



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC CASE NO 24 OF 2018

BENJAMIN KARIAMBURI MWANGI.....1st APPLICANT

MARGARET WAMBUI MWANGI.....2nd APPLICANT

AFRISCAN (KENYA) LIMITED.....3rd APPLICANT

VERSUS

KENYA ELECTRICITY TRANSMISSION COMPANY.....1st RESPONDENT

POWER CHINA GUIZHOU ENGINEERING COMPANY.....2nd RESPONDENT

RULING

1. By a Notice of Motion dated 11th May 2018 filed under Article 40, 64 and 159 (d) of the Constitution and section 24 of the Land Registration Act, Section 1A,1B and 3A of the Civil Procedure Act and Order 40 Rules 1 and 2, 51 Rule 1 of the Civil Procedure Rules, and all other enabling provisions of the Law where the Applicants seeks orders that:-

i. **Spent**

ii. **Spent**

iii. That pending the hearing and determination of the suit herein, this honourable court be pleased to issue temporary injunction restraining the Respondents jointly and severally whether by themselves and or through their servants, agents officers or any other person howsoever under their instructions, consent, authority and control from interfering and/or dealing in any manner whatsoever with the Applicant's parcel of land reference No. Nyandarua/Olaragwai/3432. Or any part thereof whether by stringing power lines through it or otherwise.

iv. **Spent**

v. That costs of and occasioned by this application be awarded to the Applicant.

vi. That such other and further orders as may be just to meet the ends of justice and safeguard and protect the Applicant's rights.

2. The Application was premised on the grounds on the face of it as well as on the supporting affidavit and supplementary affidavits dated the 11th May 2018 and 28th May 2018 respectively, sworn by Charles Mwangi the Director at the 3rd Applicant's Company who had the authority to swear the Affidavits on behalf of the 1st and 2nd Applicants herein.

3. The court granted the Applicants interim orders of staus quo to be maintained as at the 14th May 2018 pending the hearing and determination of the application inter parte.

4. By consent parties filed their written submissions wherein they highlighted the same on the 30th May 2018.

Applicants' case.

5. Counsel for the Applicant relied fully on the grounds and averments contained in their affidavits as well as on their list of authorities. Briefly, Counsel for the Applicants submitted that the 1st and 2nd Applicants who are the registered proprietors of Land reference No.

Nyandarua/Olaragwai/3432 were also the owners of the 3rd Applicant, a Limited liability Company herein.

6. That the said 3rd Applicant has been carrying out the business with Hypericum Plant flower since 2005 until the beginning of February 2017 when the 1st Respondent decided to pass the high wire voltage lines across the farm, emanating from the Turkana/Olengalani wind power project.

7. That although the on the 23rd February 2015, an easement grant had been signed to have the 1st Respondent to pass the wire lines through the farm, yet it had been subject to prompt compensation as by the requirement of the law.

8. The Applicants' claim is that the 1st Respondent subsequently and forcefully entered onto their land in February 2017, to pass the high wire voltage lines across the farm, despite them having not compensated the 3rd Applicant herein. That these act had in turn resulted into keeping the 3rd Applicant out of business due to lack of compensation for the damaged crops and irrigation system in utter violation of the Applicant's rights enshrined under Article 40(3)(b)(ii) of the Constitution.

9. That despite the numerous assessment reports prepared by the Agriculture Food Authority and forwarded by the 3rd Applicant to the 1st Respondent, the 1st Respondent had failed to compensate the Applicant for the loss/ damage caused on their land pursuant to the 1st Respondent's activities.

10. It was the Applicant's case that it had a number of international supply contracts which it could not fulfill due to the activities carried out by the 1st Respondent on the suit land. That because of these activities, which had not been compensated, the Applicants now ran the risk of falling into breaches of contracts, and other loses which they listed as:

- i. Accrual of arrears of their employees which would inevitably result to a pyramid of suits/claims
- ii. The 1st Applicant's property was subsequently put out for sale because he was a guarantor to the 3rd Applicant who had defaulted in the repayment of the loan.

