



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ali & 3 others v Kimani & 8 others (Environment & Land Case  
356 of 2019) [2021] KEELC 4786 (KLR) (24 June 2021) (Ruling)**

*Fatuma Ali & 3 others v Nelson Waruinge Kimani & 8 others [2021] eKLR*

Neutral citation: [2021] KEELC 4786 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND CASE 356 OF 2019**  
**SO OKONG'O, J**  
**JUNE 24, 2021**

**BETWEEN**

**FATUMA ALI ..... 1<sup>ST</sup> PLAINTIFF**  
**ABDALLA ALI FERUZ ..... 2<sup>ND</sup> PLAINTIFF**  
**SERIFA ALI ..... 3<sup>RD</sup> PLAINTIFF**  
**ZAMIDA ALI ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**NELSON WARUINGE KIMANI ..... 1<sup>ST</sup> DEFENDANT**  
**MICHAEL NDEGWA KINGORI ..... 2<sup>ND</sup> DEFENDANT**  
**REUBEN KIPKEMOI YEGON ..... 3<sup>RD</sup> DEFENDANT**  
**CONCORDIA BUILDING & CIVIL ENGINEERING CO.**  
**LIMITED ..... 4<sup>TH</sup> DEFENDANT**  
**JAMES MURIMI WANJOHI ..... 5<sup>TH</sup> DEFENDANT**  
**JAMES KAHUGI MWANGI ..... 6<sup>TH</sup> DEFENDANT**  
**THE PUBLIC TRUSTEE ..... 7<sup>TH</sup> DEFENDANT**  
**THE CHIEF LANDS REGISTRAR, NAIROBI ..... 8<sup>TH</sup> DEFENDANT**  
**THE HON. ATTORNEY GENERAL ..... 9<sup>TH</sup> DEFENDANT**



## RULING

1. What is before me is the plaintiffs' Notice of Motion application dated 12<sup>th</sup> November, 2019, the 5<sup>th</sup> and 6<sup>th</sup> defendants' Notice of Motion application dated 13<sup>th</sup> December, 2019 and the 1<sup>st</sup> defendant's Notice of Preliminary Objection said to be dated 27<sup>th</sup> May, 2020.
2. The plaintiffs brought this suit on 13<sup>th</sup> November, 2019 seeking; the cancellation of entries numbers 4 to 15 and all subsequent entries made against title to the parcel of land known as L.R No. 11876, Karen (hereinafter referred to as "the suit property") and for the property to be reverted to the name of Ali Mohamed Zaid ("deceased"), a permanent injunction restraining the defendants, their agents, servants and/or assignees from entering, encroaching, trespassing onto, transferring and/or otherwise dealing in any way with the suit property, mesne profits from 30<sup>th</sup> October, 1982 until the determination of the suit, special damages, general damages and costs of the suit.
3. Together with the plaint, the plaintiffs brought an application by way of Notice of Motion dated 12<sup>th</sup> November, 2019 seeking; a temporary injunction restraining the defendants from entering, interfering, trespassing, alienating, transferring and/or otherwise dealing in any manner with the suit property pending the hearing and determination of the suit and an order of restriction restricting the 8<sup>th</sup> defendant from effecting any transfer, charge and/or lease in relation to the suit property pending the hearing and determination of the application.
4. The plaintiffs' application was brought on the following grounds: The plaintiffs were the legal representatives of Ali Mohamed Zaid (deceased) (hereinafter referred to only as "the deceased"). The estate of the deceased comprised of among others the suit property. The defendants had fraudulently encroached on and alienated the suit property. The 5<sup>th</sup> and 6<sup>th</sup> defendants had threatened to evict the plaintiffs and to demolish their home within the suit property. The orders sought were preservative in nature and were necessary to prevent the plaintiffs from being unlawfully disinherited. The plaintiffs averred that unless the orders sought were granted, their home on the suit property was likely to be demolished thereby causing them irreparable damage and rendering the suit herein nugatory.
5. In their joint affidavit sworn on 12<sup>th</sup> November, 2019, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that they together with the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs were children and legal representatives of the estate of the deceased who died on 26<sup>th</sup> May, 1973. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that on the death of the deceased, the Public Trustee, the 7<sup>th</sup> defendant herein was appointed as a personal representative of his estate on 21<sup>st</sup> March, 1979. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that the deceased's family had many disputes regarding the distribution of his estate which had persisted. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that many of the beneficiaries of the estate of the deceased were also minors. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that it was in the circumstances that the 7<sup>th</sup> defendant was appointed to administer the estate of the deceased. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that among the properties that were comprised in the estate of the deceased was the suit property. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that at all material times, the 1<sup>st</sup> defendant was a senior government employee in the 7<sup>th</sup> defendant's office. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that sometimes in September, 2019, some unknown people unlawfully and forcefully entered the suit property and threatened to evict the plaintiffs from their home on the suit property. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that the said invaders claimed to be the owners of the suit property. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that due to these threats, they engaged the 7<sup>th</sup> defendant to find out the status of the deceased's estate. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that no useful information came from the 7<sup>th</sup> defendant.



6. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that they made a decision to do a search on the title of the suit property which search unearthed numerous unlawful and outrageous entries and transfers registered against the title of the suit property. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that all along, they were under the mistaken belief that the title for the suit property was in the safe custody of the 7<sup>th</sup> defendant. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that the said illegal entries in the title show a fraudulent collusion between their step mother one, Zenat Ali, deceased (hereinafter referred to only as “Zenat”), the 1<sup>st</sup> defendant and other unknown persons to make illegal and unlawful transfers to their benefit to the detriment of the estate of the deceased. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that they did not approve these transactions. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that through a purported sale agreement dated 28<sup>th</sup> July, 1980, the 1<sup>st</sup> defendant used his official position to unjustly and fraudulently enrich himself from the estate of the deceased that was bestowed upon him by law to protect. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that they were on the verge of being totally disinherited. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that the conduct of the 1<sup>st</sup> defendant went against leadership and integrity provisions of *the Constitution* and amounted to abuse of office. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs averred that the 7<sup>th</sup> defendant also breached a duty of care owed to the plaintiffs.
7. The plaintiff’s application that was filed under certificate of urgency was placed before the duty judge on 13<sup>th</sup> November, 2019 for directions. The duty judge fixed the application for hearing inter partes and granted an ex parte interim order of inhibition inhibiting the registration of any or further dealings with the subdivisions of suit property pending the hearing of the application inter partes.
8. The 5<sup>th</sup> and 6<sup>th</sup> defendants filed a replying affidavit sworn by the 5<sup>th</sup> defendant on 29<sup>th</sup> November, 2019 in opposition to the plaintiffs’ application. The 5<sup>th</sup> and 6<sup>th</sup> defendants also filed an application by way of Notice of Motion dated 13<sup>th</sup> December, 2019 seeking the setting aside of the ex parte interim orders that were given by the court on 13<sup>th</sup> November, 2019 and in the alternative, an order for the plaintiffs to furnish in court security for costs in the sum of Kshs. 100,000,000/= in default of which the said ex parte orders do stand discharged. The 1<sup>st</sup> defendant filed a replying affidavit on 16<sup>th</sup> December, 2019 in opposition to the application by the plaintiffs and a Notice of Preliminary Objection. A part from the replying affidavits by the 1<sup>st</sup> defendant and the 5<sup>th</sup> and 6<sup>th</sup> defendants, I did not see any other replying affidavit in opposition to the plaintiffs’ application on record. The plaintiffs filed further separate affidavits sworn by the 1<sup>st</sup> plaintiff on 8<sup>th</sup> May, 2020 in response to the affidavit of the 1<sup>st</sup> defendant, the affidavit of the 5<sup>th</sup> defendant and the application dated 13<sup>th</sup> December, 2019 by the 5<sup>th</sup> and 6<sup>th</sup> defendants.
9. On 3<sup>rd</sup> June, 2020, I drew the attention of the 1<sup>st</sup> defendant’s advocates to the fact that I did not have a copy of the 1<sup>st</sup> defendant’s Notice of Preliminary Objection said to be dated 27<sup>th</sup> May, 2020 on the court record. From what I have gathered from the 1<sup>st</sup> defendant’s replying affidavit and the submissions on record on the issue, the 1<sup>st</sup> defendant contended as follows in his Notice of Preliminary Objection; that the plaintiffs’ suit was time barred, the suit was bad for non-joinder of the estate of Zenat, the plaintiff disclosed no reasonable cause of action against the 1<sup>st</sup> defendant and that the court had no jurisdiction to entertain the dispute. The 1<sup>st</sup> defendant also contended that the plaintiffs had no locus standi to institute this suit on behalf of the estate of the deceased since the only competent authority that could maintain an action on behalf of the estate was the 7<sup>th</sup> defendant. The 1<sup>st</sup> defendant contended that Letters of Administration ad litem that was issued to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs for the purposes of filing this suit was irregular. The 1<sup>st</sup> defendant contended further that the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs had no basis for being parties to this suit.
10. On the merit of the plaintiffs’ claim, the 1<sup>st</sup> defendant averred in his affidavit sworn on 16<sup>th</sup> December, 2019 that the 7<sup>th</sup> defendant was lawfully appointed as the administrator of the estate of the deceased.



The 1<sup>st</sup> defendant averred that he was an employee of the Ministry of Constitutional and Home Affairs and that he never worked at the office of the 7<sup>th</sup> defendant or the Ministry under which the 7<sup>th</sup> defendant falls. The 1<sup>st</sup> defendant denied that he went to the suit property and threatened to evict the plaintiffs therefrom. The 1<sup>st</sup> defendant averred that his parcel of land, L.R No. 11876/1 measuring 2.5 acres was lawfully transferred to him by the 7<sup>th</sup> defendant through a transfer dated 30<sup>th</sup> October, 1982 and that he took possession thereof in 1982 and was still in possession. The 1<sup>st</sup> defendant averred that his possession of the said portion of the suit property had never been disturbed or challenged by the plaintiffs. The 1<sup>st</sup> defendant denied that the plaintiffs had any dwelling house on the suit property or the 1<sup>st</sup> defendant's portion of the suit property. The 1<sup>st</sup> defendant denied that he was involved in any unlawful transaction or fraudulent collusion with Zenat or anyone else in relation to the suit property. The 1<sup>st</sup> defendant denied further that he used his office to fraudulently and unjustly enrich himself. The 1<sup>st</sup> defendant averred that he entered into a valid agreement for sale in respect of the portion of the suit property owned by him and that the same was lawfully transferred to him.

