



Sagalla Lodge Limited v Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga Deceased) (Environment & Land Case 242 of 2021) [2022] KEELC 14624 (KLR) (4 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14624 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 242 OF 2021
LL NAIKUNI, J
NOVEMBER 4, 2022

BETWEEN

SAGALLA LODGE LIMITED PLAINTIFF

AND

SAMWUEL MAZERA MWAMUNGA 1ST DEFENDANT

JOSIAH CHOLA MWAMUNGA 2ND DEFENDANT

SUING AS THE EXECUTORS OF ELIUD TIMOTHY MWAMUNGA DECEASED

RULING

I. Introduction

1. Before this Honorable court for its determination is a Notice of Motion application dated September 29, 2022. It was filed by Mr Samwuel Mazera Mwamunga and Mr Josiah Chola Mwamunga (suing as the Executors of the late Eliud Timothy Mwamunga – hereinafter referred to as “The Deceased”) the 1st and Defendants/Applicants herein and brought under the dint of Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21 and Order 40 Rule 7, Order 51 Rule 1 of the *Civil Procedure Rules, 2010* of the Laws of Kenya.
2. From the very onset, this Court takes cognizance of the intricate and sensitivity of the subject matter and hence the need to handle it with utmost circumspect, care and prudence. It needs to be expedited through full trial and final determination

II. The 1st & 2nd Defendants/Applicants Case.

3. The 1st and 2nd Defendants/Applicants herein sought for the following orders:-



- a. That this honourable court be pleased to set aside and/or discharge the temporary orders of injunction issued in favour of the Plaintiff/Respondent on April 27, 2022.
 - b. Costs of this application to be provided for.
4. The aforesaid Notice of Motion application is based on the premised testimonial facts, grounds and/or averments of the thirty - six (36) Paragraphed Supporting Affidavit of Samuel Mazera Mwamunga and the three (3) annexures marked as “SMM -1 to 3” annexed thereto. He deposed that he was a duly appointed legal Executor of the estate of the late Eliud Timothy Mwamunga (the deceased). Vide a filed Plaint dated December 7, 2021, the Plaintiff/Respondent instituted this suit and sort for “*inter alia*’ orders in the nature of a permanent injunction to allow them to continue enjoying the use of the suit property. He deposed that the Plaintiff/Respondent equally filed together with the suit an application under the certificate of urgency dated the December 7, 2021 whereby he sought for *inter alia* an order for temporary injunction. He stated that the 1st and 2nd Defendants/Applicants herein opposed the said application vide a replying affidavit dated January 17, 2022.
5. He averred that on February 22, 2022 the Honorable Court directed that the parties herein file written submissions in response to the Plaintiff/Respondent’s application which parties duly complied with. Further to the above and in light of the fact that the Plaintiff/Respondent was in substantial arrears, the Honourable Court directed that the Plaintiff/Respondent engaged the 1st and 2nd Defendants/Applicants for the sole purpose of making a deposit towards the settlement of the accrued rental arrears.
6. He deposed that in compliance with the directive from this Honorable Court, the 1st and 2nd Defendants/Applicants prepared a statement of account. He informed Court that they duly wrote to the Plaintiff/Respondent and confirmed that the outstanding rent as at the month of February 2022 was at a sum of Kenya Shillings Ten Million Seven Fifty Seven Thousand Eight Forty One Hundred (Kshs 10,757,841/-). He stated that, in complete disregard of the directions of the court, the Plaintiff/Respondent refused to settle any of the outstanding rental arrears despite the Defendant doing a reminder on the same. He averred that the Defendant reiterated to the Plaintiff/Respondent the fact that he had acknowledged the accrued rental arrears and if all there was any good faith on their part, they ought to have settled a substantial amount of the rental arrears as per the directive of the court.
7. The Defendant/Applicant averred that they therefore appeared before this Honourable Court on April 27, 2022 for purposes of the delivery of the ruling in respect of the applications filed before court. That vide a ruling delivered on April 27, 2022, the Honorable Court proceeded to allow the application of the relief sought by the Plaintiff/Respondent herein. It made the following orders:
 - a. That the notice of motion application dated December 7, 2021 by the Plaintiff herein be and is hereby allowed as the same has merit and all other orders sought granted thereof with costs but on condition that the Plaintiff stringently, strictly and diligently conform to the terms and conditions stipulated in the duly executed Lease Agreement on the July 21, 2015 between them as the tenant and the Defendants as the Land Lords hereof.
 - b. That the notice of motion application dated December 21, 2021 by the Defendants be and is hereby dismissed for lack of merit with costs to the Plaintiff.
 - c. That the notice of motion application dated October 18, 2021 by the Appellant/Applicant be and is hereby allowed to wit that:-



