



REPUBLIC OF KENYA



**Taib v Juma & 2 others (Land Case 211 of 2021)  
[2023] KEELC 16639 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16639 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
LAND CASE 211 OF 2021  
LL NAIKUNI, J  
MARCH 9, 2023**

**BETWEEN**

**MAHMOUD HUSSEIN TAIB ..... PLAINTIFF**

**AND**

**MOHAMED ALI JUMA ..... 1<sup>ST</sup> DEFENDANT**

**JELANI APARTMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MOMBASA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. The Plaintiff/Applicant herein – Mahmoud Hussein Taib, moved this Honorable Court for hearing and determination of the Notice of Motion application dated October 18, 2021. It was filed under a certificate of urgency. The Applicant brought it against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents herein under the provisions of Order 40 rules 1, 2 and 4 of the [Civil Procedure Rules, 2010](#) and Sections 1A, 1B, 3A of the [Civil Procedure Act](#), Cap. 21.

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

2. The Plaintiff/Applicant sought for the following orders:-
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the suit filed herewith, this Honourable Court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> and or 2<sup>nd</sup> Respondents whether by themselves or by their agents, servants and or employees or anybody howsoever acting under



them from continuing with the construction of the multistory building on Plot Number Mombasa/Block XVI/642.

- d. That costs of this application be provided for.
3. The application is premised on the grounds, testimonial facts and the averments made out under the 11 Paragraphed Supporting Affidavit of Mahmoud Hussein Taib the Applicant herein together with three (3) annexures marked as “MHT 1, 2 and 3. The Applicant deponed that:
- a. He was the Applicant herein therefore competent enough to swear the affidavit.
  - b. Sometimes on March 2021 the 2<sup>nd</sup> Defendant/Respondent started construction of a storey house on the Plot Number Mombasa/block XVI/642 which belongs to 1<sup>st</sup> Defendant.
  - c. The said construction came as a surprise to him as no notification of the development was made to the public including himself as was required by law.
  - d. He was therefore unaware whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents had obtained the development permissions from the 3<sup>rd</sup> Defendant/Respondent as was required by law.
  - e. The aforesaid notwithstanding, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents commenced and continued with the construction of the storey house on the 1<sup>st</sup> Defendant/Respondent’s plot. In so doing, they encroached on his land being Plot Number Mombasa/block XVI/645. This was done by the construction of the building on the boundary of his plot beacon to beacon which in effect denied him the right to easement as guaranteed by the law and which was also a violation of the *Physical and Land Use Planning Act*.
  - f. On the 5<sup>th</sup> July, 2021, through his advocates he lodged a complaint with the 3<sup>rd</sup> Defendant/Respondent. Despite of this, the 3<sup>rd</sup> Defendant/Respondent took no action until 19<sup>th</sup> August, 2021 when the County Executive Committee Member in Charge of Physical and Land Use Planning issued an Enforcement Notice to the 2<sup>nd</sup> Defendant/Respondent herein.
  - g. Notwithstanding the issuance of the said Enforcement Notice, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents were still continuing with the said construction and the storey house was near its completion.
  - h. He was not aware of any appeal lodged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents in respect of the said Enforcement Notice.
  - i. The 3<sup>rd</sup> Defendant/Respondent had failed, refused and or neglected to implement the Enforcement Notice leaving him with no option but to institute this suit.
  - j. He urged Court and in the in the interest of justice that this application be allowed with costs.

### III. The 1<sup>st</sup> Defendant/Respondent’s case

4. On 18<sup>th</sup> November, 2021, the 1<sup>st</sup> Defendant/Respondent filed an 11 Paragraphed Replying Affidavit sworn by Mohamed Ali Juma and dated 18<sup>th</sup> November, 2021. It had with two (2) annexures marked as “MAJ – 1 and 2”. He averred that: -
- i. He was an adult of sound mind and the named 1<sup>st</sup> Defendant/Respondent herein hence competent to swear this affidavit.



- ii. He acknowledged the fact that at some point in time he was the registered Co - owner of the parcel of land known as Mombasa/Block XVI/642 where he held half share while his sister Amina Ali Juma held the other half share.
- iii. On the 12<sup>th</sup> January, 2021 being the registered Co - owners of the aforementioned land, they sold and transferred the same land to Jelani Apartment Limited, the 2<sup>nd</sup> Defendant/ Respondent herein. He attached a copy of the transfer dated 12<sup>th</sup> January, 2021 and marked as “MAJ – 1”.
- iv. On the 22<sup>nd</sup> January, 2021 the 2<sup>nd</sup> Defendant/Respondent were issued with a new Certificate of Title deed bearing their name as the newly registered owner. He attached a copy of the said new Certificate of Title and marked as “MAJ – 2”.
- v. Based on these facts, therefore, he stated that he never owned the land known as Mombasa/ Block XVI/642 as alleged by the Plaintiff/Applicant.
- vi. According to him and the facts stated, he had been wrongfully sued in this matter since both the Plaintiff/Applicant and his Advocate failed to undertake and perform any due diligence to determine who were the legal and absolute registered owners of the said parcel of land before wrongfully instituting the suit against him.
- vii. He held that the Plaintiff/Applicant had dragged him to this Honorable Court without any cause of action.
- viii. The Plaintiff/Applicant had caused him to engage the services of an Advocate in a matter where he had no cause of action against him thus leading him to incur great expenses in defending the suit.
- ix. He swore the affidavit in opposition of the Plaintiff/Applicant’s application dated 18<sup>th</sup> October, 2021 for having been wrongfully and without any cause of action joined him in the suit.
- x. He prayed for this Honorable Court to dismiss the Plaintiff/Applicant’s suit against him with costs.

