



Ngilu & 3 others (Suing as the Personal Representatives of the Estate of the Late Micheal Mwendwa Ngilu) v Kombo & 18 others (Environment and Land Case Civil Suit E095 of 2022) [2023] KEELC 16638 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16638 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE CIVIL SUIT E095 OF 2022
LL NAIKUNI, J
MARCH 9, 2023

BETWEEN

CHARITY KALUKI NGILU 1ST PLAINTIFF
LUNDE JEMI MWENDWA 2ND PLAINTIFF
MWENDE KATETHIA MWENDWA 3RD PLAINTIFF
SYALO NGILU MWENDWA 4TH PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE
LATE MICHEAL MWENDWA NGILU

AND

MISHI KEAH KOMBO 1ST DEFENDANT
JACKSON MWAMBAJI KAILO 2ND DEFENDANT
REBECA MUIA 3RD DEFENDANT
SALMA MBEYU 4TH DEFENDANT
ABDALLA MWACHINGIT 5TH DEFENDANT
MERCYLINE KWAMBOKA 6TH DEFENDANT
AMINA M.MWANG'OMBE 7TH DEFENDANT
TSUMA TSUMA 8TH DEFENDANT
ROBERT K.GOSHI 9TH DEFENDANT
ANDREW SIMIYU 10TH DEFENDANT
KARISA KENGA 11TH DEFENDANT
MWIJUMA MBWANA 12TH DEFENDANT



NJIRA NGALA	13 TH DEFENDANT
DUNCUN OUKO	14 TH DEFENDANT
KADAMA TOYA	15 TH DEFENDANT
SOFIA RAMADHAN SALIM	16 TH DEFENDANT
ABEL KILONZO	17 TH DEFENDANT
MANGI KATANA CHENGO	18 TH DEFENDANT
OMAR KAI	19 TH DEFENDANT

RULING

I. Introduction

1. The Plaintiffs/ Applicants herein - Charity Kaluki Ngilu, Lunde Jemi Mwendwa, Mwendu Katethia Mwendwa, Syalo Ngilu Mwendwa (suing as the personal representatives of the estate of the late Micheal Mwendwa Ngilu) moved this Honorable Court for hearing and determination of the Notice of Motion application dated 1st August, 2022 filed under a Certificate of urgency. It was brought by the dint of the provisions of Order 40 Rule 1, Rule 3 and 4, Order 51 Rule 1 and Rule 3 of the Civil Procedure Rules, 2010, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and Article 159 (2) of the Constitution of Kenya, 2010.

II. The Plaintiffs/Applicants' Case

2. The Plaintiffs/Applicants sought for the following orders:-
 - a. Spent.
 - b. That this Court be pleased to issue an order evicting the Defendants, their agents, employees' servants from those parcels of land being Sub - division Number 2427 (Original Number 2402/5) Section I Mainland North.
 - c. That the Court be pleased to grant a permanent injunction prohibiting, preventing or restraining the Defendants whether jointly or whether by themselves, their agents, employees and servants from trespassing on, wasting, constructing or otherwise interfering or dealing with that parcel of land being Subdivision Number 2427 (Original Number 2402/5) Section I Mainland North.
 - d. That this Court be pleased to grant a permanent injunction restraining the Defendants whether jointly or whether by themselves or their servants or agents or otherwise howsoever, from remaining on or continuing to remain in occupation of those parcels of land being Subdivision Number 2427 (Original Number 2402/5) Section I Mainland North.
 - e. That this Court be pleased to issue an 'order granting vacant possession of the parcel of land being Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa to the Plaintiffs.
 - f. That this Honorable Court grant a temporary injunction prohibiting, preventing or restraining the Defendants, whether jointly or whether by themselves, their agents, employees and servants from trespassing on, wasting, alienating or otherwise interfering or dealing with



the parcel of land being Subdivision Number 2427 (Original Number 2402/5) Section I Mainland North Mombasa pending hearing and determination of the instant Application and the suit.

- g. That this Honorable Court grant the Plaintiffs access, entry and the right to continue to use and remain in quiet occupation of the parcel of land being Subdivision Number 2427 (Original Number 2402/5) Section I Mainland North Mombasa pending hearing and determination of the instant Application and the suit.
 - h. That the Officer Commanding Station (OCS) Chaani 'Police Station do enforce compliance of the orders above.
 - i. That costs of this application be provided for.
 - j. That the Honorable Court be pleased to make such further or other orders, as it may deem just and expedient in the circumstances of this case.
3. The application is premised on the following grounds:
- a. The Plaintiffs they are the owners and/or beneficiaries of all that parcel of land situated at Changamwe area, Mombasa County and bordering the Kenyan Port being the suit property known as Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa estimated at the market value of a sum of Kenya Shillings One Hundred and Fifty Million (Kshs. 150, 000, 000.00).
 - b. The Plaintiffs had at all material times enjoyed peaceful, uninterrupted and exclusive occupation, and possession of the subject property from the registration date in the Certificate of Title and after being appointed the personal representatives of the Estate of the late Michael Mwendwa Ngilu.
 - c. In the year 2020 the Plaintiffs were informed that unknown persons had trespassed and were attempting to put up structures therein. The 2nd Plaintiff visited Chaani Police Station and the Offices of the District Officer in November 2020 and sought their assistance in having the trespassers vacate the suit property.
 - d. On or about November 2020 the 2nd Plaintiff visited the suit property wherein she found approximately 5 temporary structures that were yet to be completed. The persons therein informed the 2nd Plaintiff that they were willing to vacate the suit property after being paid money as compensation. The 2nd Plaintiff thereafter sought legal advice from her Advocates on record who accompanied her to the District Officer's Offices on or about 24th February 2021 at around 9:00 am.
 - e. The 2nd Plaintiff held a meeting with the District Officer and the Area Chief Chaani Area and she requested them to accompany her to the suit property. The 2nd Plaintiff she visited Chaani Police Station and sought the assistance of the Police Officers from Chaani Police Station for purposes of providing them with security during the visit to the suit property.
 - f. On or about 24th February 2021 at around 10:30 am the 2nd Plaintiff visited the suit property in the presence of the Plaintiffs' appointed licensed surveyor being Seline Consultants Limited, their Advocates on record, the District Officer, Area Chief and Police officers from Chaani area. The Defendants had constructed more temporary structures while some of them were pending completion.



- g. The persons therein stated that they were willing to stop the constructions and unlawful trespass from the suit property in the event they were paid and admitted that they were fully aware that the suit property belonged to the 1st Plaintiff. The 1st to the 9th Defendants issued their names to the Area Chief which names they submitted on the belief that the same would be used to allocate them funds to enable vacate the suit Premises.
- h. The Defendants stated that they had shifted from the adjacent parcel of land after the owners of the said parcel of land compensated them to move from their property. Some of the unknown persons occupying the suit property submitted their names to the Area Chief and started making demands for payment so that they could vacate the suit property. The Plaintiffs' appointed Surveyor, Seline Consultants Limited conducted a survey of the area for purposes of establishing the boundaries with respect to the suit property and proceeded to place the beacons for purposes of marking the boundaries of the suit property.
- i. The Defendants indicated that they were willing to demolish the unlawful temporary structures that were within the boundaries of the suit property but demanded to be paid before they could demolish the same. The 2nd Plaintiff visited Chaani Police Station in the presence of her Advocates on record and made a formal complaint with respect to the Defendants' acts of trespass and was issued with an OB No.16/24/2/2021. On or about 9th April 2021 at around 2:00 p.m, the 2nd Plaintiff visited the suit property in the presence of the OSC Chaani Police Station, Police Officers from Chaani Police Station, the Chief Chaani Area, the Elder Chaani Area and the Plaintiffs' Advocates on record and served some of the Defendants with Demand Notices.
- j. The 10th to 17th Defendants submitted their names and telephone numbers to the Chief Chaani Area with the belief that the same would be used to allocate them funds. The 2nd Plaintiff requested them to demolish the temporary structures and vacate the suit property but the Defendants reiterated that they would only do so upon receiving payments from the Plaintiffs. On 16th April 2021 that the Plaintiffs' Advocates on record and the Chief, Chaani Area visited the suit property for purposes of serving some of the Defendants with the Demand Notices and further requesting the Defendants to demolish the illegal temporary structures and vacate the suit property.
- k. The Defendants reiterated that they would only demolish the illegal temporary structures and vacate the suit property after being paid by the Plaintiffs. The 18th to the 20th Defendants submitted their names and telephone numbers to the Chief Chaani Area with the belief that the same would be used to contact them for purposes of effecting payment of the money demanded by them. The Defendants continue to be unlawfully in occupation of the suit property to the detriment of the Plaintiffs as the Plaintiffs are prevented from developing and/or benefiting from the suit property.
- l. On or about 8th May 2021 their Advocates on record visited the suit property in the presence of the area chief and proceeded to serve the remaining Defendants with the demand notices. The the 20th Defendant turned violent, harassed the Plaintiffs' Advocate on record, threatened to beat him and attempted to vandalize the Advocate's Motor Vehicle for serving him with the Demand Notices. The afore stated incident was reported at the Chaani Police Station under OB No.14/07/5/2021. The afore stated acts of violence on the part of the Defendants stalled and curtailed any peaceful efforts to have the Defendants cease and desist from the acts of trespass and unlawful occupation hence necessitating the filing of the instant suit.