- i. there be stay of execution of the ruling of the Hon F N Nyakundi issued on September 29, 2021 in Voi ELC No 015 of 2010 pending the hearing and final determination of the application on June 9, 2022;
 - ii. the Appellant granted 21 days to compile and prepare the records of appeal to be fixed for direction under the provisions of Section 79B and G of the Civil Procedure Act, Cap 21 and Order 42 Rules 11 and 13 (1), (2), (3) & (4) (a) to (f) of the Civil Procedure Rules, 2010 on June 9, 2022.
- d. That the plaintiff and the defendants to prepare and furnish this court with a full and detailed accounts on the actual rental remittance from the business premises within the next fourteen (14) days from the date of this ruling with a view of directing payment of a reasonable sum and on practical and fair basis until the outstanding and/or any outstanding rent arrears will have been fully settled.
- e. That for sake of expediency this matter to be fixed for hearing and final determination within the next ninety (90) days from this date hereof. There be a mention date on May 13, 2022 for the purpose of:-
- f. The production and presentation of the books of accounts as stated under Clause (d) above of this ruling.
- g. Making some reasonable advance payment for off setting any outstanding rental arrears.
- h. Holding a pre-trial conference session on Case management under Order 11 of the Civil Procedure Rules 2010 and fixing of an appropriate hearing date within the set out time frame stipulated hereof.
- i. That the costs of these two (2) Notice of Motion Applications dated December 7, 2021 and December 21, 2021 to be borne by the Defendants in the Cause.
8. He stated that the 1st and 2nd Defendants/Applicants confirmed to the Honorable Court that they had complied with order (e)(i) of the Ruling in so far as they were required to prepare a statement of account. Upon delivery of the ruling, they duly informed the Court of the impasse between the parties herein as the Plaintiff/Respondent had not settled any of the accrued rental arrears. Subsequently, he stated that the Honorable Court directed the Plaintiff/Respondent to fully comply with its previous directions as well as order (e)(ii) of the ruling with regards to making a deposit towards settlement of the rental arrears. Despite of the outstanding rental arrears owed being over ten million, the Plaintiff/Respondent only made an outrageous proposal of paying out a sum of Kenya Shillings Seventy Five Thousand (Kshs 75,000/-) towards settlement of the same and the Court record should reflect the same.
9. The 1st and 2nd Defendants/Applicants informed Court that despite of the proposal of the paltry Kenya Shillings Seventy Five Thousand (Kshs 75,000/-) that the Plaintiff proposed to pay was never even remitted to the 1st and 2nd Defendants/Applicants in good faith which is a clear demonstration of the contemptuous manner in which the Plaintiff/Respondent regarded their obligations stipulated under the Lease Agreement. He deposed that the Honorable Court duly informed the Plaintiff/Respondent that indeed their proposal was too low and the matter was to be mentioned after 14 days to confirm that indeed the Plaintiff/Respondent had complied with the directive of the Court. Unfortunately, on May 13, 2022 when the matter was scheduled for the mention to confirm settlement of the arrears by the Plaintiff/Respondent, the Court was not sitting due to official tasks. He held that ever since the delivery of the afore - stated Ruling, the Plaintiff/Respondent had taken a back seat with regards to the



prosecution of this matter and whenever the court was not sitting, it was the 1st and 2nd Defendants/Applicants who followed up with the ELC's Registry to ensure they obtained a fresh date and equally duly served the Plaintiff/Respondent. Despite all attempts by the 1st and 2nd Defendants/Applicants to request for settlement of the arrears, the Plaintiff/Respondent had blatantly ignored the same. It was obvious that the Plaintiff/Respondent was taking advantage of the temporary orders of injunction to avoid their obligations under the lease to the detriment of the 1st and 2nd Defendants/Applicants who had no other recourse but the current application before court.