11. The Applicant's issue was that as a result of the 1st Respondent's activities of passing the wire lines through the farm, they had incurred loss to the extent that:

- i. They had lost their crop and all onsite irrigation system and lighting power lines which had to be reallocated to a different location.
- ii. That the activities of the 1st Respondent resulted into the cutting down of trees that exposed the crop to adverse weather and subsequent loos therein.
- iii. That the high voltage power lines does not allow the 3rd Applicant to develop any infrastructure underneath in future.
- iv. That from the 17th February 2017 when the 1st Respondent forcefully entered onto the applicants land parcel, they have been unable to conduct their flower business and the farm continues to make losses.

12. It was further submitted that there was no valuation conducted by the Respondents as provided for by the law and further that indeed the monies paid to the Applicant by the Respondents was a merge payment of Ksh. 24 million which was for specific structures demolished on the property and for the interim position. That the Ksh. 15 million paid to the Applicants was done in the year 2013 but the said payment did not involve the present claim.

13. Counsel relied on the case of **Paul Gitonga Wanjao vs. Tea Factory Co Ltd & 2 others (2016) eKLR** to submit that they had established a prima facie case with a high chance of success because they had proved that there are issues and a cause of action before this court for determination.

14. The Applicants were categorical that they stood to suffer irreparable damage/loss that could not be compensated in damages if the injunction was not granted. That when the 1st Respondent exercised its right over a way leave, it was incumbent of it to compensate them promptly.

15. The Applicant's submission was that in case the court was in any doubt in regard to the first two conditions, it may determine the matter by considering in whose favor the balance of convenience tilts. In this case, the Applicant submitted, that the balance of convenience tilted in their favour.

16. That assuming damages was one of the remedies, that the court to be guided by the principles in **Hussein Budeid vs Patrick (2014) eKLR which cited the case of Waithaka vs Industrial and Commercial Development (2001) eKLR**. That in the circumstance, damages are not an adequate remedy in certain instances especially where the aggrieved party, the Applicant herein, is down trodden by the government without care.

17. The Applicant thus prayed that their application be allowed as prayed in the notice of motion dated 11th May 2018 and for an extension of orders as they await the ruling.

