



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**CONSTITUTIONAL PETITION NO. 6 OF 2018**

**IN THE MATTER OF ARTICLES 10, 40, 47, 50, 73, 75, 77, 232 AND 258 OF THE CONSTITUTION**

**AND IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 10, 40, 47, 50, 73 & 232 OF THE CONSTITUTION**

**BETWEEN**

**STEPHEN N MWAGIRU.....PETITIONER**

**VERSUS**

**THE CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**SARAH CHELIMO MAINA.....3<sup>RD</sup> RESPONDENT**

**TATU CITY LIMITED.....4<sup>TH</sup> RESPONDENT**

**KOFINAF COMPANY LIMITED.....5<sup>TH</sup> RESPONDENT**

**AND**

**ROSEMARY W NJAU.....1<sup>ST</sup> INTERESTED PARTY**

**JOSEPHINE MWAGIRU.....2<sup>ND</sup> INTERESTED PARTY**

**ANNE WALKER.....3<sup>RD</sup> INTERESTED PARTY**

**JUDGMENT**

By an Amended petition dated **18<sup>th</sup> June 2018**, the Petitioner herein sought for the following orders as against the Respondents

**a. A declaration that the removal of the Caveat placed on all those parcels of land Known as L.R Nos 11538/6,11285, 11286,11287,11288,11289,11428,11486,10877,11294, and 10883/2 by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents on 265<sup>th</sup> May 2012 was illegal, unlawful and unconstitutional and an infringement of the Petitioner's rights under Article 27,28,35, 40,43,47,48 and 50 of the Constitution.**

**b. An order of Mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to restore the caveats placed on all those parcels of land known as L.R Nos 11538/6,11285, 11286, 11287, 11288, 11289, 11428, 11486, 10877,11294,and 10883/2 by the Interested parties forbidding the registration of any dealings in the said properties pending the substantive conclusion of Winding Up Cause No. 29 of 2010 in the Matter of Tatu City Limited, High Court of Kenya at Nairobi ; Winding Cause No. 30 of 2011 in the matter of Kofinaf Company Limited High Court of Kenya at Nairobi**

**c. In the alternative to order b above a permanent Injunction prohibiting all parties to this suit including their servants,**

agents, proxies, associates, subsidiaries, employees, directors, shareholders, promoters or parent group holdings , from commencing, continuing or concluding any dealings , transfers, leases, charges, assignments, licenses or depositions whatsoever and howsoever over all those parcels of land known as L.R Nos 11538/6,11285, 11286, 11287, 11288, 11289, 11428, 11486, 10877, 11294,and 10883/2 pending the substantive conclusion of Winding Up Cause No. 29 of 2010 in the Matter of Tatu City Limited, High Court of Kenya at Nairobi ; Winding Cause No. 30 of 201 I the matter of Kofinaf Company Limited High Court of Kenya at Nairobi

**d. An order rendering null and void all transactions and dispositions whatsoever registered over all those parcels of land known as L.R Nos 11538/6,11285, 11286, 11287, 11288, 11289, 11428, 11486, 10877,11294,and 10883/2 from the 25<sup>th</sup> of May 2012.**

**e. Costs of this Petition.**

In his Petition, the Petitioner averred that together with the Interested parties, they are shareholders in both the 3<sup>rd</sup> and 4<sup>th</sup> Respondents Company. He further averred that the Companies are registered proprietors of the suit properties and being shareholders, they have beneficial interest over the suit properties. Further that on **10<sup>th</sup> June 2010**, the interested parties placed Caveats, forbidding registration of any dealings in the properties and all other properties registered in the names of the Companies. It was his contention that the instructions were received by the 1<sup>st</sup> Respondent on the **17<sup>th</sup> June, 2010**, and the Caveats were duly registered. However, he learnt that on **25<sup>th</sup> May 2012**, the Law Firm of **Ochieng, Onyango, Kibet and Ohanga Advocates** had presented what were purported to be a removal of the Caveat Applications, in respect of the properties allegedly on the instructions of the Cavatee. That on the same date, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents purported to issue a **forty five (45) days' notice** to the Interested parties to either remove the caveats or present a Court order extending the same, failure to which they would proceed and remove the Caveats. That the 2<sup>nd</sup> Respondent's claims that on **6<sup>th</sup> July 2012**, she released the said notices to the mailing clerk in the 1<sup>st</sup> and 3<sup>rd</sup> Respondents office and that the said **notices** were presented at the GPO Nairobi Counter of Postal Corporation on **9<sup>th</sup> July 2012**, mailing to the interested parties and that on **27<sup>th</sup> August 2012**, the 1<sup>st</sup> Respondent removed the Caveat on the ground that there had been no objection to the removal of the Caveat after the lapse of the **45 days** stipulated Notice. He alleged that the 2<sup>nd</sup> Respondent had not sent any notice to the Interested parties and that the notices were deliberately omitted from the mailing list by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and were therefore not dispatched to the interested parties.