10. The 1st Defendant/ Applicant deposed that despite the clear directions of the Honourable Court on how the parties were to conduct themselves with regard to their obligations under the duly executed Lease, the Plaintiff/ Respondent had blatantly shown complete disregard of the Court orders and continued to enjoy the quiet possession of the suit property without remitting a single coin in the form of rent to the estate. He emphasized that the law ought serve all parties to a suit and not just the Plaintiff/Respondent. The 1st Defendant/Applicant further stated that as per the Plaintiff/ Respondent's document filed in court, it was in undisputed fact that they last remitted rent to the 1st and 2nd Defendants/Applicants in the month of March 2020 despite being in operation and carrying out business to date. The Honourable court was categorical in its ruling that the injunction was allowed in favor of the Plaintiff/Respondent on condition that they strictly and diligently complied with the terms of the lease agreement. It was only just that the orders ought to be discharged, varied or set aside as the Plaintiff/Respondent had shown no willingness to comply with the directive of this Honourable court.
11. The 1st Defendant/ Applicant further deposed that in addition to the above the Plaintiff/ Respondent had completely neglected the suit property and had been secretly carting away goods to his other premises which went to demonstrating the bad faith on the part of the Plaintiff/Respondent. The Deponent further averred that it was apparent that the Plaintiff/ Respondent intended to completely cause wastage of the suit property with the sole intent of ensuring the property lost its national stature. He informed Court that the suit property was in a deplorable state and was slowly and gradually losing its prominence as a popular tourist destination in Voi within the County of Taita Taveta causing irreparable damage to the estate.
12. The Defendant/Applicant deposed that the Plaintiff/ Respondent had demonstrated that they were not worthy of the orders granted in his favour and the court should set them aside forthwith. He held that unless the orders sought in the Application were granted, such injustice and loss shall continue to be visited upon the 1st and 2nd Defendants/ Applicants to the irredeemable detriment of the estate. He stressed that it would be in the interest of justice that the temporary order of injunction be set aside as the Plaintiff/Respondent is indeed guilty of abuse of the discretion of the Honorable Court.

III. Replying Affidavit by the Plaintiff/Respondent

13. On October 17, 2022, the Plaintiff/ Respondent, while opposing the Notice of Motion application dated September 29, 2022 by the 1st and 2nd Defendants/Applicants filed a twenty - seven (27) Paragraphed Replying Affidavit sworn by David Maina Gaitho and dated October 17, 2022 with four (4) annexures marked as "DMG – 1 to 4" annexed hereto. He deposed being the Director to the Plaintiff's Company and duly authorized to swear this affidavit. He unequivocally admitted the contents of Paragraphs 1, 2, 3, 4, 5, and 6 of the Supporting Affidavit by the Defendant/Applicant.
14. He deposed that in answer to the averments made out under the contents of Paragraph 7 of the Supporting affidavit, the Court had directed that parties do file their statements of account. Indeed, he stated that they had already filed. In response to the contents under the Paragraph 8 of the Supporting



Affidavit he stated that he was advised by his Advocate on record which advise he verily believed to be true that whereas the 1st and 2nd Defendants/Applicants computed the arrears at a sum of Kenya Shillings Ten Million Seven Fifty Seven Thousand Eight Forty One Hundred (Kshs 10,757,841/-) they filed a letter in response. They communicated to the 1st and 2nd Defendants/Applicants' Advocate informing them of the difficulties in making payments was due to the Defendants conduct. The Deponent stated that the Defendants/Applicants had made it impossible for the Plaintiff/Respondent to operate and as they had continuously and illegally intermeddled with the operation of the business by the Plaintiff, making it impossible to earn and/or pay the outstanding rental arrears. The court granted an injunction on the December 8, 2021. He stated that the Defendants/Applicants herein contra to them being made aware of the Order restrained the Plaintiff/Respondent from accessing the lodge resulting in a scuffle. He stated that on February 16, 2022 the 1st and 2nd Defendants/Applicants caused the arrest of the Plaintiff/Respondent and charged with the offence of malicious damage to property. However, he informed Court that said charges were terminated but since the month of February 2022 to date, the Plaintiff/Respondent had not been able to operate its business and thus they were not in business.

