



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 115 OF 2019

MARRIOT AFRICA INTERNATIONAL

LIMITED.....PLAINTIFF/APPLICANT

VERSUS

MARGARET NYAKINYUA MURIGU.....1ST DEFENDANT/RESPONDENT

MARY WANJIKU KANYOTU.....2ND DEFENDANT/RESPONDENT

WILLY KIHARA.....3RD DEFENDANT/RESPONDENT

KANGAITA COFFEE ESTATE

LIMITED.....4TH DEFENDANT/RESPONDENT

AND

UKOMBOZI HOLDINGS LTD.....INTERESTED PARTY

RULING

There are three **Notices of Motion Applications**, for determination. The first Application is the Notice of Motion Application dated **1st July 2019**, by the Plaintiff/ Applicant seeking for orders that:-

1. THAT pending the hearing and determination of this suit, a temporary injunction do issue restraining the 1st, 2nd, 3rd, and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees or anyone authorized by them or acting on their behalf from trespassing on occupying, or in any other manner interfering with, or dealing with all that parcel of land known as L.R 11261/76 or any sub-plot ensuing from its sub-division or any portion thereof.

2. That pending the hearing and determination of this suit , a temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees, or anyone authorized by them or acting on their behalf from evicting, threatening to evict, harassing or in any other manner interfering with the quiet enjoying and user by the plaintiff and other occupants and or other purchasers of all that parcel of land know as L.R 11261/76 or any sub-plot ensuing from its sub-division or any portion thereof.

3. That pending the hearing and determination of this suit , a temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees, or anyone authorized by them or acting on their behalf from issuing any caveats empor or carrying any advertisements in any newspaper or media or by way of any leaflet or similar advertising materials in respect of all that parcel of land know as L.R 11261/76 or any sub-plot ensuing from its sub-division or any portion thereof.

4. That pending the hearing and determination of this suit a temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees, or anyone authorized by them or acting on their behalf from registering any caveat or inhibition against the title to all that that parcel of land known as L.R 11261/76 or any sub-plot ensuing from its sub-division or any portion thereof.

5. That the officer commanding station, Ruiru police station, do assist in the enforcement of the order issued by this honourable court.

6. That the costs of this application be borne by the Defendants in any event.

The Application is premised on the grounds that the Plaintiff/ Applicant is the owner of the suit property having purchased the same pursuant to an agreement dated **5th February 2014**, entered into between itself and **Trendsetters Investments Limited**. That the transfer of the suit property was registered in favour of the Plaintiff/Applicant on **21st August 2014**. Further that the suit property had no encumbrance or inhibition or order that had been registered against it at the time of purchase. That the Plaintiff/Applicant has subdivided the suit property into more than one thousand (**1000**) sub-plots and has since sold a number of the ensuing sub- plots to third parties.

Further that on diverse dates the Defendants/Respondents, purporting to act on behalf of the estate of the late **James Kanyotu**, caused to be placed in the local **Newspapers Advertisements** entitled **Caveat Emptor**, alleging that the suit property belonged to **Kangaita Coffee Estates Limited**, and the estate of the late **James Kanyotu**, but that the said advertisements were fraudulent and misleading as the Plaintiff/Applicant has been the lawful and legally registered owner of the same. Further that the Defendants/Respondents have on various occasions trespassed against the suit property.

It was further contended that in High Court Civil Case Number **461 of 2012**, in **Nairobi**, the **2nd** Defendant/Respondent, confirmed to the court that indeed the said **Kangaita Coffee Estates Limited** had sold the suit property to **Trendsetters Investment Limited**, and that the estate of the late **James Kanyotu**, did not have any claim against the said **Trendsetters Investment Limited**, or any person to whom **Trendsetters Investment Limited** had sold the said parcel of land to. Further that the **3rd** Defendant/Respondent accepted payment of Kenya shilling thirty nine million (**Kshs 39,000,000/=**) as full and final payment and settlement for any claim that he had in respect of the sale of the suit property and therefore, in law cannot purport to challenge the Plaintiff's/Applicant's title to the then **L.R No. 11261/76**. Further that there is real and present danger that unless restrained by Court, the Defendants/Respondents will continue to harass the Plaintiff/Applicant to its detriment.

In his supporting Affidavit sworn on **1st July 2019**, **Abdul Dawood Hassan**, a Director of the Plaintiff/Applicant reiterated the contents of the grounds in support of the Application and further averred that he had been informed by **Sanjay Kishorkumar Mashru**, a Director of **Trendsetters Investment Limited**, which information he believed to be true that by an agreement dated **30th May 2018**, entered into between the **2nd** Defendant/Respondent and **Trendsetters Investments Limited**, the **2nd** Defendant/Respondent confirmed that She had received the sum of **Kshs 65,160,804/=** as her share of the proceeds from the sale of the said parcel of land, **L.R 11261/76**, from **Trendsetters Investments Limited** and in consideration of a further sum of **Kshs 30,000,000/=**, she would irrevocably and permanently withdraw all pending litigations between herself together with the estate of the late **James Kanyotu**, in respect of any claim against the suit property .

The **2nd** Defendant/Respondent **Mary Wanjiku Kanyotu**, swore a Replying Affidavit dated **11th July 2019**, in opposition to the application dated **1st July 2019**, by the Plaintiff. She averred that there was an Application pending hearing and determination before the **Family Division** in Nairobi in **Succession Cause No. 1239 of 2008**. She further averred that the suit property has been subdivided into several sub plots, and sold to third parties and said sale and transfers shall continue unless the Court intervenes.

It was her contention that the act of purportedly signing the agreement by her was allegedly done before a lawyer known as **Odhiambo M.T Adala**, one year before the agreement was entered into as her signature was allegedly witnessed in **2011**, while the sale was allegedly conducted in **2012**.

The Application is further opposed by the **3rd** Defendant/ Respondent who swore a Replying Affidavit dated **22nd July 2019**, and averred that he is one of beneficiary of the Estate of **James Kanyotu** and further averred that he is in support of the Application by the **1st** and **2nd** Defendants/ Respondents dated **15th July 2019**. It was his contention that the Plaintiff/ Applicant did not get a clean title. Further that the alleged initial Sale Agreement of the suit property between the alleged former owner **Trendsetters Investments Limited** and **Kangaita Coffee Estate Limited** dated **19th April 2012**, indicates that **Trendsetters Investments Limited** was only buying a part of the property and that there was going to be subdivision of the suit property. That there is no way the Plaintiff/Applicant herein would have been able to acquire ownership of the whole suit property while the party it allegedly bought the property from, did not have full ownership of the said property.

He further averred that **James Kanyotu** (deceased) was the majority shareholder of **Kangaita Coffee Estate limited**, and that there is pending a Succession Cause number **1239 of 2008**, at the **High Court Nairobi, Family Division**, where there are several subsisting Court Orders barring any dealing in the deceased's property, pending the determination of the said Succession Cause. He contended that when **Trendsetter Investments Limited**, allegedly bought part of the suit property, there was a specific inhibition registered on the title of the suit property, but **Trendsetter Investments Limited**, through **HCCC No. 461 of 2012**, mischievously sued the **Registrar of Land** and the **Attorney General** for the removal of the inhibition, but did not enjoin the **Estate of James Kanyotu** or any of the Defendants herein who are Administrators and beneficiaries of the said estate. That the said Trendsetters investments Ltd got exparte orders and eventually exparte Judgment for the unlawful removal of the inhibition on the suit property.

He further averred that the exparte orders and Judgement were issued without **Jurisdiction** and the same was confirmed by the Commercial Division of the High Court on the **16th May 2019**, where the court noted that it had no jurisdiction to issue the initial exparte orders removing the inhibition by the Family Division in a Succession Cause. He further averred that **Trendsetter Investments Limited**, stated in the attached title deed to the Plaintiff's/Applicant's Supporting Affidavit that it paid **Kshs 350,000,000/=**, while the attached sale agreement indicates that it bought part of the suit property for **kshs 700,000,000/=** a clear illegality. He further contended that the suit property is currently worth **Kshs 10,000,000,000/=** and was worth more than what is stated by the **Plaintiff** and that **Trendsetter Investments Limited** did not get the requisite consent to transfer the land from the Commissioner of Lands.

It was his further contention that one of the Directors of the Plaintiff/Applicant, who signed on the Sale Agreement between the Plaintiff/Applicant and **Trendsetter Investments Limited** named as **Amos Otieno Adwera**, does not appear as one of the Directors of

Plaintiff/Applicant in the CR12. He further averred that the Plaintiff/Applicant has not attached any documentation or supporting evidence showing how it paid **Kshs.700,000,000/=** to **Trendsetter Investments Limited** and how **Trendsetter Investments Limited** paid **kshs.700,000,000/= or kshs 350,000,000/=** to **Kangaita Coffee Estate Limited**.