#### **IV. The 2<sup>nd</sup> Defendant/Respondent’s case**

5. The 2<sup>nd</sup> Defendant/Respondent responded to the application through filing a 17 Paragraphed Replying Affidavit dated 14<sup>th</sup> December, 2021 sworn by Abubakar Jelani Ali, a director in the 2<sup>nd</sup> Defendant company with five (5) annexures marked as “AYA – 1 to 5” hereof. The replies and filed on 15<sup>th</sup> December, 2021. He deposed as follows, that:
  - a. He was an adult male of sound mind and the director of the 2<sup>nd</sup> Defendant/Respondent herein hence competent to swear the Affidavit. He attached a copy of the CR 12 Form for the 2<sup>nd</sup> Defendant/Respondent and marked as “AYA – 1”.
  - b. The 2<sup>nd</sup> Defendant/Respondent was the registered owner of the parcel of land known as Mombasa/Block XVI/642 having purchased the same from the 1<sup>st</sup> Defendant/Respondent sometimes in January, 2021. He attached a copy of the Certificate of title dated 22<sup>nd</sup> January, 2021 and marked as “AYA – 2”.
  - c. The 2<sup>nd</sup> Defendant/Respondent purchased the subject matter land with intentions to develop it by building a multi – storey dwelling house for residential purposes.



- d. The 2<sup>nd</sup> Defendant/Respondent engaged the services of an Architect who prepared the relevant architectural drawings which the 2<sup>nd</sup> Defendant/Respondent. Thereafter, they presented the drawings and designs to the 3<sup>rd</sup> Defendant/Respondent for its approval. Eventually, they were issued with the approvals accordingly. He attached a copy of the approval by the 3<sup>rd</sup> Defendant/Respondent and marked as “AYA – 3”.
- e. The 2<sup>nd</sup> Defendant/Respondent also engaged the National Environment Management Authority (Hereinafter referred to as “NEMA”) for purposes of conducting an Environment Impact Assessment (EIA) Report in accordance with the requirements under the *Environmental Management and Coordination Act* (EMCA) which was duly prepared. He attached a copy of the Comprehensive Project Report Compiled by a qualified Environmental Impact Assessment Expert and marked as “AYA – 4”.
- f. In the initial plan, the 2<sup>nd</sup> Defendant/Respondent had intended to construct a development comprising of the ground floor and four (4) floors which it obtained approval from the 3<sup>rd</sup> Defendant/Respondent for the same.
- g. Thereafter the 2<sup>nd</sup> Defendant/Respondent formed an intention to extend to two (2) more floors to make a total number of six (6) floors thereof.
- h. Subsequently, the 2<sup>nd</sup> Defendant/Respondent made an application to the 3<sup>rd</sup> Defendant/Respondent for approval of the two extra floors and the same was approved in accordance with the Physical Planning laws. He attached a copy of the said application for approval for the extra two floors was attached and marked as “AYA – 5” thereof.
- i. The 2<sup>nd</sup> Defendant/Respondent constructed the multi - storey building within the confines of the boundaries of the subject matter land contrary to the allegations made by the Plaintiff/Applicant in his affidavit.
- j. The Plaintiff/Applicant’s suit against the 2<sup>nd</sup> Defendant/Respondent was a non - starter since it was evident from the report by the Land Surveyor annexed to the Supporting Affidavit that the subject matter storey house never encroached onto the parcel of land for the Plaintiff/Applicant whatsoever.
- k. From the said report by the Land Surveyor was evident that the 2<sup>nd</sup> Defendant/Respondent had left a setback of 0.60m and 0.30m from the beacons and boundary lines as such the allegation of encroachment is not only misleading but also scandalous and brought in bad faith by the Plaintiff/Applicant herein.
- l. The enforcement notice dated 19<sup>th</sup> August, 2021 was issued upon the 2<sup>nd</sup> Defendant/Respondent erroneously since the 2<sup>nd</sup> Defendant/Respondent’s application for approval of the extra two ( 2 ) floors was still pending the approval by the 3<sup>rd</sup> Defendant.
- m. Thereafter, the 2<sup>nd</sup> Defendant/Respondent obtained all approvals required for the construction of the subject matter building and complied with all legal requirements.
- n. He held that both the application and suit by the Plaintiff/Applicant was a non – starter and raised no cause of action. He prayed for this Honorable Court to dismiss both of them with costs to the Defendants/Respondents.



