



**Ethics & Anti-Corruption Commission v Githaiga & 4 others (Environment and Land Case Civil Suit E087 of 2022) [2022] KEELC 2516 (KLR) (4 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2516 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E087 OF 2022**

**JO MBOYA, J**

**JULY 4, 2022**

**BETWEEN**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**PAUL MBATIA GITHAIGA ..... 1<sup>ST</sup> DEFENDANT**

**MARJORIE WANJUKI MBATIA ..... 2<sup>ND</sup> DEFENDANT**

**YOUNG CHUL CHOI ..... 3<sup>RD</sup> DEFENDANT**

**WILSON GACHANJA ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Vide a Notice of Motion Application dated March 1, 2022, the Plaintiff/Applicant has approached the court seeking the following Reliefs:
  - a. ....Spent
  - b. ....Spent
  - c. Pending inter Partes hearing and determination of this Application, the 3<sup>rd</sup> Defendant/ Respondent by himself, his agents, servants and/or employees or any other person whatsoever be restrained from alienating, wasting, transferring, disposing or in any other way dealing with title number LR. No. 1/1086 (Original Number 1/210/2).
  - d. Pending Inter Partes hearing and determination of the Suit herein, the 3<sup>rd</sup> Defendant/ Respondent by himself, his agents, servants and/or employees or any other person whatsoever be restrained from alienating, wasting, transferring, disposing or in any other way dealing with title number LR. No. 1/1086 (Original Number 1/210/2).



- e. The costs of this application be provided for.
2. The subject Application is premised on the grounds enumerated and/or contained at the foot thereof and same is further supported by an affidavit sworn by Dorothy Mnjala on the March 1, 2022 and to which the deponent has attached 7 annexures in support thereof.
3. Upon being served with the subject application, the 3<sup>rd</sup> Defendant/Respondent responded thereto and same file a Notice of Preliminary objection dated the 23<sup>rd</sup> March 2022, wherein the 3<sup>rd</sup> Defendant raised various Grounds including the invocation of and reliance on Section 7 of the Limitation of Actions Act, Chapter 22 Laws of Kenya.
4. Nevertheless, the rest of the Defendants'/Respondents' neither filed a Replying affidavit nor Grounds of opposition. In this regard, it appears that the rest of the Defendants were not averse to the orders sought at the foot of the Notice of Motion Application herein.

### **Deposition by the Parties:**

#### **Plaintiff's Case:**

5. Vide Supporting Affidavit sworn on the 1<sup>st</sup> March 2022, Dorothy Mnjala, who describes herself as an investigator with the Plaintiff/Applicant pursuant to the provisions of Section 23 of the Anti-Corruption and Economic Crime Act, 2003, has averred and/or stated that the Plaintiff/Applicant herein is mandated to carryout and/or undertake Investigations pertaining to and/or concerning *inter-alia*, Irregular allocation and/or alienation of Public Properties, including land.
6. The deponent has further averred that pursuant to and in line with the mandate of the Plaintiff herein, same carried out and/or undertook investigations relating to the alleged irregular alienation over and in respect of the property known as L.R No. 1/1086 (original number 1/210/2), which property is stated to belong to Kenya Railways Corporation.
7. The deponent has further averred that the investigations that were carried out in respect of the subject matter revealed that one, namely, Percival Vincent Chance, purchased title number 1/210, measuring 0.91 acres on or about the 27<sup>th</sup> May 1949, from one A. H. N Holden Ltd at a consideration of kes.6, 000/= only.
8. Besides, it has been averred that subsequently on or about the March 29, 1954, the Commissioner for Transport entered into an agreement and thereafter purchased the said parcel of land from Percival Vincent Chance for the sum of kes.120, 000/= only and thereafter the land vested in East Africa Railways Corporation, (now Kenya Railway Corporation).
9. In the premises, the deponent has averred that the purchase and/or acquisition of L.R No. 1/1086, which is the suit property herein was done by a Public body using Public funds and in this regard, the suit property was/is Public property.
10. Further, the deponent has averred that the initial property, namely, L.R No. 1/210 was thereafter subdivided into two portions, culminating into the creation of L.R No's 1/1085 and 1/1086, respectively.
11. On the other hand, the deponent has proceeded to and stated that thereafter the 1<sup>st</sup> Defendant herein applied for allocation over and in respect of the suit property, namely, L.R No. 1/1086 from the 4<sup>th</sup> Defendant, who is stated to be a Brother in law of the 1<sup>st</sup> Defendant/Respondent.