It was his contention that the prayers sought by the Plaintiff/ Applicant is to prevent the Defendants/ Respondents from issuing Caveat Emptors are unattainable, because as beneficiaries and Administrators of the Estate of **James Kanyotu**, they have an inherent right to claim, fight for and agitate for all properties belonging to the said Estate and the said right cannot be curtailed.

Further that neither him nor the 2nd Defendant were owners of the suit property and therefore, they had no right or authority to sell the same and could not have sold it. He also averred that he received the cheque from **Kamlesh Pattni** in the presence of **Mr. Odhiambo M.T Adala, Advocate**, and that he was being given the money to persuade him to cease pursuing the recovery of the suit property, but that he failed in his persuasion and he therefore denied relinquishing any right

He alleged that one **Jane Gathoni Muraya**, one of the administrators of the Estate of **James Kanyotu** admitted in open court that she gave the title deed of the suit property to **Kamlesh Pattni**, as collateral for a **Kshs.50,000,000/=** loan and that the said action was illegal as it was not sanctioned by the Succession Court. He denied that the Defendants/ Respondents have any contract with the Plaintiff /Applicant or any other person in regards to the suit property, capable of being breached.

The 4th Defendant/Respondent swore a Replying Affidavit dated **13th August 2019**, in opposition to the Application dated **1st July 2019**, through **Mary Wanjiku Kanyotu**, one of the Directors of the 4th Defendant. She averred that the suit property has been subdivided into several sub plots, and transferred to third parties and the same shall continue being transferred unless the court intervenes.

It was her contention that the suit property was sold **illegally** as it was registered in the name of **Kangaita Estate Limited** and it formed part of the Estate of **James Kanyotu** and that orders were issued irregularly by **Justice Mutava**, vacating the orders issued in the Succession Cause which led to the alleged sale of this parcel of land. It was her contention that **Amos Otieno Adwera**, signed the Sale Agreement between the Plaintiff and **Trendsetters Investments Limited**, bringing into question the validity of the sale agreement and subsequent transactions pertaining to the suit property. She alleged that her signature on the sale agreement was imported from an agreement that she had signed in **2011**, for a different Sale transaction. She attached the same to the sale agreement and contended that the suit property forming part of the Estate of the late **James Kanyotu**, could not be sold without the Succession Court in **Succession Cause No. 1239 of 2008**, granting an Order for the sale and consequently supervising the transaction. Further that an offer of purchase of the suit property ought to have been issued to the beneficiaries for their consent. She acknowledged that she received about Kenya shillings **sixty five million (kshs 65,000,000/=)** in her account which she indicated in the **Succession Cause No. 1239 Of 2008**. She further averred that only 10% of parcel of land has been sold and that titles purportedly issued are under investigations because from the sale agreements with the purchasers, the Vendor of the suit property is known as **Ukombozi Holding Limited** and not the Plaintiff /Applicant herein. It was her contention that they published in the local dailies a **Caveat Emptor** advertisements to secure the estate from waste. She denied that she had stated that the Estate of **James Kanyotu** did not have any claim against the Interested Party. Further that the documents attached as **Exhibit ADH9**, should be expunged from the records as they are misleading.

On **14th August 2019**, **Jim Kenny Kimani**, a Director of the Interested Party swore an Affidavit in support of the Plaintiff's/ Applicant's Application and in response to the 2nd Defendant's/ Respondent's Replying Affidavit and averred that the **Interested Party** was incorporated to enable members of the **Deliverance Church** and other individuals acquire real estate property He also averred that the Interested Party conducted **due diligence** prior to its purchase of the suit property and has since caused the subdivision of the suit property. Further that the subdivisions were in accordance with the law and that the **Plaintiff/Applicant** and the **Interested Party** are in possession of the suit property. That the 2nd Defendant/ Respondent received monies towards the purchase and cannot complain of disparities in the contract. It was his contention that the suit property was never owned by the Estate of **James Kanyotu** and reiterated that the 4th Defendant/ Respondent is subject to the Company's Act

The 2nd Application is the one dated **15th July 2019**, by the 1st and 2nd Defendants seeking for orders that;

1. Spent

2. That a permanent injunction be issued restraining the Defendants whether by itself, themselves and or their agents, servants, employees or anyone authorized by it and acting on its behalf from trespassing on, occupying, transferring, intermeddling, advertising for the sale, disposing off, letting, leasing, building or otherwise howsoever interfering with the ownership of title or in any other manner interfering with or dealing with all that parcel of land known as L.R. No. 11261/76 and any sub plots ensuing from its alleged subdivision or any portion thereof pending the hearing and determination of the counterclaim as stated below.

1.L.R.11261/78	252.L.R.11261/327	503.L.R.11261/578	754.L.R.11261/827
2.L.R.11261/79	253.L.R.11261/328	504.L.R 11261/579	755.L.R.11261/828
3.L.R 11261/80	254.L.R 11261/329	505.L.R 11261/580	756.L.R 11261/829
4.L.R 11261/81	255.L.R 11261/330	506.L.R 11261/581	757.L.R 11261/830

5.L.R.11261/82	256.L.R.11261/331	507.L.R.11261/582	758.L.R.11261/831
6.L.R.11261/83	257.L.R.11261/332	508.L.R.11261/583	759.L.R.11261/832
7.L.R.11261/84	258.L.R.11261/333	509.L.R.11261/584	760.L.R.11261/833
8.L.R.11261/85	259.L.R.11261/334	510.L.R.11261/585	761.L.R.11261/834
9.L.R.11261/86	260.L.R.11261/335	511.L.R.11261/586	762.L.R.11261/835
10.L.R.11261/87	261.L.R.11261/336	512.L.R.11261/587	763.L.R.11261/836
11.L.R.11261/88	262.L.R.11261/337	513.L.R.11261/588	764.L.R.11261/837
12.L.R.11261/89	263.L.R.11261/338	514.L.R.11261/589	765.L.R.11261/838
13.L.R.11261/90	264.L.R.11261/339	515.L.R.11261/590	766.L.R.11261/839
14.L.R.11261/91	265.L.R.11261/340	516.L.R.11261/591	767.L.R.11261/840
15.L.R.11261/92	266.L.R.11261/341	517.L.R.11261/592	768.L.R.11261/841
16.L.R.11261/93	267.L.R.11261/342	518.L.R.11261/593	769.L.R.11261/842
17.L.R.11261/94	268.L.R.11261/343	519.L.R.11261/594	770.L.R.11261/843
18.L.R.11261/95	269.L.R.11261/344	520.L.R.11261/595	771.L.R.11261/844
19.L.R.11261/96	270.L.R.11261/345	521.L.R.11261/596	772.L.R.11261/845
20.L.R.11261/97	271.L.R.11261/346	522.L.R.11261/597	773.L.R.11261/846
21.L.R.11261/98	272.L.R.11261/347	523.L.R.11261/598	774.L.R.11261/847
22.L.R.11261/99	273.L.R.11261/348	524.L.R.11261/599	775.L.R.11261/848
23.L.R.11261/100	274.L.R.11261/349	525.L.R.11261/600	776.L.R.11261/849
24.L.R.11261/101	275.L.R.11261/350	526.L.R.11261/601	777.L.R.11261/850
25.L.R.11261/102	276.L.R.11261/351	527.L.R.11261/602	778.L.R.11261/851
26.L.R.11261/103	277.L.R.11261/352	528.L.R.11261/603	779.L.R.11261/852
27.L.R.11261/104	278.L.R.11261/353	529.L.R.11261/604	780.L.R.11261/853
28.L.R.11261/105	279.L.R.11261/354	530.L.R.11261/605	781.L.R.11261/854
29.L.R.11261/106	280.L.R.11261/355	531.L.R.11261/606	782.L.R.11261/855
30.L.R.11261/107	281.L.R.11261/356	532.L.R.11261/607	783.L.R.11261/856
31.L.R.11261/108	282.L.R.11261/357	533.L.R.11261/608	784.L.R.11261/857
32.L.R.11261/109	283.L.R.11261/358	534.L.R.11261/609	785.L.R.11261/858