- m. The Defendants proceeded to complete the remaining illegal temporary structures in attempt to use the same as a basis for claiming for payments from the Plaintiffs. The said temporary structures were erected without any approvals from the relevant authorities and the same pose a risk against the Plaintiffs on account of any alleged claims with respect to an occupier's liability. Despite the Plaintiffs requesting the Defendants to peacefully vacate the suit Property and demolish the temporary structures, they have to date failed, ignored and/or neglected to demolish the same and/or vacate the suit property. The Defendants continue to be unlawfully in occupation of the suit property and have refused, ignored and/or neglected to honor the Plaintiffs' demands.
- n. The Plaintiffs averred that the Defendants activities had diminished the value of the suit property which bordered the Kenya Ports Authority and is close to the Mombasa - Nairobi highway owing to the temporary illegal structures erected thereof hence diminishing the suit property' s value. The particulars of forceful occupation on the part of the Defendant as:
- i. Entering upon the suit property without the Plaintiffs' consent and/or notice;
 - ii. Destroying and wasting the suit property;
 - iii. Causing the erection and/or erecting illegal temporary structures on the suit property;
 - iv. Disentitling the Plaintiffs from any meaningful utility of the suit property due to their unlawful and forceful occupation of the suit property;
 - v. Disentitling the Plaintiffs from being in occupation and/or possession of the suit property;
 - vi. Failing to vacate the suit property upon demand being issued; and
 - vii. Failing, refusing and/or neglecting to demolish the illegal temporary structures erected on the suit property.
- o. The Defendants' actions of dwelling or remaining on the suit property and erecting illegal temporary structures were tantamount to trespass. The particulars of the trespass on the part of the Defendant being that:
- i. Gaining entry into and upon the Plaintiff's property without the Plaintiffs' permission or consent.
 - ii. Erecting structures on the Plaintiffs' property hence interfering and infringing upon the Plaintiffs' right to enjoy quiet and exclusive possession of the Plaintiffs' property.
 - iii. Taking possession of the Plaintiffs' Property to the detriment of the Plaintiffs.
 - iv. Failing to vacate and handover vacant possession of the property to the Plaintiffs, despite being served with Demand Notices.
- p. The Defendants' acts of demanding for payments was tantamount to mischief and fraud as the Defendants were attempting to extort funds from the 1st Plaintiff in exchange for vacant possession whilst in the full knowledge that they were trespassers. The particulars of fraud on the part of the Defendants being that:
- i. Invading and/or trespassing on the Plaintiffs' parcel of land for purposes of unlawfully obtaining undeserving compensation.



- ii. Erecting illegal structures on the suit property.
 - iii. Constructing illegal structures therein whilst knowing that they were not the registered proprietors of the suit property with the intention of claiming for compensation on account of the said structures.
 - iv. Demanding for payments as a condition precedent for them to demolish the illegal structures and to vacate the suit property.
- q. The Defendants continue to deprive the Plaintiffs of their rights to access, enter, use and enjoy quiet possession of ‘the Plaintiffs’ property despite not having any legal rights over the suit property. As a consequence of the Defendants’ actions the Plaintiffs have been deprived of their legal right to property and infringed on their Constitutional right to quiet and exclusive possession of their property and had been put into inconvenience and are thus entitled to general damages. The said illegal activities by the Defendants traverse through the suit property thereby rendering the same economically unsuitable for any development for which it was intended.
- r. The particulars of general damages being:
- i. The Plaintiffs had by the Defendants’ actions been deprived of their Constitutional right to access, remain upon and use its property known as Subdivision Number 2427 (Original Number 2402/5J Section VI Mainland North Mombasa).
 - ii. The Defendants had unlawfully taken up possession of and deprived the Plaintiffs from exercising their legal right to gain entry, remain upon, and use their property.
 - iii. The Defendants had without legal justification forcefully taken possession of the Plaintiffs’ property.
 - iv. The Defendants had acted in an unjust manner without due regard for the law by unlawfully taking-over possession and occupation of the Plaintiffs’ property.
 - v. Despite demand the Defendants had blatantly refused, ignored and failed to vacate from the suit property, demolish the structures thereon and to return vacant possession and occupation of Sub - division Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa to the Plaintiffs.
- s. Despite demand and notice of intention to sue being issued, the Defendants have unlawfully continued to remain on the Plaintiffs’ property and had failed, refused and/or ignored to vacate and demolish any structures on the Plaintiffs’ property and to give access and possession of the suit property being Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa back to the Plaintiffs.
- t. The Defendants’ adamant refusal to vacate the Plaintiffs’ parcel of land to date had necessitated the Plaintiffs to seek legal redress through the Honourable Court. Unless the Honourable Court grants the orders sought, the Defendants would continue to erect more structures on the suit property to the detriment of the Plaintiffs. No prejudice shall be occasioned on the part of the Defendants in the event the Honourable Court grants. The orders sought as the Defendants had at all material times been fully aware that the property belongs to the Plaintiffs. This Honourable Court is fully vested with the jurisdiction to grant the orders sought in the Plaintiffs’ instant Notice of Motion Application. It was in the interest of justice that this Application herein be allowed as prayed.



4. The application by the Applicant was premised on the grounds, facts and testimony on the face of the application and further supported by the 48 paragraphed annexed affidavit of Lunde Jemi Mwendwa the 2nd Applicant herein. The Applicant averred that:
- i. The Plaintiffs were the owners and/or beneficiaries of all that parcel of land situated at Changamwe area, Mombasa County and bordering the Kenyan Port being the suit property known as Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa estimated at the market value of Kenya Shillings One and Fifty Million (Kshs.150,000,000.00).
 - ii. The Plaintiffs had at all material times enjoyed peaceful, uninterrupted and exclusive occupation, and possession of the subject property from the registration date in the Certificate of Title and after being appointed the personal representatives of the Estate of the late Michael Mwendwa Ngilu.
 - iii. In the year 2020 the Plaintiffs were informed that unknown persons had trespassed and were attempting to put up structures therein. The 2nd Plaintiff visited Chaani Police Station and the Offices of the District Officer in November 2020 and sought their assistance in having the trespassers vacate the suit property.
 - iv. On or about November 2020 the 2nd Plaintiff visited the suit property wherein she found approximately 5 temporary structures that were yet to be completed. The persons therein informed the 2nd Plaintiff that they were willing to vacate the suit property after being paid money as compensation. The 2nd Plaintiff thereafter sought legal advice from her Advocates on record who accompanied her to the District Officer's Offices on or about 24th February 2021 at around 9:00 am.
 - v. The 2nd Plaintiff held a meeting with the District Officer and the Area Chief Chaani Area and she requested them to accompany her to the suit property. The 2nd Plaintiff she visited Chaani Police Station and sought the assistance of the Police Officers from Chaani Police Station for purposes of providing them with security during the visit to the suit property.
 - vi. On or about 24th February 2021 at around 10:30 am the 2nd Plaintiff visited the suit property in the presence of the Plaintiffs' appointed licensed surveyor being Seline Consultants Limited, their Advocates on record, the District Officer, Area Chief and Police officers from Chaani area. The Defendants had constructed more temporary structures while some of them were pending completion.
 - vii. The persons therein stated that they were willing to stop the constructions and unlawful trespass from the suit property in the event they were paid and admitted that they were fully aware that the suit property belonged to the 1st Plaintiff. The 1st to the 9th Defendants issued their names to the Area Chief which names they submitted on the belief that the same would be used to allocate them funds to enable vacate the suit Premises.
 - viii. The Defendants stated that they had shifted from the adjacent parcel of land after the owners of the said parcel of land compensated them to move from their property. Some of the unknown persons occupying the suit property submitted their names to the Area Chief and started making demands for payment so that they could vacate the suit property. The Plaintiffs' appointed Surveyor, Seline Consultants Limited conducted a survey of the area for purposes of establishing the boundaries with respect to the suit property and proceeded to place the beacons for purposes of marking the boundaries of the suit property.