## V. The 3<sup>rd</sup> Defendant's case

6. The 3<sup>rd</sup> Defendant responded to the application through an 8 Paragraphed Replying Affidavit dated 4<sup>th</sup> March, 2022 and sworn by Mr. Paul Manyala. He averred that:
  - a. He was an adult male of sound mind and understanding, well conversant with the facts giving rise to this suit and the instant application and hence competent to swear this Affidavit.
  - b. He was the Director in charge of Planning at the 3<sup>rd</sup> Defendant/Respondent's Department of Lands and as such duly authorized by the 3<sup>rd</sup> Defendant/Respondent to swear this affidavit on their behalf.
  - c. The Affidavit was made in opposition of the Plaintiff's Application dated 18<sup>th</sup> October, 2022.
  - d. Upon an application, the 3<sup>rd</sup> Defendant/Respondent herein issued to the 2<sup>nd</sup> Defendant/Respondent herein the Notification of Approval of the application for development permissions on 12<sup>th</sup> March 2021 for proposed development on Plot No. MSA/XVI/642 situated along/off Majengo Road for four ( 4 ) number of floors approved by the e-construction permit system CP number P2021/00111 subject to the conditions hereunder.
  - e. Later on the 2<sup>nd</sup> Defendant/Respondent made an application to the 3<sup>rd</sup> Defendant for approval of a two (2) extra floors but the same was not approved.
  - f. Thus, on 18<sup>th</sup> August 2021, the Enforcement notice was issued against the 2<sup>nd</sup> Defendant/Respondent. Indeed the notice was properly issued upon the 2<sup>nd</sup> Defendant taking that their application for approval of the extra two (2) floors was still pending and awaiting the approval by the 3<sup>rd</sup> Defendant's. Despite all this, the 2<sup>nd</sup> Defendant still proceeded and continued building without having obtained the approvals, exceeding the number of floors it had applied. Besides, it also failed use the safety nets to stop debris, no inspection forms of the construction and other nuisances from permeating into the neighbors plots as was required under the building laws.
  - g. From the foregoing facts, the Plaintiff/Applicant's application had merit and he hence urged the Honorable Court to allow the Plaintiff/Applicant's application with costs by the 2<sup>nd</sup> Defendant/Respondent herein.
  - h. The matter of law herein are deponed to based on advise as aforesated, while the matter of fact are known to him of his information and belief, the sources of such information and belief having been duly disclosed and attributed.

## VI. Submissions

7. On 24<sup>th</sup> May, 2022 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 18<sup>th</sup> October, 2021 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 on Notice by Court accordingly.

### A. The Written Submissions by the Plaintiff/Applicant

8. On 3<sup>rd</sup> December, 2021, the Learned Counsel for the Plaintiff/Applicant herein through the Law firm of Messrs. Aboubakar, Mwanakitina & Company Advocates filed their written submissions dated 2<sup>nd</sup> December, 2021.



9. Mr. Aboubakar Advocate commenced the submission by stating and admitting to the facts on record which established that the 1<sup>st</sup> Defendant/Respondent, Mohamed Ali Juman had been registered Co - owner of all that parcel of land known as Plot No. Mombasa/block XVI/642 where he owned half (1/2) share thereof and his sister Amina Ali Juma owned the other half (1/2). On the 12<sup>th</sup> January, 2021 they sold and transferred the same to the 2<sup>nd</sup> Defendant Jelani Apartments Limited. Therefore, as at the time of filing this suit the said plot was owned by the 2<sup>nd</sup> Defendant/Respondent. Therefore, there was no doubt that the 2<sup>nd</sup> Defendant/Respondent owned the said property.
10. The Learned Counsel submitted that the Plaintiff/Applicant had sworn that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents were constructing a storey house in the said plot. This construction came as a surprise to the Plaintiff/Applicant as no notification of the development was made to the public including himself as was required by law. Consequently, the Plaintiff/Applicant became aware that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondent had not obtained the development permissions from the 3<sup>rd</sup> Defendant/Respondent for this development and construction works.
11. The Learned Counsel further argued that the 2<sup>nd</sup> Defendant/Respondent while proceeding on with the construction, they encroached onto the Plaintiff/Applicant's Plot Number Mombasa/block XVI/645 by constructing its building on the boundary of his plot from beacon to beacon. This encroachment had in effect denied the Plaintiff/Applicant his right to easement, that was a right to the passage of air from the space required to be set aside for that purpose.
12. The Learned Counsel submitted that consequently, the Plaintiff/Applicant lodged a complaint to the County Government of Mombasa (3<sup>rd</sup> Defendant/Respondent). He annexed as "MHT – 1" being a letter from his then Advocates on record, Messers. M.A. Mwinyi Advocate dated 5<sup>th</sup> July, 2021 as proof of his complaint. Additionally, Attached to the complaint was a copy of the Surveyor's report marked as "MHT – 2" thereof. The report showed the extent of encroachment and the blocking of the space required by law for enjoyment of easement by the Plaintiff/Applicant. The last annexure marked as "MHT – 3" was a copy of the Enforcement Notice that the 3<sup>rd</sup> Defendant/Respondent issued to the 2<sup>nd</sup> Defendant/Respondent. The Enforcement Notice dated 19<sup>th</sup> August, 2021 showed that the 2<sup>nd</sup> Defendant/Respondent had built without approved PPA 2. It also showed that, it had exceeded the number of four (4) floors initially approved, it was not using safety nets to stop debris and there were no inspection forms of the construction.
13. It was the contention of the Learned Counsel that despite the issuance of the Enforcement Notice by the 3<sup>rd</sup> Defendant/Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents had not taken any steps to address the situation. Resultantly, it caused the Plaintiff/Applicant to move this Court through the application and the suit. He stated that under the provision of Section 57 of the *Physical and Land Use Planning Act*, 2019 (Herein after referred to as "The PLUPA"), a person shall not carry out development within a County without a development permission granted by the County Executive Committee Member responsible for Physical and Land Use Planning. According to the Counsel, the Plaintiff/Applicant herein had proved through the Enforcement Notice annexed to his Supporting Affidavit and annexed as "MHT – 3" that the 2<sup>nd</sup> Defendant/Respondent was constructing the house without the requisite permission.
14. He contended that that the aforesaid being the case, the County Executive Committee Member was required under the provision of Sub - Section 3 thereof to direct the 2<sup>nd</sup> Defendant/Respondent to restore the land in which the development and construction was taking place to its original condition or as near to its original condition as is possible and such restoration was to take place within 90 days. If the person failed to comply then the County Executive Committee Member shall undertake the



restoration exercise himself. But despite of this situation, in the instant case, the County Executive Committee Member had failed to state the appropriate action as dictated by law.