He further averred that the Postmaster General in his letter dated **14<sup>th</sup> August 2014**, confirmed that the purported notices to the interested parties were not among the letters received by the Post Office on **11<sup>th</sup> August , 2014** for onward dispatch. He alleged that the Caveats were removed on **25<sup>th</sup> May, 2012**, the date of receipt of the Application establishing motive with the deliberate intention to collude, defraud and defeat the Interests of the Petitioner and the Interested Parties in the Companies and by extension the properties.

He contended that there were discrepancies in the purported Notice to Withdraw the Caveat, as the address used is not the Interested Parties' address but rather the address of **Kofinaf**, and Application for removal were not copied to the Interested Parties, the Caveats were purportedly removed on the same day of the application for removal, yet the approval for removal was allegedly issued on **27<sup>th</sup> August 2010**, no payment receipts were attached to show the payment of prescribed fees prior to receipt of the applications for removal of the caveats and that no adhesive revenue stamp is affixed on the Application for removal of Caveat Forms and that receipt of postage indicates a nonexistent Post Office, the entry in the Postal Office ledger has no Post Office code and that the Notices were never posted.

He further contended that in the absence of valid notices to remove the caveats, the actions of the 1<sup>st</sup> Respondent were unlawful and that the caveats were removed without giving the Interested parties an opportunity to be heard and in a manner that denied them an opportunity to take alternative legal actions. That on **5<sup>th</sup> October 2012**, the 3<sup>rd</sup> Respondent was served with a Court order that directed the preservation of the properties, but still opted to reject the Court orders for the spurious reason that the same was not very clear and thus not registrable as it did not list the properties against which it has to be registered and there's therefore a clear case of bias by the 3<sup>rd</sup> Respondent. He averred that as result of the fraudulent removal of the caveats by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, the Petitioner and the Interested Parties have suffered great prejudice as the suit properties have since been transferred to Special Purpose Vehicle Companies while others have been mortgaged by various offshore Financial Companies. That the Caveats were fraudulently and illegally removed and the sale will have an immediate negative impact on the value of his shares in the Companies.

Further that the 2<sup>nd</sup> Respondent has on various occasions called upon the Ethics and Anti-Corruption Commission to investigate the decision and action of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents in relation to the removal of the said caveat but the commission has failed to investigate the matter and in the meantime the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have continued to act with impunity in relation to the Petitioner's rights and it is therefore imperative that the caveats be restored to protect his rights.

He averred that his rights have been breached and particularized breach of **Article 10 of the Constitution**, by the Respondents as; failing to follow statutory procedures in removal of the caveats, not allowing him to participate in the process, failing to uphold his rights under **Article 27,40 and 50 of the Constitution** , being discriminatively by failing to provide official searches, failing to uphold national values, failing to properly advise the 1<sup>st</sup> Respondent. He further averred that there was breach of **Article 27** of the Constitution by the removal of the caveats, with sole intention of defeating his rights, failing to follow the laid down procedures,

He further particularized breach of **Article 28** under paragraph 35 (a) of his Petition, Breach of **Article 35** under paragraph 35(b), breach of **Article 40** under paragraph 36, Breach of Article 43 under paragraph 36(a), breach of **Article 47** under paragraph 37, breach of **Article 48** under paragraph 37 (a), breach of **Article 50** under paragraph 38, breach of **Article 73** under paragraph 39 and breach of **Article 232** of the Constitution under paragraph 40.