33.L.R.11261/110	284.L.R.11261/359	535.L.R.11261/610	786.L.R.11261/859
34.L.R.11261/111	285.L.R.11261/360	536.L.R.11261/611	787.L.R.11261/860
35.L.R.11261/112	286.L.R.11261/361	537.L.R.11261/612	788.L.R.11261/861
36.L.R.11261/113	287.L.R.11261/362	538.L.R.11261/613	789.L.R.11261/862
37.L.R.11261/114	288.L.R.11261/363	539.L.R.11261/614	790.L.R.11261/863
38.L.R.11261/115	289.L.R.11261/364	540.L.R.11261/615	791.L.R.11261/864
39.L.R.11261/116	290.L.R.11261/365	541.L.R.11261/616	792.L.R.11261/865
40.L.R.11261/117	291.L.R.11261/366	542.L.R.11261/617	793.L.R.11261/866
41.L.R.11261/118	292.L.R.11261/367	543.L.R.11261/618	794.L.R.11261/867
42.L.R.11261/119	293.L.R.11261/368	544.L.R.11261/619	793.L.R.11261/868
43.L.R.11261/120	294.L.R.11261/369	545.L.R.11261/620	794.L.R.11261/869
44.L.R.11261/121	295.L.R.11261/370	546.L.R.11261/621	795.L.R.11261/870
45.L.R.11261/122	296.L.R.11261/371	547.L.R.11261/622	796.L.R.11261/871
46.L.R.11261/123	297.L.R.11261/372	548.L.R.11261/623	797.L.R.11261/872
47.L.R.11261/124	298.L.R.11261/373	549.L.R.11261/624	798.L.R.11261/873
48.L.R.11261/125	299.L.R.11261/374	550.L.R.11261/625	799.L.R.11261/874
49.L.R.11261/126	300.L.R.11261/375	551.L.R.11261/626	800.L.R.11261/875
50.L.R.11261/127	301.L.R.11261/376	552.L.R.11261/627	801.L.R.11261/876
51.L.R.11261/128	302.L.R.11261/377	553.L.R.11261/628	803.L.R.11261/877
52.L.R.11261/129	303.L.R.11261/378	554.L.R.11261/629	804.L.R.11261/878
53.L.R.11261/130	304.L.R.11261/379	555.L.R.11261/630	805.L.R.11261/879
54.L.R.11261/131	305.L.R.11261/380	556.L.R.11261/631	806.L.R.11261/880
55.L.R.11261/132	306.L.R.11261/381	557.L.R.11261/632	807.L.R.11261/881
56.L.R.11261/133	307.L.R.11261/382	558.L.R.11261/634	808.L.R.11261/882
57.L.R.11261/134	308.L.R.11261/383	559.L.R.11261/635	809.L.R.11261/883
58.L.R.11261/135	309.L.R.11261/384	560.L.R.11261/636	810.L.R.11261/884
59.L.R.11261/136	310.L.R.11261/385	561.L.R.11261/637	811.L.R.11261/885
60.L.R.11261/137	311.L.R.11261/386	562.L.R.11261/638	812.L.R.11261/886

61.L.R.11261/138	312.L.R.11261/387	563.L.R.11261/639	813.L.R.11261/887
62.L.R.11261/139	313.L.R.11261/388	564.L.R.11261/640	814.L.R.11261/889
63.L.R.11261/140	314.L.R.11261/389	565.L.R.11261/641	815.L.R.11261/890
64.L.R.11261/141	315.L.R.11261/390	566.L.R.11261/642	816.L.R.11261/891
65.L.R.11261/142	316.L.R.11261/391	567.L.R.11261/643	817.L.R.11261/892
66.L.R.11261/143	317.L.R.11261/392	568.L.R.11261/644	818.L.R.11261/893
67.L.R.11261/144	318.L.R.11261/393	569.L.R.11261/645	819.L.R.11261/894
68.L.R.11261/145	319.L.R.11261/394	570.L.R.11261/646	820.L.R.11261/895
69.L.R.11261/146	340.L.R.11261/395	571.L.R.11261/647	821.L.R.11261/896
70.L.R.11261/147	341.L.R.11261/396	572.L.R.11261/648	822.L.R.11261/897
71.L.R.11261/148	342.L.R.11261/397	573.L.R.11261/649	823.L.R.11261/898
72.L.R.11261/149	343.L.R.11261/398	574.L.R.11261/650	824.L.R.11261/899
73.L.R.11261/150	345.L.R.11261/399	575.L.R.11261/651	825.L.R.11261/900
74.L.R.11261/151	346.L.R.11261/400	576.L.R.11261/652	826.L.R.11261/901
75.L.R.11261/152	347.L.R.11261/401	577.L.R.11261/653	827.L.R.11261/902
76.L.R.11261/153	348.L.R.11261/402	578.L.R.11261/654	828.L.R.11261/903
77.L.R.11261/154	349.L.R.11261/403	579.L.R.11261/655	829.L.R.11261/904
78.L.R.11261/155	350.L.R.11261/404	580.L.R.11261/656	830.L.R.11261/905
79.L.R.11261/156	351.L.R.11261/405	581.L.R.11261/657	831.L.R.11261/906
80.L.R.11261/157	352.L.R.11261/406	582.L.R.11261/658	832.L.R.11261/907
81.L.R.11261/158	353.L.R.11261/407	583.L.R.11261/659	833.L.R.11261/908
82.L.R.11261/159	354.L.R.11261/408	584.L.R.11261/660	834.L.R.11261/909
83.L.R.11261/160	355.L.R.11261/409	585.L.R.11261/661	835.L.R.11261/910
84.L.R.11261/161	356.L.R.11261/410	586.L.R.11261/662	836.L.R.11261/911
85.L.R.11261/162	357.L.R.11261/411	587.L.R.11261/663	837.L.R.11261/912
86.L.R.11261/163	358.L.R.11261/412	588.L.R.11261/667	838.L.R.11261/913
87.L.R.11261/164	359.L.R.11261/413	589.L.R.11261/668	839.L.R.11261/914
89.L.R.11261/165	360.L.R.11261/415	590.L.R.11261/669	840.L.R.11261/915

90.L.R.11261/166	361.L.R.11261/416	591.L.R.11261/670	841.L.R.11261/916
91.L.R.11261/167	362.L.R.11261/417	592.L.R.11261/671	842.L.R.11261/917
92.L.R.11261/168	363.L.R.11261/418	593.L.R.11261/672	843.L.R.11261/918
93.L.R.11261/169	364.L.R.11261/419	594.L.R.11261/673	844.L.R.11261/919
94.L.R.11261/170	365.L.R.11261/420	595.L.R.11261/674	845.L.R.11261/920
95.L.R.11261/171	366.L.R.11261/421	596.L.R.11261/675	846.L.R.11261/921
96.L.R.11261/172	367.L.R.11261/422	597.L.R.11261/675	847.L.R.11261/923
97.L.R.11261/173	368.L.R.11261/423	598.L.R.11261/677	848.L.R.11261/924
99.L.R.11261/174	369.L.R.11261/424	599.L.R.11261/678	849.L.R.11261/925
100.L.R.11261/175	370.L.R.11261/425	600.L.R.11261/679	850.L.R.11261/926
101.L.R.11261/176	371.L.R.11261/426	601.L.R.11261/680	851.L.R.11261/927
102.L.R.11261/177	372.L.R.11261/427	602.L.R.11261/681	852.L.R.11261/928
103.L.R.11261/178	373.L.R.11261/428	603.L.R.11261/682	853.L.R.11261/929
104.L.R.11261/179	374.L.R.11261/429	604.L.R.11261/683	854.L.R.11261/930
105.L.R.11261/180	375.L.R.11261/430	605.L.R.11261/684	855.L.R.11261/931
106.L.R.11261/181	376.L.R.11261/431	606.L.R.11261/685	856.L.R.11261/932
107.L.R.11261/182	377.L.R.11261/432	607.L.R.11261/686	857.L.R.11261/933
108.L.R.11261/183	378.L.R.11261/433	608.L.R.11261/687	858.L.R.11261/934
109.L.R.11261/184	379.L.R.11261/434	609.L.R.11261/688	859.L.R.11261/935
110.L.R.11261/185	380.L.R.11261/435	610.L.R.11261/689	860.L.R.11261/936
112.L.R.11261/186	381.L.R.11261/436	611.L.R.11261/690	861.L.R.11261/937
113.L.R.11261/187	382.L.R.11261/437	612.L.R.11261/691	862.L.R.11261/938
114.L.R.11261/188	383.L.R.11261/438	613.L.R.11261/692	863.L.R.11261/939
115.L.R.11261/189	384.L.R.11261/439	614.L.R.11261/693	864.L.R.11261/940
116.L.R.11261/190	385.L.R.11261/440	615.L.R.11261/694	865.L.R.11261/941
117.L.R.11261/191	386.L.R.11261/441	616.L.R.11261/695	866.L.R.11261/942
118.L.R.11261/192	387.L.R.11261/442	617.L.R.11261/696	867.L.R.11261/943
119.L.R.11261/193	388.L.R.11261/443	618.L.R.11261/697	868.L.R.11261/944