15. Further, the Learned Counsel submitted that the provision of Section 72 of PLUPA directed the County Executive Committee Member to serve the owner, occupier, agent or developer of property or land with an Enforcement Notice if it came to his notice that a developer commences development on any land without the required development permission having been obtained, or any condition of a development permission granted had not been complied with. To this end, and luckily so, the County Executive Committee Member did issue an Enforcement Notice as required by law. Todate, although the 2<sup>nd</sup> Defendant/Respondent had never appealed against the issued notice to the relevant County Physical and Land Use Planning Liaison Committee, still the County Executive Committee Member had refused, neglected and or failed to enforce the notice hence the suit.
16. The Learned Counsel asserted that based on the contents of the Survey report annexed as “MHT – 2”, the 2<sup>nd</sup> Defendant/Respondent had constructed its building encroaching the Plaintiff/Applicant’s plot by 0.6 m and 0.3m on the ground floor and by 0.3m from 1<sup>st</sup> Floor upwards. The Learned Counsel cited Rule 13 (1) of the Physical Planning (Building and Development Control) Rules, 1998 which provided that no person shall erect a building in such manner as to provide any back to back dwelling.
17. Further, he referred Court to Rule 18 thereof which provides that:-

“a domestic building shall be so sited as to leave an open space immediately in front thereof, which space shall extend throughout the whole width of the front of the building to a distance of not less than 6m (20ft) measured at right angles therefrom.”

The Learned Counsel further submitted that Rule 21 thereof provides that any passage between building erected on the same plot or between a building and the boundaries of the plot on which such building is situated, shall have minimum dimensions of 1.2m (4ft) in width and 2.1m (7ft) in height. The facts as proved by this application were that the 2<sup>nd</sup> Defendant/Respondent had violated the above sited law by leaving no space between the building and the boundary of its plot bordering the Plaintiff/Applicant’s plot. It had left no open space as was required by the rules.

18. The Learned Counsel argued that the said rules were meant for the neighbors to enjoy the free flow of air for their benefit. This was by virtue of the provision of Section 138 of the Land Act, No. 6 of 2012 which creates an easement. The section provides that:-

138. (1) Subject to any other written law applicable to the use of land, the rights capable of being created by an easement are—

- a. any rights to do something over, under or upon the servient land; or
- b. any right that something should not be so done;
- c. any right to require the owner of servient land to do something over, under or upon that land;

1. The Learned Counsel submitted that by the Physical and Land Use Planning Act and the 1998 Rules, the 2<sup>nd</sup> Defendant/Respondent had been advised to leave an open space between the building and the boundary of his plot. This created an easement which had denied the Plaintiff/Applicant the use of. Further, the Learned Counsel referred informed Court of the provision of Section 32 of the Limitation of Actions Act, Cap. 22 which states that means by which easement may be required and it provides that:



32. Means by which easements may be acquired

- (1) Where—
- (a) the access and use of light or air to and for any building have been enjoyed with the building as an easement; or
  - (b) any way or watercourse, or the use of any water, has been enjoyed as an easement; or
  - (c) any other easement has been enjoyed, peaceably and openly as of right, and without interruption, for twenty years, the right to such access and use of light or air, or to such way or watercourse or use of water, or to such other easement, is absolute and indefeasible.

20. The Learned Counsel submitted that an easement was defined by this Court in the case of “ELC NO. 422 of 2017 *Esther Wanjiku Mwangi & 3 Others v Wambui Ngarachu* when Justice J.G. Kemei adopted the Court of Appeal definition of an easement in the case of “*Kamau v Kamau* (1984) where the Court observed that:

“An easement is a convenience to be exercised by one landowner over the land of a neighbour without participation in the profit of that other land. The tenement to which it is attached is the dominant and the other on which it is imposed is the servient tenement. Once an easement is validly created, it is annexed to the land so that the benefit of it passes with the dominant tenement and the burden of it passes with the servient tenement to every person into whose occupation these tenements respectively come. So, also in equity, do restrictive covenants because they are in the nature of negative easements.”

21. Further, the Learned Counsel cited the case of: “ELC No. 130 of 2016 *Col (Rtd) Lawrence Nteene v Kongoni Camp Limited*” where Court granted an injunction order on the basis that there was evidence that the Plaintiff had used the suit property as an excess road. Similarly, he held that in this instant case, there was evidence that the 2<sup>nd</sup> Defendant/Respondent herein had failed, refused and or neglected to leave a free space meant to provide access to air and thus the Plaintiff/Applicant was entitled to the orders sought.

22. In conclusion, the Learned Counsel held the view that from the aforesaid reasons they had shown on “a prima facie basis’ that the Plaintiff/Applicant deserved the orders he craved for before this Honorable Court. Thus, he urged the Honorable Court to grant the orders sought in the application.

