the 1<sup>st</sup> Defendant maintained that any such creation of parcels out of its original parcel was fraudulently and illegally done and the same must be revoked.
- x. As such, the 1<sup>st</sup> Defendant maintained that the orders sought were untenable as the instant Application filed alongside the Plaint on 25<sup>th</sup> of March 2024 were premature, an abuse of the process of the Court and amounts to multiplicity of suits. It urged the Court to dismiss them in entirety with costs to the 1<sup>st</sup> Defendant. In the alternative and without prejudice to the foregoing, the same be stayed pending the hearing and determination of ELC No. E023 of 2023 above.

#### **IV. Submissions**

- 6. On 15<sup>th</sup> May, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 25<sup>th</sup> March, 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down this decision, the Honourable Court had not had a chance to access the written submissions if at all they were filed or not. Nonetheless, being governed by the set out timeframe, the Honourable Court proceeded to reserve a ruling on 9<sup>th</sup> October, 2024 but eventually delivered it on 7<sup>th</sup> November, 2011 accordingly.



## V. Analysis and Determination

7. The Honourable Court has carefully read and considered the pleadings herein and the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes. In order to arrive at an informed decision, the Honourable Court has three (3) framed issues for its determination. These are:-
- a. Whether the Notice of Motion dated 25<sup>th</sup> March, 2024 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.
  - b. Whether the Plaintiff/Applicant should be granted orders of permanent injunction at the interlocutory stage?
  - c. Who will bear the Costs of Notice of Motion application 25<sup>th</sup>, March, 2024.

### **Issue a). Whether the Notice of Motion dated 25<sup>th</sup> March, 2024 meets threshold required of a temporary injunction under Order 40 Rules 1 of the Civil Procedures Rules, 2010.**

8. Under this sub – heading, the Honourable Court shall examine whether the Applicant has made out a case for the grant of temporary injunction. The application herein is premised under Order 40 Rule 1 of the Civil Procedure Rules 2010 amongst the provisions of the law. Which provides as follows: -

Order 40, Rule 1

Where in any suit it is proved by affidavit or otherwise—

- a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - b) that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
9. The principles applicable in an application for an injunction were laid out in the celebrated case of “Giella – Versus - Cassman Brown & Co Ltd (1973) EA 358”, 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.”
10. 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 & 2 others [2014] eKLR”, where the Court opined that:-

“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".

11. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition melted down in "MRAO Limited – Versus - First American Bank of Kenya Ltd & 2 others (2003) KLR 125",

"So what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter"

12. Now turning to the issues under the instant application. As the Court previously observed in this ruling, the Plaintiff contends that it is the registered owner of the property known as LR No. MN/1/10401 measuring 2.387 Hectares or thereabout and situate at Shanzu in Mombasa County - "the suit property" or "the Plaintiff's property"). It has held the suit property as a lessee from the Government of the Republic of Kenya for a term of 99 years with effect from 1<sup>st</sup> July 1997. The Plaintiff was allotted and/or allocated the suit property vide a Letter of Allotment Reference No. 61093/1X/24 dated 8<sup>th</sup> July, 1997. Annexed in the affidavit and marked as "MR 3" a true copy of the letter of allotment dated 8<sup>th</sup> July, 1997. At the time of allocation and/or allotment of the suit property to the Plaintiff, there were erected thereon some old and dilapidated pre-fabricated houses which were occupied by staff of the 1<sup>st</sup> Defendant's and/or its predecessor in title.

13. In consideration of being allotted/allocated the suit property, the Plaintiff paid a total of a sum of Kenya Shillings Two Million One Thirty Seven Thousand Five Hundred (Kshs. 2,137,500.00/=) to the Government of the Republic of Kenya through the defunct office of the Commissioner of Lands which amount was made up as follows:

i.	Stand premium.....	Kshs. 1,000,000.00
ii.	Rent from.....	Kshs. 100,000.00.
iii.	Conveyancing fees.....	Kshs. 1,250.00
iv.	Registration fees.....	Kshs. 250.00
v.	Stamp Duty.....	Kshs. 44,000.00
vi.	Approval fees.....	Kshs. 2,000.00
vii.	Planning fees .....	Kshs. 30,000.00
viii.	Costs of buildings .....	Kshs. 960,000.00
	Total.....	Kshs. 2,137,500.00