120.L.R.11261/194	389.L.R.11261/444	619.L.R.11261/698	869.L.R.11261/945
121.L.R.11261/195	390.L.R.11261/445	620.L.R.11261/699	870.L.R.11261/946
122.L.R.11261/196	391.L.R.11261/446	621.L.R.11261/700	871.L.R.11261/947
123.L.R.11261/197	392.L.R.11261/447	622.L.R.11261/701	872.L.R.11261/948
124.L.R.11261/198	393.L.R.11261/448	623.L.R.11261/702	873.L.R.11261/949
125.L.R.11261/199	394.L.R.11261/449	624.L.R.11261/703	874.L.R.11261/950
126.L.R.11261/200	395.L.R.11261/450	625.L.R.11261/704	875.L.R.11261/951
127.L.R.11261/201	396.L.R.11261/451	626.L.R.11261/705	876.L.R.11261/952
128.L.R.11261/202	397.L.R.11261/452	627.L.R.11261/706	877.L.R.11261/953
129.L.R.11261/203	398.L.R.11261/453	628.L.R.11261/708	878.L.R.11261/954
130.L.R.11261/204	399.L.R.11261/454	629.L.R.11261/709	879.L.R.11261/955
131.L.R.11261/205	400.L.R.11261/455	630.L.R.11261/710	880.L.R.11261/956
132.L.R.11261/206	401.L.R.11261/456	631.L.R.11261/711	881.L.R.11261/957
133.L.R.11261/207	402.L.R.11261/457	632.L.R.11261/712	882.L.R.11261/958
134.L.R.11261/208	403.L.R.11261/458	633.L.R.11261/713	883.L.R.11261/959
135.L.R.11261/209	404.L.R.11261/459	634.L.R.11261/714	884.L.R.11261/960
136.L.R.11261/210	405.L.R.11261/460	635.L.R.11261/715	885.L.R.11261/961
137.L.R.11261/211	406.L.R.11261/461	636.L.R.11261/716	886.L.R.11261/962
138.L.R.11261/212	407.L.R.11261/462	637.L.R.11261/717	887.L.R.11261/963
139.L.R.11261/213	408.L.R.11261/463	638.L.R.11261/718	888.L.R.11261/964
140.L.R.11261/214	409.L.R.11261/464	639.L.R.11261/719	889.L.R.11261/965
141.L.R.11261/215	410.L.R.11261/465	640.L.R.11261/720	890.L.R.11261/966
142.L.R.11261/216	411.L.R.11261/466	641.L.R.11261/721	891.L.R.11261/967
143.L.R.11261/217	412.L.R.11261/467	642.L.R.11261/722	892.L.R.11261/968
144.L.R.11261/218	413.L.R.11261/468	643.L.R.11261/723	893.L.R.11261/969
145.L.R.11261/219	414.L.R.11261/469	644.L.R.11261/724	894.L.R.11261/970
146.L.R.11261/220	415.L.R.11261/470	645.L.R.11261/725	895.L.R.11261/971
147.L.R.11261/221	416.L.R.11261/471	646.L.R.11261/726	896.L.R.11261/972

148.L.R.11261/222	417.L.R.11261/472	647.L.R.11261/727	897.L.R.11261/973
149.L.R.11261/223	418.L.R.11261/473	648.L.R.11261/728	898.L.R.11261/974
150.L.R.11261/224	419.L.R.11261/474	649.L.R.11261/729	899.L.R.11261/975
151.L.R.11261/225	420.L.R.11261/475	650.L.R.11261/730	900.L.R.11261/976
152.L.R.11261/226	421.L.R.11261/476	651.L.R.11261/731	901.L.R.11261/977
153.L.R.11261/227	422.L.R.11261/477	652.L.R.11261/732	902.L.R.11261/978
154.L.R.11261/228	423.L.R.11261/478	653.L.R.11261/733	903.L.R.11261/979
155.L.R.11261/229	424.L.R.11261/479	654.L.R.11261/734	904.L.R.11261/980
156.L.R.11261/230	425.L.R.11261/480	655.L.R.11261/735	905.L.R.11261/981
157.L.R.11261/231	426.L.R.11261/481	656.L.R.11261/736	906.L.R.11261/982
158.L.R.11261/232	427.L.R.11261/482	657.L.R.11261/737	907.L.R.11261/983
159.L.R.11261/233	428.L.R.11261/483	658.L.R.11261/738	908.L.R.11261/984
160.L.R.11261/234	429.L.R.11261/484	659.L.R.11261/739	909.L.R.11261/985
161.L.R.11261/235	430.L.R.11261/485	660.L.R.11261/740	910.L.R.11261/986
162.L.R.11261/236	431.L.R.11261/486	661.L.R.11261/741	911.L.R.11261/987
163.L.R.11261/237	432.L.R.11261/487	662.L.R.11261/742	912.L.R.11261/988
164.L.R.11261/238	433.L.R.11261/488	663.L.R.11261/743	913.L.R.11261/989
165.L.R.11261/239	434.L.R.11261/489	664.L.R.11261/744	914.L.R.11261/990
166.L.R.11261/240	435.L.R.11261/490	665.L.R.11261/745	915.L.R.11261/991
167.L.R.11261/241	436.L.R.11261/491	666.L.R.11261/746	916.L.R.11261/992
168.L.R.11261/242	437.L.R.11261/492	667.L.R.11261/747	917.L.R.11261/993
169.L.R.11261/243	438.L.R.11261/493	668.L.R.11261/748	918.L.R.11261/994
170.L.R.11261/244	439.L.R.11261/494	669.L.R.11261/749	919.L.R.11261/995
171.L.R.11261/245	440.L.R.11261/495	670.L.R.11261/750	920.L.R.11261/996
172.L.R.11261/246	441.L.R.11261/496	671.L.R.11261/751	921.L.R.11261/997
173.L.R.11261/247	442.L.R.11261/497	672.L.R.11261/752	922.L.R.11261/998
174.L.R.11261/248	443.L.R.11261/498	673.L.R.11261/753	923.L.R.11261/999
175.L.R.11261/249	444.L.R.11261/499	674.L.R.11261/754	924.L.R.11261/1000

176.L.R.11261/250	445.L.R.11261/500	675.L.R.11261/755	925.L.R.11261/1002
177.L.R.11261/251	446.L.R.11261/501	676.L.R.11261/756	926.L.R.11261/1003
178.L.R.11261/252	447.L.R.11261/502	677.L.R.11261/757	927.L.R.11261/1004
179.L.R.11261/253	448.L.R.11261/503	678.L.R.11261/758	928.L.R.11261/1005
180.L.R.11261/254	449.L.R.11261/504	679.L.R.11261/759	929.L.R.11261/1006
181.L.R.11261/255	450.L.R.11261/505	680.L.R.11261/760	930.L.R.11261/1007
182.L.R.11261/256	451.L.R.11261/506	681.L.R.11261/761	931.L.R.11261/1008
183.L.R.11261/257	452.L.R.11261/507	682.L.R.11261/762	932.L.R.11261/1009
184.L.R.11261/258	453.L.R.11261/508	683.L.R.11261/762	933.L.R.11261/1010
185.L.R.11261/259	454.L.R.11261/509	684.L.R.11261/764	934.L.R.11261/1011
186.L.R.11261/260	455.L.R.11261/510	685.L.R.11261/765	935.L.R.11261/1012
187.L.R.11261/261	456.L.R.11261/512	686.L.R.11261/766	936.L.R.11261/1013
188.L.R.11261/262	457.L.R.11261/513	687.L.R.11261/767	937.L.R.11261/1014
189.L.R.11261/263	458.L.R.11261/514	689.L.R.11261/768	938.L.R.11261/1015
190.L.R.11261/264	459.L.R.11261/515	690.L.R.11261/769	939.L.R.11261/1016
191.L.R.11261/265	460.L.R.11261/516	691.L.R.11261/770	940.L.R.11261/1017
192.L.R.11261/266	461.L.R.11261/517	692.L.R.11261/771	941.L.R.11261/1018
193.L.R.11261/267	462.L.R.11261/518	693.L.R.11261/772	942.L.R.11261/1019
194.L.R.11261/268	463.L.R.11261/519	694.L.R.11261/773	943.L.R.11261/1020
195.L.R.11261/269	464.L.R.11261/520	695.L.R.11261/774	944.L.R.11261/1021
196.L.R.11261/270	465.L.R.11261/521	696.L.R.11261/775	945.L.R.11261/1022
197.L.R.11261/271	466.L.R.11261/522	697.L.R.11261/776	946.L.R.11261/1023
198.L.R.11261/272	467.L.R.11261/523	698.L.R.11261/777	947.L.R.11261/1024
199.L.R.11261/273	468.L.R.11261/524	699.L.R.11261/778	948.L.R.11261/1025
200.L.R.11261/274	469.L.R.11261/525	700.L.R.11261/779	949.L.R.11261/1026
201.L.R.11261/275	470.L.R.11261/526	701.L.R.11261/780	950.L.R.11261/1027
202.L.R.11261/276	471.L.R.11261/527	702.L.R.11261/781	951.L.R.11261/1028
203.L.R.11261/277	472.L.R.11261/528	703.L.R.11261/782	952.L.R.11261/1029