- ix. The Defendants indicated that they were willing to demolish the unlawful temporary structures that were within the boundaries of the suit property but demanded to be paid before they could demolish the same. The 2nd Plaintiff visited Chaani Police Station in the presence of her Advocates on record and made a formal complaint with respect to the Defendants' acts of trespass and was issued with an OB No.16/24/2/2021. On or about 9th April 2021 at around 2:00 p.m, the 2nd Plaintiff visited the suit property in the presence of the OSC Chaani Police Station, Police Officers from Chaani Police Station, the Chief Chaani Area, the Elder Chaani Area and the Plaintiffs' Advocates on record and served some of the Defendants with Demand Notices.
- x. The 10th to 17th Defendants submitted their names and telephone numbers to the Chief Chaani Area with the belief that the same would be used to allocate them funds. The 2nd Plaintiff requested them to demolish the temporary structures and vacate the suit property but the Defendants reiterated that they would only do so upon receiving payments from the Plaintiffs. On 16th April 2021 that the Plaintiffs' Advocates on record and the Chief, Chaani Area visited the suit property for purposes of serving some of the Defendants with the Demand Notices and further requesting the Defendants to demolish the illegal temporary structures and vacate the suit property.
- xi. The Defendants reiterated that they would only demolish the illegal temporary structures and vacate the suit property after being paid by the Plaintiffs. The 18th to the 20th Defendants submitted their names and telephone numbers to the Chief Chaani Area with the belief that the same would be used to contact them for purposes of effecting payment of the money demanded by them. The Defendants continue to be unlawfully in occupation of the suit property to the detriment of the Plaintiffs as the Plaintiffs are prevented from developing and/or benefiting from the suit property.
- xii. On or about 8th May 2021 their Advocates on record visited the suit property in the presence of the area chief and proceeded to serve the remaining Defendants with the demand notices. The 20th Defendant turned violent, harassed the Plaintiffs' Advocate on record, threatened to beat him and attempted to vandalize the Advocate's Motor Vehicle for serving him with the Demand Notices. The afore stated incident was reported at the Chaani Police Station under OB No.14/07/5/2021. The afore stated acts of violence on the part of the Defendants stalled and curtailed any peaceful efforts to have the Defendants cease and desist from the acts of trespass and unlawful occupation hence necessitating the filing of the instant suit.
- xiii. The Defendants proceeded to complete the remaining illegal temporary structures in attempt to use the same as a basis for claiming for payments from the Plaintiffs. The said temporary structures were erected without any approvals from the relevant authorities and the same pose a risk against the Plaintiffs on account of any alleged claims with respect to an occupier's liability. Despite the Plaintiffs requesting the Defendants to peacefully vacate the suit Property and demolish the temporary structures, they had to date failed, ignored and/or neglected to demolish the same and/or vacate the suit property. The Defendants continue to be unlawfully in occupation of the suit property and had refused, ignored and/or neglected to honour the Plaintiffs' demands.
- xiv. The Plaintiffs averred that the Defendants activities had diminished the value of the suit property which borders the Kenya Ports Authority and is close to the Mombasa-Nairobi highway owing to the temporary illegal structures erected thereof hence diminishing the suit property' s value. The particulars of forceful occupation on the part of the defendant as:



- a. Entering upon the suit property without the Plaintiffs' consent and/or notice;
 - b. Destroying and wasting the suit property;
 - c. Causing the erection and/or erecting illegal temporary structures on the suit property;
 - d. Disentitling the Plaintiffs from any meaningful utility of the suit property due to their unlawful and forceful occupation of the suit property;
 - e. Disentitling the Plaintiffs from being in occupation and/or possession of the suit property;
 - f. Failing to vacate the suit property upon demand being issued; and
 - g. Failing, refusing and/or neglecting to demolish the illegal temporary structures erected on the suit property.
- xv. The Defendants' actions of dwelling or remaining on the suit property and erecting illegal temporary structures are tantamount to trespass. The particulars of the trespass on the part of the Defendant being that:
- a. Gaining entry into and upon the Plaintiff's property without the Plaintiffs' permission or consent.
 - b. Erecting structures on the Plaintiffs' property hence interfering and infringing upon the Plaintiffs' right to enjoy quiet and exclusive possession of the Plaintiffs' property.
 - c. Taking possession of the Plaintiffs' Property to the detriment of the Plaintiffs.
 - d. Failing to vacate and handover vacant possession of the property to the Plaintiffs, despite being served with Demand Notices.
- xvi. The Defendants' acts of demanding for payments is tantamount to mischief and fraud as the Defendants were attempting to extort funds from the 1st Plaintiff in exchange for vacant possession whilst in the full knowledge that they were trespassers. The particulars of fraud on the part of the Defendants being that:
- a. Invading and/or trespassing on the Plaintiffs' parcel of land for purposes of unlawfully obtaining undeserving compensation.
 - b. Erecting illegal structures on the suit property.
 - c. Constructing illegal structures therein whilst knowing that they are not the registered proprietors of the suit property with the intention of claiming for compensation on account of the said structures.
 - d. Demanding for payments as a condition precedent for them to demolish the illegal structures and to vacate the suit property.
- xvii. The Defendants continued to deprive the Plaintiffs of their rights to access, enter, use and enjoy quiet possession of 'the Plaintiffs' property despite not having any legal rights over the suit property. As a consequence of the Defendants' actions the Plaintiffs had been deprived of their legal right to property and infringed on their Constitutional right to quiet and exclusive possession of their property and have been put into inconvenience and are thus entitled to general damages. The said illegal activities by the Defendants traversed through the suit



property thereby rendering the same economically unsuitable for any development for which it was intended.

- xviii. Despite demand and notice of intention to sue being issued, the Defendants had unlawfully continued to remain on the Plaintiffs' property and have failed, refused and/or ignored to vacate and demolish any structures on the Plaintiffs' property and to give access and possession of the suit property being Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa back to the Plaintiffs.
- xix. The Defendants' adamant refusal to vacate the Plaintiffs' parcel of land to date had necessitated the Plaintiffs to seek legal redress through the Honourable Court. Unless the Honourable Court grants the orders sought, the Defendants would continue to erect more structures on the suit property to the detriment of the Plaintiffs. No prejudice shall be occasioned on the part of the Defendants in the event the Honourable Court grants. The orders sought as the Defendants had at all material times been fully aware that the property belonged to the Plaintiffs. This Honourable Court is fully vested with the jurisdiction to grant the orders sought in the Plaintiffs' instant Notice of Motion Application. It is in the interest of justice that this Application herein be allowed as prayed.

III. The Defendants/Respondents' Case

- 5. On 5th December, 2022, the 1st Defendant filed 24 paragraphed Replying Affidavit dated 3rd December, 2022 on the following grounds:-
 - i. He swore the affidavit on her own behalf and on behalf of the 18 other Defendants/ Respondents who had authorized him to do so.
 - ii. She denied that the Plaintiffs/Applicants are the owners and or beneficiaries of the suit property as alleged in Paragraph 2 of the said affidavit for the following reasons:
 - a. The annexure marked as "LJM 1" which was not clear, and she shall demand to inspect the original on or before the hearing of this application show that as at 2nd July, 1974 the suit property was registered in favour of Port Reitz Properties Limited.
 - b. On 25th September, 1974 Port Reitz Properties Limited charged the suit property to Falon Harilal Harjivoan Kathari for a sum of Kenya Shillings Two Hundred Thousand (Kshs. 200,000/-).
 - c. On 8th July, 1980 Micheal Drury registered a caveat against the suit property claiming purchasers' interest.
 - d. On 17th February, 1981 Micheal Drury withdrew the caveat dated 13th February, 1981.
 - e. On the same date, that is 17th February, 1981 there was a withdrawal of charge dated 13th February, 1981.
 - f. On the same date, that was dated 17th February, 1981 a transfer dated 13th February, 1981 was registered in favour of Micheal Drury for a sum of Kenya Shillings One hundred and ten Thousand (Kshs. 110,000/-) in terms of the provision Section 55 (1) of the Registration of Titles Act.
 - g. On the same day, that is, dated 17th February, 1981 a Provisional Certificate was issued.