The Petition is contested and the 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on **29<sup>th</sup> June 2018** by **Edwin Munoko Wafula** a Senior Land Registration Officer at Ardhi House, Nairobi. He averred that he had been advised by State Counsel on record that the Application is an

abuse of Court process and that is contrary to express provisions of law. He averred that the dispute between the Petitioner and the 2<sup>nd</sup> and 4<sup>th</sup> Respondents started when the Petitioner filed a Winding Cause which was denied by Court vide a Ruling dated **12<sup>th</sup> July 2013**, and that the ruling stated that the Petitioner's interest was limited to the shareholding and not to the assets of the Company. Further that the Petitioner's Application seeking for stay of execution at the Court of Appeal was also dismissed. Further that he has been advised by his Advocate on record that the Petitioner placed caveats over the suit properties in 2010. That the Caveats were later removed and the Petitioner moved the Court seeking to have them reinstated. He alleged that the Petitioner and the 1<sup>st</sup> Respondent were charged with the offence of forgery after they purported to change the name of the Directors/ shareholders of the Company. Further that a caveat can only be lodged against a suit property registered in the name of a Company by a Director and not a shareholder and that from the records, the Petitioner has never been a Director. He averred that in 2012, the Law Firm of **Ochieng, Onyango, Kibet & Ohaga Advocate** presented an Application for removal of the caveats. That the Notices were duly prepared and sent to the caveatees informing them after the expiration of 45 days, the Land Registry will proceed to lift the caveats if no objection is received by then. He alleged that after the expiry of the 45 days, the Caveats were removed by the registrar having been satisfied that no documents were pending for registration in respect of the said titles. He averred that the Application herein is *res judicata*, as the matter placed before this court has been subject of various suits that are pending before the High Court at Milimani. He urged the Court to dismiss the Petition.

The 4<sup>th</sup> and 5<sup>th</sup> Respondents filed their Replying Affidavit sworn on **20<sup>th</sup> November, 2018** by **Christopher Barron**, their Chief Operating Officer. He averred that the Petition has been brought on an issue already decided and as such it is an abuse of the court process. That in 2010, the Petitioner and his mother **Rosemary Wanja Mwagiru**, the Interested Party herein lodged caveats against the suit properties using a falsified form CR12 in respect of **Tatu City Limited** and the 4<sup>th</sup> Interested party indicating that he and his mother are the sole owners and Directors of the 4<sup>th</sup> Interested party, thus prohibiting any further transactions on the properties of the 4<sup>th</sup> and 5<sup>th</sup> Interested parties. That as a result they were charged before the Chief Magistrates Court with the offence relating to forgery, but that the Petitioner filed a Constitutional Reference in attempt to block their criminal prosecution. Further that on **24<sup>th</sup> October** the High Court declined to block their prosecution. That though the High Court later terminated the case, the Court was clear that it did not exonerate them as regards falsified forms. He averred that the 4<sup>th</sup> and 5<sup>th</sup> Respondents lodged an appeal before the Court of Appeal.