15. He sated that the 1st and 2nd Defendants' agents/ employee assaulted one of the Plaintiff/Respondent's staff member Mr Zablon Mwabili. This further compound the difficulties in compliance since the Defendants/Applicants continued interfering with the running of the lodge. Whereas the 1st and 2nd Defendants/Applicants were outrightly in violation of a court order, they were now asking the same Court to assist it in enforcing the same order.
16. He deposed that injunctive orders were equitable in nature. He argued that the 1st and 2nd Defendants/Applicants had come to court with unclean hands. He submitted that the Orders sought by the 1st and 2nd Defendants could not be issued. In reply to the averments made out under the contents of Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Supporting Affidavit herein, he stated that together with the Plaintiff/Respondent's employees, they had been illegally barred from operating the lodge. Thus, it was impossible for the Plaintiff/Respondent to make money and thus meet its contractual obligations. The Plaintiff/Respondent instructed its advocate to write to the Defendants' Advocates expressing its frustrations and asking for disengagement as per the termination clause. Contrary to the assertions of the Defendants/Applicants, the Plaintiff/Respondent had taken steps to comply with directives of the Court that were aimed at concluding this matter. It was the 1st and 2nd Defendants/Applicants who had since moved to the court of appeal for orders amongst others stay of proceedings herein.
17. In reply to the averments made under the contents of Paragraphs 29, 30 and 31 of the Supporting Affidavit, the Plaintiff/Respondents stated that the suit land was wasting away since the Plaintiff/Respondent no longer operated it due to the prevailing circumstances caused by the Defendants/Applicants. The Plaintiff/Respondent contested the contents of Paragraphs 32, 33, 34 and 35 of the Supporting Affidavit stating that the 1st and 2nd Defendants/Applicants had since moved to the Court of Appeal in Civil Application E039 of 2022 to stay execution and proceedings. The Court of Appeal had since ruled that the matter was not urgent. Further to the contents under Paragraph 23 above, the orders sought in the pending application before the Court of Appeal had similar legal relief as those sought in the present application and that this Court was reaching a conflicting outcome with that of the Appeal and that the 1st and 2nd Defendants/Applicants could not seek similar orders before different fora.



VI. Submissions

18. On October 24, 2022 while all the parties were present in Court, it was agreed by consensus all the parties had filed comprehensive pleadings on the Notice of Motion application dated September 29, 2022. Therefore, it was further agreed that there would be no need of them filing any written submissions. Hence, the Honorable Court proceeded and reserved the November 4, 2022 as the date to render its ruling accordingly.

VI. Analysis & Determination

19. I have fully considered all the filed pleadings, the oral submissions and the several cited authorities and the relevant provisions of the law in reference to the Notice of Motion application dated September 29, 2022 by the 1st and 2nd Defendants/Applicants and the Replying Affidavit by the Plaintiff/Respondent thereof.
20. In order to reach an informed decision on this matter, I have framed two (2) issues for determination. These are:-
- a. Whether the 1st and 2nd Defendants/Applicants herein through their filed Notice of Motion application dated September 29, 2022 met threshold and hence were entitled to the orders to discharge, Vary and/or Set aside the injunction orders granted by this Court on April 27, 2022 under the provisions of Order 40 Rules 7 of the *Civil Procedure Rules, 2010*.
 - b. Who should bear the Costs of this application?

Issue No a). Whether the 1st and 2nd defendants/applicants herein through their filed notice of motion application dated September 29, 2022 met threshold and hence were entitled to the orders to discharge, vary and/or set aside the injunction orders granted by this court on April 27, 2022 under the provisions of order 40 rules 7 of the Civil Procedure Rules, 2010.

21. The issue under this sub heading, the Court holds that the provision of Order 40 Rule 7 of the *Civil Procedure Rules, 2010* provides thus:-

“Any order for an injunction may be discharged or varied, set aside by the Court on an application made thereto by any party dissatisfied with such order”.

In order to apply the provision of under Order 40 Rule 7, the Honorable Court based on the filed application made, should look into certain principles.

22. Firstly, in the case of: “*James Juma Muchemi & Partners Limited – Versus - Barclays Bank of Kenya & Another* (Nairobi HCCC No 339 of 2011 (2012) eKLR, Mabeya J, expressed the view that the jurisdiction under the provision of Order 40 Rule 7 was discretionary and like in all other discretions, the same must be exercised judiciously although there are no firm rules of law or practice that have been set down. In the case of “*Ragui – Versus - Barclays Bank of Kenya* (2002) 1 KLR 647, Ringera J stated ‘*inter alia*’:-

“It is settled law that if an interlocutory injunction has been obtained by means of representation or concealment of material facts, the same will on the application of the party aggrieved be discharged”.