14. While the 1<sup>st</sup> Defendant argued that in the 1970's, the then Ministry of Water and Resources, through the Water department, was in charge of water infrastructure within the Republic. To enable the Water department, undertake this critical function, various parcels of land across the country were set aside for water infrastructure activities. In the Coastal region, the Government of Kenya through the Department of Water under the Ministry of Water and Resources reserved all parcel of Land L-shaped delineated in the approved Development Plan No. CT/12/25/88/1 dated 15<sup>th</sup> January 1988 and Development plan No. 12. CT.25.1.76 dated 14<sup>th</sup> July 1974 measuring approximately 18.3 Hectares at Shanzu area, section 1 Mainland North of Mombasa Municipality for public use and construction of Government staff houses for employees working on the Coastal Water supply project on behalf of the people of Kenya.
15. In 1978, the then Department of water started the construction of the Baricho-Mombasa and Coastal Water projects and also completed the construction of over Twenty-Seven (27) timber houses consisting of two-and three-bedroom units on an approximate area measuring 7.5 Hectares for occupation by the employees and staff of different cadres working in the Coastal Water project including those from the Ministry and agencies. The remaining part of the parcel measuring around 10.8 Hectares was retained for expansion and development of water infrastructures in anticipation of a rapid population growth.
16. The parcels of land of the then water department in the Coastal region were handed over and inherited by the 1<sup>st</sup> Defendant to enable it set up its offices, staff houses, water infrastructure projects and facilities. This is clearly shown by the L shaped block measuring approximately 18.3 Hectares in the development plan No. CT/12/25/88/1 of 1988 approved Number 143 for the entire Shanzu area in Mombasa County where the land reserved for Coastal water Supply project staff houses is coded as "05" which when interpreted from the legend "05" stood for Coastal Water Supply Project staff houses and he confirmed that the land indicated as reserved and coded in the development plan of Shanzu was the same piece of land that was inherited by the 1<sup>st</sup> Defendant for staff houses from the Ministry of Water and Resources.
17. However, those parcels of land that the 1<sup>st</sup> Defendant inherited and rightfully owned started to find themselves in the hands of private individuals through illegal, irregular and fraudulent acquisition in collusion with some Government officials. One such parcel the subject of such illegal and unlawful acquisition is the suit property. As a result of these unlawful and irregular acquisition of the 1<sup>st</sup> Defendant's parcels, several caveats were placed on some of these parcels in the year 2016 and most of the attendant disputes have been determined in favor of the 1<sup>st</sup> Defendant while others are still pending before various Courts across the country for determination, including some before this Honorable Court
18. In the case of "Mbuthia – Versus - Jimba Credit Corporation Limited 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."



19. Similarly, in the case of “Edwin Kamau Muniu – Versus - Barclays Bank of Kenya Limited” the court held that:-

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”

20. In the present case, the suit property under contest by two different parties. The Plaintiff has produced before this Honourable Court a title deed registered in its name. The 1<sup>st</sup> Defendant on the hand contends that the said land belongs to it for purposes of providing housing for its employees. In the present case, the Respondents by their action, have threatened the alienation of the suit property which will be prejudicial to the Applicants being the Legal proprietors of the suit land. Ownership of land and proof of title Regarding this first condition though, the Applicants have demonstrated a prima facie case with a probability of success at the trial as enunciated in the case of “Giella -Versus - Cassman Brown & Co. Ltd (Supra)”.

21. The court has further considered the evidence on record against the second principle for the grant of an injunction, that is, whether the Applicants might suffer irreparable injury which cannot be adequately compensated by an award of monetary damages. With regards to the second limb of the Court of Appeal in “Nguruman Limited (supra)”, held that,

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

22. 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 Applicant’s property is at risk and it has a right to utilise its property. The Plaintiff 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.”

23. Quite clearly, the Applicant would not be able to be compensated through damages as it has shown the court that its rights to the suit property through the documentation for ownership of the suit property. The Applicant has therefore satisfied the second condition as laid down in “Giella’s case”.



24. Thirdly, the Plaintiff 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”.

25. In the case of “Paul Gitonga Wanjau – Versus - Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR”, the court dealing with the issue of balance of convenience expressed itself thus:-

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

26. The balance of convenience tilts in the favour of the Petitioner. 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.”