**B. The Written Submissions by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents**

23. On March 21, 2022 the Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondent herein through the Law firm of Messrs. Gitahi Gathu & Co. Advocates filed their written submissions dated 21<sup>st</sup> March, 2022. Mr. Gitahi Advocate commenced his submission by re capping that what was before the Honorable Court being the Plaintiff/Applicant’s notice of motion application dated 18<sup>th</sup> October, 2021 and supported by an affidavit sworn on the even date. He stated that the Plaintiff/Applicant sought for injunctive orders against both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents from proceeding with the construction of a multi storey building on Plot known as Mombasa/ Block XVI/642 on the grounds that the construction encroached on his property and that he had established that there had been no approvals for the construction obtained from the 3<sup>rd</sup> Defendant/Respondent herein plus costs.



24. Pursuant to this, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their respective Replying Affidavits sworn on the 18<sup>th</sup> November 2021 and 14<sup>th</sup> December, 2021 respectively opposing the contentions made by the Plaintiff/Applicant. In his submissions, the Learned Counsel raised several issues for determination by this Honourable Court which included but not limited to the following:
- a. Who were the registered owner of the subject matter land?
  - b. Had the property for the Plaintiff/Applicant herein been encroached by the said construction as alleged?
  - c. Had the 2<sup>nd</sup> Defendant/Respondent complied with all legal requirements in respect of the subject matter construction?
25. On the issue of the registered owner of the suit property, the Learned Counsel affirmed that the 2<sup>nd</sup> Defendant/Respondent was the registered owner of the parcel of land known as Mombasa/block XVI/642 having procured it from the 1<sup>st</sup> Defendant/Respondent sometime in the month of January, 2021. Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents entered into an agreement for sale of the property and subsequently had the property transferred. The 1<sup>st</sup> Defendant/Respondent had captured this fact under the contents of Paragraphs 2, 3, 4 and 5 of his Replying Affidavit sworn on 18<sup>th</sup> November, 2021. He stressed that the suit property changed hands from the 1<sup>st</sup> Defendant/Respondent to the 2<sup>nd</sup> Defendant/Respondent as evidenced by both the transfer instrument dated 12<sup>th</sup> January, 2021 and the Certificate of title both of which were produced as annexures in the 1<sup>st</sup> Defendant/Respondent's affidavit. He cited the provision of Section 26 of the [Land Registration Act, 2012](#) the law provides that:
- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
26. He held that the statutory provisions relating to a party being registered in a certificate of title by the Registrar being taken as the indefeasible owner were cited and upheld in the case of "[Margaret Njeri Wachira v Eliud Waweru Njenga](#) [2018] eKLR where it was held that:
- “The Courts are therefore mandated by statute to consider a title document as prima facie evidence of ownership to land and a conclusive evidence of proprietorship to land...”
27. Therefore, based on the above facts and the legal position on land ownership, the Learned Counsel was of the view that the Plaintiff/Applicant had no cause of action against the 1<sup>st</sup> Defendant/Respondent herein. As such, his claim against the 1<sup>st</sup> Defendant ought to be dismissed with costs.
28. On the issue on whether the Plaintiff/Applicant's property had been encroached by the said construction. The Learned Counsel refuted that the property for the Plaintiff/Applicant property had been encroached whatsoever. He indicated that when the 2<sup>nd</sup> Defendant/Respondent purchased the subject matter property, the 1<sup>st</sup> Defendant/Respondent pointed out that the beacons to the property which were in situ as originally placed which fact was confirmed by a Surveyor. Based on this



information, the 2<sup>nd</sup> Defendant/Respondent proceeded to not only engage the services of an architect who drew the architectural plan of the development, but also other relevant professionals such as engineers and surveyors to ensure that the intended development was done in compliance with all laws and regulations and that the Construction was up to standards and safe for residential purposes. The 2<sup>nd</sup> Defendant/Respondent not only involved the 3<sup>rd</sup> Defendant/Respondent in obtaining the requisite approvals but also engaged the NEMA who prepared an Environment Impact Assessment report dated 18<sup>th</sup> March, 2021. The 2<sup>nd</sup> Defendant/Respondent had produced the said approval and the Environment Impact Assessment report in its Replying Affidavit.

29. The Learned Counsel attested that by the time the 2<sup>nd</sup> Defendant/Respondent commenced the Construction, it had satisfied itself that the boundary beacons were in order and all the requisite approvals and consents had been obtained. The Plaintiff/Applicant herein produced a report by Land Surveyor prepared by the County Surveyor one Mr. Gilbert Nderitu who in his findings indicated that there had been no encroachment on the Plaintiff/Applicant's property by the 2<sup>nd</sup> Defendant/Respondent's development. Hence, it was baffling that the Plaintiff/Applicant had filed this instant matter alleging encroachment of his property by the development and/or construction undertaken by the 2<sup>nd</sup> Defendant/Respondent and when the said development was at the sixth floor. The development had already been completed and the only pending matter was the interior finishing and the building would be ready for occupation. The Plaintiff/Applicant was a neighbor to the 2<sup>nd</sup> Defendant/Respondent's property and had all along been present in the subject matter area even before commencement of the construction and had only brought the allegations of trespass/encroachment when the building was at its sixth floor.