Respondents' case

18. The application was opposed by the Respondents herein who also filed an application dated the 22nd May 2018 on the 23rd May 2018 seeking for orders of stay of the interim orders issued on the 14th May 2018.
19. It was the 1st Respondent's submission that it only engaged in acquisition of easements from its transmission acts and not acquisition of property. The process of acquisition of easement bequest from an early stage and in this instance, it began on 14th October 2013 when the National Land Commission advertised that they would be acquiring way leave of certain properties.
20. That before the construction phase, the 1st Respondent undertook steps of survey to determine whether there were structures or crops or trees along the transmission line route. That structures crops and tree were usually paid for earlier in the project to enable the owners to re-allocate them by cutting them down. The 1st Respondent did not engage in any reallocation of structures.
21. That unlike the averment of the 3rd Applicant that it had been in the business of planting flowers since 2005, yet their certificate of in cooperation was issued and dated 6th January 2011.
22. That it was not true that the Respondent had not considered compensating the Applicants thus shutting them down, on the contrary, the Applicant had been paid the sum of Ksh. 4,168,000/= on 24th August 2017.
23. That the easement agreement between them and the 1st and 2nd Applicants which agreement was signed on 23rd February 2015 together with an indemnity.
24. That the 1st and 2nd Applicants were duly paid a consideration in the amount of Kshs 1,204,500/= and that by the time the 1st and 2nd Applicants were signing the easement agreement, they were all aware that the 3rd Applicant to which they were directors, was engaging in the flower business.
25. The Applicants were also aware that the 1st Respondent intended to build a transmission line across the property and further that there was no relationship between the 3rd Applicant and the Respondents.
26. That indeed if there was any claim by the 3rd Applicant, the claim was to lie against the 1st and 2nd Applicants.
27. The Respondent further submitted that the property under auction was LR No. Kajiado/9095. The suit herein relates to title No Nyandarua/ Olaragwai/3422. There was therefore no nexus between the two properties aforementioned and the court cannot be approached seeking an injunction with regard to the suit property by claiming that a different suit property was up for auction.
28. The Respondent's case was that although the Applicant submitted that the 1st Respondent's activities on the suit land had resulted to the feeling that the 3rd Applicant's employees will be laid off if they are not compensated, yet a look at their supplementary affidavit, at paragraph 7, the same was to the effect that the 3rd Applicant had stopped operations in July 2017. In essence, they have already laid off their workers and as such, an order of injunction cannot revive the 3rd Applicant's operations.
29. The Respondent also submitted that in as far as the loan the 3rd Applicants were obligated to service, that the annexures marked as CM 8 and 9, were not proof of extension of a loan but letters to the 1st Respondent.
30. That with regard to the Agriculture Food Authority reports, it was the Respondent's submission that they had responded under Para 14 (j) of their responding affidavit.
31. The Respondent submitted that the principles governing issuance of injunctions are found in the celebrated case of **Giella vs Cassman Brown** and asked the court to gain sight of the case of **Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 others [2016] eKLR**.
32. The Respondents submitted that an injunction, if it is to be issued in this case, will be issued against public interest the reason being the 1st Respondent has an EPC contract with the 2nd Respondent as indicated in their replying affidavit. That any stoppage of works will therefore lead to the 1st Respondent paying to the 2nd Respondent about Ksh. 500,000/= per day for idle man power, idle equipment and security and the stoppage of work would result in the 1st Respondent not completing the transmission line project by 31st July 2018.
33. That if the project was not completed, by 31st July 2018, the country would have to pay to lake Turkana wind power limited who have constructed a wind power plant in Turkana a sum of Kshs. 33,000,000/= per day. The Respondents relied on the case of **East African development Bank vs. Hundai Motor Ltd (2006) eKLR** to submit that the Applicants had not met the threshold as provided for under the celebrated case of **Giella vs Cassman Brown**.
34. The Respondents further submitted that the Evidence before court is that the Applicants are claiming about 1.6 billion yet there was no record of a 2017 license or application for such licenses or even payment of the same. What was filed at page 40 is a flower imprinter's check list not a license.
35. That the 3rd Applicant was not a going concern as they ceased operations in July 2017 and according to their annexure in the supplementary affidavit at page 42 marked as CM 4, their license expired on 3rd June 2016.

36. That a look at the annexure marked as CM 3 of the Applicant's supplementary affidavit at page 27 the same clearly showed that the profits of the 3rd Applicant's business had significantly declined from the year 2015 – 2016 by almost Ksh 20 million which decline in profits happened before the 1st Respondent or its agents gained entry into the suit property in February 2017 to construct the lower foundations and to erect the tower.
37. That the easement agreement between the 1st and 2nd Applicants and the 1st Respondent required that any dispute as to any damage or disagreement in relation to the easement required be resolved by arbitration therefore the dispute between the parties herein should have been subject of arbitration proceedings and this court's jurisdiction if any was acceptable to the extent provided for under Section 7 of the Arbitration Act Laws of Kenya.
38. That the Applicants had not sought the intervention of this court under Section 7 of the Arbitration Act and as such this matter ought to be determined through Arbitration.
39. That although the Applicants had alluded to the fact that their rights under Article 40 of the Constitution had been infringed, yet Article 40 related to protection of right to property. That right can only be deprived in accordance to article 40 (30 (b) and Articles 34 (d) of the Constitution. That the easement agreement registered as against the 1st and 2nd Applicant's title in this case had certain restrictions in it and confers upon the 1st Respondent and its agents, only the right of entry into the suit property.
40. That contrary to the submission by the Applicant that the 1st Respondent had not made compensation to them, the Respondent's submission was to the effect that indeed what the 1st Respondent's agents had damaged on the suit land had been compensated fully to date.
41. That indeed the Applicants had been requested to provide their financial reports for 5 years which they had not done to date.
42. The 1st Respondent conceded that what was pending payment/compensation were flowers yet to be destroyed and the relocation of power lines and drip irrigations system along the way leave corridor reason being that there is a stringing exercise yet to be completed on the suit property. That during the stringing exercise, the 2nd Respondent would seek access to the suit property and may end up damaging further flowers or may end up requiring the relocation of certain structures. The stringing of such costs could therefore not be done at this stage. The Applicant's claim was a claim in anticipation of damages to be done not that which has been done.
43. The Respondents had also filed an application dated 22nd May 2018 in which they sought to set aside the order of the status quo issued on 14th May 2018 in the alternative that that the Applicants to provide security for damages occasioned to the 1st Respondent for the period that the order for status quo shall be in force.
44. The Respondent's application was premised on the points already raised that they had an EPC contract with the 2nd Respondent and any stoppage of work would attract costs of Kshs 500,000/= per day. That further if the project was not completed by 31st July 2018, it would attract costs of Ksh 33,000,000/= per day.
45. That the interim orders in place had breached provisions of Section 65 of the Energy Act and Section 157 of the Land Act to the effect since a way leave is recognized under these Acts and certain conditions are attached to its creation, it made it an offence for a guarantor of a way leave to stop activities of a guarantees.
46. The Respondents thus sought for the dismissal of the Applicants' application and that the court do allow their application dated 22nd May 2018.
47. In response to the Respondents application, the Applicants were categorical that a process on acquisition of easement was not challenged. All the Applicant's sought was that in the process of acquisition, the provision of the constitution be adhered to and compensation be paid promptly.
48. That they are ready to accept the proposal and that if the Respondents were ready to pay damages, that they should deposit the amount claimed in a joint interest earning account held by both the Applicant and Respondent counsel.