12. Be that as it may, it has been averred that at the time when the 1<sup>st</sup> Defendant applied to be allocated the suit property, same was indeed an employee of Kenya Railways Corporation and was residing in the house erected on the suit property.
13. It has further been averred that the 4<sup>th</sup> Defendant, who was a Brother in law of the 1<sup>st</sup> Defendant, thereafter proceeded to and approved the request for allocation of the suit property to and in favor of the 1<sup>st</sup> Defendant and thereafter directed Kenya Railways Corporation to either surrender the said parcel to the Ministry of Land for reallocation or in the alternative that Kenya Railways Corporation to allocate the suit property to the 1<sup>st</sup> Defendant.
14. Other than the foregoing, the deponent has further averred that following the directives and/or instructions by the 4<sup>th</sup> Defendant/Respondent, the then Executive chairman of Kenya Railways, namely, Professor J. K Musuva wrote to the 4<sup>th</sup> Defendant and clarified that Kenya Railways Corporation was unable to proceed with the proposed allocation in favor of the 1<sup>st</sup> Defendant.
15. Notwithstanding the foregoing, the deponent has averred that despite the protest and/or response from Kenya railways corporation, the 4<sup>th</sup> Defendant proceeded to and generated an indenture dated the June 30, 2000, whereupon the suit property herein was alienated to and in favor of the 1<sup>st</sup> Defendant, (sic) on the basis of payment in the sum of Ksh.6, 000, 000/= only.
16. Besides, the deponent has averred that on the same date, namely, the June 30, 2000, a Transfer instrument was executed between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on one hand and the 3<sup>rd</sup> Defendant on the other hand, whereby the suit property was transferred to and registered in favor of the 3<sup>rd</sup> Defendant.
17. According to the deponent, the investigations that have been taken and/or conducted have revealed that the transactions touching on and/or concerning the allocation of the suit property to and in favor of the 1<sup>st</sup> Defendant and thereafter the Sale and transfer thereof to the 3<sup>rd</sup> Defendant were fraudulent, illegal and thus void.
18. In any event, the deponent has averred that owing to the fact that original property, which culminated into the creation of the suit property, was acquired using public funds, the suit property is public property and therefore ought not to have been alienated and transferred to the names of the 1<sup>st</sup> Plaintiff.
19. Based on the foregoing, the deponent has averred that the Plaintiff/Applicant is keen to recover and/or pursue the recovery of the suit property and to restore same to Kenya Railways Corporation, under whose custody the property vested.
20. Nevertheless, it is averred that given that the suit property is currently registered in the names of the 3<sup>rd</sup> Defendant, same is likely to sell, dispose of, charge and/or otherwise deal with same in a manner that will defeat the substratum of the subject suit.
21. On the other hand, the deponent on behalf of the Plaintiff has thus implored the court to grant the orders sought at the foot of the subject application and thereby preserve and or conserve the status of the suit property pending the hearing and determination of the suit.

**Response by the 3rd Defendant/Respondent:**

22. Following the service of the subject Application, the 3<sup>rd</sup> Defendant/Respondent proceeded to and filed a Notice of Preliminary Objection dated the March 29, 2022 and in respect of which, the 3<sup>rd</sup> Defendant stated as hereunder;



- i. That this Court lacks jurisdiction under the law to entertain, interrogate or determine the suit as the same is time barred, the substratum thereof having been filed outside the statutory time limit in Section 7 of the Limitation of Actions Act, Chapter 22, Laws of Kenya.
- ii. That the Issues raised in the present suit are also the subject matter in another ongoing suit, namely, Milimani ELC No. E052 of 2021 Young Chul Choi v Kenya Railways Corporation Limited hence the current suit is res sub -judice and offends the provisions of Section 6 of the Civil Procedure Act, Chapter 21, Laws of Kenya.
- iii. That the Entire suit is totally defective as the Verifying Affidavit is incompetent for want of compliance with the law and the suit as presented ought to be struck out.
- iv. That the Suit is bad in law, is vexatious and an abuse of court process.

### **Submission by the Parties:**

23. The application herein came up for hearing on the May 31, 2022, whereupon the Advocates for the Parties agreed that same be disposed of and/or canvassed by way of oral submissions.
24. Pursuant to the foregoing, the court allowed and/or authorized the advocates for the Parties to proceed and ventilate the subject application vide oral submissions.
25. Before venturing to capture the various submissions that were rendered by the Plaintiff and the 3<sup>rd</sup> Defendant respectively, it is appropriate to point out that counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants indicated to the court that same would not be opposing the Application for the grant of orders of Temporary Injunction herein.
26. Based on the foregoing, the contest pertaining to whether the subject application should be allowed or otherwise, gravitated between the Plaintiff, on one hand and the 3<sup>rd</sup> Defendant only.
27. Be that as it may, it was the Plaintiff's submissions that the suit property, which is currently registered in the name of the 3<sup>rd</sup> Defendant, was hitherto public property, same having been acquired by a public body and with the use of public funds.
28. Secondly, the Plaintiff further submitted that despite the fact that the suit property was public land, same was irregularly alienated and transferred into the name of the 1<sup>st</sup> Defendant who thereafter sold and transferred same to and in favor of the 3<sup>rd</sup> Defendant/Respondent.
29. It was further submitted that the quick and prompt manner in which the suit property was sold and transferred to the 3<sup>rd</sup> Defendant, underscores the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were keen to conceal the illegality and/or fraud that informed the allocation and transfer of the suit property in their favor.
30. Nevertheless, the Plaintiff have further submitted that insofar as the suit property is currently registered in the name of the 3<sup>rd</sup> Defendant, same is therefore at liberty to sell, dispose of, alienate and or otherwise charge the property, in such a manner that the recovery thereof would thereof be impossible and/ or otherwise difficult.
31. On the other hand, the Plaintiff has submitted that the alienation and/or disposal of the suit property, in any manner by and/or at the instance of the 3<sup>rd</sup> Defendant, shall therefore put the property beyond the reach of the Plaintiff/Applicant.



32. Owing to the foregoing, the Plaintiff/Applicant has therefore submitted that same has established and/or proved a clear case to warrant the grant of the orders of temporary injunction and essentially preserve the suit property.
33. On her part, counsel for the 3<sup>rd</sup> Defendants submitted that the suit property having been transferred to and registered in favor of the 3<sup>rd</sup> Defendant on or about June 2000, the subject suit which has been filed on the 15<sup>th</sup> March 2022 and whose import is to recover vacant possession of the suit property, is therefore barred by the Limitations of Actions Act. In this regard, the 3<sup>rd</sup> Defendant's counsel invoked and/or relied on the provisions of Sections 7 of the [Limitation of Actions Act](#).
34. Secondly, counsel for the 3<sup>rd</sup> Defendant also submitted that there is a pending suit, namely, ELC NoE052 of 2021 Between the 3<sup>rd</sup> Defendant and Kenya Railways Corporation and in respect of which an order of temporary injunction has since been issued and/or granted.
35. In the premises, the counsel for the 3<sup>rd</sup> Defendant has submitted that the subject suit is therefore barred by the doctrine of sub-judice and therefore contravenes the Provisions of Section 6 of the [CivIL Procedure Act](#), Chapter 21, Laws of Kenya.
36. Thirdly, the counsel for the 3<sup>rd</sup> Defendant has submitted that the issue pertaining to the legality or otherwise of the suit property is also being debated and/or canvased vide ELC No. E022 of 2021. Consequently, the 3<sup>rd</sup> Defendant has stated that the current suit is therefore an abuse of the due process of the court.
37. Lastly, counsel for the 3<sup>rd</sup> Defendant has submitted that it has not been proved and/or established that the suit property is public property and in this regard, the provisions of the Limitations Act are therefore relevant and applicable.
38. Based on the foregoing, the 3<sup>rd</sup> Defendant has therefore contended that the Suit herein is barred by the Limitations of Actions Act and hence, same ought to struck out. In any Event, it has been contended that the Suit does not disclose any Prima Facie case, whatsoever.
39. In a short rejoinder, counsel for the Plaintiff submitted that the provisions of the [Limitation of Actions Act](#), including Section 7 thereof which has been invoked and relied upon by the 3<sup>rd</sup> Defendant does not apply to proceedings relating to recovery of public properties.
40. On the other hand, counsel for the Plaintiff further submitted that the pending proceedings, namely, ELC No. E022 of 2021, only concern the 3<sup>rd</sup> Defendant as against Kenya Railways Corporation and hence same have no bearing in respect to the subject matter.
41. At any rate, it was further submitted that the Doctrine of Sub-judice does not apply to the instance situation, given that the parties in respect of the two cases are separate and distinct.
42. In view of the foregoing, the Plaintiff has reiterated that a basis has therefore been laid and/ or otherwise established to warrant the grant of the orders sought.

#### **Issues for Determination:**

43. Having reviewed the subject application, the affidavit in support thereto and the Notice of Preliminary objection ventilated on behalf of the 3<sup>rd</sup> Defendant, the following issues do arise and are thus germane for determination.
  - i. Whether the subject suit is barred by the [limitation of Actions Act](#) or otherwise, Chapter 22, Laws of Kenya.



- ii. Whether the subject suit is Sub-judice and therefore barred by the provision of Section 6 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.
- iii. Whether the Plaintiff/Applicant has established and/or laid before the court sufficient basis to prove the existence of a Prima facie case.
- iv. Whether the Plaintiff is disposed to suffer Irreparable Loss unless the orders sought are granted.

**Analysis and Determination:**

**Issue Number 1 Whether the subject suit is barred by the limitation of Actions Act or otherwise.**

- 44. The 3<sup>rd</sup> Defendant has contended and/or otherwise submitted that the suit herein is barred by the provisions of Section 7, 12 and 17 of the *Limitation of Actions Act* and in particular, that the 12-year period for recovery of the suit property have since lapsed and/or extinguished.
- 45. Further, the 3<sup>rd</sup> Defendant has submitted that insofar as the suit property was sold to and registered in the name of the 3<sup>rd</sup> Defendant in June 2000, any proceedings geared towards the recovery of same by and/or on behalf of Kenya Railways Corporation ought to have been mounted on or before the year 2012 and not otherwise.
- 46. In the premises, the 3<sup>rd</sup> Defendant has therefore contended that the suit before hand is misconceived, premature and otherwise legally untenable.
- 47. Be that as it may, it is imperative to note and/or observe that the Plaintiff/Applicant herein is an Independent constitutional commission created and/or established by dint of Article 79 and 248 of *the Constitution* 2010 and same is tasked with various responsibilities inter-alia recovery of illegally allocated public properties.
- 48. Pursuant to and by dint of the mandate of the Plaintiff/Applicant, it is worthy to state that same carries out the recovery of public properties for and/or on behalf of the Government of the Republic of Kenya and thus proceedings commenced by same are in the public nature and or essentially, relates to recovery of public land and not otherwise.
- 49. Premised on the foregoing, it is important therefore to state and underscore that the provisions of Section 7, 12 and 17, among other provisions of the *Limitation of Actions Act* do not apply as against the Plaintiff and essentially, in proceedings pertaining to recovery of Government land.
- 50. To buttress the foregoing observation, it is paramount to take cognizance of the provisions of Section 42 of the *Limitation of Actions Act*, which provides as hereunder;
  - ‘42. Exclusion of certain proceedings (1) This Act does not apply to—
    - (a) criminal proceedings; or
    - (b) matrimonial proceedings; or
    - (c) an action to recover possession of Trust land; or
    - (d) proceedings by the Government to recover possession of Government land, or to recover any tax or duty, or the interest on any tax or duty, or any penalty for non-payment or late payment of any tax or duty, or any costs or expense in connection with any such recovery; or...
    - (k) actions, including actions claiming equitable relief, in which recovery or compensation in respect of the loss of or damage to any public property is sought.’ (Emphasis, mine)



51. Other than the foregoing provisions, it is also central and/or imperative to take cognizance of the Provisions of Section 74 of the [Anti - Corruption and Economic Crimes Act](#), 2003, which provides as follows;

‘74. Amendment of section 42 of Cap. 22

Section 42 of the Limitations of Actions Act is amended by inserting the word “or” at the end of paragraph (h) and inserting the following new paragraph immediately after paragraph (h)— (i) a proceeding to recover an amount for which a person is liable under section 51 or 52 of the [Anti-Corruption and Economic Crimes Act](#), 2003 or a proceeding under section 55 or 56 of that Act.’

52. My reading of the foregoing provisions fortify my perception that suits for purposes of recovery of illegally alienated Government/public land, mounted by and or on behalf of state agencies, the Plaintiff/Applicant not excepted are not subjected to the [Limitation of Actions Act](#).

53. In the premises, it is my considered view that the objection by the 3<sup>rd</sup> Defendant, premised on the provisions of Section 7 of the [Limitation of Actions Act](#), is therefore misplaced, misconceived and legally untenable.

**Issue Number 2 Whether the subject suit is Sub-judice and therefore barred by the provision of Section 6 of the Civil Procedure Act.**

54. Other than the issue of [Limitation of Actions Act](#), the 3<sup>rd</sup> Defendant also raised and/or ventilated a claim that there exist another similar suit namely, ELC No. E052 Of 2021, between the 3<sup>rd</sup> Defendant and Kenya Railways Corporation and in respect of which the same property is being addressed and/or deliberated upon.

55. It may well be that there exists yet another suit, namely, ELC No. E052 of 2021, but the question is who are the parties and whether the Plaintiff/Applicant hereto is involved in the said proceedings.

56. On the other hand, there is also the question as to the nature and/or character of the dispute, which is being ventilated therein and whether the cause of action is one and the same, as the one herein.

57. Suffice it to observe, that while ventilating a preliminary objection, the 3<sup>rd</sup> Defendant herein could only speak and/or submit on proven or admitted set of facts, as contained in the pleadings by the adverse party, namely, the Plaintiff/Applicant.

58. Contrarily, the 3<sup>rd</sup> Defendant could only ventilate the preliminary objection, albeit based on pure points of law and not on issues of facts that may require further investigations and/or interrogation by the court, before authenticating and/or ascertaining their veracity.

59. In the premises, I am afraid that the issue of the existence of another suit, namely, ELC No. E052 of 2021 between the 3<sup>rd</sup> Defendant and Kenya Railways Corporation and whether the cause of action therein replicates the suit beforehand, are issues that cannot be ventilated vide the preliminary objection.

60. At any rate, the scope, extent and or tenor of what can be dealt with vide a preliminary objection has been well demarcated, delienated and case law abound on same.



61. Be that as it may, it is important to take cognizance of the decision of the Supreme Court of Kenya in the case of *Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others*, Civil Application No. 23 of 2014, [2014] eKLR; where the court stated as hereunder;

“Thus a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”

62. On the other hand, the circumstances where a preliminary objection can be ventilated and/or canvassed were also underscored with clarity vide the decision in the case of *Oraro v Mbaja* [2005] eKLR, where the distinction between a question of law and fact was discussed:

“... A “preliminary objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

63. Based on the foregoing, it is difficult to appreciate how the 3<sup>rd</sup> Defendant would wish the court to engage and/or indulge in a fact finding mission, with a view to making a positive finding based on the Doctrine res sub-judice.

64. In a nutshell, I also find and hold that the doctrine of Sub-judice does not apply in respect of the subject matter. In any event, same cannot be raised and/ or canvassed vide a Preliminary Objection given that it entails investigations of certain facts, prior to and before arriving at the conclusion about the existence of another Suit and whether, the other Suit concerns same cause of action.

**Issue Number 3 Whether the Plaintiff/Applicant has established and/or laid before the court sufficient basis to prove the existence of a Prima facie case.**

65. The Plaintiff/Applicant herein has submitted that what comprises the suit property, was hitherto part and parcel of the original property namely L.R No. 1/210/2, which was bought by the Commissioner For Transport and thereafter vested in East Africa Railway, now Kenya Railways Corporation.