204.L.R.11261/278	473.L.R.11261/529	704.L.R.11261/783	953.L.R.11261/1030
205.L.R.11261/279	474.L.R.11261/530	705.L.R.11261/784	954.L.R.11261/1031
206.L.R.11261/280	475.L.R.11261/531	706.L.R.11261/785	955.L.R.11261/1032
207.L.R.11261/281	476.L.R.11261/532	708.L.R.11261/786	956.L.R.11261/1033
208.L.R.11261/282	477.L.R.11261/533	709.L.R.11261/787	957.L.R.11261/1034
209.L.R.11261/283	478.L.R.11261/534	710.L.R.11261/788	958.L.R.11261/1035
210.L.R.11261/284	479.L.R.11261/535	711.L.R.11261/789	959.L.R.11261/1036
211.L.R.11261/285	480.L.R.11261/536	712.L.R.11261/790	960.L.R.11261/1037
212.L.R.11261/286	481.L.R.11261/537	713.L.R.11261/791	961.L.R.11261/1038
213.L.R.11261/287	482.L.R.11261/538	714.L.R.11261/792	962.L.R.11261/1039
214.L.R.11261/288	483.L.R.11261/539	715.L.R.11261/793	963.L.R.11261/1040
215.L.R.11261/289	484.L.R.11261/540	716.L.R.11261/794	964.L.R.11261/1041
216.L.R.11261/290	485.L.R.11261/541	717.L.R.11261/795	965.L.R.11261/1042
217.L.R.11261/300	486.L.R.11261/542	718.L.R.11261/796	966.L.R.11261/1043
218.L.R.11261/301	487.L.R.11261/543	719.L.R.11261/797	967.L.R.11261/1044
219.L.R.11261/302	488.L.R.11261/544	720.L.R.11261/798	968.L.R.11261/1045
220.L.R.11261/303	489.L.R.11261/545	721.L.R.11261/799	969.L.R.11261/1046
221.L.R.11261/304	490.L.R.11261/546	722.L.R.11261/800	970.L.R.11261/1047
222.L.R.11261/305	491.L.R.11261/547	723.L.R.11261/801	971.L.R.11261/1048
223.L.R.11261/306	492.L.R.11261/548	724.L.R.11261/802	972.L.R.11261/1049
224.L.R.11261/307	493.L.R.11261/549	725.L.R.11261/803	973.L.R.11261/1050
225.L.R.11261/308	494.L.R.11261/550	726.L.R.11261/804	974.L.R.11261/1051
226.L.R.11261/309	495.L.R.11261/551	727.L.R.11261/805	975.L.R.11261/1052
227.L.R.11261/310	495.L.R.11261/552	728.L.R.11261/806	976.L.R.11261/1053
228.L.R.11261/311	497.L.R.11261/553	729.L.R.11261/807	977.L.R.11261/1054
229.L.R.11261/312	498.L.R.11261/554	730.L.R.11261/808	978.L.R.11261/1055
230.L.R.11261/313	499.L.R.11261/555	731.L.R.11261/809	979.L.R.11261/1056
231.L.R.11261/315	500.L.R.11261/556	732.L.R.11261/810	980.L.R.11261/1057

232.L.R.11261/316	501.L.R.11261/557	733.L.R.11261/811	981.L.R.11261/1058
233.L.R.11261/317	502.L.R.11261/558	734.L.R.11261/812	982.L.R.11261/1059
234.L.R.11261/318	503.L.R.11261/559	735.L.R.11261/813	983.L.R.11261/1060
235.L.R.11261/319	504.L.R.11261/560	736.L.R.11261/814	984.L.R.11261/1061
236.L.R.11261/320	505.L.R.11261/561	737.L.R.11261/815	985.L.R.11261/1062
237.L.R.11261/321	506.L.R.11261/562	738.L.R.11261/816	986.L.R.11261/1063
238.L.R.11261/322	507.L.R.11261/563	739.L.R.11261/817	987.L.R.11261/1064
239.L.R.11261/323	508.L.R.11261/564	740.L.R.11261/818	988.L.R.11261/1065
240.L.R.11261/324	509.L.R.11261/565	741.L.R.11261/819	989.L.R.11261/1066
241.L.R.11261/325	510.L.R.11261/566	742.L.R.11261/820	990.L.R.11261/1067
242.L.R.11261/326	511.L.R.11261/567	743.L.R.11261/821	991.L.R.11261/1068

3. That an inhibition order to be registered against any or all titles that have been issued pursuant to the alleged transfers and subsequent subdivisions of L.R. No. 11261/76, Ruiru including but not limited to plots listed in prayer 2 above;

4. That the honourable court be pleased to order that the County Police Commander, Kiambu County do assist in enforcing the said orders.

5. That the costs of this application be provided for;

The Application is premised on the grounds that that there is a suit pending determination in Succession Cause **No. 1239 of 2008**, where distribution of the estate is yet to be done. Further that there was another suit, being **HCC No. 461 of 2012**, instituted by the 2nd Defendant named in the counter-claim which has since been concluded by the Court's ruling dated **18th May 2019**, in which it held that it had no jurisdiction to hear and determine any of the issues brought before it as it was not an **Environment & Land Court**. Further that there is likelihood of further wasting, transfer, sale of the suit premises and the public being duped unless the Court grants the order sought since the Defendants/Applicants are likely to suffer irreparable loss if the said orders are not granted.

In support of the Application, **Margaret Nyakinyua Murigu** one of the Administrators of the Estate of the late **James Kanyotu** swore a Supporting Affidavit dated **15th July 2019**. She averred that there was an illegal sale of the suit property vide an alleged Sale Agreement dated **19th April 2012**. It was her contention that the suit property was registered in the name of **Kangaita Coffee Estate Limited**, and formed part of the estate of **James Kanyotu** and it has been the subject of a Court Order issued by court in **Succession Cause No.1239 of 2008**. She denied that her co-administrator, the 2nd Defendant/Applicant together with **John Kariuki Kanyotu** signed a Sale Agreement between **Kangaita Coffee Estate limited** and **Trendsetter Investments Limited** and averred that the 2nd Applicant's signature on the sale Agreement is a forgery, as it has obvious inconsistencies. Further that though from the CR12, the Plaintiff/ Applicant Company, has different Directors, it was a different Director that signed the alleged sale Agreement, bringing into question its authenticity. She further averred that no amount were deposited into any of the Estate's accounts for distribution to the beneficiaries or settlement of the estate debts. She denied knowledge of any agreement dated **5th February 2014**, for the sale of the suit property.

Further that in Succession Cause no. **1239 of 2008**, **Justice Luka Kimaru** ruled that the purported Directors had no authority to sell or transact and that there are several Court Orders, prohibiting any dealing or sale of estate's property, unless by way of **court order or consents** of the parties. She further averred that the transfers which were effected were done illegally as no **Land Control Board Consent** was issued. That the Plaintiff/Applicant had already subdivided and sold a small portion of the original **LR No. 11261/76**, and that the illegal sale must be stopped as the sale was meant to ensure that the suit property ceased to exist so as to disenfranchise the beneficiaries of the estate of the late **James Kanyotu**.

