



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT KWALE**  
**ELC PETITION NO. 14 OF 2021**

**FORMERLY MOMBASA ELC PETITION NO.43 OF 2020**

**MKUPUO NETWORK AWARENESS.....PETITIONER/APPLICANT**

**AND**

**CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF PHYSICAL PLANNING AND SETTLEMENT.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT KWALE.....3<sup>RD</sup> RESPONDENT**

**KWALE INTERNATIONAL SUGAR COMPANY LTD.....4<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**RULING**

1 The Applicant/Petitioner filed a Chamber Summons dated 4<sup>th</sup> December 2020 which is the subject of this ruling for the following orders; -

- 1) THAT pending the hearing and determination of this application a conservatory order does issue staying and or restraining the 3<sup>rd</sup> Respondent, their officers, employees and or agents from wasting, dissipating, trespassing or dealing in any way whatsoever with the parcel of land known as Ramisi Phase 1 Block 5056
- 2) THAT pending the hearing and determination of this Petition a temporary injunction be issued against the 3<sup>rd</sup> Respondent, their officers, employees and or agents from wasting, dissipating, trespassing or dealing in any way whatsoever with the parcel of land known as Ramisi Phase 1 Block 5056.
- 3) THAT this honorable court be pleased to issue an order to OCS of Lungalunga Police station, Kikoneni Police station and Shimoni Police to prevent the 3<sup>rd</sup> Respondent from trespassing and carrying out any activities on Ramisi Phase 1 Block 5056 until this petition is heard and determined
- 4) THAT this honorable court be pleased to allow for the hearing of the petition on a priority basis due to urgency and sensitivity of the matter before the court.
- 5) THAT this honorable court be pleased to issue such further or other order(s) s it may deem just and expedient for the ends of justice.
- 6) THAT the costs of this application be provided for.

**Petitioners case**

2 It is the Petitioners case that its members have occupied Ramisi Phase 1 Block 5056 which measures 8000 acres (the suit property) over a

long period of time including their forefathers. That sometime in the year 2008 the 1<sup>st</sup> and 2<sup>nd</sup> Respondent carried out registration of the squatters with a view to settling them. They were then issued with Allotment Letters of the properties they occupied within the suit property. To date no certificates of title have been issued despite complying with the terms of the said allotment letters by making the requisite payments to the 1<sup>st</sup> Respondent who issued them with receipts.

3 That the 3<sup>rd</sup> Respondent have with the aid of government officials unlawfully trespassed on the suit property with the aim of taking the land rendering the petitioners landless. In the process the 3<sup>rd</sup> Respondent has destroyed the petitioner's houses, crops and livelihoods without any form of compensation. In 2019 the 6<sup>th</sup> Respondent undertook a valuation for purposes of compensation for the losses. To date no compensation has been made. Moreover, the 3<sup>rd</sup> Respondent was now planting sugar cane on the suit property destroying anything belonging to the petitioners in the process.

4 The Petitioners claim that their rights under articles 10(1)(a)(b)(c) & 2(a)(b), 20,21,22,23,27, 40,47 and 165 of the Constitution of Kenya have been infringed upon.

5 The Petitioners seek among other orders for a declaration that they are the lawful legitimate owners of the suit property having been issued with allotment letters/letters of offer and complying with the terms thereof. They also seek an order restraining the 3<sup>rd</sup> Respondent from trespassing, subdividing, selling, transferring, mortgaging, occupying, wasting, charging and or dealing with the suit property whatsoever. Further in the alternative a mandatory injunction against the 3<sup>rd</sup> Respondent from trespassing, subdividing, selling, transferring, mortgaging, occupying, wasting, charging and or dealing with the suit property whatsoever.

6 The 1<sup>st</sup>, 2<sup>nd</sup> & 5<sup>th</sup> Respondents were represented by the office of the Attorney General.

7 The 3<sup>rd</sup> Respondents filed a reply to the petition and have opposed the application herein through the replying affidavit of Benson Nzuka, Legal Manager sworn on the 4<sup>th</sup> February 2021. The replying affidavit gives an account of the history and ownership of the suit property by the 3<sup>rd</sup> Respondent which form the gist of their submissions herein.