30. The Learned Counsel submitted that they had left sufficient setback from the boundary line and the ground floor of the subject matter building and that the first floor moving upwards was along the boundary line such that there was no encroachment whatsoever. The Learned Counsel referred the Court to the provision of Section 107 and 108 of the Evidence Act, Cap. 80 which provides as follows:

“ 107. Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

31. He submitted that burden of proof was well expounded on in “The Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 17 at paras 13 and 14: where it describes it thus:

“

“ 13. The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose.



14. The legal burden of proof normally rests upon the party desiring the Court to take action; thus a claimant must satisfy the Court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.”

The Legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the Appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who will fail without further evidence?

32. He averred that no evidence had been tendered before this Honourable Court to demonstrate to what extent had the 2<sup>nd</sup> Defendant/Respondent encroached onto the property of the Plaintiff/Applicant and for how long it had occurred and what injuries had the Plaintiff suffered as a result of the said encroachment. It was therefore the Learned Counsel’s view that the Plaintiff/Applicant herein had failed to discharge his duty of proving the alleged encroachment. As such, the 2<sup>nd</sup> Defendant/Respondent prayed that this Honorable Court finds that the case by the Plaintiff/Applicant was without merit and should be dismissed with costs.
33. On the issue of whether the 2<sup>nd</sup> Defendant/Respondent herein complied with all legal requirements in respect of the subject matter construction/ development. The Learned Counsel submitted that, the 2<sup>nd</sup> Defendant/Respondent had fully complied with all legal requirements before commencing the said construction. According to him, it was evident from the annexures contained in the 2<sup>nd</sup> Defendant/Respondent’s Replying Affidavit dated 14<sup>th</sup> December, 2021 that they obtained the necessary approvals from the 3<sup>rd</sup> Defendant/Respondent herein and the NEMA respectively. The allegations made by the Plaintiff/Applicant that the 2<sup>nd</sup> Defendant/Respondent never obtained approval from the 3<sup>rd</sup> Defendant/Respondent and that NEMA never conducted any public participation in preparation of the Environment Impact Assessment Report were totally misleading and made in bad faith.
34. The Learned Counsel submitted that the 2<sup>nd</sup> Defendant/Respondent produced the Environment Impact Assessment report to demonstrate that all legal requirements in that regard were fully complied with. As such, he prayed that this Honorable Court dismisses the suit by the Plaintiff/Applicant for want of merit. The Counsel held the opinion that it was evident that the Plaintiff/Applicant was zealous to paint the 2<sup>nd</sup> Defendant/Respondent in bad light and thwart the process made on the subject matter property.
35. The upshot of this, the Learned Counsel held that the suit and the application by the Plaintiff/Applicant lacked merit. It had been brought in bad faith and that the Plaintiff/Applicant had failed to demonstrate encroachment on his property. He had also failed to demonstrate his claim against both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and such his claim ought to fail and be dismissed with costs.

## VII. Analysis and Determination

36. I have carefully read and considered the pleadings herein, the written submissions, the cited decisions on law by parties, the relevant and appropriate provision of the *Constitution of Kenya, 2010* and the stature. In order to arrive at an informed, just, fair and reasonable decision, the Honorable Court has framed three (3) important issues for its determination. These are:-



- a. Whether the Notice of Motion application dated October 18, 2021 by the Plaintiff/Applicant herein meets threshold required for granting a temporary injunction order under the provision of Order 40 Rules 1, 2 & 3 of the [Civil Procedures Rules, 2010](#).
- b. Whether the 1<sup>st</sup> Defendant/Respondent herein is a necessary party to this suit.
- c. Who will bear the Costs of Notice of Motion application dated October 18, 2021.

**Issue No. a). Whether the Notice of Motion application dated 18<sup>th</sup> October, 2021 by the Plaintiff/Applicant herein meets threshold required for granting a temporary injunction order under the provision of Order 40 Rules 1, 2 & 3 of the Civil Procedures Rules, 2010.**

37. Despite of the numerous issues raised from this application, essentially what the Plaintiff/Applicant is seeking from this Court is being granted temporary injunction orders against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents herein. And that is the pith and substance of this sub heading. The application herein is premised under Order 40 Rules 1, 2 & 3 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.

38. The principles applicable in an application for an injunction were laid out in the celebrated and ‘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.”

39. The three (3) pre - conditions set out in the case of [“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,

“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".

40. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition melted down in the Court of Appeal case of "[\*Mrao Limited v 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"

41. In the instant case, the Plaintiff/ Applicant claimed that sometime on March 2021 the 2<sup>nd</sup> Defendant/ Respondent herein started construction of a storey house on the 1<sup>st</sup> Defendant/Respondent's Plot. The said construction came as a surprise to the Plaintiff/Applicant as no notification of the development was made to the public including the Plaintiff/Applicant as was required by law. Therefore, the Plaintiff/Applicant was unaware whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondent had obtained the development permissions and approvals from the 3<sup>rd</sup> Defendant/Respondent. The aforesaid notwithstanding, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents commenced and continued with the construction of the storey house on the 1<sup>st</sup> Defendant/Respondent's Plot and in doing so they encroached on the land for the Plaintiff/Applicant. This happened by constructing the building on the boundary of his plot beacon which in effect denied him the right to easement as guaranteed by the law and which is also a violation of the [\*Physical and Land Use Planning Act\*](#). As a result, he lodged a complaint to the 3<sup>rd</sup> Defendant and who after awhile issued an Enforcement Notification to the 2<sup>nd</sup> Defendant/Respondents to stop the construction as it was in breach of the law on several grounds and aspects clearly enumerated herein.