Jim Kenny Kimani, a Director of the Interested Party swore a Replying Affidavit in response to the 1st Defendant's application dated **15th July 2019**. It was his contention that he has been advised by the Interested Party's advocates on record that **permanent injunction** which is also a **perpetual injunction** is granted upon the hearing of the suit, as it settles the dispute with finality which are the orders sought by the 1st & 2nd Defendants in their application dated **15th July 2019**. He averred that **Trendsetters Investments Limited**, were obligated to deal with

the Directors of the 4th Defendant/Respondent and the payments made in accordance to the terms of the contract. Further that the Interested Party purchased the suit property from the Plaintiff and that there was a clear term of the said Sale Agreement that the Interested Party shall upon the execution of the agreement cause subdivision of the suit property and offer the subplots for sale to third parties and payments be used to pay the purchase price. That the subdivision was in compliance with the law and was approved by the necessary authorities and that the Interested Party is in the process of transferring titles to third parties. It was his contention that the property as claimed by the 1st Defendant does not exist and any orders over such property will be an exercise in futility and unenforceable.

He further averred that the Plaintiff/Applicant and Interested party have been in possession of the suit property and the Defendants/Respondents do not have any claim over the suit property as the same is legally registered under the Plaintiff. He contended that the advertisements placed by the Defendants on the diverse dates in 2018 and 2019 purporting that the suit property belonged to the 4th Defendant/Respondent was misleading and without basis. It was his contention that he had been advised by the Law Firm of **Guandaru Thuita and Co. Advocates**, whose advice he believed to be true that the 4th Defendant/Respondent (**Kangaita Coffee Estate limited**) is subject to the Companies Act and more specifically the principle of Corporate Personality.

He alleged that the signature of the 2nd Defendant/Respondent in the affidavit is similar to the signature in the sale agreement between 4th Defendant/Respondent and **Trendsetters Investments Limited** and similar to the signature on cheques produced as annexures. He further averred that the 2nd Defendant received various amount of money which she confirmed to have received. It was his contention that at no point was the suit property owned by the **Estate of James Kanyotu**, but was at all materials times owned by the 4th Defendant/Respondent.

Abdul Dawood Hassan, swore a Further Affidavit in response to the Replying Affidavit by the 3rd Defendant filed on 22nd July 2019. It was his contention that the 3rd Defendant/Respondent has no claim to the suit property as he is neither a shareholder in the 4th Defendant/Respondent nor is he an administrator of the Estate of the late **James Kanyotu**. He averred that the Plaintiff/ Applicant got a clean title free from any encumbrances and/or inhibitions. He alleged that the 3rd Defendant/Respondent is, for the very first time, seeking to challenge a sale agreement that was validly executed over seven years ago. He also contended that the suit land was, owned by the 4th Defendant/Respondent which is a legal, separate and distinct entity from its promoters, Directors, members, shareholders, creditors, guarantors, suppliers, and financiers.

Further that the Court Orders alluded to by the 3rd Defendant/Respondent, do not touch on sale of the suit land, but rather on the transfer of any share held by the estate of the late **James Kanyotu** in the 4th Defendant, which is the Company that owned the suit land by the persons so named in the order and therefore there was no **Court Order** prohibiting the sale of the suit land to **Trendsetters Investment Limited** by the Directors of the 4th Defendant and to prevent the **beneficiaries** of the Estate of the late **James Kanyotu**, from disposing the deceased's personal properties and /or share in various Companies in which he is a shareholder without the consent of the court.

He further averred that on the 18th July 2012, and 25th July 2012, all inhibitions that had been registered on the title to the suit title were cancelled by a **Court order** issued by **Justice Mutava**, leaving the suit title free from any encumbrances at the time the suit land was transferred to **Trendsetter Investment Limited**. Further that in **HCCC No. 461 of 2012**, in its ruling dated 16th May 2017, the Court refused to grant the Applicants (1st and 2nd Defendant herein) the orders sought as it lacked jurisdiction to hear and determine the matter and thus downed its tools meaning that the cancellation orders issued on the 18th day of July 2012 and 25th day of July 2012 are still in effect.. He further averred that the 1st -3rd Defendants herein being either the Administratrix and/ or the beneficiaries of the said Estate don't have any **legal right/locus standi** to bring a claim over the suit land, the only remedy available to the administratrix of the said estate is to lodge a claim over the shareholding held by the estate of the late **James Kanyotu** with the directors of the 4th Defendant herein.

The 3rd Defendant **Willy Kihara Njoki Kanyotu** in his Further Affidavit sworn on 30th September 2019, contended that the issue is that the suit property was never sold to the Plaintiff/ Applicant nor to **Trendsetters Investment Limited**. He further averred that it is clear from the agreement allegedly between **Trendsetters Limited** and **Kangaita Coffee Estate**, that the former was only buying a portion of the suit property.

He further alleged that the suit property belongs to the 4th Defendant and thus the 1st Defendant had no capacity or authority to sell it and there would be no way the Plaintiff/ Applicant would have gotten a clean title from **Trendsetters Investments Limited**. He denied that the suit property was ever sold and that although the Interested Party allege to be the owner of the suit property, the same has never been transferred to them. It was his contention that the Interested Party has not provided any proof of payment and cannot as it did not pay the amount. He urged the Court to allow the Application dated 15th July 2019, and dismiss the Plaintiff's/Applicant's Application dated 1st July 2019.

The 3rd Application is the Notice of Motion Application dated 20th January 2020 by the Plaintiff/ Applicant seeking for orders that;

- 1. THAT this Honourable Court be pleased to forthwith strike out the 1st and 2nd Defendants Counter claim dated 15th July 2019 as it is statutorily time barred by virtue of the provision of the Limitations of Actions Act.*
- 2. THAT pursuant to the above the Verifying Affidavit attached to the Counter claim therein be struck out.*
- 3. THAT as a result the 1st and 2nd Defendants Counter Claim as against the Plaintiff be dismissed in its entirety.*
- 4. THAT consequently, the order issued on 22nd August 2019 by this Honourable Court maintaining the status quo be set aside.*
- 5. THAT the Cost of the Counter claim and of the Application be provided for.*

The Application is premised on the grounds that the sale of the suit property was validly and legally concluded by way of sale agreement on **19th April 2012**, and subsequently the legal title to the suit property was validly transferred to **Trendsetters Investments Limited**, who then sold the same to the Plaintiff. That since then, the 1st and 2nd Defendants have never challenged the legality or validity of the said agreement through litigation in any Court. That **Section 4 (1) (a) of the Limitations of Actions Act** prohibits bringing of any action founded in Contract after the end of **6 years**. Further that the 1st and 2nd Defendants are for the first time in nearly a decade challenging the Sale Agreement that was concluded in **2012**, vide their Counter Claim dated **16th July 2019**.

Further that the 2nd Defendant confirmed in a sworn Affidavit dated **11th June 2018**, filed in **HCCC 461 of 2012**, that she is a Director of **Kangaita Coffee Estates Limited**, and that she signed the sale agreement dated **19th April 2012**, that the suit property was sold to **Trendsetters Investments Limited**, by the 4th Defendant, that she and her son **John Kanyotu**, are the Directors who executed the Sale Agreement, that the sale of the suit property was duly sanctioned by the **Board of Directors** and that she withdrew any claims that she had against the suit property by withdrawing her Application dated **22nd September 2016**.

It was further contended that the 2nd Defendant/Respondent has in an agreement dated **30th May 2018**, confirmed that she received **Kshs. 65,160,804/=** as her share of proceeds from the sale and in consideration of **Kshs. 30,000,000/=** she would withdraw all pending litigations. Further that the 3rd Defendant accepted **Ksh. 39,000,000/=** in final settlement of any claim. Further that the Defendants having chosen to deliberately sleep on their rights, should not be aided by the Court as such an inordinate delay defeats the cardinal principle of equity. That the Counter Claim having been filed out of time amounts to an overt waste of judicial time as the Counter claim is hinged on the sale Agreement. Further that since the Defendants have no legal claim as against the Plaintiff over the suit property, the order issued on **22nd August 2019**, maintaining the **status quo** is negatively affecting the constitutionality guaranteed to third parties to lawful and quiet enjoyment of the sub plots ensuing from the suit land.

In his supporting Affidavit sworn on **20th January 2020**, **Abdul Dawood Hassan** reiterated the contents of the grounds in support of the Application and averred that the 1st and 2nd Defendants/ Respondents have erroneously filed a Counter Claim against the Plaintiff/ Applicant. He averred that the actions of the Defendants/Respondents amount to perjury as they confirm through various affidavits that they lack any legal claim against the suit property, while challenging the validity of the Sale Agreement. It was his contention that taking into account the gross value of the suit property, it is inconceivable that any persons claiming Illegality on a sale agreement concluded in **2012**, would sit on their rights for an excessive period. He further averred that the Defendants have been trying to acquire the suit property through extra judicial means by threatening the subplots owners with eviction notices and warning the public with dealing with the same.