- iii. It appeared to him that as at 17th February, 1981 the original title had been lost and no proof of an application for another title was tendered rendering the issuance of the Provisional Title illegal.
- iv. The Provisional Certificate of Title ought to indicate the name of the company before transfer was made to the Purchaser. However, the annexed Provisional Certificate did not show in whose favour it was registered. The suit property shows it had been charged to an individual but the transfer to Micheal Drury show his registration was through a purchase initiated by government after the registered owner failed to pay the government rent which is a contradiction of the facts.
- v. The original grant to the original owner was not disclosed to show the nature of the grant and the conditions thereof. The annexure marked as “LJM - 4” was not complete. Further, it was not signed by the Honorable Presiding Judge and thus the same was of no evidential value to this case.
- vi. The title documents obtained in respect of this suit were obtained by fraud and or misrepresentation and therefore they were null and void. The allegations made in Paragraph 3 of the said affidavit and aver that the same are false and or misleading. Further to the foregoing she avers that sometime in January, 2015 she and her late husband Zani Kalinga Kutoa being destitute and landless entered into the piece of land which they currently occupy and constructed thereon their residence of wattle and mud and she remembers on the same year she gave birth to her child Khadija Zani.
- vii. They found on the said land Mwijuma Mbwana and the other Respondents who welcomed them to the suit property and he informed them that he was born on the suit property and no one had claimed ownership of the same. She annexed and marked as “MKK - 1, 2 and 3 respectively a copy of her national identification card, a birth certificate and a photograph of herself and her family living on the said land.
- viii. She had peacefully lived on the said land until sometime in October, 2022 when the area chief assisted by police officers from Chaani police station visited their residence with a process server to serve them with the court pleadings and took their details with them.
- ix. She knew that when she moved into the suit property she met some of her colleagues all of whom had semi-permanent shelter being unable to rent out premises due to their destitute status these include:
 - a. Jackson Kalua Mwambaji who constructed a house partly with mud and wattle and partly with bricks where he resides with his family. Annexed hereto and marked “MKK 4, 5 and 6” respectively was a copy of his identity card, that of his wife and a photograph of the house.
 - b. Tsuma Mwagutu Tsuma who also constructed a house of mud and wattle with the pillars reinforced with a mixture of cement and pebbles. Annexed hereto and marked “MKK 7, 8 and 9” were copies of his identity card, a Certificate of Birth and a photograph of him and his family outside their house.
 - c. Mwijuma Mbwana Mwijuma who constructed a house of wattle covered with a mixture of cement and gravel. Annexed hereto and marked as “MKK 10 and 11” were copies of his identity.



- d. Njira Ngala Mangale who constructed a house of mud and wattle and the pillars reinforced with a mixture of cement and gravel. Annexed hereto and marked as “MKK - 12 and 13” was a copy of his identity card, Certificate of Birth of his children and a photograph of his and his family outside their house.
- e. Abel Ngala Kilonzo who like the others constructed a house of mud and wattle with the pillars reinforced by a mixture of cement and gravel. Annexed hereto and marked as “MKK 1- 4, 15 and 16” is a copy of his identity card and that of his wife, a Certificate of Birth and a photograph of him and his family outside their house.
- f. Mangi Katana Chengo who constructed a house partly with bricks and partly with wattle covered a mixture of cement and gravel. Annexed hereto and marked “MKK 17, 18 and 19” are copies of his Identity Card, that of his wife, his son and Certificate of Birth of his children and a photograph of him and his family outside their house.
- g. And the rest who had constructed similar houses; Annexed hereto and marked MKK 20 are copies of their Identity Cards and other documents and photographs confirming the same.
- x. From the time they entered into the said land to date they had never seen any of the Plaintiffs/ Applicants at the said land and their claim of possession and or occupation was an outright lie. From the foregoing facts, the allegations made in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46 respectively could not be true and was a clever fabrication to paint the Defendants/Respondents as land grabbers yet they were bona fide occupants of the land protected by law.
- xi. The annexure marked as “LJM - 7” did not indicated whose houses were constructed on the suit property and since it stated that only 4 houses were constructed thereon it was highly likely that the Defendants/Respondents are not on the suit property.
- xii. She had never been served with notices as alleged. Their occupation of the land on which they constructed their houses was open and known to the County Government of Mombasa who had promised to allocate them land pursuant to its Constitutional duty or give them alternative land. The provisional administration was also aware of their occupation and had allowed them to continue with the occupation until they were allocated the land or were given alternative land.
- xiii. Their interest in the land they occupy are protected by law.
- xiv. She asked for the said application to be dismissed with costs for:-
 - a. of the suit property.
 - b. If indeed, the Defendants/Respondents were in occupation of the suit property, which are denied anyway, then the Plaintiffs/Applicants illegally obtained the same and should be deprived of the said property.
 - c. The Defendants/Respondents were entitled to a fundamental right to shelter and unless the state provides them with alternative land they were not to be evicted from the suit property at all and in fact both the national and county governments were under a constitutional duty to acquire the said property for them.



- d. It was in the interest of Justice that the application be dismissed with costs.
6. The other 18 Defendants also swore Replying Affidavits on the same date and averred that what was contained in Mishi Keah Hombo's affidavit was correct and the position.

IV. Submissions

7. On 9th December, 2022 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 1st August, 2022 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and a ruling date was reserved for the 27th February, 2023 by Court accordingly.

A. The Written Submissions by the Plaintiffs/Applicants

8. On 23rd November, 2022, the Learned Counsel for the Plaintiff through the Law firm of Messrs. Anne Wamithi and Company Advocates filed their written submissions dated even date and filed on the 24th November, 2022. Mr. Gathu Advocate stated that on 25th October 2022 the Court directed that the Defendants do file their Responses and that parties do file their respective submissions with regard to the instant Application and issued interim Orders in the matter. However, the Defendants failed to serve the Plaintiffs' Advocates, thereby prompting the Plaintiffs to file their Submissions.
9. The Learned Counsel submitted that the Plaintiffs were the owners and/or beneficiaries of all that parcel of land situated at Changamwe area. Mombasa County and bordering the Kenya Port being suit property known as Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa estimated at the market value of Kenya Shillings One Hundred and Fifty Million (Kshs, 150,000,000.00.)
10. He submitted that the Plaintiffs had at all material times enjoyed peaceful, uninterrupted and date in the Certificate of Title upon being appointed the personal representatives of the Estate of the late Michael Mwendwa Ngilu. However, in the year 2020 the Plaintiffs were informed that unknown persons had trespassed and were attempting to put up structures therein which prompted the 2nd Plaintiff to visit Chaani Police Station and the Offices of the District Officer in November 2020 wherein she sought their assistance in having the trespassers vacate the suit property.
11. The Learned Counsel further averred that on or about November 2020 the 2nd Plaintiff visited the suit property wherein she found approximately 5 temporary structures that were yet to be completed and the persons therein informed the 2nd Plaintiff that they were willing to vacate the suit property after being paid money as compensation. On or about presence of the Plaintiffs' appointed licensed surveyor being Seline Consultants Limited, their Advocates on record, the District Officer, Area Chief and Police officers from Chaani area. The persons therein stated that they were willing to stop the constructions and unlawful trespass from the suit property in the event they were paid and admitted that they were fully aware that the suit property belonged to the 1st Plaintiff.
12. The Learned Counsel submitted that the Defendants willfully submitted their names to the Area Chief which names they submitted on the belief that the same would be used to allocate them funds to enable vacate the suit Premises. The 2nd Plaintiff visited Chaani Police Station in the presence of her Advocates on record and made a formal complaint with respect to the Defendants' acts of trespass and was issued with an OB No. 16/24/2/2021. In the presence of the OCS Chaani Police Station, Police Officers from That on or about 9th April 2021 at around 2:00 pm, the 2nd Plaintiff visited the suit property Chaani Police Station, the Chief Chaani Area, the Elder Chaani Area and the Plaintiffs Advocates on record and served some of the Defendants Area and the Notices. The Defendants continued to be



unlawfully in occupation of the suit property to the detriment of the Plaintiffs as the Plaintiffs were prevented from developing and/or benefiting from the suit property. That on or about 8th May 2021 their Advocates on record visited the suit property in the presence of the area chief and proceeded to serve the remaining Defendants with the demand notices wherein the 20th Defendant turned violent, harassed the Plaintiffs' Advocate on record, threatened to beat him and attempted to vandalize the Advocate's Motor Vehicle for serving him with the Demand Notices which incident was reported at the Chaani Police Station under OB No.14/07/5/2021.