42. All said and done, this Court is guided by the legal ratio in several decisions including the case of "[\*Mbuthia 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."

43. 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."

44. And hence it will proceed in that manner. In the present case, it is evident that the Plaintiff/ Applicant's freedom to quiet enjoyment of his property has been interfered with. The continuous alleged encroachment of the construction of the storey house on the 1<sup>st</sup> Defendant/Respondent's Plot which was sold to the 2<sup>nd</sup> Defendant/Respondent may be affecting the boundary of the Applicant's



plot beacon to beacon which in effect has denied him the right to easement as guaranteed by the law. But I dare say these are facts to be canvassed and of further interrogation during the full trial. Further, I hold that there is no doubt in the mind of Court that there is a dispute between the parties that can only be determined by entertaining and maintaining the conduct of this suit.

45. Regarding this first condition though, the facts of the case are fairly clear. The 2<sup>nd</sup> Defendant/Respondent herein started construction on the Plot No. Mombasa/block XV1/642 where no notification of the development was made to the public including the Plaintiff/Applicant herein as is required by the law. Further to the foregoing, the 2<sup>nd</sup> Defendant/Respondent while proceeding with the construction, may have encroached on the Plaintiff/Applicant's Plot Number Mombasa/block XV1/645 by constructing its building on the boundary of his plot from beacon to beacon. The alleged encroachment may in effect have denied the Plaintiff/Applicant his right to easement, that is a right to the passage of air from the space required to be set aside for that purpose. Again I reiterate these are matters that would require further interrogation and evidence during the full trial.
46. However, the 3<sup>rd</sup> Defendant/Respondent in their Replying affidavit dated the 4<sup>th</sup> March 2022 avers that they issued a Notification of Approval of the application for development permissions on 12<sup>th</sup> March 2021 to the 2<sup>nd</sup> Defendant herein for proposed development on plot No. MSA/XVI/642 situated along/off Majengo Road was for number of four (4) floors as approved by the e-construction permit system CP number P2021/00111 subject to the conditions hereunder. The 2<sup>nd</sup> Defendant had made an application to the 3<sup>rd</sup> Respondent/Respondent for approval of two (2) extra floors and the same had not yet been approved nor issued. But from the facts adduced herein, the 2<sup>nd</sup> Defendant/Respondent still proceeded to undertake the construction upto the sixth (6<sup>th</sup>) floor a fact confirmed by his Advocate in his written submissions. This caused for the Enforcement Notice to be issued by the 3<sup>rd</sup> Defendant/Respondent. Infact, Mr. Paul Manyala, the Director in Charge of Planning at the 3<sup>rd</sup> Defendant/Respondent under oath stated that the 2<sup>nd</sup> Defendant/Respondent had never obtained approvals for the extra two (2) floors that they had applied for and hence he supported the application by the Plaintiff/Applicant to that extent and justified the reasons the Enforcement Notification was issued. . It is my view that the Enforcement notice issued on 18<sup>th</sup> August 2021 was indeed properly done upon the 2<sup>nd</sup> Defendant taking that the 2<sup>nd</sup> Defendant's application for approval of the extra two (2) floors was still pending for the 3<sup>rd</sup> Defendant's approval. It was works in progress. But despite of this, the 2<sup>nd</sup> Defendant became impatient and continued building without approvals, exceeding the number of floors and also not using safety nets to stop debris, no inspection form as is required under the building laws.
47. Additionally, the court observes that the from the submissions by the Plaintiff/Applicant, he lodged a complaint to the County Government of Mombasa, (3<sup>rd</sup> Defendant/Respondent).He has annexed as 'MHT 1' a letter from his advocate M.A. Mwinyi Advocate dated 5<sup>th</sup> July,2021 as proof of his complaint.Attached to the complaint is a Surveyor's Report marked as "MHT - 2". The Report shows the extent of encroachment and the blocking of the space required by law for enjoyment of easement by the Plaintiff/Applicant. This state of affairs, contribute to justify that Plaintiff/Applicant has established that he bears a "prima facie case" with a high chance of succeeding and the prayers sough ought to be granted.
48. 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 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.”

49. On the issue whether the Applicant will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. In the instant case, it is not hidden that the Plaintiff/Applicant’s property is at risk of encroachment evidenced by the last annexure marked as “MHT – 3” to the 3<sup>rd</sup> Defendant.
50. Quite clearly, the Plaintiff/Applicant would not be able to be compensated through damages as he has shown the court that his rights to the suit property by the encroachment of his boundary from beacon to beacon. Besides, the Court has been informed that the construction has been completed upto the sixth ( 6<sup>th</sup>) floor and the only works remaining was the interior finishing then occupation would take place. This is an extreme and delicate position of the matter. To the Court, therefore, the Plaintiff/Applicant herein has satisfied the second condition as laid down in Giella’s case.
51. On the issue of balance of convenience, I find that it tilts in favour of the Plaintiff/Applicant herein as he is the owner of the land which may have been encroached by the construction in the 2<sup>nd</sup> Defendant/ Respondent’s property which is the suit property.