## SUBMISSIONS

8 On 15<sup>th</sup> February 2021 this court directed that the application be canvassed by way of written submissions. The Petitioners filed their submissions on 16/04/21 dated 15/04/21. The 1<sup>st</sup> 2<sup>nd</sup> and 5<sup>th</sup> Respondents filed theirs on 16/11/21 and the 3<sup>rd</sup> Respondent on 16/11/21.

## PETITIONERS/APPLICANTS SUBMISSIONS

9 Counsel for the Petitioners submitted that the Petitioners had established a prima facie case to warrant issuance of interlocutory injunction and relied on the case of **Nguruman Limited Vs. John Bonde Nielsen & 2 Others (2014) eKLR** where the Court of Appeal stated as follows; -

*'That the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent irreparable damage that may result from the invasion'*

10 It was urged that the Petitioners were entitled to fair administration action as set out in the Constitution. The government had started the process of settling them which they stopped without an explanation or any justification yet majority of the Petitioners had complied with the terms of the letters of allotment. The Petitioners had the legitimate expectation that they would receive titles arising therefrom. In addition, they had been living in the land since precolonial times. Counsel urged that the petitioners had lost their livelihoods as most were dependent on farming and had lost their homes. The Petitioner further alleged that the 3<sup>rd</sup> Respondent had acquired the certificate of lease fraudulently without transparency and illegally by failing to comply with the process for acquisition of public land. Instead they excised land from the suit property which was given different plot numbers one being LR No.5056/6 where the certificate of lease was issued to the 3<sup>rd</sup> Respondent. Further that it was wrong to allege the suit property did not exist when the rest of the parcels were excised from it. From the 3<sup>rd</sup> Respondents pleadings it was clear that they claimed ownership long after it had been allocated to the squatters.

11 The Petitioners also urged that the 3<sup>rd</sup> Respondents cannot rely on the provisions of Section 25(1) of the Land Registration Act for protection of their title since their title is being challenged by the Petitioners on grounds of fraud, illegality or failure to follow procedure. In this regard Counsel cited the provisions of section 26(1)(b). Counsel further relied on the definition of fraud from the Black's Law Dictionary, 10<sup>th</sup> Edition 'A knowing misrepresentation or know concealment of a material fact made to induce another to act to his or her detriment' to buttress this point.

12 It was further contended that the fact that Settlement Fund Trustees did not revoke or cancel the letters of allotment, that the process of settlement was abruptly stopped without explanation, The NLC illegally allocating land which had already been set aside for settlement, the 3<sup>rd</sup> Respondents claimed ownership long after it had been allocated to the squatters, there being no evidence that the consent of the National and County governments was obtained as required under Section 5(2)(a) of the National Land Commission Act, all pointed to the presence of fraud. That the proof of fraud did not require to be beyond reasonable doubt but something more than a balance of probabilities as stated in **R.G Patel Vs. Lalji Makanji 1957 EA 314**. It was not enough to hold a certificate of lease or title and as long as it was being challenged then the 3<sup>rd</sup> Respondent must explain itself. Reliance was placed on the case of **Danchi Kiptugen Vs Commissioner of Lands & 4 Others (2015) eKLR**.

13 On the opposition that the Petitioners had failed to state with precision the infringements as required in the filing of Constitutional

Petitions, the Petitioners submitted that article 40(3) of the Constitution was indeed violated from the facts and material presented by the Petitioners. Further the Petitioners were also denied the right to fair administrative action by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents under article 47 of the Constitution.