66. On the other hand, it has also been submitted that the original property which was subdivided culminating into the suit property, having been bought and/or acquired using public funds, the suit property therefore constitutes public property and same ought not to have been alienated in the manner same was done.

67. In any event, the Plaintiff has further submitted that upon the alienation of the suit property in favor of the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant quickly and in a fraudulent manner and in a bid to conceal the fraud caused the suit property to be transferred to and registered in the names of the 3<sup>rd</sup> Defendant.

68. Be that as it may, it is imperative to note that the factual deposition alluded to and contained at the foot of the affidavit in support of the application herein, have not been contested and/or otherwise controverted.



69. In the premises, it is appropriate to observe that indeed credible basis has been made and/or established to warrant a finding that a prima facie case has been proven by the Plaintiff/Applicant in respect to the matters in dispute.

70. As far as what constitutes Prima facie Case concerned, it is sufficient to adopt and reiterate the holding in the case of *Mrao Ltd. vs First American Bank of Kenya Ltd & 2 others* [2003] eKLR where the Court stated as hereunder;

“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 will 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.”

71. Taking into account the factual deposition outlined by and/or on behalf of the Plaintiff/Applicant and given the claim that the suit property is public property and therefore ought not to have been alienated in the first place, there is no gainsaying that a prima facie case has indeed been established and the veracity of the issues therein shall have to await a plenary hearing.

**Issue Number 4 Whether the Plaintiff is disposed to suffer Irreparable Loss unless the orders sought are granted.**

72. As pertains to whether or not the Plaintiffs/Applicant herein shall be disposed to suffer irreparable loss, if the orders sought are not granted, it is important to note that the nature of loss to be suffered by the Plaintiff/Applicant is not to be measured from a Private- interest perspective.

73. Suffice it to add that the proceedings herein have been commenced by the Plaintiff, not for purposes of satisfying her personal quest, but to recover the suit property for and on behalf of the Republic of Kenya and hence the people of Kenya.

74. In the premises, the issue before hand, concerns public interests and the general welfare of the nation and hence any alienation and/or disposal of the suit property, will not only complicate the recovery process, but will jeopardize public interest, given that the allegation beforehand, imputes fraud and illegality in the alienation of the suit property.

75. On the other hand, there exists real fear and apprehension that the 3<sup>rd</sup> Defendant who is currently the registered owner of the suit property, may well seek to alienate and dispose of same or better still charge the suit property and in the event of any such action arising, there would be need to implead such 3<sup>rd</sup> Parties in the matter.

76. Notwithstanding the foregoing, any further and/or adverse dealings with the suit property may also culminate into a third party invoking and relying on the doctrine of bona fide purchaser for value without notice and in such a scenario, the recovery process may be brought to naught.

77. In short, what I have outlined in the preceding paragraphs, is an endeavor to show that any dealings with the suit property, unless the orders sought are granted are bound to occasion Irreparable loss.

78. Suffice it to note, that what constitutes irreparable loss has infinite perspectives and/or nuances and same cannot therefore be exclusively underscored and/or exhaustively, explained.



79. Nevertheless, it is still imperative to refer to and adopt the holding of the Court of Appeal vide the decision in the case of *Nguruman Ltd vs Jan Bonde Nielsen & 2 others [2014] eKLR*, where the Honorable Court observed as hereunder;

“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.”

80. In the premises, it is common ground that the factual position and the attendant apprehension, which have been underscored in respect of the subject matter meets the definition of what constitutes Irreparable Loss.

**Final Disposition:**

81. Having reviewed and/or evaluated the issues for determination which were outlined in the body of the Ruling, it is apparent and evident, that the subject Application is truly meritorious.

82. In the premises, I come to the conclusion that the Plaintiff/Applicant has met and/or satisfied the requisite threshold to warrant the grant of the orders sought. Consequently, the Application dated March 1, 2022, be and is hereby allowed in terms of prayer 3 thereof.

83. Costs of the Application herein shall however, abide the cause.

84. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2022.**

**HON. JUSTICE OGUTTU MBOYA,**

**JUDGE**

**In the Presence of;**

Kevin Court Assistant