27. On a balance of convenience, the Plaintiff/ Applicant argued that the balance of convenience tilts in its favour as the registered proprietors of the suit property. The 1st Defendant maintained that it was the legal and rightful owner of the suit property and that any such title held by the Plaintiff was a result of fraudulent, irregular and illegal acquisition. The 1<sup>st</sup> Defendant maintained that the suit property was irregularly, illegally and fraudulently hived off the 1<sup>st</sup> Defendant’s larger Shanzu L - shaped parcel as shown in PDP Ref; CT/12/25/88/1 dated 15<sup>th</sup> January 1988.

28. Under this sub heading, the Honorable Court have expended such elaborate analysis above holds that the Plaintiff/Applicant is entitled to all the prayers sought from the filed application herein. 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. As indicated above, 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 registration of title in the name of the Plaintiff/Applicant. I have also not had the opportunity to interrogate the annexures attached to the Replying Affidavit by the 1<sup>st</sup> Defendant/Respondent herein to be in a position to decipher the issues raised by it. That will only be possible and convenient during a full trial. In the meantime, there will be great need to preserve the suit property pending the hearing and final determination of the suit.

29. 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 grant a temporary injunction to restrain such acts...”

30. Therefore, I am convinced that if orders of temporary injunction are not granted in this suit, the properties 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 find that the Plaintiff/Applicant has met the criteria for grant of orders of temporary injunction. Thus, I proceed to grant the orders sought accordingly.

**Issue No. b). Whether the Plaintiff/Applicant should be granted orders of permanent injunction at the interlocutory stage**

31. Before proceeding further, under this Sub – title, its significant to appreciate the great distinction between the prohibitory injunction as envisaged in the “Locus Classicus” case of “Giella – Versus - Cassman Brown ( Supra)” and a Mandatory Injunction. The first authority on making this distinction was “Shepard Homes – Versus – Sandham (1970) 3 WLR Pg. 356 Case” in which Megarry. J as he then was stated follows:-

“Whereas a Prohibitory Injunction merely requires abstention from acting, a Mandatory Injunction requires the taking of positive steps, and may require the dismantling or destruction of something already erected, or constructed. This will result in a consequent waste of time, money and materials. If it is ultimately established that the Defendant was entitled to retain the erection”.

32. Additionally, based on a passage from 24 Halsbury Laws of England, Page 248, the case of “Locabail International Finance Limited - Versus - Agro Export and others (1986) All ER 906”, the court held thus: -

‘A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can easily be remedied, or if the Defendant attempted to steal a march on the Plaintiff... .....a Mandatory injunction will be granted on an interlocutory application.’

33. I will consider the question of whether these orders can be issued at the interlocutory stage. The decisions of the Court of Appeal offer guidance on this point. Unlike Temporary Injunction which are granted only to be in force for a specified time or until the issuance of further orders from Court,



Permanent Injunction are rather different, in that they are perpetual and issued after a Suit has been heard and finally determined.

34. Permanent Injunction fully determines the right of the Parties before the Court and is normally meant to perpetually restrain the commission of an act by the Plaintiff in order for the rights of the Plaintiff to be protected. This Court has the powers to grant the Permanent Injunction under Sections 1A, 3 & 3A of the *Civil Procedure Act*, Cap. 21 if it feels the right of a Party has been fringed, violated and/or threatened as the Court cannot just seat, wait and watch under these given circumstances.
35. It's the effect of the order that matter as opposed to it mere positive working which makes it mandatory. The Honorable Court must be very cautious and vary that the matter before court is not only an application for mandatory injunction, but is one which, if granted would amount to the grant of a major part of the relief claimed in the action. Such applications should be approached with great circumspect and caution and the relief granted only in a clear case lest the suit is finalized at the interlocutory stage and there is nothing left to be heard and determined at the chagrin of the opposing party. Certainly, that would not be equity, fair and just at all to the other party.
36. The circumstances under which the Court would grant a Mandatory Injunction was well stated out by the Court of Appeal in the Case of "Malier Unissa Karim –Versus - Edward Oluoch Odumbe (2015) eKLR" as follows: -

“The test for granting a Mandatory Injunction is different from that enunciated in the “Giella –Versus - Cassman Brown case which is the locus classicus case of Prohibitory Injunctions. The threshold in Mandatory is higher than the case of Prohibitory Injunction and the Court of Appeal in the case of “Kenya Breweries Limited - Versus - Washington Okeyo (2002) EA 109” had the occasion to discuss and consider the principles that govern the grant of a Mandatory Injunction was correctly stated in Vol. 24 Halsbury Laws of England 4<sup>th</sup> Edition Paragraph 948 which states as follows:-

“A Mandatory Injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can be easily remedied, or if the Defendant attempts to steal a march on the Plaintiff, a Mandatory Injunction will be granted on an Interlocutory application”.