In opposing the Application, the 2nd Defendant/ Respondent swore a Replying Affidavit on **12th June 2020**, averred that the Court has exercised its jurisdiction over the matter founded in **Section 7 of the Limitations of Actions Act**. It was her contention that they are within the stipulated time to file a claim against the Plaintiff/ Applicant for recovery of land belonging to **Kangaita Coffee Estate Limited**, whose **alter ego** is the late **James Kanyotu**. She averred that it is in the best interest that the suit is preserved pending the hearing and determination of the suit. She further averred that there are developments still ongoing and the said action is in blatant disregard of the orders issued by the Court.

The Application is further opposed and the 3rd Defendant/ Respondent swore a Replying Affidavit on **11th May 2020**, and averred that the Plaintiff/ Applicant is trying to divert the attention of the Court from dealing with the main suit. He contended that the Plaintiff/ Applicant continues to be in contempt of the **status quo orders** issued and therefore the Application is an abuse of the Court process. He denied that the Application is based on the alleged sale agreement dated **19th April 2012**, and averred that the Counter Claim is an action for recovery of land and hence not affected by **section 4 of the Limitation of Actions Act**. It was his contention that the Plaintiff/ Applicant has already admitted that **HCCC No. 461 of 2012**, challenged the transfer of the suit property and therefore the allegations that the Defendants/ Respondents were sleeping on their rights are untrue. He further relied on his Replying Affidavit sworn on **22nd July 2019**.

The Plaintiff/ Applicant through **Abdul Dawood Hassan** swore a Further Affidavit sworn on **10th August 2020**, and averred that the Counter Claim is based on the alleged illegality of the Sale Agreement dated **19th April 2012** that led to the transfer of the suit property. It was his further contention that it is only the 4th Defendant/ Respondent who can file an action on the legality of the sale or an action to recover the suit property as the 1st and 2nd Defendants (Plaintiffs in the Counter Claim) lack **locus standi** to bring any action with regard to the suit property. It was his contention that the Estate of the late **James Kanyotu**, was only a shareholder in the 4th Defendant/ Respondent and therefore the suit property cannot have been estate property. He further contended that the Counter claim as filed is solely hinged on the claim that the sale agreement that led to the sale and transfer of the suit property was a forgery and thus not properly executed by the Directors of the 4th Defendant/ Respondent. He urged the Court to allow the Application.

The Court directed that the three applications be canvassed together thus this ruling. The three Applications were canvassed by way of written submissions to which the Court has now carefully read and considered and renders itself as follows:-

It is not in doubt that the suit property initially belonged to **Kangaita Coffee Estates**, the 4th Defendant herein. It is also not in doubt that by an alleged Sale Agreement dated **19th April 2012**, the said 4th Defendant allegedly sold the suit property to **Trendsetters Investments Limited** who in turn sold the suit property to the Plaintiff. It is further not in doubt that the suit property is currently registered in the name of the Plaintiff/Applicant and that the said suit property has since been sold to the Interested Party. Further the suit property has been subdivided into various subplots and that some of the subplots have since been sold to other third parties who have either commenced construction or have fully constructed on the said sub plots.

Though the Plaintiff / Applicant has averred that it legally and validly bought the suit property and that it has since sold the same to the Interested Party with an understanding that the purchase price would be collected from the subsequent purchase from the subplots, it is the Defendants contention that the suit property was not validly sold as the parties who sold the said suit property did not have authority to sell the same. That the said suit property formed part of the Estate of the Late **James Kanyotu**, and there was no Court consent granting the

same. It is not in doubt that the 2nd and 3rd Defendants received some monies allegedly as part of purchase price for the sale of the suit property and that they had sworn affidavits and agreements claiming that they had no interest over the suit property. The Court further notes that there are various issues that are contradictory and contentious. Further the Court notes that the said contentious issues cannot be decided upon based on affidavit evidence. The said issues will have to be determined upon production of evidence during the main hearing.

The Plaintiff and the 1st and 2nd Defendants have filed two separate Applications seeking for temporary injunction orders. Further the Plaintiff has also filed an Application seeking to strike out the **Counter Claim** by the 1st and 2nd Defendants, based on the fact that they did not have **locus standi** to bring the same and further that since the 1st and 2nd Defendants are seeking to challenge the legality of a contract of sale that was entered into in the year 2012, then the same is barred by **Section 4 (1) (a) of the Limitation of Actions**. The court finds the issues for determination are as follows;

1. Whether the Application dated 20th January 2020 is merited.

2. Whether the Application dated 1st July 2019 is merited.

3. Whether the Application dated 15th July 2019 is merited.

1. Whether the Application dated 20th January 2020 is merited

The Plaintiff/ Applicant in its Application has averred that the Court Claim is time barred and has therefore urged the Court to strike it out and dismiss the same. Further the Plaintiff/ Applicant had also sought for the verifying Affidavit to be struck out. In its Further Affidavit and submissions, the Plaintiff/ Applicant also called into question the capacity of the 1st and 2nd Defendants to bring the suit. It is the 3rd Defendant's/Respondent's contention that the said **Counter claim** is not on the illegality of the contract and that the same can only be limited by **Section 7 of the Limitations of Actions Act**, as the said claim is for the recovery of the land. The 2nd Defendant/Respondent also filed a Replying Affidavit in opposition to the Application and contended that they are well within their stipulated time to file the claim against the Plaintiff for recovery of the land belonging to **Kangaita Coffee Estate Limited**.

Whether or not what is being challenged is the illegality of the Contract or the recovery of the suit property, the **locus standi** of the 1st and 2nd Defendants to sue has been called to question. The Court must first determine whether the 1st and 2nd Defendants/Respondents have the requisite **locus** to bring the Counter claim. This is so because the capacity of the parties to bring the Counter claim goes to the jurisdiction of the Court to deal with the matter. The Court notes that the said issue of jurisdiction was raised in the Plaintiff's/ Applicant's further Affidavit and submissions and given that an issue of jurisdiction can be raised at any point even on appeal, the Court is obligated to determine the said issue first. See the case of **Phoenix of E.A. Assurance Company Limited ...Vs.. S. M. Thiga t/a Newspaper Service [2019] eKLR** where the Court of Appeal stated that;

“In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.”

It is not in doubt that the 4th Defendant/Respondent herein was the initial owner of the suit property. Further that the 1st and 2nd Defendants/ Respondents are claiming on behalf of the Estate of the Late **James Kanyotu**, who was the majority shareholder of the said Company. The 4th Defendant/Respondent herein is a **Limited Liability Company**, capable of suing and being sued on its own. The 1st and 2nd Defendants/ Respondents being Administrators of the Estate of the late **James Kanyotu** are therefore representing the shareholder in the said Company. In the case of **Priscilla Jesang Koech ...Vs... Rebecca Koech & 3 Others [2018] eKLR**, the Court held that;

*“Locus standi is the cornerstone of any case. Before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued. In the case of **BV Law society of Kenya vs Commissioner of Lands & Others, Nakuru High Court, Civil Case No. 464 of 2000**. It was held that:*

If a party has no locus standi, then the said party cannot bring a suit to court. The issue of locus standi goes to the root of any suit and the said issue of locus standi is a point of law which is capable of disposing of a matter.’

It is not in doubt that the 1st and 2nd Defendants/ Respondents being Administrators of the Estate of the Late **James Kanyotu** are therefore bringing the suit as shareholder of **Kangaita Coffee Estate Limited**. It is important to note that the said **Kangaita Coffee Estate Ltd** is a Company that is distinct from its shareholders. The 1st and 2nd Defendants/ Respondents have alleged that they have brought the Counter claim seeking to recover the suit property belonging to **Kangaita Coffee Estate Limited**, whose alter ego is **James Kanyotu** However, only the Company has capacity to take action on its own as its separate from its shareholders. See the case of **Omondi ...Vs... National Bank of Kenya Limited and Others [2001] EA 177**, where the court held:-

“The property of the company is distinct from that of its shareholders and the shareholders have no proprietary rights to the company's property apart from the shares they own. From that basic consequence of incorporation flows another principle: only the company has capacity to take action to enforce its legal rights.”

Therefore, it is the Court's considered view that the 1st and 2nd Defendants/ Respondents do not have the requisite **locus standi** to bring the Counter claim. The Plaintiff/ Applicant had further sought for striking out of the Counter claim and the Verifying Affidavit on the grounds that the same is barred by **Section 4(1) (a) the Limitations of Actions Act**. However, since the Court has already held that the 1st and 2nd Defendants/Respondents do not have **locus standi** to bring the suit, then the said issue has already been spent and the Court finds no reason to deal with the same.