It was his contention that he has been advised by his Advocates, that the Honourable Court's enforcement jurisdiction cannot be revoked to reinstate caveats that were lodged by the Petitioner's mother, the 1<sup>st</sup> Interested Party herein using a falsified Companies registry form because giving of false information to the Land Registrar in 2010 which resulted in the registration of the caveats was expressly prohibited under **Section 83** of the repealed registration of Titles Act. He further averred that in **November 2010**, the 4<sup>th</sup> and 5<sup>th</sup> Respondents filed a High Court Case **Civil 561 of 2010**, and sought the removal of the caveats lodged by the 1<sup>st</sup> Interested Party and that the suit was overtaken by events following the administrative removal of the caveats by the 1<sup>st</sup> Respondents following an Application by the 5<sup>th</sup> Respondent on **25<sup>th</sup> May 2012**. That thereafter the 1<sup>st</sup> Interested Party presented an Application before the High Court on **1<sup>st</sup> October 2012**, seeking amongst others an order restraining dealings with several properties belonging to the 4<sup>th</sup> and 5<sup>th</sup> Respondents and an order directing the Registrar of titles to file an affidavit explaining the circumstances of the removal of the caveats. That on the same day, the Court issued an order by consent of the parties preserving the properties pending the outcome of the Winding up Petition that the Petitioner and the 1<sup>st</sup> Interested Party had instituted in **October 2010**. That on **9<sup>th</sup> November 2012**, the 3<sup>rd</sup> Respondent filed an Affidavit before the High Court in her capacity as the Chief Land Registration Officer and explained that due process was followed in the manner in which caveats had been registered against certain properties and removal. That thereafter the 1<sup>st</sup> Interested party withdrew the Application which she had presented to Court on **1<sup>st</sup> October 2012**, following the filing of the Affidavit by the 3<sup>rd</sup> Respondent. That in **March 2013**, the Petitioner and his mother **Rosemary Mwagiru** presented a Petition in High Court Civil Case **ELC NO. 561 of 2010** against the 4<sup>th</sup> and 5<sup>th</sup> Respondent and others challenging the removal of the caveats. He further averred that in the circumstances, the instant Petition amounts to abuse of the process of the Court because the subject matter of this Petition is also directly and substantially in issue in the Petition dated **19<sup>th</sup> March 2013**, pending before the Environment and Land Court in Nairobi.

That vide a letter issued by the Postal Corporation of Kenya on **4<sup>th</sup> October 2018**, it confirmed that a letter was indeed posted at GPO by the Ministry of Lands addressed to **Rosemary Wanjau & Others P.O Box 55 Ruiru**, and that it was dispatched as a single item. That the letter was dispatched in Ruiru Post Office on **10<sup>th</sup> July 2012** and was received in Ruiru on **11<sup>th</sup> July 2012**. That the Post Office issued all notice and the renter of **Box 55 Ruiru** returned the call notice marked as unknown and after expiry of the retention notice it was returned to GPO Nairobi on **26<sup>th</sup> September 2012**. That the Postal Corporation of Kenya averred that because the information contained in the letter dated **11<sup>th</sup> August 2014**, is inaccurate it was premised on an incomplete investigation and that the letter had been recalled and was not to be used as a basis of asserting that the Ministry of Lands did not hand over the letter.

Further that on **1<sup>st</sup> October 2012**, the High Court issued an interim order of injunction preserving the properties of the 4<sup>th</sup> and 5<sup>th</sup> Respondents and that the Winding Up Petitions were dismissed on **18<sup>th</sup> January 2013**, and following the dismissal the Petitioner and the 1<sup>st</sup> Interested Party once again moved the Court seeking to restrain the 4<sup>th</sup> and 5<sup>th</sup> Respondents from dealing with their properties. However, their Application for injunction was dismissed on the basis that amongst other, they did not have a legal interest in the said properties. That they later moved to the Court of Appeal and the Court held that the Petitioner and the 1<sup>st</sup> interested Party should not continue placing impediments in the way of the 4<sup>th</sup> and 5<sup>th</sup> Respondents which would have effects of preventing them from carrying out their projects.

He averred that the Petition amounts to abuse of the Court process since it is a tool designed to reinstate the orders dated **1<sup>st</sup> October 2012**. Further that the Petitioner's efforts to have the caveats replaced administratively, were declined. It was his contention that the Petitioner and the 1<sup>st</sup> Interested Party do not have any legal interest in the properties and the Honourable Court can therefore not reinstate the caveats as the Petitioner has not demonstrated which rights he has over the suit properties. He contended that the Petition is designed to help the Petitioner to force the majority owner to give up enforcement of the LCIA award which was [published on **15<sup>th</sup> February 2015** by the London Court of International Arbitration.