### 1<sup>st</sup> 2<sup>nd</sup> 5<sup>th</sup> Respondents Submissions

14 The 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup> Respondents filed grounds of opposition to the application contending that the suit property is government land and was properly leased to the 3<sup>rd</sup> Respondent who has been operating a sugar factory under the said 99-year lease. The lease was to protect the 28,162 from being compulsory acquired in the event the 3<sup>rd</sup> Respondent defaulted in a loan repayment by the Bank of India Limited. That the application was defective for failing to attach a copy of the title, a mandatory requirement under Order 30 of the Civil Procedure Rules 2010 as was held in **Samuel Kipng'eno Koech Vs Wambui Gitonga (2016)**. In addition, counsel urged that the letter of offer issued on 16/06/2008 lapsed by dint of effluxion of time after 90 days and ceased to have legal effect thereafter and relied on the case of **Stephen Mburu & 4 Others Vs Comat Merchants Ltd & Another (2012) EKLR**. In any event a letter of allotment was a mere offer and does not confer rights of ownership until the entire process is completed and title issued in accordance to **Ravji Karsan Sanhani Vs. Peter Gagukuru. (2019) eKLR**.

15 Counsel identified two issues for determination 1) whether the Petitioners claim of ownership of the suit property is time barred and 2) whether the Petitioner has established a prima facie case. In regard to the claim for ownership it was stated that the Petitioners had not proved the elements of adverse possession, they were on the suit property by dint of the letters of allotment, had not displaced the 3<sup>rd</sup> Respondent whose operations had been unaffected by the claims of ownership raised by the Petitioners. Reliance was placed on the case of **Chevron (K) Ltd Vs Harrison Charo was Shutu (2016)**. Further that the petitioners alleged entitlement over the suit property on grounds of long habitation should be dismissed since the suit property claimed is government land and legally adverse possession cannot accrue thereof- see Section 41 of the Limitation of Actions Act.

16 Counsel further pointed that the Petitioners claim must fail because only 4 letters of allotment have been exhibited against the over 600 applicants and only one had proof of alleged payment. Moreover, there was no proof confirming that the Petitioners fulfilled the subsequent conditions for issuance of title. The Petitioners had therefore failed to prove on a balance of probabilities that they were entitled to injunctive orders.

17 Counsel urged that the Petitioner had not established a prima facie case with a probability of success as they had grossly failed to rebut the Respondents pleadings which prove the 3<sup>rd</sup> Respondent as the lessee of the suit property from the government of Kenya. The prayers sought in the application should therefore be dismissed since injunctive orders cannot be issued against the 3<sup>rd</sup> Respondent who is in lawful occupation – see Section 3 (1) of the Trespass Act Cap 294.

### 3<sup>rd</sup> Respondents Submission

18 As a way of background the 3<sup>rd</sup> Respondents stated that Ramisi Phase 1 block 5056 was leased to them as compensation for surrendering two of its titles to the Government for squatter compensation. That the 3<sup>rd</sup> Respondent fulfilled all the conditions in the letter of offer by the 5<sup>th</sup> Respondent culminating into the issuance of the lease. Upon realization of existence of urban area and a few squatters the 4<sup>th</sup> Respondent requested the 3<sup>rd</sup> Respondent to surrender the said title to enable excision of 200 Ha for development of Kanana township and settlement of the squatters in one village. The 4<sup>th</sup> Respondent committed to compensate the 3<sup>rd</sup> Respondent of the substantive investments on Plot 5056 and instructed the Ministry of Lands to undertake a valuation for ex gratia compensation on plot 5056. Moreover, the 3<sup>rd</sup> Respondent consented to the excision of various parcels from the land. The 3<sup>rd</sup> Respondent in good faith heeded to the Ministry of Interior and coordination advise to stop operations pending completion of the excision and squatter settlement. After the completion of the excision process a new certificate of title 5056/6 was issued on 29/08/2019. It is further stated that upon issuance of the new title the 3<sup>rd</sup> Respondent embarked on preparation of the land for cane growing, albeit with difficult access due to hostility and violence from the Petitioners.

19 The 3<sup>rd</sup> Respondent submitted on the conservatory and interlocutory orders herein sought by the Petitioners. On conservatory orders it was contended that plot No. 5056 ceased to exist as it was extinguished by the excision process and consequently there was no ownership and no trespass. Based on the case of **Board of Management of Uhuru Secondary School Vs. County Director of Education & 2 Others (2015) eKLR** it was urged that in granting conservatory orders potential arguability was not enough, the prima facie case ought to be beyond speculative basis. Counsel urged that potential arguability is premised on the existence of a right and the subsequent violation. There was no right since the plot 5056 does not exist. In the same breath the ingredients for trespass cannot be proved. Moreover, the Petitioners has not produced evidence of legal ownership of the property being trespassed upon.