Determination.

49. I have considered the Applicant's application herein that seeks interim orders of injunction against the Respondents. I have also looked at the pleadings herein, the Respondent's replying affidavit, the submissions by both Counsel as well as the authorities cited and the law.
50. The issue for determination by this court is whether the Applicants have established a case to enable this court grant it the interlocutory injunction sought. The principles to be considered by this court in determining whether or not to grant the order of injunction sought are well settled. In **Giella vs Cassman Brown [1973] EA 358** at page 360 Spry VP held that:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Third, if the court is in doubt, it will decide an application on the balance of convenience. (E.A. Industries v. Trufoods, [1972] E.A. 420.)”

51. On the first issue as to whether the Applicants in this matter had made out a prima facie case with a probability of success. I am guided

by the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, where a prima facie case was described as follows:

“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 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.”

52. Have the Applicants herein demonstrated that they have a genuine and arguable case?

53. In the present case, there is no dispute going by annexures herein that both the 1st and 2nd Applicants herein are the registered proprietors of land parcel No. **Nyandarua/Oalaragwai/3432** having been so registered on the on the 20th March 2001.

54. It is also not in dispute that on or about the year 2013 the National Land Commission advertised the intension of the 1st Respondent to traverse the suit property on the 4th October 2013 so as to install a 400 KV transmission power line from Loiyangalani to Suswa. That initially the suit land was known as Ol Aragwai settlement scheme 141 which was later sub-divided to give rise to Parcel A, B and C. That parcel No. 141A was later renamed as parcel No.1490 which was later subdivided and resulted in the suit land herein No Nyandarua/Olaragwai/3432.

55. It is evident that on the 23rd February 2015 both the 1st and 2nd Applicants herein signed an easement agreement in favour of the 1st Respondent which easement was registered at the Lands registry in favor of the 1st Respondent herein as is evidenced by the Certificate of official search dated the 31st October 2017.

56. Later on the 27th February 2015 both the 1st and 2nd Applicants signed an indemnity indemnifying the 1st Respondent herein in respect of any suit and/or claim(s) that may arise in respect of the property regarding the agreement for grant of easement they had duly executed. That the said indemnity was irrevocable and was not to be voided for want of consideration.

57. It was on the basis of the signed Way Leave agreement, where the 1st and 2nd Applicants gave their consent that the 2nd Respondent proceeded with the construction of the proposed power lines. The Applicants were compensated for the loss of use of land, with Ksh 1,204,500/= and further payments were made in the following manner.