11. In her further affidavit sworn in response to the replying affidavit by the 1<sup>st</sup> defendant, the 1<sup>st</sup> plaintiff averred that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were issued with a limited Grant of Letters of Administration lawfully. The 1<sup>st</sup> plaintiff averred that as beneficiaries of the deceased's estate, the plaintiffs had the locus standi to challenge any Grant of Letters of Administration issued in respect of the estate of the deceased and to apply for any special grant. The 1<sup>st</sup> plaintiff averred that the Grant of Letters of Administration that was issued to the 7<sup>th</sup> defendant had not been confirmed to enable the 7<sup>th</sup> defendant to distribute the estate. The 1<sup>st</sup> plaintiff reiterated that the 1<sup>st</sup> defendant used his position in a government office to confer a benefit on himself. The 1<sup>st</sup> plaintiff averred that at no time was the estate of the deceased vested on Zenat or her name entered in the land register as a sole owner or a joint proprietor of the suit property. The 1<sup>st</sup> plaintiff averred that neither the 7<sup>th</sup> defendant nor Zenat had obtained directions or authority from the court to subdivide the suit property and to transfer a portion thereof to the 1<sup>st</sup> defendant. The 1<sup>st</sup> plaintiff denied that the suit was time barred. The 1<sup>st</sup> plaintiff contended that the plaintiffs learnt of the fraudulent transactions in 2019.
12. As I have stated earlier, the 5<sup>th</sup> and 6<sup>th</sup> defendants opposed the plaintiff's application through a replying affidavit sworn on 29<sup>th</sup> November, 2019 by the 5<sup>th</sup> defendant. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that the plaintiffs' suit was baseless, statute barred and an abuse of the process of the court. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that L.R No. 11876 ("the suit property") which was the subject matter of the plaintiff's suit did not exist in law and as such the orders sought in relation thereto were sought in vain. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they owned L.R No. 11876/3 and L.R No. 11876/5 ("Plot No. 11876/3 and Plot No. 11876/5") which they acquired from the 2<sup>nd</sup> defendant on 11<sup>th</sup> October, 2010. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they had occupied the two parcels of land peacefully and had been paying land rates to the relevant authorities. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they had put up structures on the two parcels of land which were occupied by a tenant. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that on or about 26<sup>th</sup> September, 2019, the 2<sup>nd</sup> plaintiff attempted to enter the two parcels of land owned by the 5<sup>th</sup> and 6<sup>th</sup> defendants and the 5<sup>th</sup> and 6<sup>th</sup> defendants lodged a formal complaint against him at Langata Police Station. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that the plaintiffs did not make any other attempt to enter the two parcels of land. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that the plaintiffs were indolent in bringing the action since they allegedly discovered the entries on the title of the suit property in 2011. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that the plaintiffs' claim should have been directed against their step mother Zenat for damages. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that the plaintiffs' suit was time barred since their cause of action arose in 1982. The 5<sup>th</sup> and 6<sup>th</sup> defendants reiterated that the plaintiffs did not have any dwelling house on their two parcels of land.



13. The 5<sup>th</sup> and 6<sup>th</sup> defendants' Notice of Motion application dated 13<sup>th</sup> December, 2019 was brought on the grounds that were on the face thereof and on the supporting affidavit sworn by the 5<sup>th</sup> defendant on 13<sup>th</sup> December, 2019. The application was brought on the grounds that the plaintiff procured the interim orders of 13<sup>th</sup> November, 2019 undeservedly. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that the said orders had interfered with the 5<sup>th</sup> and 6<sup>th</sup> defendants' quiet possession and enjoyment of their rights over the portions of suit property which they owned. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they had been in possession of their two parcels of land since 2010 when they purchased the same from the 2<sup>nd</sup> defendant. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they were in the process of subdividing and selling their two parcels of land when the plaintiffs came up and claimed that the same belonged to them. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they had already lost prospective purchasers and were in the verge of losing others. The 5<sup>th</sup> and 6<sup>th</sup> defendants contended that the plaintiffs' suit was time barred and that the plaintiffs concealed material facts to the court and deliberately failed to make their step mother a party to the suit. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that they had already entered into an agreement of sale in respect of one of the parcels of land for Kshs. 25,000,000/= which sale risked being rescinded. The 5<sup>th</sup> and 6<sup>th</sup> defendants averred that no prejudice would be occasioned to plaintiffs if they were ordered to furnish security for costs in the sum of Kshs. 100,000,000/=.
14. In her further affidavit in reply to the replying affidavit of the 5<sup>th</sup> defendant, the 1<sup>st</sup> plaintiff averred that the plaintiffs' suit was based on fraud and as such raised triable issues. The 1<sup>st</sup> plaintiff averred that the 5<sup>th</sup> and 6<sup>th</sup> defendants were beneficiaries of fraudulently subdivided land whose titles were defective. The 1<sup>st</sup> plaintiff averred that no suit was bought against Zenat because Zenat was not vested with power to administer the estate of the deceased. The 1<sup>st</sup> plaintiff averred that it was up to the 5<sup>th</sup> and 6<sup>th</sup> defendants to pursue the estate of Zenat.
15. In her affidavit in reply to the 5<sup>th</sup> and 6<sup>th</sup> defendants' application dated 13<sup>th</sup> December, 2019, the 1<sup>st</sup> plaintiff averred that the application lacked merit. The 1<sup>st</sup> plaintiff averred that the plaint raised triable issues. The 1<sup>st</sup> plaintiff averred that the ex parte orders sought to be set aside were made by the court after due consideration of the material that was placed before the court. The 1<sup>st</sup> plaintiff averred that the continued subdivision and sale of the suit property by the 5<sup>th</sup> and 6<sup>th</sup> defendants were aimed at rendering the suit nugatory. The 1<sup>st</sup> plaintiff averred that the 5<sup>th</sup> and 6<sup>th</sup> defendants were beneficiaries of fraudulent subdivision and transfer of the suit property. The 1<sup>st</sup> plaintiff averred that the titles held by the 5<sup>th</sup> and 6<sup>th</sup> defendants were defective. The 1<sup>st</sup> plaintiff reiterated that the suit was not time barred as claimed by the 5<sup>th</sup> and 6<sup>th</sup> defendants.
16. The plaintiffs' and the 5<sup>th</sup> and 6<sup>th</sup> defendants' applications and the 1<sup>st</sup> defendant's Preliminary Objection were heard together by way of written submissions. I have considered the two applications together with the affidavits filed in support thereof and in opposition thereto. I have also considered the 1<sup>st</sup> defendant's Preliminary Objection. I will deal first with the 1<sup>st</sup> defendant's Preliminary Objection and then the Plaintiffs' application and finally the 5<sup>th</sup> and 6<sup>th</sup> defendants' application. I find no merit in the 1<sup>st</sup> defendant's preliminary objection. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs obtained a Limited Grant of Letters of Administration for the purposes of filing this suit. The said grant has not been set aside. It is my finding therefore that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs have locus standi to bring this suit. Whether the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs were properly joined in the suit is debatable. That is however an issue of misjoinder that cannot defeat a suit. On the issue of time bar, the plaintiffs' suit is based on fraud. In cases of fraud, causes of action arise when fraud is discovered. As to when the plaintiffs discovered the alleged acts of fraud by the defendants is a matter of evidence that the court cannot determine at this stage. On whether the plaint discloses a reasonable cause of action, I am satisfied that it does. The plaintiffs



are the beneficiaries of the estate of the deceased. The 7<sup>th</sup> defendant was appointed by the court as the administrator of the estate of the deceased. The circumstances under which the suit property which is part of the deceased's estate was subdivided and sold before confirmation of grant of letters of administration that was issued to the 7<sup>th</sup> defendant and without the knowledge of beneficiaries has been called into question. The role of Zenat who was not an administrator of the estate of the deceased in the transaction has also been questioned. The 1<sup>st</sup> defendant's use of his position in the Ministry of Constitutional and Home Affairs to facilitate the transaction has also been raised as an issue. It is my finding that the plaint discloses a reasonable cause of action. In any event, a reasonable cause of action is not one that must succeed. On whether this court has jurisdiction over the dispute, I am persuaded that it has. The dispute concerns title, use and possession of land. It is only this court that can determine the dispute. Due to the foregoing, I find no merit in the 1<sup>st</sup> defendant's preliminary objection.