20 It is the 3<sup>rd</sup> Respondents submission that in case of land, proprietary rights are proved by title, by the party claiming violation of its rights as provided in Section 26 of the Land Registration Act. Such title is absolute and conclusive proof of ownership except where it is disputed on grounds of having been obtained fraudulently as also restated in **Margaret Njeri Wachira Vs. Eliud Waweru Njenga ELC No. 453 of 2017**. It was emphasized that the 3<sup>rd</sup> Respondent had provided a copy of the certificate of title and was the absolute owner. The Petitioners only produced letters of allotment for a negligible portion of the land which also did not show ownership. Moreover, there was no evidence of compliance with the terms thereof consequently the same lapsed and the land reverted to the original owner.

21 Counsel stated that granting of conservatory orders is dependent on likelihood of success. That likelihood of the success of this application is pegged on the Petitioners producing a certificate of title of their ownership, yet the Certificate of title herein is in the name of the 3<sup>rd</sup> Respondent. Furthermore, there was no constitutional right which was violated in the absence of proof of title. Reliance was placed on the Court of Appeal holding in **Center for Rights Education & Awareness (CREAW) Vs. Attorney General & Ano. EKLR**.

22 The 3<sup>rd</sup> Respondent further contended that the legal mandate on settlement and compensation of squatters is vested in the 4<sup>th</sup> Respondent

and not the 3<sup>rd</sup> Respondent. Moreover, the Ministry of Lands & Physical Planning and the Ministry of Interior & Coordination of National government all took part in the process of resettlement.

23 Citing the principles for granting an injunction as stated in the case of **Giella Vs. Cassman Brown** Counsel urged that the Petitioner had not proved a prima facie case with a probability of success since they do not have locus standi to file the petition, they did not have title, the suit property does not exist and consequently there cannot be any violation of a constitutional right thereof.

24 Counsel also contended that no material had been provided by the Petitioners to show irreparable damage. That the valuation report presented by the 3<sup>rd</sup> Respondent was indeed proof that loss of the suit property could be quantified and compensable. Moreover, this process was either completed or ongoing under the 4<sup>th</sup> Respondent and Ministry of Land & Physical Planning.

25 On the principle of balance of convenience it was pointed that it is the 3<sup>rd</sup> Respondent who is incurring losses for failure to access the land and at the verge of contractual breaches with contractors they had already employed. Therefore, the balance of convenience favored the 3<sup>rd</sup> Respondent. The Court was urged to also consider the good will from the 3<sup>rd</sup> Respondent who offered part of the land for settlement of squatters. Moreover, there was no doubt in the arguments raised in support of the first two principles to warrant the court to consider the application on balance of convenience. The case of **National Bank of Kenya Ltd & 2 Others Vs Sam-Con Ltd (2003) eKLR 462** was relied upon to buttress this point.

26 Having failed to meet the test in *Giella Vs Casman Brown* the court was urged not to grant the interlocutory orders and, in any event, the same cannot be directed at the 3<sup>rd</sup> Respondent.

27 Counsel for the 3<sup>rd</sup> Respondent also submitted on Police protection orders noting that it was indeed the 3<sup>rd</sup> Respondent who was deserving of such protection to ensure seamless transition into the suit property legally acquired.

28 On costs it was submitted that the same should be in the course. The court was urged to dismiss the application.

## ANALYSIS AND DETERMINATION

29 This court has considered the Application, its supporting documentation and pleadings together with the petitioners' submissions. I have also considered the responses by the Respondents in opposition to the application, the robust rival submissions as well as all the authorities cited. I will point out at the outset that Counsels in their submission delved into the realm of the Petition. At this stage the issue that is before this court for determination is whether the orders sought should be granted. This court will therefore consider the submissions to the extent that the same are relevant to the determination of the application before this court.

30 The application seeks both injunctive and conservatory orders. The principles for the grant of orders for an injunction have already been cited herein by the parties as guided by the case of **Giella v Cassman Brown Co. Ltd & Anor (1973) EA 358** as affirmed in among others **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR**. These are 1) Prima facie case with a probability of success 2) Whether the Plaintiff will suffer irreparable harm if orders sought are not granted and 3) Balance of convenience. To determine if the conditions or principles have been met by the Petitioner Applicant I will proceed to analyze each principle.

### Whether the Petitioners/Applicants have established a prima facie case with probability of success

31 Guided by the case of **Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others (2003) KLR 125 - A Prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later". (Emphasis is mine)** The Petitioner/applicant is therefore under a duty to tender material to this court that would convince the court to conclude the existence of a right which the Respondent has allegedly infringed and therefore requires an explanation from the infringing party.

I'm also aware that at this juncture the court is cautioned against going into the merits of the case since this is the preserve of the trial court as emphasized in the case of **Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others (supra)**. As a matter of emphasis the court is not obligated at this stage to decide difficult questions of law which call for detailed argument and mature considerations.

32 Has this burden of proof been discharged on a balance of probabilities is the question to be answered by this court. It has also been urged that this being a Constitutional Petition there must exist a constitutional right on the party pleading an infringement. The Petitioners case is that they have lived on the suit property and the process of settling them on the suit property had commenced. They have presented copies of letters of allotment issued by Director Land Adjudication & Settlement and some receipts towards meeting some of the conditions in the letters of allotment. Indeed, it is not in dispute that this process had commenced. A legitimate expectation was created that they would be issued with titles, however the process was allegedly stopped without explanation. In my view this is the right that has been allegedly infringed upon that requires a rebuttal from the Respondents. It has been urged that letters of allotment are not proof of title. The court in the case of **Kenleb Construction Ltd Vs New Gatitu Service Station Ltd & another, (1990) eKLR** stated that *the right that requires to be protected need not be legal, an equitable right would also suffice. I find that the Petitioners have proved a prima facie case on a balance of probabilities.*

### Whether the plaintiff will suffer irreparable injury/loss that cannot be compensated by an award of damages

33 In the case of **Nguruman Ltd v Jan Bonde Nielsen & 2 Others [2014] eKLR** the Court of Appeal considered irreparable injury as follows:

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

34 Counsel for the Petitioners urged that some Petitioners had lost their homes and livelihoods as most were dependent on farming. I have also seen photos exhibited as ‘BHM3’ in this regard. Counsel for the 3<sup>rd</sup> Respondents contended that no material had been provided by the Petitioners to show irreparable damage and demonstrated from the valuation report undertaken by the Ministry of Lands & Physical Planning that the lost suit property was quantifiable and can be compensated. In my view while it could be partly true that a valuation would go a long way to determine the compensation payable, I’m in doubt whether the petitioners many years and history on the land can be accurately compensated.

#### **In whose favor does the balance of convenience lie?**

35 There being a doubt on the above principle I’m inclined to consider the balance of convenience. In the case of **Paul Gitonga Wanjau vs. Gathuthis Tea Factor y Company Ltd & 2 others (2016) eKLR**, the court dealing with the issue on 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 injury 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 on convenience lies. ”***

36 Both parties plead they will suffer the greater harm and more so the 3<sup>rd</sup> Respondent. There being a doubt on the above principle I’m inclined to consider the balance of convenience. I will consider this from the public interest perspective and from the premise that public interest has been identified by the Courts as a legitimate factor in assessing where the balance of convenience lies. At this juncture my analysis shall also go into the issue of conservatory orders which have also been sought herein. The Court in **Kenya Association of Manufacturers & 2 others v Cabinet Secretary – Ministry of Environment and Natural Resources & 3 others (2017) eKLR** had this to say about the grant of conservatory orders:

***“In an application for a conservatory order, the Court is not invited to make any definite or conclusive findings of fact or Law on the dispute before it because that duty falls within the jurisdiction of the Court which will ultimately hear the substantive dispute. The jurisdiction of the Court at this point is limited to examining and evaluating the materials placed before it, to determine whether the applicant has made out a prima facie case to warrant grant of a conservatory order. The Court is also required to evaluate the materials and determine whether, if the conservatory order is not granted, the applicant will suffer prejudice. Thirdly, it is to be borne in mind that conservatory orders in public Law litigation are meant to facilitate ordered functioning within the public sector and to uphold the adjudicatory authority of the court in the public interest. (emphasis is mine)***