23. Secondly, I discern that the discretion under Order 40 Rule 7 ought to be sparingly used so as to avoid a situation where it would appear as if the same is being used as a tool for the abuse of the court. This is



- because before issuing the injunction, the Court must have been satisfied that it was necessary to grant the same. If it were not satisfied, the court would not have issued the injunction in the first place.
24. Thirdly, another principle to consider would be if the injunction was obtained by concealing facts which if put to the Judge in first instance would have affected his Judgment on whether or not to give the injunction, then a court can be inclined to vary or vacate the injunction in light of the new facts.
 25. Fourthly, another issue to be factored into under the given circumstance while considering this application, if the circumstances of the suit have radically changed so that it is no longer necessary to have the injunction.
 26. Now, turning to and applying these few enumerated principles herein in the instant case, there is no doubt that there are no tangible material facts that have been concealed or any change in the circumstances of this suit which will necessitate the Court discharging, varying and/or setting aside the injunction orders issued herein. If anything, with all due respect to the parties herein and from the filed pleadings, they have been too open, honest, transparent and accountable. For more reason, there is no need even to conduct a site visit at all.
 27. On whether there has been circumstances that have drastically changed in the matter from the time when the injunction orders were issued. This is an interesting issue to consider keenly. In my view, in this matter, it is the Roller Coaster which broke the Carmel's back. To begin with, the core contention by the 1st and 2nd Defendants/Applicants are that the Plaintiff/Respondent even after the Court clearly guiding and providing the parties directions on how they were to conduct themselves with regards to their obligations under the lease, the Plaintiff/Respondent had failed to comply with the said orders. The court ordered on the April 27, 2022 that this matter be dispensed with within 90 days pending the compliance of pretrial conferencing session on case management under Order 11 of the [Civil Procedure Rule, 2010](#). From the Court file the Defendants/Applicants filed their Defence on 21st September 2022 which was more than 90 days after the said ruling was delivered.
 28. The suit herein was filed by the Plaintiff/Respondent seeking a permanent injunction to restrain the 1st and 2nd Defendants/Applicants and sought for damages. By that time, it appeared that the Plaintiff/Respondent was able to satisfy the Court having established "a prima facie case" to the extent that it followed the conditions set by the Honourable court and those of the duly executed lease agreement dated July 21, 2015. Primarily, that was the reason the Court granted the injunction orders. In any event, if the Application herein was sought to protect the provisions of the lease agreement then, as we speak and from the facts adduced in the pleadings, with great humility, I am afraid there is no Lease to be protected anymore. I take judicial notice that the agreement has already been breached. There is no oata of doubt from its own admission and the filed statement of accounts, the Plaintiff/Respondent has not been remitting any rental payments from March, 2020 todate. They have cited numerous reason being the principles of Force Majure caused by the global Covid – 19 pandemic and the stringent conditions imposed by the Ministry of Health conditions which drastically affected the hospitality industry which includes the Plaintiff/Respondent's business, continuous interference of the business operations by the Defendant/Applicants leading to physical assault charges preferred and criminal proceedings instituted. Suffice to say, this Court finds it rather disturbing that despite even being advised by Court and making an offer to pay the outstanding the rent allegedly being over Kenya Shillings Ten Million, it offered to pay paltry sum of Kenya Shillings Seventy Five Thousand (Kshs 75, 000.00), but the same which was still never remitted. Perhaps, there is a complete breach of the terms and conditions of the duly executed Lease Agreement which may be ascertained during the full trial. But in the meantime, the Court is satisfied that there has been peculiar circumstances and drastic changes that has taken place on the matter from the time when the injunction orders were granted and now which has necessitated the filing of this application. I strongly hold that the injunction



orders sought and granted to the Plaintiff/Respondent have been overtaken by events. The Plaintiff/Respondent are extremely non – committal to the terms and conditions of the Lease Agreement. I dare say, they have completely lost any fidelity to the Lease. The purpose for the said orders have already been spent.

29. Additionally, I also take note that the parties want to rely on the termination, force majeure and the applicable law dispute resolution and arbitration clause. It is clear from Clause 22(a) of the lease agreement that the parties submitted to the exclusive jurisdiction of the Courts of Kenya.
30. I should add that the requirement in Section 6(1) of the *Arbitration Act* is not a mere technicality which can be diminished by Article 159 (2) (d) of the *Constitution of Kenya* as claimed by the Applicant. It is a substantial legal matter that aims at promoting and attaining efficacious resolution of disputes through arbitration by providing for stay of proceedings but only where a party desirous of taking advantage of an arbitration clause in a contract has applied promptly for stay of proceedings and made a request to have the matter referred to arbitration. I note that the parties did not directly address the issue of arbitration but the constant referral of the lease agreement in this application clearly implies the desire to have this matter referred to arbitration. In my opinion, the provisions of Section 6 (1) of the *Arbitration Act* are, unambiguous and self-explanatory. Courts have expressed themselves on the tenor and meaning of the section 6 (1) *Arbitration Act*.
31. The legal position is that a party who wishes to take advantage of the arbitration clause in a contract should either at the time of entering appearance or before the entry of appearance make the application for reference to arbitration. I agree with the court’s holding in “*Eunice Soko Mlagui – Versus - Suresh Parmar and 4 others* (2017) eKLR. The court stated that section 6 of the *Arbitration Act* is a specific statutory provision on stay of proceedings and referral of a dispute to arbitration where parties had entered into an agreement with an arbitration clause. The section prescribes the conditions under which a court can stay proceedings and refer a dispute to arbitration. Its intention is to regulate and facilitate the realization of the constitutional objective of promoting alternative dispute resolution. The Court stated that there was nothing in that provision that could be said to be derogating or subverting the constitutional edicts as regards alternative dispute resolution.
32. In the Supreme Court case of:- “*Raila Odiga – Versus - IEBC & 3 Others*, the Court observed that Article 159 (2), (d) of the *Constitution* simply means that a court of law should not apply undue attention to procedural requirements at the expense of substantive justice. The Article 159 was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from the courts.
33. All in all, the conclusion here is that the 1st and 2nd Defendants/Applicants herein have established a good case where the Court is convinced that the Plaintiff/Respondent deserves enjoying the prima facie Injunction orders particularly as they blatantly continue breaching the terms and conditions stipulated in the Lease Agreement.

Issue No b). Who should bear the costs of this application?

34. The issue of Costs is a discretion of the Honorable Court. Costs is the award that is granted to any party at the conclusion of any legal action, process and proceedings in a litigation. The proviso of the provision of Section 27 (1) of the *Civil Procedure Act*, Cap 21, it provides that Costs follow the events. By events, it means the outcome or results of the said legal action, process or proceedings of a litigation.
35. In the instant case, the 1st and 2nd Defendants/Applicants herein have succeeded in prosecuting their Notice of Motion application dated September 29, 2022 they ought to be awarded costs of the application to be borne by the Plaintiff/Respondents herein.



IV. Conclusion and Disposition

28. In the long run, based on the detailed and thorough analysis of the salient issues raised hereof, the 1st and 2nd Defendants/Applicants have succeeded in the preponderance of probability their application has been allowed. For avoidance of doubt, I hereby proceed to make the following orders: -
- a. That the notice of motion application dated September 29, 2022 by the 1st and 2nd Defendants/Applicants herein be and is hereby allowed on the condition that the Plaintiff/Respondent stringently, strictly and diligently does not fully conform, adheres and/or complies with the terms and conditions stipulated in the duly executed Lease Agreement on the July 21, 2015 between them as the Tenant and the Defendants as the Land Lords hereof to the suit property.
 - b. That the plaintiff be and is hereby given 60 days from the date of this Ruling to make a deposit of a sum of Kenya Shillings One Million (Kshs 1,000,000/-) into the bank account for the 1st and 2nd Defendants/Applicants herein as a show of good faith being Diamond Trust Bank, Voi Branch, bank Account Numbers xxxx failure to which the interim injunction which is still in force having been granted on April 27, 2022 shall be vacated automatically.
 - c. That for sake of expediency this matter to be fixed for hearing on December 9, 2022 and its final determination within the next Sixty (60) days from this date hereof.
 - d. That during the hearing of this suit, all parties are required to summon all their witnesses without fail. Any party to this suit that does not adhere to these suit shall be penalized.
 - e. That costs of the application to be awarded to the 1st and 2nd Defendants/Applicants to be borne by the Plaintiff/Respondent.

It is so ordered accordingly

**RULING DELIVERED, SIGNED AND DATED AT MOMBASA THIS..... 4THDAY OF
.....NOVEMBER..... 2022.**

HON. MR. JUSTICE L. L. NAIKUNI (JUDGE)

ENVIRONMENT AND LAND COURT AT

MOMBASA

In the presence of:

- a. M/s. Yumnah Hassan, Court Assistant.
- b. Mr. Adede Advocate holding brief for Mr. Nyange Advocate for the Plaintiff/Respondent
- c. Mr. Kuwinda Advocate for the 1st and 2nd Defendants/Applicants.