13. He contended that afore stated acts of violence on the part of the Defendants stalled and curtailed any peaceful efforts to had the Defendants cease and desist from the acts of trespass and unlawful occupation hence necessitating the filing of the instant suit. The Defendants had proceeded to complete the remaining illegal temporary structures in an attempt to use the same as a basis for claiming for payments from the Plaintiffs. The Defendants activities had diminished the value of the suit property which borders the Kenya Ports Authority and is close to the Mombasa - Nairobi highway owing to the temporary illegal structures erected thereof hence diminishing the suit property's value. Despite the Plaintiffs requesting the Defendants to peacefully vacate the suit Property and demolished the temporary structures, they had to date failed, ignored and/or neglected to demolish the same and/or vacate the suit property which were erected without any approvals from the relevant authorities and which pose a risk against the Plaintiffs on account of any alleged claims with respect to an occupier's liability.
14. The Learned Counsel invited the Honourable Court to take into account the Defendants' Advocates submission in Court that most of the Defendants if not all had been in occupation of the Premises for a period of about 2 years and or not exceeding 5 years. Further, that most of the Defendants entered the Plaintiffs' property after they discovered there was a possibility of compensation for the 5 initial trespassers. The actions of the Defendants were negligent, illegal, unlawful and aimed at depriving the Plaintiff of its constitutional rights. According to him, end Counsel averred that the issues for determination before the Court could be framed as follows:
 - i. Whether the Honorable Court had jurisdiction to grant the orders sought;
 - ii. Whether the Plaintiffs were entitled to the orders sought;
 - iii. Whether the Plaintiffs have proved ownership of the parcels of land;
 - iv. Whether the action by the Defendants amounted to trespass and
 - v. Whether the Plaintiffs were entitled to costs of the suit.
15. On the issue of whether the Honourable Court has jurisdiction to grant the orders sought. The Learned Counsel held that the Plaintiffs sought for among other orders mandatory injunction with respect to the suit properties as against the Defendants and subsequently eviction orders. This was for the reasons that the Defendants were unlawfully in possession of the Plaintiffs parcel of land. The Plaintiffs had proven that they had attained the threshold for granting of injunctions and further relied on the provisions of Section 13 (7) (a), (c), (d), (h) and (i) of the *Environment and Land Court Act* with respect to the jurisdiction of the Court which provides that:-

“In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including- (a) interim or permanent preservation orders including injunctions; (b) prerogative orders; (c) award of damages; (d) compensation; (e) specific performance; (g) restitution; (h) declaration; or (i) costs.”



16. The Learned Counsel held that this Honorable Court was vested with jurisdiction to issue mandatory and permanent injunctions. They relied on the case of “[*Maber Unissa Karim v Edward Oluoch Odumbe*](#) [2015] eKLR where the Court stated that:-

“In my view, therefore, there are special circumstances in the Plaintiff’s case in that his court cannot aid a trespasser to continue with his illegal acts of unlawfully occupying the Plaintiff’s premises rent free when the Plaintiff must have incurred money in acquiring it and is not receiving any benefit out of it. The Plaintiff is by law entitled to have the Defendant evicted if he does not vacate voluntarily since he is an outright trespasser. In my view, the Plaintiff’s case is overwhelmingly strong, plain and clear and therefore I do not see any purpose that will be served by not determining the issue whether or not the Defendant is a trespasser in the suit premises at this stage rather than delaying the Defendant’s day of reckoning.

In my humble view, the delay in determining the issue will only serve to delay meting out justice to the Plaintiff who has, in my view, demonstrated that he is entitled to vacant possession of the demised premises whose tenancy term with the Defendant lapsed on 31st January 2015.

Article 159 (2) (b) places a duty upon this court to, in exercising judicial authority which is derived from the people, to be guided by the principle that justice shall not be delayed.

In addition, this court is enjoined by the overriding objectives under Sections 1A and 1B of the *Civil Procedure Act* to ensure prompt, just, fair, proportionate and expeditious disposal of disputes in a cost-effective manner to all litigants.

In the premise, I shall not allow the Defendant the luxury of delaying justice to the plaintiff when it has become trite clear and plain that the defendant is a trespasser in the Plaintiffs House(Maisonette) No.43 on LR 209/10482 off Mombasa Road.”

17. His contention was that the facts of this case were clear and uncontroverted particularly taking into account that the Defendants had not filed any response to the instant Application. His view was that where the facts were clear and uncontroverted, the Honorable Court ought not to shy away from granting mandatory injunction at an interlocutory stage. On this point, he relied on the decision of the Court in the case of “[*Tom Onyango v Mimoso Investments Limited*](#) [2017] eKLR where the Court stated that:-

“(18) The Learned Judge was satisfied that the Respondent’s case was plain and clear. He was not satisfied that any purpose would be served by delaying the determination of the issues. Having regard to the state of the pleadings and the peculiar circumstances of the case, we are satisfied that special circumstances existed for granting a mandatory injunction at an interlocutory stage, although it amounted to granting a final relief.”

18. The Learned Counsel invited the Honourable Court to take into great consideration the remarks by the Defendants’ Advocate on record on 25th October, 2022 to the effect that the Defendants had only been in occupation of the parcel of land for period not exceeding 5 years. The Plaintiffs had adduced evidence showing that they were the rightful owners of the subject property pursuant to the provisional Certificate of title produced and annexed marked as “LJM – 1” and the Confirmation of Grant produced and as “LJM – 4” and nothing had been produced by the Defendants to show their nature of claim with respect to the properties.



19. The Learned Counsel submitted that the law on injunctions was clearly settled in the landmark case of “*Giella v Cassman Brown and Co. Ltd* [1973] EA 358 where the Court held:-

“First the 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 adequately be compensated by an award of damages. And thirdly, if the court is in doubt, it will decide an Application on a balance of convenience.”

20. On the issue of whether the Plaintiffs had proved the ownership of the parcels of land, the Learned Counsel submitted that the Plaintiffs were the rightful and legal owners of the suit land. They had a right to own and use their property. They relied on the provisions of Article 40 of the [Constitution](#) of Kenya which provides that:

“Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-

(a) of any description; and

(b) in any part of Kenya.”

21. The Learned Counsel observed that the Defendants had not produced any evidence to the effect that they had any rights with respect to the suit property and/or adduced any grounds that would defeat the Plaintiffs' rights with respect to the suit property. Section 24 of the [Land Registration Act](#) No.3 of 2012 provides thus;

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

22. The Learned Counsel submitted that on the other hand, Section 25(1) of the [Land Registration Act](#) No. 3 of 2012 provides thus;

“the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.”

23. The Learned Counsel submitted that the Plaintiffs' rights with respect to the property had not in any way been challenged by the Defendants who thus far had not adduced any evidence to this Honourable Court to the extent that they had any rights with respect to the property hence this Court ought to make a finding that the actions of the Defendants were without justification and that they ought to be evicted forthwith from the said property. The Plaintiffs relied on the case of “[Kiplangat Chesenge v Joseph Rotich & David Rotich](#) [2018] eKLR where it was held that in the absence of proof disputing



a person's ownership to land, the Court ought to invoke Article 40 of the Constitution to safeguard those rights. It stated thus:-

“Since the Plaintiff's evidence was not challenged at the hearing, it is my finding the Plaintiff is the absolute proprietor of the suit property. He is therefore entitled to protection of the said title as provided for under the *Land Registration Act* No.3 of 2012.