17. With regard to the plaintiffs' application, I have set out herein earlier the prayers sought by the plaintiffs. The plaintiffs have sought a temporary injunction pending the hearing of the suit. The principles upon which this court exercises its discretion in applications for a temporary injunction are now well settled. In *Giellav Cassman Brown & Co. Ltd.* [1973] E.A 358, it was held that an applicant for a temporary injunction must show a prima facie case with a probability of success and such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal adopted the definition of a prima facie case that was given in *Mrao Limited v First American Bank of Kenya Limited & 2 Others* [2003] KLR 125 and went further to state as follows:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. ...All that the court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation...The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed.”

18. It is also well settled that injunction is a discretionary remedy. The court has the discretion to grant the order with or without conditions. The court also has the discretion to refuse the order even if the conditions for grant of such order have been met if the court forms the view that it would not be equitable to do so. From the material before the court, I am convinced that the plaintiffs have satisfied the principles for grant of a temporary injunction. I have held that their plaint discloses a reasonable cause of action. That means that they have a prima facie case against the defendants. The plaintiffs have also demonstrated that they are beneficiaries of the estate of the deceased and that they risk being deprived of the suit property if the orders sought are not granted to preserve the property. That said I am in agreement with the defendants that the plaintiffs have been indolent and that they are guilty of laches. I am satisfied from the material on record, that the defendants have been in possession of the suit property for several years. I am not convinced by the reasons that were given by the 1<sup>st</sup> plaintiff as to why they did not come to court earlier. Equity aids the vigilant. An indolent litigant cannot benefit from an equitable remedy. I would therefore not grant the injunction sought. However, in the wider



interest of justice, I am of the view that it is necessary to preserve the suit property pending the hearing of the suit more so when the 5<sup>th</sup> and 6<sup>th</sup> defendants have stated on oath that they have plans to subdivide their parcels further and to sell the same to third parties. This suit would turn out to be an academic exercise if the suit property is not preserved. I will therefore grant orders aimed at mainly preserving the suit property pending the hearing of the suit.

19. With regard to the 5<sup>th</sup> and 6<sup>th</sup> defendants' application, I find no merit in the same. The ex parte orders granted on 13<sup>th</sup> November, 2019 were intended to preserve the suit property. The 5<sup>th</sup> and 6<sup>th</sup> defendants have contended that the said orders have prevented them from subdividing and selling portions of the suit property owned by them. That was exactly what the said orders were intended to achieve. I have dealt with the other grounds upon which the application was bought in the 1<sup>st</sup> defendant's preliminary objection which I have dismissed. I find no reason why I should discharge the interim orders aforesaid or to order the plaintiffs who are citizens of Kenya and who have an arguable case to furnish security for costs.

### **Conclusion:**

20. In conclusion, I hereby make the following orders;
1. The 1<sup>st</sup> defendant's preliminary objection and the 5<sup>th</sup> and 6<sup>th</sup> defendants' Notice of Motion application dated 13<sup>th</sup> December, 2019 are dismissed.
  2. The plaintiffs' Notice of Motion application dated 12<sup>th</sup> November, 2019 is allowed as follows; Pending the hearing and final determination of this suit or further orders by the court, there shall be an inhibition inhibiting the registration of any other or further dealings with L.R No. 11876/1 (I.R No. 37068), L.R No. 11876/4 (Original number 11876/2/2), L.R No. 11876/5 (Original No. 11876/2/3) and L.R No. 11876/6 (Original No. 11876/2/4) being subdivisions of all that parcel of land known as L.R No. 11876 (Original No. 3589/4).
  3. That costs of the applications and the preliminary objection shall be in the cause.

**DELIVERED AND DATED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JUNE 2021**

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**S. OKONG'O**

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**JUDGE**

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

N/A for the Plaintiff

Mr. Muturi for the 2<sup>nd</sup> defendant

Mr. Tolo for the 5<sup>th</sup> and 6<sup>th</sup> defendants

Ms. Kavuli for the 7<sup>th</sup> defendant

Mr. Kemei and Ms. Mwangeli for Interested Parties

Ms. C.Nyokabi-Court Assistant