He contended that the Petition was filed after the Principal Secretary Ministry of Lands and Physical Planning Communicated that the Petitioner's attempts to have the caveats placed had been overtaken by events. That the Petitioner has on several other occasions sought to

have injunctions issued and when the orders were not granted, he would withdraw the suit and file another one. Further that his efforts to have the National Assembly make a resolution to have the Petitioner get a larger share of **Tatu City**, he organized people and faked a protest. The Court was urged to dismiss the Petition.

The Parties elected not to file written submissions. The Court has now carefully considered the pleadings and the annexures thereto and finds that the issue for determination is;

- 1. Whether the Petition is Res Judicata**
- 2. Whether the suit is an abuse of the Court process**
- 3. Whether the Petition is merited**

#### **1. Whether the Petition is Res Judicata**

The guiding law on the issue of Res Judicata is **Section 7 of the Civil Procedure Act** which provides that;

**“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”**

From the said provision of law, it is clear that for a matter to be *res judicata*, the same must have been heard and finally determined by a Court of competent jurisdiction. In this instant the Respondents have alleged that the instant Petition is *res judicata* and that there are various other suits that have been filed in various other Courts. However, the Court notes that the Respondents have also acknowledged that the Petitioner and or the 1<sup>st</sup> Interested Party have always sought to withdraw the matter before the same could be heard and determined.

Further that though there are various other matter regarding the same parties that have been heard and determined there is no evidence that the said matter involved the instant cause of action being the removal of the caveats. That the 1<sup>st</sup> Interested Party had however withdrawn a matter that involved the instant cause of action before the same could be heard and finally determined. The Court finds and holds that the Petition is not *res judicata* as there is no evidence of any suit that has been heard and finally determined on the same issues

#### **2. Whether the suit is an abuse of the Court process**

The Respondents have averred that the instant suit is an abuse of the Court process with the 1<sup>st</sup> Respondent averring that the issue between the 4<sup>th</sup> and 5<sup>th</sup> Respondents have already been determined. Further the 4<sup>th</sup> and 5<sup>th</sup> Respondents have also alleged that the Petition is an abuse of the Court process as the 1<sup>st</sup> Interested Party had already sought for the removal of the Caveats in **ELC 561 of 2010** and further brought a Petition in the said suit and a **Thika Petition 5 of 2018**, which Applications they had withdrawn before the same could be heard and determined. The 4<sup>th</sup> and 5<sup>th</sup> Respondents have also alleged that the Petition has only filed the instant Petition to try and force their hands not to enforce an award which was awarded by the London Court of International Arbitration.

The Court of Appeal in the case of ***Muchanga Investments Limited ...Vs... Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] KLR 229***, held that:-

**“The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in *bona fides* and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it..The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice. Examples of the abuse of the judicial process are: -**

- i. Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.**
- ii. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.**
- iii. Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent’s notice.**
- iv. Where there is no iota of law supporting a Court process or where it is premised on frivolity or recklessness.**

It is not in doubt that there are various suits between the same parties that relate to the same cause of action and though the same have not been heard and finally be determined ,they involve the same cause of action and between the same parties. The Court further notes that from the evidence adduced that the suits and or applications are either filed by the Petitioner or the 1<sup>st</sup> Interested Party. Further. It is also not in doubt that the Petitioner had filed another suit before this Court being Petition 5 of 2018 and

withdrew it. Further the Petitioner had sought to withdraw the instant and was only barred by this Court vide a Ruling dated 21<sup>st</sup> June 2019.

The actions of the Petitioner seem to be improper use of the Judicial time and process and that every time the Petitioner files and withdraws a matter, the same will have taken the Judicial time and further engaging the Respondents in litigation which does not seem to end as everytime a suit is filed, the Respondents are forced to defend the same which in the Court's considered view takes up their time and worse, the Petitioners does not have the intention of litigating to the end as evidenced by the withdrawal of Petition 5 of 2018 and immediately filing of the instant suit.