Additionally, Article 40 of the *Constitution* guarantees the property rights of every person and provides under. Article 40(3) that no person shall be deprived of property or of any interest in or right over property of any description without prompt and just compensation being made to the person deprived of the property.”

24. The Learned Counsel submitted that a similar holding was made in the case of: “*Elizabeth Chemutai Chepkowny v Janeth Chepkoech & another* [2019] eKLR where the Court stated thus:

“The Plaintiff testified that she is the registered owner of land parcel LR No.kericho/Roret as demonstrated by Plaintiffs Exhibit 1 and 2.Since the plaintiff's evidence was not challenged at the hearing, it is my finding the plaintiff is the absolute proprietor of the suit property. The defendants have not demonstrated any lawful claim to the suit land whatsoever. The Plaintiff is therefore entitled to protection of the said title as provided for under the *Land Registration Act* No. 3 of 2012. Additionally, Article 40 of the *Constitution* guarantees the property rights of every person....”

25. On the issue of whether the Defendants action amounted to trespass, the Learned Counsel submitted that this Honourable Court was therefore called upon to safeguard the Plaintiffs' right to the property as they had proved that they had vested interest in the property. On the same breath, this Court ought to hold that the actions of the Defendants with respect to the property amounts to trespass which warranted the eviction of the Defendants from the properties. In the case of “*Elizabeth Chemutai Chepkowny (supra)*, the Honourable Court held that:-

“The second issue is whether the Plaintiff has proved that the Defendants trespassed onto his land. The Plaintiff testified that the defendants are occupying her land without her consent and they have adamantly refused to leave. In the case of *Nyangeri Obiye Thomas v Yunuke Sakagwa Nyoiza* ELC Case No.277 of 2018 Okong'o Jobserved as follows:

Clerk & Lindsell on Torts 18th Edition at paragraph 18-01 defines trespass as follows:

“Any unjustifiable intrusion by one person upon land in possession of another.”Trespass is actionable at the instance of the person in possession and that proof of ownership is prima facie proof of possession”

From the evidence on record, it is my finding that the defendants are unlawfully occupying the suit property. This amounts to trespass to land.”

26. The Learned Counsel asserted that the Defendants were unlawfully in occupation of the Plaintiffs' parcel of land and invited the Court to find that the Defendants were in trespass with respect to the suit property. The Plaintiffs tendered evidence to wit the demand letters and the OB Numbers from Chaani Police Station proving that they had never consent to the Plaintiffs' continued occupation of the parcel of land and the continued occupation of the same by the Defendants was tantamount to an infringement on the Plaintiffs' right to own and enjoy their property. They proved trespass on the



part of the Defendants and invited the Court to consider the words of the Court in the case of "[John Chumia Nganga v Attorney General & Another](#) [2019] eKLR where the Court stated that:-

“Trespass has been defined by *Clerk and Lindsell on Torts*, 18th edition at Pg.23 as;

“any unjustifiable intrusion by one person upon the land in possession.”

I am satisfied on the material placed before me that the Plaintiff is the registered proprietor of the suit land. The Plaintiff has accused the defendant of encroaching upon his land and putting barbed wire fence and thereof annexing a portion of his land measuring 10 metres. The Defendant having entered onto the Plaintiff's suit land without any lawful or justifiable cause while the Plaintiff was in possession the Defendant was therefore a trespasser.”

27. The Learned Counsel invited the Honourable Court to find that the Plaintiffs had proved their case on a balance of convenience and are deserving of the orders sought and humbly relied on the case of: *Zephania Khisa Saul v School Committee St. Anne's Secondary School* [2019] eKLR Where Justice Mwangi Njoroge stated as follows;

“Without any evidence from the defence that it bought the land or otherwise legally took possession thereof its presence thereon amounts to trespass on the Plaintiffs property as this court has found that the Plaintiff is the registered owner of the suit land and is entitled to possession of the land. The plaintiffs right to property guaranteed by Article 40 of the *Constitution* have therefore been violated. Article 40 of the *Constitution* provides for the protection of the right to acquire and own property and forbids parliament and state from arbitrarily depriving a person of his property. I do not find any justification given for the Defendant's occupation of the Plaintiff's land. I therefore find that the Plaintiff has established his claim on a balance of probabilities and I enter judgment in his favour against the Defendant and grant prayers No. (a), (b) and (c) in the plaint dated 21/6/2017.”

28. On the issue of whether the Plaintiffs stood to suffer irreparable damage, loss and prejudice in the event the orders were not granted, he held the Plaintiffs had been deprived off the liberty to use and enjoy the property at the behest of the unlawful acts by the Defendants. He further submitted that the Defendants' temporary structures had diminished the value of the property and taking that they were erected without any approvals from the relevant authorities. To him they posed a risk against the Plaintiffs on account of any alleged claims with respect to an occupier's liability.
29. The Learned Counsel was of the view that the Defendants were not capable of compensating the Plaintiffs with respect to the loss suffered on account of their unlawful occupation of the Property and prayed that the Honorable Court issued the mandatory injunction sought at this interlocutory stage. The Plaintiffs were entitled to costs as the suit herein was necessitated by the Defendants' resistance in vacating the Plaintiffs' suit property and handing over vacant possession of the same. In conclusion, he urged the Honorable Court to allow the application dated 1st August, 2022 and the prayers sought by the Plaintiffs with costs.

B. The Defendants'/Respondents' Submissions

30. On 7th December, 2022, the Learned Counsel for the Defendants through the Law firm of Messrs. Aboubakar, Mwanakitina & Company Advocates filed their written submissions dated even date.
31. Mr. Khamis Salim Advocate commenced by submitting that the effect of prayer 6 was again to cause for the eviction of the Defendants from the suit premises. It was their humble submission that generally



such orders were only available after the Court had heard the evidence of the parties in a full trial and not by way of an interlocutory application. It was only on exceptional circumstances when such orders may be granted on application. Accordingly, the Learned Counsel held that the Plaintiffs had not demonstrated that this matter was within the purview of those exceptional circumstance. He submitted that the Plaintiffs/Applicants should have shown on “a prima facie” basis that they had been in occupation and use the suit property from 23rd July, 1985 (37 years ago) when the deceased allegedly acquired the suit property to date. They would have at least shown empirical documentary evidence such as photographs of the house they lived in or the garden they had tendered or a crop that they planted or any other construction or physical evidence of their presence on the suit property. They had failed to do so. Alternatively, they should have shown that the Defendants had recently demolished some house or perimeter wall whether of barbed wire or stones or bricks. They had also failed to prove this to court.

32. The Learned Counsel submitted that on the other hand, the Defendants had shown that they were on the suit property some for life and some for over 12 years and the recent occupant was in occupation for at least 7 years on the suit property. They had also exhibited photographs of their semi-permanent houses in which they lived with their families. In any event, the Plaintiffs/Applicants had failed to have brought to Court a surveyor’s report that showed that the alleged houses of the Defendants were indeed constructed on the suit property. In the absence of such a report there was no way one would establish that indeed the Defendants houses were constructed on the suit property. The Learned Counsel held that the Plaintiffs/Applicants had thus failed to discharge the burden of proof to warrant this court issue such drastic orders of eviction.
33. The Learned Counsel submitted that the principles for granting an interlocutory injunction were well known. He relied on the case of:- “ELC No.61 of 2021 *Hezron Kamau Gichuru v Kianjoya Enterprises Limited & Another*” where Justice L.A.Omollo relied on the Court of Appeal interpretation of the principles in the case of “*Giella v Cassman Brown*”. In its decision in the case of “*Nguruman Limited v Jan Bonde Nielsen & 2 Others* CA No 77 of 2012 where it held that:-

“The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

34. The Learned Counsel submitted that the Plaintiffs in their attempts to establish a legal right on a prima facie basis relied on the facts that they were the registered owners of the suit property and enjoyed the rights of ownership as provided for by the provision of Sections 24 and 25 of the *Land Registration Act*, No. 3 of 2012. However, this right was being challenged by the Defendants as shown in their filed Counter - Claim. The Counsel argued that the Defendants had a right to challenge the Plaintiffs’ title



in accordance to the provision under Section 26 of the [Land Registration Act](#), 2012 on grounds of fraud, misrepresentation, illegal or unprocedural acquisition or through corrupt practices. There was therefore before this Court two competing rights regarding the title to the suit property. Thus, under the given circumstances, the Learned Counsel contended that it was the law that such drastic order that sanctioned for the eviction of persons from land should await the determination of the legality or otherwise of the title held by the Plaintiffs.