(i) Ksh. 15,101,686.00 for building structures (paid to 1st Applicant)

ii) Kshs. 3,191,940.00 for building structures (paid to 3rd Applicant on 31st October 2016)

iii) Kshs 494,470.00 for cut trees (paid to 1st Applicant on or about the 11th February 2016)

iv) Kshs. 4, 168, 00.00 for damaged flowers while constructing the tower foundations (paid to 3rd Applicant on 24th August 2017)

v) Kshs. 526,000.00 for relocation of irrigation system and pumps at the tower location during civil works (paid to 3rd Applicant on 22nd June, 2017)

In total thereof, the Applicants had been paid a total sum of Kshs 24,688,778.00

58. It would appear that the Applicants were un-happy with the compensation and/or failure by the Respondents, as they intend the court to believe, to pay them that they moved to Court seeking the orders indicated herein above. At paragraph (m) of their application, the Applicants also seem to complain that the Respondents are trespassers on their land having forcefully entered therein in the month of February 2017.

59. Whilst the Applicants' claim is for lack of prompt compensation, the Respondent's arguments on the other hand is that all the compensation was paid and that what was pending payment/compensation were flowers yet to be destroyed and the relocation of power lines and drip irrigations system along the way leave corridor reason being that there is a stringing exercise yet to be completed on the suit property.

60. That during the stringing exercise, the 2nd Respondent would seek access to the suit property and may end up damaging further flowers or may end up requiring the relocation of certain structures. The stringing of such costs could therefore not be done at this stage. The Applicants' claim was a claim in anticipation of damages to be done not that which has been done. That they were willing to pay the damages incurred once the stringing exercise was completed.

61. It is however clear from the documents availed by both the Applicant and the Respondents herein that the Applicants gave their consent to the construction of the cables on the suit property and even signed the requisite agreement on the 23rd February 2015 detailing the nature of damage/loss and the amount due to them as compensation. That on subsequent dates they were compensated as herein above tabulated.

62. On whether the Applicants herein have established a prima facie case with a likelihood of success, Section 144 of the Land Act, is clear on the steps for an Application for way leave to the effect that it provides that;

(1) Unless the Commission is proposing on its own motion to create a wayleave, an application, for the creation of a wayleave, shall be made by any State department, or the county government, or public authority or corporate body, to the Commission.

(2) An application shall be made in the prescribed form and shall be accompanied by any prescribed information or other information that the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a wayleave until all prescribed or required information has been submitted to it.

(3) In order to enable a proposed wayleave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as if it were applying to create a wayleave and references to "the applicant" in this Sub-part in relation to an application to create a wayleave shall be taken to apply as well to the Commission.

(4) The applicant shall serve a notice on—

(a) all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights;

(b) The county government in whose area of jurisdiction land over which the proposed wayleave is to be created is located;

(c) all persons in actual occupation of land in an urban and per-urban area over which the proposed wayleave is to be created; and

(d) any other interested person.

(5) along the route of the proposed wayleave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed wayleave is likely to be created.

63. I find that the 1st Respondent followed the due process as laid down in the Act in acquiring the portions of the suit properties on which it is constructing the said electricity transmission towers thus they lawfully entered onto the suit properties and construction thereon of electricity transmission towers was legal and constitutional.

64. A look at the party's agreement dated the 23rd February 2015, the same is clear at clause 11 and 12 to the effect that;

11. Any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement or the breach, termination or validity hereof shall be settled by reference to a single arbitrator to be agreed on within seven days or service of a notice of such dispute, difference or question by the one party on the other failing which agreement the single arbitrator shall be appointed at the request of any of the parties by the chairman of the Institute of Chartered Arbitrators of Kenya and such arbitration shall be conducted in accordance with the last revision of the Arbitration Act, Chapter 49 of the Laws of Kenya

The award shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the tribunal's decision;

The award in such arbitration shall be final and binding upon the Parties and judgment thereon may be entered in any court having jurisdiction for its enforcement; and the parties renounce any right of appeal from the decision of the tribunal insofar as such renunciation can validly be made.

The arbitration panel shall not have the authority to order the termination or amendment of this agreement.

12. This agreement shall remain in force so long as the Electric Line (whether original or replaced or any part thereof shall be upon or under the said land.