37. In the case of:- “Joseph Kaloki t/a Royal Family Assembly – Versus - Nancy Atieno Ouma (supra)” the court of appeal reaffirmed its decision in “Kenya Breweries Limited & another – Versus - Washington O. Okeyo [2002] eKLR” and stated that

“a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”

38. Further the same Court of appeal in the case of “Jay Super Power Cash and Carry Limited –Versus - Nairobi City Council and 20 others *CA 111/2002*” held that: -

“This Court has recognized and held in the past that it is the trespasser who should give way pending the determination of the dispute and it is no answer that the alleged acts of trespass



are compensable in damages. A wrong doer cannot keep what he has taken balance he can pay for it”.

39. The Court also reaffirmed its decision in “Shariff Abdi Hassan – Versus - Nadhif Jama Adan [2006] eKLR” where it stated that:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”

40. Based on these cases, for a permanent injunction to be granted at least these conditions ought to be fulfilled: -
- a. There are special circumstances to be considered;
  - b. The Defendant is not taking advantage to steal the match against the Plaintiff.
  - c. That once the case is decided it brings to a conclusion of the matter.
41. From the facts of this instant case, I am not convinced that special circumstances exist in this matter that may warrant the grant of a mandatory injunction. It is not in dispute that there exists a land dispute which has led to the 1<sup>st</sup> Defendant to interfere and they require ample time to conduct an intense investigation of the suit property. Perhaps seeing and retaining the original Certificate of the title deed would be necessary in the given circumstances so long as they do not cause any interference with it in any way whatsoever. I am also not convinced that this case is so clear that it ought to be decided at once. There are competing claims by both parties and these require further interrogation. At this stage I cannot tell for sure that the 1<sup>st</sup> Defendant/Respondent claim is untrue.
42. For these reasons, therefore, taking that all these issues were raised pre – maturely, I decline to grant orders of Permanent injunction at this stage whatsoever.

**Issue No. c). Who will bear the Costs of Notice of motion application dated 25<sup>th</sup> March, 2024**

43. 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.
44. 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. 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.
45. In the present case, taking that this matter is still on going for full trial as is directed herein below, the Honourable Court elects to have the costs in the cause.



## **VI. Conclusion and Disposition**

46. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to the Preponderance of Probabilities and the balance of convenience. Clearly, the Applicant has a case against the Respondent.
47. 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 25<sup>th</sup> March, 2024 be and is hereby found to have merit thus it is hereby allowed as per the Court's discretion and the preservation of the suit property save for prayers numbers (c) and (e) of the application which seek for the mandatory permanent injunctive orders at the interlocutory stage of the proceedings.
  - b. That pending hearing and determination of this suit, there be and is hereby issued an order of temporary injunction to restrain the Defendants, their officers, employees, assigns, agents or any other person acting for them and on their instructions from revoking the Plaintiff's title to the property known as LR No. MN/I/10401 situate at Shanzu in Mombasa County and from in any manner whatsoever interfering with the Plaintiff's ownership and use of the said property.
  - c. That for expediency sake, there be a mention on 2<sup>nd</sup> December, 2024 for conducting a Pre – Trial conference session pursuant to the Provisions of Order 11 of the Civil Procedure Rules, 2010. Thereafter, there be fixed a full trial hearing on 18<sup>th</sup> February, 2025.
  - d. That the cost of these applications will be in the cause.

It is so ordered accordingly.

**RULING DELIEVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

.....

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

**Ruling delivered in the presence of:**

- a. M/s. Firdaus Mbula, Court Assistant.
- b. Mr. Kilonzo Advocate holding brief for Mr. Oluga Advocate for the Plaintiff/ Applicant.
- c. Mr. Mollo Advocate holding brief for M/s. Mwangi Advocate for the 1<sup>st</sup> Defendant/Respondent.
- d. No appearance for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Defendants/Respondents.

**HON. LL NAIKUINI (JUDGE)**