37 The Supreme Court in **Gitaru Peter Munya v Dickson Mwenda Kithinji & 2 others {2014} eKLR** also pronounced itself on conservatory orders; -

***“conservatory orders’ bear a more decided public Law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as the “prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.... However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely public interest.... That it is in the public interest that the order of stay be granted. This third condition is dictated by the expanded scope of the Bill of Rights, and the public spiritedness that run through the Constitution.***

38 Having found that a prima facie case has been established I will not dwell much on the whether conditions for grant of the conservatory orders have been met. The conditions largely mirror the ones for grant of injunction with a few modifications. This courts earlier analysis has to a large extend covered this aspect.

39 This is a Constitutional Petition where the Petitioners allege contravention of their fundamental rights and freedoms under articles 10(1)(a)(b)(c) & 2(a)(b), 20,21,22,23,27, 40,47 and 165 of the Constitution of Kenya. It is also not an ordinary matter. The 3<sup>rd</sup> Respondent has indeed admitted in paragraph 35 of their submissions that they are ‘conscious and alive to the issues of land affecting the coastal region...’ Guided by the Supreme Court in **Gitaru Peter Munya v Dickson Mwenda Kithinji & 2 others (supra)** the public interest shall take precedence and justice to be seen to be done.

40 As to the orders sought for the OCS of Lungalunga Police station, Kikoneni Police station and Shimoni Police to prevent the 3<sup>rd</sup>

Respondent from trespassing and carrying out any activities on the suit property I do not find this prayer merited. Court orders are expected to be obeyed. It is also expected that the Petitioners will keep the peace.

41 In view of the orders I'm about to issue it is important for the sake of clarity that I state what the status quo is on the ground as gleaned from the documents filed in support and opposition of this application. At paragraph 9 of the 3<sup>rd</sup> Respondents submissions it is stated that upon issuance of the new certificate of title, the 3<sup>rd</sup> Respondent begun to clear and prepare the lease land for purposes of cane growing and development. However, access became difficult. Further at paragraph 38 that the projects aimed at developing the land have stalled. At paragraph 6 it is clear that the Ministry of Interior and Coordination of National Government vide letter dated 18/07/2019 advised the 3<sup>rd</sup> Respondent that '*..in order to have unhindered access it had to halt its operations on the property to facilitate completion of the excision process and resettlement of the individuals under the lease land..*'. The status quo is therefore as per the said letter since the second limb of the same has not been completed and or is in issue before this court.

42 The upshot of the foregoing analysis is that the Petitioners Application dated 4<sup>th</sup> December 2020 is merited. The following orders hereby issue to dispose of the said application'-

- 1) THAT subject to the status quo as detailed in paragraph 41 of this ruling, pending the hearing and determination of this Petition a temporary injunction be issued against the 3<sup>rd</sup> Respondent, their officers, employees and or agents from wasting, dissipating, or dealing in any way whatsoever with the parcel of land known as Ramisi Phase 1 Block 5056.
- 2) THAT the Petitioners shall keep the peace.
- 3) THAT recognizing the need to expedite the hearing of this Petition parties shall appear before this court on **10<sup>th</sup> February 2022** to take directions on the disposal of the Petition on priority basis.
- 4) THAT costs shall be in the cause

**DELIVERED AND DATED AT KWALE THIS 4<sup>TH</sup> DAY OF FEBRUARY 2022.**

**A.E. DENA**

**JUDGE**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Matende for the Applicant/Petitioner

Mr. Mwanjeje H/B for Ms. Njau for the 1<sup>st</sup> 2<sup>nd</sup> and 5<sup>th</sup> Respondents

No Appearance for the 3<sup>rd</sup> Respondent

No Appearance for the 4<sup>th</sup> Respondent

Mr. Denis Mwakina- Court Assistant.