65. Further, vide an indemnity signed by the 1st and 2nd Applicants on the 27th February 2015, the same was clear to the effect that;

'We bind ourselves and undertake to indemnify Kenya Electricity Transmission Company Limited in respect of any suit and/or claim(s) that may arise in respect of the property regarding the agreement for grant of easement duly executed by us and this indemnity is irrevocable and shall not to be voided or voided for want of consideration'.

66. There has been no submissions brought forward to suggest that these agreements were signed under duress. In this instant thereof the court finds that the said agreements were signed by parties who were fully aware of their implications and repercussions. The Court has a sacred duty therefore to uphold and enforce a contract that the parties enter into cannot rewrite the party's agreements. A party cannot therefore run away from the terms of its agreement.

67. In the case of **Shah -vs- Guilders International Bank Ltd [2003]KLR** the Court in considering the terms of the parties contract stated that;-

"The parties executed the same willingly and they are therefore bound by it."

68. The mere reading of the above captioned clauses of the party's agreement is clear enough and need not be interpreted. I find that the

Applicants herein have not established a prima facie case with the probability of success.

69. The court of appeal in the case of **Kenya Commercial Finance Co. Ltd –vs- Afraha Education Society (2001) IEA 86** cited by **Gitumbi, J** with approval in the case of **Joseph Wambua Mulusya –vs- David Kitu & Another (2014) eKLR** observed as follows:-

“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is sequential so that the second condition can only be addressed if the first one is satisfied”.

70. Although it follows that once an Applicant has not established a prima facie case, that the matter should be left at that, yet I am obliged to consider whether the other two principles as laid down in the *Giella vs Cassman Brown* case (supra) have been discharged by the Applicants.

71. On the second issue that the applicants will suffer irreparable harm or injury if injunction is not granted, in the case of **Director of Public Prosecutions v Justus Mwendwa Kathenge & 2 others [2016] eKLR** where the court of appeal held as follows;

*It is not for nothing that the rules and general principles governing the grant of interlocutory injunction have been scrupulously developed. It is, for instance, critical for courts to remember the sequence of consideration of the **Giella** (supra) principles, that even where prima facie case is established, an injunction will not be granted if the injury or damage to be suffered is not irreparable or is capable of compensation.*

72. I have considered the facts placed before me as well as the annexures and the as stated herein above, I find that the dispute that the Applicants have with the Respondents is mainly over the compensation for damages.

73. I find that the Respondents have already paid a total sum of Kshs 24,688,778/= to the Applicants in compensation for the damages they had caused on the suit land, that what was remaining in terms of further compensation is what has been termed as anticipated damages which is yet to be occasioned.

74. That this damage can only be determined after the 2nd Respondent gains entry onto the suit property and completes the stringing works. Once the stringing work is completed, only then would there be an ascertainment of the value of flowers damaged.

75. It thus follows that since the Applicants were compensated for the damage and/or loss incurred on their land and what is remaining is the compensation after the stringing exercise is completed, which compensation is not denied by the Respondents, that indeed compensation for damages is a remedy available in the present situation.

76. On the last aspect *on the balance of convenience*, I find that the electricity transmission towers that the Respondents are constructing on the suit properties are intended for the common good of the public which is issue is of great national and public interest.

77. I also find and that the Respondents followed the procedure laid down in the Land Act, 2012 for acquiring a way leave (right of way) over the portions of the suit properties that would be affected with the same, and are ready, willing and able to pay to the Applicants a just compensation for the portions of the suit properties that will be affected by the stringing exercise. Further, I find that if the injunction is granted, the consequences will be heavy and dire for the Respondents and the tax payer is likely to lose millions of shillings. I find in favour of the public interest *vis-à-vis* private interest.

78. Consequently, I dismiss the Applicants' application dated 11th May 2018 with costs to the Respondents. The interim orders issued ex-parte on the 14th May 2018 are herein set aside.

79. Parties to comply with the provisions of order 11 within the next 21 days for the hearing of the main suit herein.

Dated and delivered at Nyahururu this 4th day of July 2018.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE