REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

ELC CIVIL APPEAL NO. 190 OF 2010

HARUN NJENGA MUNGAI.....1ST APPELLANT

KINYANJUI MUNGAI.....2ND APPELLANT

RACHEL MUGURE.....3RD APPELLANT

VERSUS

JAMES MUNGAI NGURIMU (Suing as Guardian *Ad Litem* of

DANIEL NGURIMU MUNGAI.....RESPONDENT

RULING

INTRODUCTION

1. This Ruling relates to two Application, namely the Application dated the 14th April 2021, filed by the Respondent and the one dated the 28th June 2021, the latter Application, having been filed by the Appellants/Applicants.

2. In respect of the Application dated the 14th April 2021, the Respondent has sought for the following reliefs as follows;

i. ……*(Spent)*

ii. The Respondent's Advocate, M/s Mwangi Kithinji Advocates, be granted leave to come on record after judgment.

iii. Pending the Hearing and determination of this Application this honourable court be pleased to issue an order od stay the execution of the judgment entered herein on 25th January 2018, in its entirely.

iv. This Honourable court be pleased to order the Appellants/Applicant to furnish the Respondent with further and better particulars and further require the Appellant/Applicant to serve the Respondent to serve the Respondent all pleading relating to this matter.

v. The Respondent be granted unconditional leave to file his Defense and to defend the suit on its merits.

vi. This Honourable court bars and/or restrains the Appellant/Applicants from selling, disposing of, wasting and/or damaging the suit property being Kiganjo/Kiamwangi/854 and Kiganjo/Kiamwangi/855.

vii. The Honourable court makes an order that aforementioned suit property is preserved so that the Respondent may file his Defense he is heard on merits.

viii. That all cautions, caveats and all such restrictions placed on the suit property that were or may have been lifted be reinstated and that the status quo on the property be reinstated.

ix. This Honourable court be pleased to make any such orders as it deems mete, just and expedient.

x. Costs of and incidental to the application be in the cause.

3. The subject Application is premised and/or based on the grounds contained at the foot of the Application, including grounds 1 to 13, *both inclusive* and same is further supported by the affidavit of one James Mungai Ngurimu, who was appointed as the guardian *ad litem* of the Respondent herein. For clarity, the supporting affidavit which has 54 paragraphs was sworn on the 14th April 2021, and in respect of which the Respondent has attached a total of five (5) annextures.

4. The second Application is the one dated 28th June 2021, and in respect thereof the Appellants have sought for the following reliefs;

a. ***The parcels of land known and/or described as L.R No's Kiganjo/Kiamwangi/854 and Kiganjo/Kiamwangi/855, be amalgamated and thereafter the Deputy registrar be authorized to sign all subdivisions and transfer documents on behalf of the Respondent.***

b. Costs be in the cause.

5. The latter Application is premised on the grounds contained at the foot thereof and same is further supported by a short affidavit sworn by one Kinyanjui Mungai, who is the 2nd Appellant/Applicant.

6. The two [2] Applications came up for mention on the 30th September 2021, for purposes of giving directions, pertaining to and/or concerning the hearing of both the Applications.

DEPOSITIONS BY THE PARTIES

THE RESPONDENT'S APPLICATION DATED 14TH APRIL 2021

7. In respect of the Application dated the 14th April 2021, the Supporting Affidavit has been sworn by one, called James Mungai Ngurimu and wherein same has averred that the subject suit touches on and/or concerns one Daniel Ngurimu Mungai, who is the Deponent's Father.

8. The Deponent has further averred that though the Respondent had instructed and/or retained an advocates known as M/s B. G Wainaina & company Advocates, to defendant the subject matter on behalf of the Respondent, the advocate has failed and/or neglected to file a Defense on behalf of the Respondent.

9. It has further been averred that as a result of the failure to file Defense, the subject matter proceeded to and was heard, culminating into the delivery of ex-parte judgment on the 25th January 2018, though without the involvement and/or participation of the Respondent.

10. The Deponent has further averred that during the period preceding the delivery of the ex-parte judgment, the Respondent herein had suffered memory lapses and as a result of same, the Respondent was incapable of appreciating various facts and/or comprehending the developments pertaining to the subject matter, including whether same was served with the Record of Appeal in respect of the subject matter.

11. Be that as it may, the Deponent has further averred that the reason the matter herein proceeded to and was heard in the absence of the Respondent, was because the Respondent's estranged advocate, namely M/s B. G Wainaina & Co. advocates, had failed to notify him on the hearing dates touching and/or concerning the matter.

12. It has been similarly averred that the failure and/or neglect by the Respondent estranged advocates, to defend and/or otherwise participate in the matter, led to the Respondent filing to a complaint with the Advocate Disciplinary Tribunal.

13. It is further averred that as a result of the failure by the Advocate to properly and/or diligently to protect the interest of the Respondent, the Respondent herein is on the verge of loosing his (Respondent) suit parcel of land.

14. In the premises, the Respondent has now approached the court with the plea to set aside and/or vacate the ex-parte orders/judgment.

15. Owing to the foregoing, the Respondent has thus asked the court to excuse the mistake of the estranged advocate and to set aside what the Respondent's alleges and/ or contends to be the Ex-parte judgment.

APPELLANTS APPLICATION DATED 28TH JUNE 2021

16. Vide supporting affidavit sworn by one Kinyanjui Mungai, it is averred that the Appellants herein filed and/or lodged the subject Appeal against the decision rendered by the Principal Magistrate's Court vide Thika CMCC No. 1739 of 2005, and thereafter the Appeal was heard and determined vide judgment rendered on the 25th January 2018.

17. It is further averred that following the delivery of the judgment, whereby the appeal succeeded, it was directed that the Respondent herein was to subdivide and transfer various portions to and in favor of the Appellants, respectively.

18. It is further averred that despite having been served with the extracted decree, the Respondent has failed to comply with and/or adhere to

with the terms of the decree. For clarity, it is averred that the Respondent has failed to sub divide the Land and thus the subject Application.

19. On the other hand, the Deponent has further averred that same requires that the two parcel of lands herein be amalgamated and thereafter same be subdivided and transferred in favor of the Appellants.

20. Finally, the Deponent has further averred that because the Respondent has failed and/or neglected to execute the transfer documents, it is appropriate that the honourable court do authorize the Deputy Registrar of this honourable court to sign the relevant transfer instruments and/or documents, to facilitate the effective transfer and registration of the resultant portions to and in favor of the Appellants.

RESPONSE TO THE APPLICATION DATED 28TH JUNE 2021

21. Vide Replying affidavit sworn on the 16th September 2021, one James Mungai Ngurimu, has averred that the judgment which was rendered on the 25th January 2018, was arrived at and thereafter rendered without the participation and/or involvement of the Respondent.

22. The Deponent has further averred that the failure for the Respondent to participate and attend the hearing of the subject matter was caused and/or occasioned by the erstwhile advocate, who failed to notify the Respondent of the mentions/hearing dates.

23. It is the further averment by the Respondent that given the judgment that was entered without the participation of the Respondent, it is therefore appropriate that same be afforded an opportunity to be heard.

24. In any event, the deponent has further averred that the Right to be heard is a Constitutional Right and to proceed to hear and nay, grant the Application by the Appellants, shall amount to condemning the Respondent without being heard.

SUBMISSIONS

25. The matter herein, came up for mention for directions on the 30th September 2021, on which date the court directed that the two Applications, namely the Application, dated, the 28th June 2021 and the one dated 14th April 202 be heard simultaneously so as to save judicial time.

26. On the other hand, the court directed that the two Application be heard by way of written submissions to filed and exchanged by the parties, within set timelines.

27. Besides, the subject matter was thereafter directed to be mentioned on the 11th November 2021, to ascertain or otherwise, the filing and exchange of the written submissions.

28. Come the 11th November 2021, the parties herein had not complied with the directions that were issued on the 30th September 2021. For clarity, the parties herein had failed to file and exchange the written submissions.

29. Owing to the foregoing, the parties herein, through their respective advocates, sought for and obtained extension to the timelines, which had been previously been granted.

30. As a result of the request and/or plea by and/or on behalf of the Parties, the timelines which had been granted to the parties, were duly extended by a further 7 days and thereafter the matter was set down for mention on the 22nd November 2021.

31. It is worthy to note that despite the extension of time, which was granted on the 11th November 2021, the parties again failed and/or neglected to file their written submissions. In this regard, the court therefore was constrained to fix the subject matter for Ruling with or without the written submissions.

32. Be that as it may, on the 24th November 2021, the Respondent herein filed written submissions, dated the same day touching on and/or concerning the Notice of Motion Application dated the 14th April 2021.

33. Nevertheless, the Appellants herein did not file any submissions despite the window granted by the court for either party to do so.

34. It is imperative to state, that the submissions by and/or on behalf of the Respondent are now part of the Record and same shall be considered and applied where appropriate.

ISSUES FOR DETERMINATION

35. Having reviewed the two sets of Application, namely the Application dated the 14th April 2021, together with the affidavit in support thereof, the Application dated the 28th June 2021, together with the Supporting Affidavit thereto and having taken into account the written submissions by and/or on behalf of the Respondent**, I am of the considered view that the following issues are germane for determination;**

i. *Whether this court was seized of jurisdiction to hear and entertain the subject appeal.*

ii. Whether the judgment in the subordinate court was entered in the absence of a statement of defense by and/or in favor of the Respondent and whether or not the Respondent was heard.

iii. Whether the judgment herein ought to be set aside and leave be granted to the Respondent to file a statement of Defense and to Defend the suit.

iv. Whether the court can order and/or decree of the amalgamation of L.R No's Kiganjo/Kiamwangi/854 and Kiganjo/Kiamwangi/855

ANALYSIS AND DETERMINATION

ISSUE NUMBER ONE [1]

36. Vide the submissions dated and filed on the 24th November 2021, the Respondent herein has raised a rather curious issue, pertaining to and/or concerning the issue of the jurisdiction of this honourable court to entertain and/or adjudicate upon the subject Appeal.

37. According to the Respondent, the original suit and/or proceedings were taken and/or heard at the Principal Magistrate's court at Thika and that by the time the Appeal was filed, there was no High court seating at Thika and hence the filing of the subject Appeal at Nairobi.

38. However, the Respondent has argued that by the time the Appeal was heard and judgment rendered, the Environment and Land Court had been established and operationalized at Thika. In this regard, the Respondent contends that the appropriate and relevant court that should have heard the appeal should the Environment and Land court, sitting at Thika and not otherwise.

39. On this account, the Respondent's counsel has thus contended that the Enviroment and Land Court, sitting at Nairobi was thus not seized of jurisdiction to hear and entertain the subject Appeal. Consequently, and on this account the Respondent's counsel has attacked the validity and/or legality of the judgment rendered on the 25th January 2018.

40. Speaking for myself, I am unable to appreciate and/or discern the arguments being raised and/or ventilated by counsel for the Respondent. However, I must point out that the argument that questions the jurisdiction of the Environment and Land Court sitting in Nairobi, to hear and to determine the subject appeal, is clearly misguided.

41. First and foremost, at the point when the subject Appeal was filed, the Appeal registry, which was then serving Thika District Registry was the Nairobi Appeal Registry and this explained why the Appeal was mounted and/or lodged at Nairobi and not otherwise.

42. Secondly, the Environment and Land court, as well as the High Court are Courts created pursuant to and under the Constitution, 2010, and the jurisdictions of these courts, have been circumscribed and well delineated under the constitution 2010. For clarity, the jurisdiction of the Environment and Land court, is provided for under **Article 162 2(b) of the Constitution 2010.**

43. My reading of the said provision of the law as well as the provision of Section 13 of the Environment and Land Court Act,2011, does not specify the Geographical limitation that affect the extent and scope of the jurisdiction of the Environment and land court.

44. Clearly, the Environment and Land court has jurisdiction across the country and can thus hear and determine any matter and/or appeal, arising from whatever region in the Republic of Kenya, subject only to the provision of Article 162 2(b) of the Constitution, 2010.

45. Thirdly, like the High Court of Kenya which is only one court, but with various Registries spread and/or dotted across the country, the Environment and land court is similarly one court, with Registries across the designated places within the Republic of Kenya.

46. In this regard, there is no Environment and Land court meant for Thika, but Thika, like other gazetted Registries, is a registry constituting a sitting place for the one singular court, referred to as the Environment and land court.

47. Fourthly, even though that the High Court and the Courts of Equal Status, are singular in nature, this courts however, have designated Registries and therefore directions can and often do issue to designate a Specific place, as the place/registry for hearing and in such a scenario the hearing place is thereafter constituted by referring to the name of the town/area.

48. Nevertheless, the fact that a particular matter has been designated to be heard at a particular area or town, does not mean that directions cannot issue, designating a particular matter to be relocated and/or be redirected to another Registry, for purposes of hearing and determination.

49. Having said so much, it is now imperative to draw the attention of the Respondent's counsel to the Provision of **Order 47 of the Civil Procedure Rules 2010,** which speaks to and/or concern the District rRgistries of the High court and which by dint of Section 7 of the sixth schedule of the Constitution,2010, applies *mutatis mutandis* to the Environment and Land court. For clarity, the said provisions provides as hereunder;

ORDER 47 – DISTRICT REGISTRIES

1. Institution of suits in High Court [Order 47, rule 1.]

Every suit in the High Court may be instituted at the central office of that court situate in Nairobi or in a District Registry.

2. Schedule of District Registries and areas [Order 47, rule 2.]

(1) There shall be District Registries and Deputy Registrars of the High Court at the places and for the areas set out in the Schedule in Appendix G.

(2) The Chief Justice may by notice in the Gazette amend the Schedule to subrule (1) by the addition or deletion of any area, place of Registry or District Registrar or by the variation of any area.

3. Title of suits filed in a District Registry [Order 47, rule 3.]

Suits filed in a District Registry shall be intituled as suits in "The High Court of Kenya at (District Registry)", and shall be serially numbered in that Registry.

4. Suits filed in a registry remain there when all defendants reside within that area [Order 47, rule 4.]

Where the defendant resides or carries on business, or all the defendants (if more than one) reside or carry on business within the area in the District Registry whereof a suit has been instituted, all proceedings shall be taken in such registry subject to any order fixing the place of trial made by the court under rule 8.

5. Proceedings against the Government [Order 47, rule 5.]

Notwithstanding anything in rule 4, in any civil proceedings against the Government the defendant shall for the purposes of this Order be deemed neither to reside nor to carry on business within the district of any District Registry.

6. Place of trial [Order 47, rule 6.]

(1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.

(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.

7. All preliminary steps taken before the District Registrar [Order 47, rule 7.]

In a suit proceeding in a District Registry all formal steps preliminary to the trial and all interlocutory applications shall, in the absence of a judge, be made and taken before the District Registrar; and when such suit is ready for trial it may be set down for hearing before a judge sitting at the place of the Registry

8. Appeal from decision of District Registrar [Order 47, rule 8.]

(1) Any person affected by any order or decision of a District Registrar made in any preliminary step or upon an interlocutory application may appeal to a judge; and such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the District Registrar had jurisdiction only by consent.

(2) Such appeal shall be by way of endorsement upon the record by the District Registrar at the request of any party within fourteen days from the making of such order or decision, and the record bearing such endorsement shall forthwith be sent to the registrar of the High Court who shall give such directions for the hearing of the appeal as he may consider reasonable

(3) The hearing of an appeal under this rule shall be before a judge in chambers.

9. Taxations in District Registries [Order 47, rule 9.]

A District Registrar with regard to suits tried in his area shall have the same power of taxing costs as the registrar has as a taxing officer under any Rules of Court, and all such rules shall apply to the taxation of costs by a District Registrar.

10. Appeals from subordinate courts. [Order 47, rule 10.]

An appeal from a decree or order of a subordinate court to the High Court may be filed in the District Registry within the area of which such subordinate court is situate; and the District Registrar shall, upon the payment to him of all fees, endorse the date of filing upon the memorandum of appeal, and forward the papers to the High Court Registry in that area for hearing and disposal.

50. Other than the fact that the district registries dotted across the country only constitutes places of trial and not different Environment and land courts, it is also important to note that a person, the Respondent not excepted, who is keen to challenge the jurisdiction of the appellate court to hear and/or determine an appeal is obliged to raise and/or canvass such Objection at the time of issuance of Directions and not otherwise.

51. In respect to the foregoing observation, it is imperative to take cognizance of **Order 42 Rule 13 of the Civil Procedure Rules 2010,** which as hereunder;

13. Directions before hearing [Order 42, rule 13.]

(1) On notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the appellant shall cause the appeal to be listed for the giving of directions by a judge in chambers.

(2) Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule.

(3) The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.

(4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—

(a) the memorandum of appeal;

(b) the pleadings;

(c) the notes of the trial magistrate made at the hearing;

(d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;

(e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate; (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal: Provided that—

(i) a translation into English shall be provided of any document not in that language; (ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).

52. It is common ground that before the subject Appeal was fixed and/or listed for hearing, same was placed before the Hon Judge for issuance of Directions and thereafter directions were indeed issued, pertaining to the place of trial and the number of judges to conduct the hearing of the appeal and the duration required for the hearing of the appeal.

53. Suffice it to say, that no Objection was ever taken against the Jurisdiction of the Environment and Land Court, sitting at Nairobi to hear and determine the subject Appeal, either as required by the law or at all.

54. In the premises, the issue of jurisdiction being raised and/or ventilated by the Respondent is therefore a *Red-herring*

ISSUE NUMBER TWO [2]

55. The Respondent herein has sought and/or requested the court to find and hold that the judgment in respect of the subject matter was entered against the Respondent, albeit without a Defense filed by and/or on behalf of the Respondent.

56. On the other hand, the Respondent has also sought that upon finding and holding that the judgment was entered in the absence of statement of defense and/or affording the Respondent herein, same be set aside and leave be granted to the Respondent to file a defense.

57. First and foremost, it is worthy to note that the judgment rendered on the 25th January 2018, related to and/or concern an Appeal, arising from the Decision of the Lower Court and not otherwise.

58. Secondly, in matters of appeal the presupposition is that the parties had filed their pleadings in the original suit and that the pleadings which were filed in the original suit, shall comprise of and form part of the record of appeal, to be evaluated by the judge prior to and/or before rendering a judgment.

59. Thirdly, where an appeal is filed and/or lodged, the Respondent against whom the appeal is filed, is not required by law to file any response, whether it be a replying affidavit or a statement of defense.

60. For the avoidance of doubt, such a Respondent is merely expected to appear before the appellate court during the directions and the hearing of the appeal and to ventilate the response vide oral and/or written submissions and not otherwise.

61. Taking the foregoing into account, it is therefore inconceivable that the Respondent herein is asking the court to set aside the judgment, which was rendered on appeal and thereafter allow the Respondent to file a statement of defense.

62. Notwithstanding the foregoing, the Respondent herein has also contended that because same did not file a statement of defense same was not heard. However, I have looked at the original file and it is evident and/or apparent that the Respondent herein, who was the Defendant in the subordinate court, filed a statement of defense dated the 18th January 2006.

63. On the other hand, the same Respondent also attended court and tendered his defense evidence including calling four (4) witness, who testified on his behalf. Clearly, the Respondent herein filed a statement of defense, testified before the subordinate court and called 4 witnesses to support the defense.

64. In this regard, it is unfathomable for the Respondent's counsel to now approach the court and seek to be afforded an opportunity to file a statement of defense and the Respondent to be heard.

65. Clearly, the Respondent counsel has not appreciated the issues pertaining to the subject matter and therefore the application placed before the honourable court is colored with misapprehensions or better still, misconception of the applicable Laws.

Issue number 3

66. As pertains to the third issue, the question that arises is whether the judgment which was rendered by this honourable court, differently constituted, can be set aside and/or varied either in the manner sought by the Respondent or at all.

67. It suffices it to note, that the impugned judgment was a considered judgment, which was crafted and rendered after the honourable judge heard the appeal, reviewed the totality of the evidence adduced and applied her judicial mind to the relevant law.

68. In my humble view, the judgment which was rendered by the honourable judge is not one that lends itself to setting aside under **the Provisions of Order 10 of the Civil Procedure Rules, 2010,** in the manner sought by the Respondent.

69. Consequently, I am afraid that the prayer for setting aside judgement, which is said to have been entered in default of defense in this matter (*but which was clearly a considered judgment after hearing of the appeal*) is not for granting.

Issue number 4

70. On the other hand, the Appellants herein have also sought for the orders for the amalgamation for L.R No's *Kiganjo/Kiamwangi/854 and Kiganjo/Kiamwangi/855, (the suit properties)* and thereafter the Deputy Registrar to sign all the subdivision and transfer documents.

71. It is important to note that the judgment of the honourable judge was founded and/or anchored on the Reliefs that had *hitherto* been sought vide the Plaint which originated the suit in the subordinate court.

72. It is also worthy to note, that while entertaining and/or adjudicating the appeal, the honourable judge could only grant the Reliefs covered by the pleadings and not otherwise.

73. Nevertheless, the Appellants herein, have since reverted to court with an application, which is now seeking orders that are at variance with the decree that was rendered by the honourable court.

74. Essentially, what the Appellants are seeking to achieve is to set aside, vary and supersede the judgment and decree of the honourable judge, albeit without filing for an Application for review and/or an appeal.

75. In my humble view, the orders sought by the Appellants herein, at the foot of the Application dated 28th June 2021, meant to invite me to sit on an appeal of the decision of a court of equal jurisdiction. Such an invitation, is inimical to the established principles of the law and shall amount to courting travesty, if not anarchy within the corridors of justice.

76. But even assuming that I was disposed to walk the invite,[which I am afraid I cannot do] there is still yet another obstacle, same being that a court of law is bound by the pleadings and the reliefs sought by the parties and the court is not allowed to digress into any other issue not pleaded. For clarity, there is no provision for any other business (AOB), which can allow the court to grant completely different orders and/ or Reliefs than those which were pleaded and/or canvased.

77. In support of the foregoing position, I invoke and rely in the decision in the case of **Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR,** where the honourable court observed as hereunder;

> ***"….it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties***

which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded."

Other judges on the case expressed themselves in similar terms, with Judge Christopher Mitchell J.S.C. rendering himself thus;

> ***"In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."***

78. As concerns the limb of the Application dated the 28th June 2021, requiring the deputy registrar to sign all the transfer documents attendant to the subdivision and to facilitate to the transfer and subdivision in favor of the Appellants, it is sufficient to remind the Appellants' counsel that similar orders were sought vide the Application dated 23rd August 2018, and which was allowed by the honourable judge on 13th April 2021.Consequently, the said orders remain vibrant, legal and in existence.

79. In the premises, there is no legal basis for making a further request for orders that have *hitherto* been granted and similarly been extracted and signed. In this regard, the Application by the Appellants' seeking orders which had hitherto been granted, amounts to an abuse of the Due Process of the Court.

FINAL DISPOSITION

80. Having reviewed all the issues for determination, I now make the following orders;

i. *The Notice of Motion Application dated 14th April 2021, is devoid of merits and same is hereby Dismissed.*

ii. *The Notice of Motion Application dated the 28th June 2021, is not only misconceived, but same amounts to an abuse of the Due Process of the Court. Same is equally dismissed.*

81. Each party shall bear own costs as pertains to the two Applications.

82. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF DECEMBER 2021.

HON. JUSTICE OGUTTU MBOYA

JUDGE

ENVIROMENT AND LAND COURT.

MILIMANI.

IN THE PRESENCE OF;

MS KITHINJI FOR THE APPELLANTS APPLICANTS

N/A FOR THE RESPONDENT

CA JUNE