35. The Learned Counsel submitted that further to the foregoing, the Defendants had shown that most of them had been in occupation of the suit property for over twelve (12) years and were claiming title that having now acquired of the suit property by way of Land adverse possession. It should be noted that the provision of Section 28 of the [Land Registration Act](#), 2012 establishes rights known as overriding interests. One of such right was a right acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or prescription. The Land Adverse possession was the principle associated with the provisions of Sections 7,17 and 37 of the [Limitation of Actions Act](#), Cap. 22. So, in addition to the challenge to the Plaintiffs title under the provision of Section 26 of the [Land Registration Act](#),2012, there was also the claim of a legal right to ownership of the land by the Defendants under Sections 7,17 and 37 of the [Limitation of Actions Act](#), Cap. 22. The Learned Counsel held that whenever there were competing rights of ownership, the law required that permanent injunctive orders do await the final determination of the competing rights by the court.
36. The Learned Counsel submitted that in the alternative to the aforesaid claims, the Defendants relied on their fundamental right to housing and in so doing they had sued by way of a Counter-Claim entities that were bestowed with the duty and responsibility to house them and were seeking mandatory injunctive orders compelling them to acquire the land and settle them. It should be noted that one of the overriding interests in land under Section 28 of the [Land Registration Act](#), 2012 was the right of compulsory acquisition. The right to housing under the provision of Article 43 of the [Constitution](#) of Kenya, 2010 had been dealt with by the Supreme Court and although that right was addressed with regard to public land but where informal settlements had been established in a private property whose owners had never occupied the land, never used it from the date they allegedly acquired the land then the occupants were entitled to be settled on the said land. This was more so bearing in mind the principles of land policy entrenched by the provision of Article 60 of the [Constitution](#). This was where it was required that the owner of land must hold, use and manage the land in a manner that is equitable, efficient, productive and sustainable.
37. The Learned Counsel submitted that the Plaintiffs/Applicants Defendants had not demonstrated before Court that they had used that land productively as a resource. The Plaintiffs/Applicants had never shown any benefit that was derived to the State as land was to be used to generate income not only to the owner but also to the state. This failure by the Plaintiffs which amount to breach of the constitutional principles of land policy is a justification for them to be denied the right of ownership to the suit property with or without compensation.
38. The Learned Counsel relied on “Petition No.3 of 2018 [Mitu Bell Welfare Society v Kenya Airports Authority & others](#) where the Supreme Court addressed the right to housing under Article 43 of the [Constitution](#) and at one point remarked that:-

“ 149. From the foregoing, the question as to when the right to housing accrues, in our view, is not dependent upon its progressive realization. The right accrues to every individual or family, by virtue of being a citizen of this Country. It is an entitlement guaranteed by the [Constitution](#) under the Bill of rights. The persistent problem is that its realization depends on the availability of land



and other material resources. Given the fact that our society is incredibly unequal, with the majority of the population condemned to grinding poverty, the right to accessible and adequate housing remains but a pipe-dream for many. What with each successive government erecting the defence of “lack of resources”. The situation is compounded by the fact that, for reasons incomprehensible, the right to housing in Kenya is predicated upon one’s ability to “own” land. In other words, unless one has “title” to land under our land laws, he/she will find it almost impossible to mount a claim of a right to housing, even when faced with the grim possibility of eviction.”

150. This scenario has inevitably led to the emergence of the so called “informal settlements”, an expression that describes a habitation by the “landless”. In their struggle to survive, many Kenyans do occupy empty spaces and erect shelters thereupon, from within which, they eke their daily living. Some of these settlements sprout upon private land, while others grow on public land. It is these “settlers” together with their families who face the permanent threat of eviction either by the private owners or State agencies. The private owners will raise ‘the sword of title’, while the State agencies will raise ‘the shield of public interest’. So where does this leave the right to housing guaranteed by Article 43 of the *Constitution*?

39. The Learned Counsel also quoted Justice Omollo in the “*Hezron Kamau Gichuru*” case held in respect of the grant of mandatory injunction at the interlocutory stage thus: -

“I am not convinced that special circumstances exist in this matter that may warrant the grant of a mandatory injunction. 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 1st Defendant/Respondent has no claim over the suit parcels or that the 2nd Defendant/ Respondent advised it to register a caution on the suit parcels and the basis for such advice.”

40. Thus, in conclusion, the Counsel urged Court that the application by the Plaintiffs/Applicants should not be allowed with costs.

V. Analysis and Determination

41. I have carefully read and considered the pleadings herein – the Notice of Motion application dated 1st August, 2022 by the Plaintiffs/Applicants herein, the Replies by the Defendants, the written submissions, the cited decisions by Court and by the parties herein, the relevant and appropriate provisions of the *Constitution* of Kenya, 2010, and the statutes. For this Honorable Court to reach an informed, reasonable, just, fair and equitable decision, it has condensed the subject matter into the following four (4) salient issues for its determination. These are:

- a. Whether the Notice of Motion dated 1st August, 2022 by the Plaintiffs/Applicants herein meet the threshold required for granting temporary injunction orders under the provision of Order 40 Rules 1, 2 and 3 of the *Civil Procedures Rules*, 2010.
- b. Whether the Plaintiffs/Applicants should be granted orders of Mandatory injunction at the interlocutory stage.
- c. Whether the parties are entitled the reliefs sought.



d. Who will bear the Costs of Notice of Motion application dated 1st August, 2022.

ISSUE a). Whether the Notice of Motion dated 1st August, 2022 by the Plaintiffs/Applicants herein meet the threshold required for granting temporary injunction orders under the provision of Order 40 Rules 1, 2 and 3 of the Civil Procedures Rules, 2010.

42. 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.

43. The principles applicable in an application for an injunction were laid out in the celebrated locus classicus case of : “*Giella v 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.”

44. The three (3) 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 v Jan Bonde Nielsen & 2 others* [2014] eKLR, it held 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 v Afraba 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”.

45. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition melted down in the case of:- “*Mrao Limited v First American Bank of Kenya Ltd & 2 others* (2003) KLR 125, Court found that:

“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”

46. The Honorable Court now wishes to cross check and apply these legal principles to the instant case. Firstly, on the issue of “the prima facie case” The Plaintiffs/Applicants averred that they were the legal and absolute registered owners and/or beneficiaries of the suit land known as all that parcel of land situated at Changamwe area, Mombasa County and bordering the Kenyan Port being the suit property known as Subdivision Number 2427 (Original Number 2402/5) Section VI Mainland North Mombasa. It was estimated at the market value of a sum of Kenya Shillings One Hundred and Fifty Million (Kshs. 150, 000, 000.00.). They evidenced these facts through annexures marked as Exhibit “LJM - 1” being copies of the Provisional Certificate of Title with respect to suit property, “LJM - 2” as a copy of the Transfer with respect to the suit Property and “LJM - 3” being a copy of the Certificate of Postal Search as at 5th February 2021. The Plaintiffs/Applicants further asserted that at all material times they had enjoyed, uninterrupted and exclusive occupation and possession of the subject property from the date of the registration in the Certificate of Title and after being appointed the personal representatives of the Estate of the Late Michael Mwendwa Ngilu. On these facts, they evidenced it with an annexed marked as “LJM - 4” which was a copy of the Certificate of Confirmation of the Grant for the estate of the deceased. The Plaintiffs/Applicants averred that in the year 2020 they were informed that unknown persons had trespassed and were attempting to put up structures therein. Based on these inferences, the Plaintiffs/Applicants emphatically and articulately advanced the argument that they bore “a prima facie case” and ought to be considered to be granted that orders as sought.
47. Being adversarial system, on the other hand, the Defendants urged the Court to consider not granting the orders as sought by the Plaintiffs/Applicants herein as they failed on the front of the “prima facie case”. The Defendants contended that the Plaintiffs/Applicants in their attempts to establish a legal right on a prima facie basis relied on the fact that they were the absolute and legally registered owners of the suit property and enjoyed the rights of ownership as provided for by the provision of Sections 24 and 25 of the *Land Registration Act*, 2012. However, and based on the legal ration founded in the decision cited by the Learned Counsel for the Defendant of “*Hezron Kamau Gichuru* (Supra) it appears that there are competing interest to the extent that the title deed and the ownership of the suit property being challenged by the Defendants as graphically demonstrated and spelt out from the filed Counter - Claim. A Counter Claim tantamount to a suit by all standards. Legally speaking, and in the given circumstances, the Defendants/Respondents herein have as a matter of right to challenge the title deed bestowed and held by the Plaintiffs/Applicants herein as founded for under the provision title under the provision Section 26 of the *Land Registration Act*, 2012 on grounds of fraud, misrepresentation, illegal or un-procedural acquisition or through corrupt practices. Certainly, before Court there are two competing rights regarding the title to the suit property – one by the Plaintiffs/Applicants on the one hand and on the other by the Defendants/Respondents herein. Under the given circumstances, therefore, the Honorable Court is left with no option but to decline granting the orders