**Issue b). Whether the 1<sup>st</sup> Defendant/Respondent is a necessary party to this suit.**

52. The Honorable Court has been invited to consider the issue of misjoinder of a party in this suit. The provisions of Order 1 Rules 9 and 10 (2) of the Civil Procedure Rules provide that:-
  - 9: “No suit shall be defeated by reason of the misjoinder or non joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it
  - 10 ( 2 ) - “ The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
53. Undoubtedly, the 1<sup>st</sup> Defendant/Respondent sold off the property to the 2<sup>nd</sup> Defendant/Respondent and who were even issued with a new Certificate of title deed in their names. Indeed, the Plaintiff/Applicant has openly admitted to the fact that the 1<sup>st</sup> Defendant/Respondent sold the suit property to the 2<sup>nd</sup> Defendant/Respondent who started the construction after they bought the suit land from the 1<sup>st</sup> Defendant/Respondent. Its participation in these proceedings does not add any value at all to the matter. Should there be any need to gather any evidence from him, the party so desiring, shall be at liberty to have him summoned as a witness but surely not a party nor an interested party. At this point, therefore, though no formal application by the 1<sup>st</sup> Defendant asking to be struck out of the suit, the Court shall proceed to invoke the powers inherent of this Court under the provisions of Article 159 ( 1 ) and ( 2) of the Constitution of Kenya, 2010, Sections 3 & 13 of the Environment and Land Court



Act, No 19 of 2011 and Order 1 Rule 10 (2) of the [Civil Procedure Rules, 2010](#) to order that henceforth the name of the 1<sup>st</sup> Defendant/Respondent herein which was improperly joined in this proceedings to be struck out with costs.

**Issue e). Who will bear the Costs of Notice of Motion application 18<sup>th</sup> March, 2022.**

54. It is now well established that the issue of costs is at the discretion of the Court. Costs mean any award that is granted to a party upon the conclusion of any legal action, process or proceedings in any litigation. The proviso of the provision of Section 27 (1) of the [Civil Procedure Act](#), Cap. 21 holds that costs follow the events. (See the Supreme Court case of “[Jasbir Rai Singh Rai – Versus Tarchalon Singh](#) (2014) eKLR and Court of Appela case of “[Mary Wambui Munene – Versus Ihururu Dairy Co – operatives Societies Limited](#) (2014) eKLR) .
55. In this case, the Honorable Court finds that the result of the application filed by the Plaintiff/Applicant it has fulfilled the conditions set out under the provision of Order 40 Rule 1, 2 and 3 of the [Civil Procedure Rules, 2010](#). The application shall be deemed to have merit and is hereby allowed with costs to the Plaintiff/Applicant and the 3<sup>rd</sup> Defendant as against the 2<sup>nd</sup> Defendant. At the same time, from the empirical documentary facts and admission by the Plaintiff/Applicant herein, pursuant to the provision of Order 1 Rule 10 (2) and other inherent powers of this Court, it is found that the 1<sup>st</sup> Defendant/Respondent was improperly joined in this matter and hence struck out from this case. Taking that they took trouble to defend themselves, they are also entitled to costs to be borne by the Plaintiff/Applicant herein.

**VIII. Conclusion & Disposition**

56. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Clearly, on preponderance of probability, from the issues presented from the filed application, it appears the Plaintiff/Applicant has a case against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents herein.
57. 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 dated October 18, 2021 is found to have merit and hence be and is hereby allowed in its entirety.
  - b. That an order of Temporary injunction do and is hereby issued restraining the 1<sup>st</sup> and/ or 2<sup>nd</sup> Respondents whether by themselves or by their agents, servants and or employees or anybody howsoever acting under them from continuing with the construction of the multistory building on Plot Number Mombasa/Block XVI/642.
  - c. That an order of this Honorable Court be made invoking the inherent powers of this Court under the provisions of Article 159 ( 1 ) and ( 2) of the [Constitution of Kenya, 2010](#), Sections 3 & 13 of the [Environment and Land Court Act](#), No 19 of 2011 and Order 1 Rule 10 (2) of the [Civil Procedure Rules, 2010](#) tha henceforth the name of the 1<sup>st</sup> Defendant/Respondent herein which was improperly joined in this proceedings to be and is hereby struck out from these proceedings – the suit and application by the Plaintiff/Applicant herein with costs.
  - d. That for expediency sake this Case to be heard and determined within the next One Hundred and Eighty (180) days from the date of the delivery of this Ruling commencing from July 27, 2023. There be a mention on May 10, 2023 for purposes of holding a Pre – Trial Conference and other directions pursuant to the provision of Order 11 of the [Civil Procedure Rules, 2010](#).



- e. That the costs of this application are awarded to the Plaintiff/Applicant and the 3<sup>rd</sup> Defendant/Respondent as against the 2<sup>nd</sup> Defendant/Respondent herein. The 1<sup>st</sup> Defendant/Respondent to be awarded Costs too to be borne by the Plaintiff/Applicant.

It is so ordered accordingly.

**RULING DELIVERED THROUGH THE MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 9<sup>TH</sup> DAY OF MARCH 2023.**

**HON. JUSTICE L. L. NAIKUNI, (JUDGE)**

**ENVIRONMENT AND LAND COURT**

**MOMBASA**

**In the presence of:**

- a. M/s. Yumna, Court Assistant;
- b. Mr. Khamis Salim Advocate holding brief for Mr. Aboubaker Advocate for the Plaintiff/Applicant.
- c. Mr. Gitahi Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents.
- d. Mr. Tajbhai Advocate for the 3<sup>rd</sup> Respondent.