In the case of Nancy Musili ...Vs... Joyce Mbete Katisi [2018] eKLR the Court in citing the case of Stephen Somek Takwenyi & Another ...Vs... David Mbuthia Githare & 2 Others Nairobi (Milimani) HCCC No. 363 of 2009, where the Court held that:-

“This is a power inherent in the court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived. The court has an inherent jurisdiction to preserve the integrity of the judicial process. When the matter is expressed in negative tenor it is said that there is inherent power to prevent abuse of the process of the court. In the civilised legal process it is the machinery used in the courts of law to vindicate a man's rights or to enforce his duties. It can be used properly but can also be used improperly, and so abused. An instance of this is when it is diverted from its proper purpose, and is used with some ulterior motive for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process. But the circumstances in which abuse of the process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes on the extrinsic evidence only. But if and when it is shown to have happened, it would be wrong to allow the misuse of that process to continue. Rules of court may and usually do provide for its frustration in some instances. Others attract res judicata rule. But apart from and independent of these there is the inherent jurisdiction of every court of justice to prevent an abuse of its process and its duty to intervene and stop the proceedings, or put an end to it”.

Therefore, this court finds and holds that the instant Petition is an abuse of the Court process and the said abuse must therefore be prevented by this Court.

### **3. Whether the Petition is merited**

It is the Petitioner's contention that his rights were violated when the Caveats were removed without affording neither him nor the interested parties an opportunity to be heard. His Petition hinges on the fact that the Ministry of Lands never sent out the letter giving the 45 days' notice before the said Caveats could be removed. The Court notes that while making the Applications for the registration of the Caveats, the Applicants listed their address as **P.O Box 55 Ruiru**. It is not in doubt that automatically the right address to which any communication would be sent would be the said address.

Further the Court notes that the Petitioner has averred that the Post Master General had indicated the said letters had not been posted. However, the Court has seen the letter dated **4<sup>th</sup> October 2018 marked as annexure CB 13** by the Post Master General clarifying the issue in which the Post Master General confirmed that the **Ruiru** Post Office confirmed that on **11<sup>th</sup> July 2012**, that a letter was received addressed to the 1<sup>st</sup> Interested Party and others which letter was dispatched, however the renter of **P.O Box 55 Ruiru** returned the Call Notice. Consequently the court finds and holds that the said letter was clearly dispatched to the address that had been supplied by the persons who had placed Caveats on the suit properties.

Further the court notes that the 1<sup>ST</sup> Respondent has alleged that the Caveats were registered upon the Application by the Interested Party. Further, the said Caveats were removed upon following of the due process which involved sending out the 45 days' Notice. The Law requires that when the Land Registrar receives an Application for the removal of the Caveats, that the Interested Parties would then be given a 45 days' notice requiring them to give an explanation as to why the caveat should not be removed. From the affidavits produced as evidence, it is clear that the 45 days' notice to the Interested Parties was sent out upon the Land Registrar receiving an Application from the Law Firm of **Ochieng, Onyango Ohanga & Kibet Advocates**. Further when the Interested parties did not object to the said removal, then the Land Registrar proceeded to remove the said Caveats.

From the above analysis of the available evidence this court is satisfied that due process was followed in the removal of the Caveats. Given that due process was followed, it then follows that the Interested Parties who had put up the Caveats having been duly served with the Notice by the Land Registrar were given an opportunity to be heard as required by the rules of natural Justice.

The Court further notes that as per the evidence, it seems that the letter was never received by the Interested Parties. However, the land Registrar cannot be faulted for having followed the laid down procedure. It is the Interested Parties who had provided the said address and they should shoulder the commissions and/or omissions that come with it.

Having now carefully considered the pleadings herein and the annexures thereto, this court finds the instant Petition not merited and it is an abuse of the court process. Consequently, the court proceeds to dismiss the said petition dated 18<sup>th</sup> June 2018 entirely with costs to the Respondent.

It is so ordered.

*Dated, signed and Delivered at Thika this 15th day of June 2020.*

**L. GACHERU**

**JUDGE**

**15/6/2020**

**Court Assistant – Jackline**

**ORDER**

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**By Consent of :**

**No consent for the Plaintiff**

**No consent for the 1<sup>st</sup> Defendant**

**No consent for the 2<sup>nd</sup> Defendant**

**L. GACHERU**

**JUDGE**

**15/6/2020**