sanctioning for eviction from the suit properties as in order to balance the scale of justice the matter should await the determination of the legality or otherwise of the title held by the Plaintiffs.

48. In the case of "*Mbutia v Jimba credit Corporation Ltd* 988 KLR 1, the Court held that:
- “In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.”
49. Similarly, in the case of: "*Edwin Kamau Muniu v Barclays Bank of Kenya Ltd* the Court held that:
- “In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”
50. All said and done, although clearly there are already as indicated two competing interests over the suit land between the Plaintiffs and the Defendants taking that through the annexures by both the Plaintiffs and the Defendants, the Honorable Court feels strongly inclined in the meantime as it declines to grant the eviction orders but grant the temporary injunction orders in favour of the Plaintiffs/Applicants. The Court is of the opinion that the Plaintiffs holds authentic and substantive documentary prove, unless stated otherwise, of being the lawful registered Proprietor of the Property. Of Course, this is a fact emphatically contested to by the Defendants/Respondents who claim that they have been enjoying peace occupation of the said suit property for over 12 years and are claiming that they have now acquired the suit property by way of adverse possession. That objection cannot be easily wished away by this Honorable Court. However, in these given circumstances, and in meantime, I find that the Plaintiffs/Applicants have established that they have “a prima facie” case with a probability of success.
51. With regards to the second limb of the Court of Appeal in case of: "*Nguruman Limited (supra)*, the Court held that:-,
- “On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
52. On the issue whether the Plaintiffs/Applicants would suffer irreparable harm which could not be adequately compensated by an award of damages, the Plaintiffs/Applicants must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. As admitted by them, it is a fact that the Defendants have occupied the suit land and caused massive constructions on it. This, it is not hidden that the Plaintiffs/Applicants’ property may be subjected or exposed to great risk yet they may have a right to vacant possession in the long run. Clearly, the Plaintiffs/Applicants have to demonstrated 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."

53. Quite clearly, the Plaintiffs/Applicants would not be able to be compensated through damages as they have shown the court that their rights to the suit property registration documents and transfer documents. He has therefore satisfied the second condition as laid down in Giella's case (*supra*).

54. Thirdly, the Plaintiffs have to demonstrated that the balance of convenience tilts in their favour. In the case of: "[Pius Kipchirchir Kogo](#) (*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".

55. In the case of: "[Paul Gitonga Wanjau v Gatbuthis 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."

56. The Plaintiffs/Applicants contends that the balance of convenience tilts in their favour because they are legal registered proprietors of the suit property. The decision of:- "[Amir Suleiman v 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."



57. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the registration of title in the name of the Plaintiffs/Applicants.

58. In case of:- "*Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another* [2019] eKLR where the court in deciding on an injunction application stated:-

“circumstances for consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

59. 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 Plaintiffs/Applicants. In view of the foregoing, I find that the Plaintiffs/Applicants have met the criteria for grant of orders of temporary injunction. Further to this, I direct that they be allowed free access to and from the suit land at peace and without any hindrance at all.

ISSUE No. b). Whether the Plaintiffs/Applicants should be granted orders of Mandatory injunction at the interlocutory stage.

60. I will consider the question of whether mandatory injunction orders can be issued at the interlocutory stage. The decisions of the Court of Appeal offer guidance on this point.

61. In the case of:- "*Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma* [2020] eKLR the Court of appeal reaffirm its decision in the case:- "*Kenya Breweries Limited & another v 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.”

62. The Court also reaffirmed its decision in the case of:- "*Shariff Abdi Hassan v 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.”

63. I am not convinced that special circumstances exist in this matter that may warrant the grant of a mandatory injunction. I am also not convinced that this case is so clear that it ought to be decided at once not any one trying to steal a match as it were. As already over stated herein, there are competing claims by both parties and these require further interrogation. At this stage I cannot tell for sure that the Defendant has no claim over the suit property. I therefore decline to grant orders of Mandatory injunctions stated under prayer at this interlocutory stage of the matter.



ISSUE c). Who will bear the Costs of Notice of Motion application dated 1st August, 2023.

64. It is trite law that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party upon the conclusion of a legal action, or process or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. (See the Supreme case of “*Jasbir Rai Singh Rai – Versus – Tarchalon Singh* (2014) eKLR and the Court of appeal case of *Mary Wambui Munene – Versus – Ibururu Dairy Co – Operative Societies Limited* (2014) eKLR).
65. In this case, the results of the matter is that the Court finds that the Plaintiffs/Applicants have fulfilled the three prevalent conditions set out under Order 40 40 Rules 1, 2, 3 and 4 of the *Civil Procedure Rules*, 2010, whereby they are entitled to costs.

VI. Conclusion & Disposition

66. Ultimately, having conducted an elaborate analysis, the Honorable Court on the preponderance of probability the Court is satisfied that the Plaintiffs/Applicants herein has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Clearly, on the preponderance of probability, with regard to the reliefs sought from this application, the Plaintiffs/Applicants herein have a case against the Defendants/Respondents.
67. 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 1st August, 2022 has merit and hence be and is hereby allowed save for Prayer number 6 whereby the orders of permanent injunctions are hereby found to lack merit and can only be determined and granted the main suit on its merit.
 - b. That an order of Temporary injunction do and is hereby issued prohibiting, preventing or restraining the Defendants, whether jointly or whether by themselves, their agents, employees and servants from trespassing on, wasting, alienating or otherwise interfering or dealing with the parcel of land being Subdivision Number 2427 (Original Number 2402/5) Section I Mainland North Mombasa pending hearing and determination of the instant Application and the suit.
 - c. That an order be made that the Prayers numbers 2, 3, 4, 5 and 7 seeking injunctions that are permanent in nature at the interlocutory stage and hence be and are hereby not allowed.
 - d. That for expediency sake, this suit should be heard and determined within the next One Hundred and Eighty (180) days from the date of the delivery of this Ruling commencing from 26th July, 2023. There be a mention date on 9th may, 2023 for holding of a Pre – trial Conference pursuant to the provision of Order 11 of the *Civil Procedure Rules*, 2010.
 - e. That in the given circumstances, pursuant to the provision of Order 18 Rule 11 of the *Civil Procedure Rules*, 2010 there shall be a conducted a Site Visit (“Locus in Quo”) by Court on 12th May, 2023.
 - f. That an order be made to the effect that the Plaintiffs/Applicants herein be allowed to have free access to and from the suit land without any hindrances whatsoever.
 - g. That the cost of this application will be in the cause.

It is so ordered accordingly



RULING DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS SIGNED AND DATED AT MOMBASA THIS 9TH DAY OF MARCH 2023.

HON. JUSTICE L. L. NAIKUNI

JUDGE

ENVIRONMENT AND LAND COURT, AT MOMBASA

In the presence of:

- a. M/s. Yumnah, the Court Assistant.
- b. Mr. Elijah Gathu Advocate for the Plaintiffs/Applicants.
- c. Mr. Khamisi Salim Advocate holding brief for Mr. Aboubakar Advocates for the Defendants/Respondents.

