



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MIGORI**

**ELC PETITION NO. E024 OF 2021**

**IN THE MATTER OF : ARTICLE 2, 3,10,27,40,50,62,64,67, 162 (1) (b), 165, 179, 180, 183 AND 259 (1) & (3) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF : THE ALLEGED CONTRAVENTION, VIOLATION & FLAGRANT ABUSE OF THE CONSTITUTION, SPECIFICALLY ARTICLES 2,3,10,27,40,50,62,64,67, 179, 180, 183 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: THE LAND ACT NO. 6 OF 2012 ACTS, THE LAND REGISTRATION ACT NO. 3 OF 2012, THE COUNTY GOVERNMENT ACT NO. 17 OF 2012, THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, 2015, THE LEADERSHIP AND INTEGRITY ACT, 2012 AND THE FAIR ADMINISTRATIVE ACT, 2015**

**AND**

**IN THE MATTER OF: SECTION 75 OF THE CONSTITUTION OF KENYA, THE REGISTERED LAND CAP 300, AND THE LAND ACQUISITION ACT CAP 295 (REPEALED)**

**BETWEEN**

**JOHN OCHIENG MARICUS (Suing as the Administrator of the estate of Maricus Oseta Murama).....PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MIGORI.....1<sup>ST</sup> RESPONDENT**

**HON ZACHARY OKOTH OBADO (THE GOVERNOR COUNTY GOVERNMENT OF MIGORI).....2<sup>ND</sup> RESPONDENT**

**THE NATIONAL LANDS COMMISSION.....3<sup>RD</sup> RESPONDENT**

**AND**

**MWEMBE & MWEMBE ASSOCIATES.....1<sup>ST</sup> INTERESTED PARTY**

**MBINGO ENTERPRISES LTD.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

**A. INTRODUCTION**

1. The Petitioner, **John Ochieng Maricus (suing as the administrator of the estate of Maricus Oseta Murama)** filed a Notice of Motion dated 15<sup>th</sup> April 2021 (**The application herein**) through the firm of **Gordon Ogola, Kipkoech & Company Advocates** seeking the following orders infra: -

i. Spent.

ii. Spent.

iii. That pending the hearing and determination of the main petition, this Honourable Court be and is hereby pleased to issue a conservatory order by way of injunction restraining, prohibition and/or stopping the Respondents and the Interested Parties either jointly or severally by themselves, agents, servants, or assigns howsoever from acting on and/or in any other manner whatsoever from continuing with the ongoing constructions of residential buildings and/or offices, commencing any new construction or erection of any building and/or structures, digging trenches, creating any new access roads, leasing, alienating, interfering with the boundaries, or in any way dealing and/or interfering with the petitioners beneficial use and quiet enjoyment of the suit parcel L.R. No. SUNA EAST 1/25900.

iv. That pending the hearing and determination of the Application inter-parties, this Honourable Court be and is hereby pleased to issue an order directing that this petition be placed before Acting Chief Justice to empanel a bench of an uneven number of Judges since it raises serious and weighty constitutional issues, the imbalance of the status of the parties involved, and is/has attracted immense public interest.

v. Costs of the petition.

## **B. PETITIONERS' CASE**

2. The application is anchored on the **thirty-four (34) grounds** set out on its face. It is also supported by the affidavit of the petitioner sworn on 15<sup>th</sup> April 2021 together with annexed documents marked ("**JOM1**" - "**JOM 3a, b & c**") namely: **letter of administration ad litem and death certificate regarding Maricus Oseta Murama (Deceased), title deed, certificate of official search and green card in respect of the suit land.**

3. Briefly, according to the grounds on the face of the application and the supporting affidavit, the petitioner contends that the petition raises substantial questions of law under the Constitution of Kenya, 2010 (**The Constitution**). This is based on the following reasons: -

i. The deceased was the registered and absolute proprietor of all that parcel of land known as SUNA EAST WASWETA 1/25900 ('suit land') measuring approximately 39.36 hectares (98 acres) or thereabouts; that the deceased held the title in trust for entire Murama family and the ownership devolved to the family upon his demise.

ii. The suit land was registered in the name of the deceased on 31<sup>st</sup> July 2018.

iii. On or about 8<sup>th</sup> July 2020, parcel land no. SUNA EAST WASWETA 1/24585 was subdivided creating parcels number SUNA EAST WASWETA 1/25900 & 25901. The mutations and subdivisions were duly registered and a mutation form bearing serial number 0445706 and registry sheet no. 30, was obtained on 26<sup>th</sup> February 2021.

iv. The deceased's family contracted a land agency to subdivide the suit land and sell it in small portions.

v. Sometimes in early March 2021, the petitioner was informed that the 2<sup>nd</sup> respondent's graders were seen purportedly creating access roads within the suit land.

vi. On 6<sup>th</sup> April, 2021 the petitioner visited the suit land and found that the 2<sup>nd</sup> respondent had fenced off its portion and commenced excavation to build houses thereon.

vii. There have been rumours in the year 2020 that the 1<sup>st</sup> respondent was to relocate the 2<sup>nd</sup> respondent's headquarters to Lichota, the same area where the suit land is located.

viii. There are no signboards erected at the construction site which is on the suit land to show the nature of the works undertaken by the players in the construction namely architects, electrical/mechanical engineers, quantity surveyors or the contractors; that this deliberate act is meant to conceal their illegal activities.

ix. The petitioner has the sanctity of the title of the suit land and is statutorily protected under Sections 24, 25 and 26 of the Land Registration Act, 2012 (2016).

x. That the actions of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents over the suit land amounts to encroachment, trespass, assumption of possession, construction and other activities made in contravention of the right to equal protection and enjoyment of the law as enriched under Article 27 (1) of the Constitution.

xi. The 1<sup>st</sup> respondent or its predecessor did not follow or act in accordance with the constitutional and legal framework of acquiring privately owned land, vide rights of compulsory acquisition conferred by specific provisions of the law being

Article 40 of the Constitution, Sections 107 to 133 of the Land Act, No. 6 of 2016 (2012) which repealed the provisions previously contained Section 3 of the Land Acquisition Act which were not followed by the respondents.

xii. The petitioner raises weighty constitutional and serious legal issues of immense public interest, and it may be discomforting to hear the matter in the Migori court which is within the precincts of the headquarters of the 1<sup>st</sup> respondent or before a single Judge.

#### C. 1<sup>st</sup> AND 2<sup>nd</sup> RESPONDENTS' CASE

4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are represented by the firm of **Prof. Tom Ojienda & Associates**. They filed a replying affidavit sworn and dated 25<sup>th</sup> May 2021 on 4<sup>th</sup> June 2021. The **thirty - two (32)** paragraphed replying affidavit is sworn by **Naomi Matiko, the County Attorney for the 1<sup>st</sup> respondent** in opposition to the application. Annexed thereto are documents marked **(NM1 to NM8) which include legal provisions, various case law decisions, minutes and correspondence**. The County Attorney deponed: -

i. That the application is unnecessary, misconceived, fundamentally incurable and defective, bad in law and should be struck out with costs.

ii. This court lacks jurisdiction to hear and determine this matter by dint of Section 7 of the Limitation of Action Act Chapter 22 of Laws of Kenya as the petitioner's cause of action is for trespass and recovery of land where the respondents are putting up constructions or erection of buildings.

iii. The suit land has been in possession of the respondents from the early 1970s when the same was alienated as government land by the then Commissioner of Lands to be part of public utility. It has been well over 30 years and the petitioners are now seeking to recover the land.

iv. That the documents produced by the petitioner to prove ownership of land are subject to challenge and the petitioner has the onerous task to demonstrate the procedure they followed to get the public suit land registered in the name of the deceased.

v. The purported Part Development Plan (PDP) purporting to grant title over the public utility land was an illegality and cannot be used to confer the suit land to the petitioner.

vi. That the suit land has never been degazetted to cease from being a public utility land to private land.

vii. That around 13<sup>th</sup> April 2011 the then Migori Liaison Committee held a meeting for Preparation of Advisory Plan for Lichota Farm, the suit land and did various allocation for various users.

viii. The Salaries and Remuneration Commission (SRC) on diverse dates wrote letters to all county governments directing that all counties construct official residence for the Governor, Deputy Governor and ensure completion by the year 2022.

ix. On 16<sup>th</sup> April 2021, the CECM held a meeting and there was a presentation on a draft plan proposing development on suit land.

x. On the strength of the directive from the Salaries and Remuneration Commission (SRC) and the resolution from the CECM meeting held on 16<sup>th</sup> April 2019 the respondent started construction on the suit land.

xi. The allegations that the suit land should have been compulsorily acquired is false, misleading and should not be entertained by this court. Compulsory Acquisition is regulated by the specific provisions including Article 40 of the Constitution and Section 107 to 133 of the Land Act, 2016 (2012) and this already being a public utility, it could not have been the case here.

xii. The notice of motion lacks merit and should be dismissed with costs.

5. On 7<sup>th</sup> June, 2021 Mr. Gordon Ogola learned Counsel for the petitioner and Ms. Omire holding brief for Prof. Ojienda learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents appeared before me virtually. Mr. Ogola told the court he would wish to abandon the petitioner's application dated 12<sup>th</sup> May 2021 for and there was no objection thereto by Ms. Omire.

6. As regards the present application, Mr. Ogolla orally stated he wished to entirely rely on the notice of motion and the list of authorities dated 4<sup>th</sup> June 2021 filed evenly. Ms. Omire orally stated she wished to rely on the replying affidavit filed and served herewith. None of the parties put in written submissions.

#### D. THE 3<sup>RD</sup> RESPONDENT AND INTERESTED PARTIES' CASE

7. I have also noted that the 3<sup>rd</sup> respondent and the 1<sup>st</sup> and 2<sup>nd</sup> interested parties have not been participants in these proceedings. So, I directed that the interested parties be served which the Deputy Registrar of this court graciously did through their emails on record.

## **E. ISSUES FOR DETERMINATION**

8. I have carefully considered the entire application as well as the 1<sup>st</sup> and 2<sup>nd</sup> respondents' replying affidavit thereto, respective oral submissions and the list of authorities. On that account, it is this court's considered opinion that the issues for determination that arise therefrom are: -

**a. Whether the petitioner has made out a case to warrant grant of conservatory orders over the suit land L.R. No. SUNA EAST 1/25900 pending the hearing and determination of the main petition.**

**b. Whether the petition raises weighty matters of substantial questions of law which warrant the file to be placed before the Chief Justice for empanelment of an uneven number of Judges.**

## **F. DISCUSSION AND DISPOSITION**

9. The main gist of the petitioner's case is that he is suing as the Administrator of the Estate of Maricus Oseta Murama (deceased). That the 1<sup>st</sup> and 2<sup>nd</sup> respondents authorised construction of the 1<sup>st</sup> respondent's headquarter, Governor, Deputy Governor, Speaker and other County Officials' residence on the suit land.

10. The petitioner asserted that the suit land is private land belonging to the estate of the deceased who held it in trust and the same was to devolve to their family upon demise of the deceased. That the construction was illegal since the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not follow the correct procedure to compulsorily acquire private land for public utility as stipulated under the law.

11. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> respondents contend that the suit land was already allocated as public land by the then Commissioner of Lands in the 1970s. That the application by the petitioner is a nonstarter and statute barred under Section 7 of the Limitation of Actions Act since it seeks a claim of trespass of land which should be filed within 12 years.

12. This court is vested and clothed with authority from the Constitution of Kenya 2010, to interpret, safeguard, protect and promote its provisions under **Article 165 (3) (b) of the Constitution 2010** and as held in the case of **United States International University vs Attorney General and 2 Others (2012) eKLR**. In addition, this court also has the duty to check and balance, intervene in actions of other arms of Government and State Organs to uphold the sanctity of the Bill of Rights.

13. In that regard, turning to the first issue for determination, the guiding principles under which the court has authority and is called upon to make and order for conservatory orders is well settled under **Article 23 (3) of the Constitution (supra)**. It provides: -

**Authority of courts to uphold and enforce the Bill of Rights.**

**(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—**

**(a) a declaration;**

**(b) an injunction;**

**(c) a conservatory order;**

**(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;**

**(e) an order for compensation; and**

**(f) an order of judicial review. (Emphasis added)**

14. At this point, all the court is required to do is analyse the pleadings and not in any way delve into the merits or demerits of the petition, to establish whether the petitioner has set out a *prima facie* case to warrant conservatory orders. A *prima facie* case as it has been held time and again is not one which must succeed at the hearing, but one which is not frivolous; See **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2003) KLR 125**. An applicant or in this case the petitioner should demonstrate to the court that its case is one which raises weighty, serious and arguable constitutional issues alleging violation of rights.

15. In **Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General (2011) eKLR**, it was held: -

**“At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.” (Emphasis added)**

16. Moreover, I endorse the standpoint taken by **Odunga J** in **Kevin K. Mwiti & Others v Kenya School of Law & Others (2015) where he stated:**

**“A prima facie case, it has been held is not a case which must succeed at the hearing of the main case. However, it is not a case which is frivolous. In other words the Petitioner has to show that he or she has a case which discloses arguable issues and, in this case, arguable Constitutional issues. It has been held that in considering an application for conservatory orders, the court is not called upon to make any definite finding either of fact or law as that is the province of the court that will ultimately hear the petition. At this stage the applicant is only required to establish a prima facie case with a likelihood of success.” (Emphasis mine).**

17. **Article 22 (1) of the Constitution** invites every person to institute court proceedings claiming violation of a fundamental bill of right(s). For a petitioner to bring themselves to enjoy the protective orders under **Article 23(c) of the Constitution** then one must be claiming a violation of a fundamental right(s).

18. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are public bodies. The nature of conservatory orders unlike injunctions are for the protection of public good and order.

19. The Supreme Court of the Republic of Kenya in **Gitirau Peter Munya vs. Dickson Mwenda Kithinji and 2 Other (2014) eKLR** held that:

**“Conservatory orders’ bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as the “prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success’ in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.” (Emphasis supplied)**

20. The petitioner’s case is well established that he is apprehensive the suit land is forcefully being taken away from his family by the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the construction works. The petitioner questions the alleged allocation of the suit land to the respondents for public utility purposes. The petitioner also lays claim on it on the strength of a title deed issued while the 1<sup>st</sup> and 2<sup>nd</sup> respondents contend the suit land was a public land allocated to its predecessor in the 1970s by the then Commissioner of Lands.

21. The actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents on the suit land will have far reaching consequences as one of its intention is to move their headquarters, other residential premises and public utilities on the suit land as is shown in the minutes of the meeting held on 13<sup>th</sup> April 2011 and 16<sup>th</sup> April 2019. In the absence of orders protecting the equal interest of the petitioner on the suit land, then the fundamental rights of the estate of the deceased, will have been violated.

22. On that score, I am satisfied that this is a proper case for granting conservatory orders on the suit land. Furthermore, this court is mandated under **Section 13 (7) (a) of the ELC Act 2015 (2011)** to grant interim preservation orders; **See also Ogada vs Mollin (2009) KLR 620.**

23. Having passed the hurdle of the first issue for determination, I then turn to the second issue. The petitioner contends that he is apprehensive that since the trial court is within the proximity of the headquarters of the 1<sup>st</sup> respondent, the weighty constitutional and serious legal issues it raises, the imbalance of the status of the parties and the immense public interest it has attracted, it may be a little discomforting to hear the matter either in Migori court or before a single Judge. The 1<sup>st</sup> and 2<sup>nd</sup> respondents oppose this proposition.

24. **Article 162 (2) (a) and (b) of the Constitution** establishes courts with the status of the High Court to hear and determine disputes relating to

a. ...

**b. the environment and the use and occupation of, and title to land.**

25. **Article 162 (3) of the Constitution** provides that parliament shall determine the jurisdiction of the courts contemplated above. The **Environment and Land Court Act Cap 2015 (2011)** established the Environment and Land Court which has an equal status of the High Court.

26. It therefore goes without saying that this court has the mandate and jurisdiction to hear and determine matters raising questions of law under **Article 165 (3) (b) of the Constitution; See.....**

27. The composition of the court is established under **Section 21 of the Environment and Land Court Act (supra)**. The said section provides that the court shall be presided over by a single Judge with the exception under subsection 2 which reads:-

**(2) Notwithstanding subsection (1), any matter certified by the Court as raising a substantial question of law.**

**(a) under Article 165(3)(b) or (d) of the Constitution; or**

**(b) concerning impact on the environment and land, shall be heard by an uneven number of judges, as determined by the Chief Justice.**

28. The above provision is not absolute. It is an exception rather than a rule. The court should interrogate the matter before it to establish whether a substantial question (s) of law has been raised for it to be heard by an uneven number of judges as determined by the Chief Justice.

29. The guiding authority for the empanelment of Judges is enumerated under **Articles 165 (4)** of the **Constitution**. The matters referred to the Chief Justice are those which raise **substantial matters of law under clause 3 (b) or (d)**. What constitutes matters of substantial questions of law is not defined under the Constitution, but case law has attempted to.

30. In the case of **Republic v President & 5 others Ex-parte Wilfrida Itolondo & 4 others [2013] eKLR**, the court stated that a substantial question of law would be one that falls within one of two categories: -

**“1. Whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; or**

**2.**

**“(i) For a case to be certified as one involving a substantial point of law, the intending applicant must satisfy the Court that the issue to be canvassed is one the determination of which affects the parties and transcends the circumstances of the particular case and has a significant bearing on the public interest;**

**(ii) The applicant must show that there is a state of uncertainty in the law;**

**(iii) The matter to be certified must fall within the terms of Article 165 (3)(b) or (d) of the Constitution;**

**(vi) The applicant has an obligation to identify and concisely set out the specific substantial question or questions of law which he or she attributes to the matter for which the certification is sought.”**

36. The above authoritative pronouncements illuminate and which I do appreciate that where matters raise novel and complex issues, they do not necessarily deserve the constitution of a bench to determine a matter. The approach for the matter at hand should be holistic. The mere fact that one factor exists does not automatically mean that the matter should be certified under **Article 165(4)** of the **Constitution**.

37. Additionally, even if a matter is of public interest, it does not necessarily mean that a bench should be constituted to hear the matter. Therefore, the decision to certify a matter whether it raises substantial questions of law is discretionary and left to the Judge who must appreciate and look at the individual circumstances of the case in question.

38. In that regard, the matter before me, raises the issue of a compulsory acquisition of land from a private owner. These are matters which the court is confronted with on a regular basis. There is no uncertainty of the law on the procedure to be followed on acquisition of land. All this court has to and is called upon to do is interrogate the evidence at the hearing thereof as to whether or not the procedure in law was followed to the latter.

39. While it cannot be denied that the aftermath of the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents will affect the general public, the matters raised by the petitioner in this petition are more of a private nature and he has not clearly demonstrated how apart from himself, the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents will affect the residents of Migori County. He cannot appoint himself as a spokesman of the people of Migori County who have not filed any suit before this court to show how the establishment of the headquarters of the 2<sup>nd</sup> respondent in a new location shall affect them.

40. The matter as presented before this court falls well within the jurisdictional mandate of this court to investigate matters relating to land and environment as stipulated under **Article 162 (2) (b)** of the **Constitution**. This is read together with its mandate to determine disputes relating to compulsory acquisition of land; land relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land as per **Section 13 (2)** of the **Environment and Land Act (supra)**

41. It should also be noted that, if necessary, the court may *suo moto* visit the scene of the suit land in dispute. It would cause unnecessary delays to procure funds from the judiciary to enable the sitting judges to make the visit from where the court shall be sitting; bearing in mind the provisions of **Sections 1A, 1B** of the **Civil Procedure Act Cap 21**, that the ultimate objective is that the courts are enjoined or called upon is to ensure justice is delivered without delay in a just, expeditious, proportionate and affordable, resourceful and efficient manner.

42. Lastly, I wish to address and defray the fears raised by the petitioner that it may be ‘discomforting’ to hear the matter in Migori at the precincts of the headquarters of the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

43. In **Republic vs Independent Electoral and Boundaries Commission & 3 others Ex parte Wavinya Ndeti (2017) eKLR**, the Court quoted the learned writings of Lord Denning in *What Next in the Law, at page 310* in which he had this to say:

**“If I be right thus far – that recourse must be had to law – it follows as a necessary corollary that the judges must be independent. They must be free from any influence by those who wield power. Otherwise, they cannot be trusted to decide whether or not the power is being abused or misused... [The judges] will not be diverted from their duty by any extraneous influences; not by hope of reward nor by the fear of penalties; not by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people their confidence in the judges.”**

44. In the case **Masalu and Others vs. Attorney General (2005) 2 EA 165** it was noted that:-

**“A Judge has to pass between the Government and the man whom the Government is prosecuting; between the most powerful individual in the community and the poorest and the most unpopular. It is of the last importance, that in the exercise of these duties he should observe the utmost fairness. The judicial department comes home in its effects to every man’s side; it passes on his property, his reputation, his life, his all. It is to the last degree important that he should be rendered perfectly and completely independent with nothing to influence or control him but God and his conscience...”**

45. I associate myself with the above sentiments and I cannot over emphasize that there is no greater call for judicial officers than the call to exercise neutrality, independence and to administer justice without fear or favour. A Judge worth his salt, should not shy away from his or her constitutional mandate of interpreting and applying the Constitution as is stipulated in **Article 159 (2) (a) of the Constitution**.

46. In light of the above, I decline to certify that this matter raises a substantial question of law to warrant reference of the same to the Chief Justice to empanel a bench of an uneven number of judges as required under Article 165(4) of the Constitution. This prayer in the application is hereby dismissed.

47. The Notice of Motion dated 15<sup>th</sup> April, 2021 partially succeeds, and orders are issued as follows: -

**i. That pending the hearing and determination of the main petition, a conservatory order be and is hereby issued by way of injunction restraining, prohibiting and/or stopping the Respondents and the Interested Parties either jointly or severally by themselves, agents, servants, or assigns howsoever from acting on and/or in any other manner whatsoever from continuing with the ongoing constructions of residential buildings and/or offices, commencing any new construction or erection of any building and/or structures, digging trenches, creating any new access roads, leasing, alienating, interfering with the boundaries, or in any way dealing and/or interfering with the petitioners beneficial use and quiet enjoyment of the suit parcel L.R. No. SUNA EAST 1/25900.**

**ii. For avoidance of doubt, the petitioner, his servants, agents or personal representatives are prohibited from further subdivisions and/or selling or charge of the suit land or any other parcels of the suit land arising from the subdivision.**

**iii. Owing to the nature of this matter, the In Charge of the Environmental and Land Court Registry is hereby directed to issue a hearing date on this file on a priority basis in the new term.**

**iv. Costs shall be in the cause.**

48. Orders accordingly.

**DELIVERED SIGNED AND READ VIA EMAIL AT MIGORI LAW COURTS THIS DAY 29<sup>TH</sup> OF JULY 2021**

**G.MA. ONGONDO**

**JUDGE**

**In presence of:-**

**Gordon Ogola, Kipkoech & Company Advocates for Petitioner.**

**Prof. Tom Ojienda & Associates Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.**

**N/A for the 3<sup>rd</sup> Respondent**

**Mwembe & Mwembe Associates - 1<sup>st</sup> Interested Party.**

**Mbingo Enterprises Limited - 2<sup>nd</sup> Interested Party.**

**Tom Maurice – Court Assistant.**