From the above analysis, the Court finds and holds that the Notice of Motion Application dated **20th January 2020**, is merited and the same is allowed in terms of prayers **no. 4, 5 & 6** of the said Application as the 1st and 2nd Defendants lack **locus standi** to bring the Counter Claim.

2. Whether the Application dated 1st July 2019 is merited

The Plaintiff/ Applicant has sought for various orders amongst them temporary interlocutory Injunctions restraining the Defendants from dealing with the suit property, preventing them from threatening the parties in the suit properties with evictions and from further registering any caveat emptors advertisements or inhibitions.

The Applicant having sought for injunctive orders is only entitled to either grant or denial of the same at this stage. It is not in doubt that there has been contradictory and contentious issues that have been raised by both parties that require proper interrogation during the main trial, by calling of evidence, testing the same through cross examination and arrival of determination of the said contentious issues. However, the suit is still at an interlocutory stage and the Court cannot deal with the merit of the case at this stage. See the case of **Airland Tours and Travel Ltd...Vs...National Industrial Credit Bank, Milimani HCCC No.1234 of 2003**, where the Court held that:-

“In an Interlocutory application, the Court is not required to make any conclusive or definitive findings of facts or law, most certainly not on the basis of contradictory affidavit evidence or disputed proposition of law.”

In determining whether to grant or not to grant the orders of injunction as sought, the court is guided by the principles set out in the case of **Giella ...Vs... Cassman Brown Co Ltd (1973)EA 358**, and which have later been repeated in other judicial decisions. See the case of **Kibutiri...Vs...Kenya Shell, Nairobi High Court, Civil Case No.3398 of 1980 (1981) KLR**, where the Court held that:-

“The conditions for granting a temporary injunction in East Africa are well known and these are: First, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience. See also E.A Industries ..Vs...Trufoods (1972) EA 420.”

It is therefore the duty of the Applicant to establish that it has a *prima-facie* case with probability of success. A *prima-facie* case was described in the case of of **Mrao Ltd...Vs...First American Bank of Kenya Ltd & Others (2003)KLR**, to mean:-

“A case in which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

Has the Plaintiff/ Applicant herein established a prima facie case? It is not in doubt that the Plaintiff/ Applicant is the registered owner of the suit property that has since been subdivided into subplots. Though the Defendants/ Respondents have refuted this and alleged that the said title was acquired fraudulently, the said contention cannot be settled at this juncture. As already stated above, these are contentious and contradictory statements of facts that cannot be determined at this stage. This Court will have to determine the same at the main hearing. However, as a registered owner, the Plaintiff/Applicant is deemed to be an **absolute and indefeasible** proprietor whose proprietorship can only be challenged as provided by the law. See **Section 26(1)(a)&(b)** of the **Land Registration Act**.

Prima facie, being the registered owner of the suit property, the Plaintiff/Applicant has therefore established that it has an interest over the suit property. The Plaintiff/Applicant being the prima facie owner of the suit property and given that it has further alleged that the Defendants/ Respondents are interfering with their use and enjoyment over the said suit property, then it is not in doubt that its rights over the suit property (being the right of being in quiet possession) have allegedly been infringed upon by the Defendants/ Respondents by the various adverts and Caveat Emptors that have been placed in the Newspapers. Consequently, the court finds and holds that the Plaintiff/ Applicant has established a prima facie case with probability of success as its rights can only be curtailed in accordance with the law.

On whether the Plaintiff/ Applicant will suffer irreparable loss which cannot be compensated by an award of damages;- ***‘Irreparable loss’*** was described in the case of **Paul Gitonga Wanjau...Vs...Gathuthi Tea Factory Co. Ltd & 2 Others, Nyeri HCC No.28 of 2015**, as ***simply injury or harm that cannot be compensated by damages and would be continuous.***

It is not in doubt that the Plaintiff/ Applicant is in possession of the suit property. If for any reason the Plaintiff/ Applicant is put out of possession and taking into account that there have been various developments on the suit property and after the main hearing the Plaintiff/ Applicant becomes the successful litigant, this court finds and holds that the Plaintiff/Applicant will suffer irreparable harm that cannot be compensated by way of damages. It is trite that a crystallized right which is violated cannot be equated to compensation by damages. See the Case of **Niaz Mohammed Janmohammed...Vs...Commissioner for Lands & 4 Others (1996) eKLR**, where the Court held that:-

“It is no answer to the prayer sought, that the Applicant may be compensated in damages. No amount of money can compensate

the infringement of such right or atone for transgression against the law, if this turns out to have been the case. These considerations alone would entitle the Applicant to the grant of the orders sought.”

Equally in this case, the Court finds that if the Plaintiff/Applicant’s rights are infringed, and no amount of money can compensate such infringement. For the above reasons, the Court finds that the Plaintiff/Applicant has established that it is likely to suffer **irreparable loss** and/or injury which cannot be adequately compensated by an award of damages.

On the third limb wherein if the Court is in doubt, then it ought to determine the matter on the balance of convenience, the Court finds that the balance of convenience always tilts in favour of maintaining the **status quo**. It is not in doubt that this matter raises serious conflicts of facts. Further it is not in doubt that a temporary injunction is meant to preserve and protect the suit property. See the case of **Exclusive Estates Ltd...Vs.... Kenya Posts & Telecommunications Corporation & Another, Civil Appeal No.62 of 2004** where the court held that:-

“A temporary injunction is issued in a suit to preserve the property in dispute in the suit of the rights of parties under determination in a suit pending the disposal of the suit, to preserve the subject matter”

Further in the case of **Virginia Edith Wambui...Vs....Joash Ochieng Ougo, Civil Appeal No.3 of 1987 (1987) eKLR**, the Court of Appeal held that:-

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial.”

Further in the case **Paul Gitonga Wanjau ...Vs... Gathuthi Tea Factory Company Ltd & 2 others (2016) eKLR**, the Court dealing with the issue on balance of convenience expressed itself thus:-

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance on convenience lies.”

In this instant matter, the Court finds and holds that the **status quo** ought to be maintained and the **status quo** herein is that which existed before the wrongful act. The wrongful act herein is the interference of the suit property by the Defendants/Respondents.

Having now carefully considered the available evidence, the Court finds and holds that the **Notice of Motion Application** dated **1st July 2019**, as brought by the Plaintiff/ Applicant is **merited** and the same is allowed entirely with costs.

4. Whether the Notice of Motion Application dated 15th July 2019 is merited.

The 1st and 2nd Defendants/ Applicants in this Application have sought for various orders . Though in its submissions the Defendants/ Applicants submitted that they had sought for a temporary injunction, from their Application the Defendants/ Applicants have indeed sought for a permanent injunction. It is trite that parties are bound by their pleadings. In this instance, the Defendants/ Respondents having sought for permanent injunction, they are therefore bound by their pleadings.

A permanent injunction cannot be granted at an interlocutory stage. However, it can only be granted upon production of evidence and after the evaluation of the merit of the said evidence. See the case of **Kenya Power & Lighting Co. Limited ...Vs... Sheriff Molana Habib [2018] eKLR** the Court held that;

‘A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

A permanent injunction is different from a temporary/ interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

Having considered the available evidence herein, this Court holds and finds that the 1st & 2nd Defendants / Applicants are not entitled to the prayers sought in the Notice of Motion Application dated **15th July 2019**.

Further the Defendants/ Applicants have sought for an inhibition. An inhibition order is similar to temporary injunctive orders. See the case of **Dorcas Muthoni & 2 others ...Vs... Michael Ireri Ngari [2016] eKLR** where the Court stated that;

“An order of inhibition issued under Section 68 of the Land Registration Act is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further

orders or until the suit in which the said property is a subject is disposed off. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial.”

The Court must then determine whether the 1st and 2nd Defendants/ Applicants have met the required threshold as set out in the case of **Giella ...Vs...Cassman Brown (supra)**. The Defendants/Applicants would then need to prove that they have a prima facie case with a probability of success.

As already held above by the Court, the 1st and 2nd Defendants/ Applicants are Administrators of the Estate of the late **James Kanyotu** who was a shareholder of **Kangaita Coffee Estate Ltd** and therefore represent him as a shareholder. It is not in doubt that as a shareholder, the said Estate does not have any proprietary interest over the suit property as the same belongs to the Company and it held all the rights and privileges over the same. For a party to establish a prima facie case, the party must first establish that it has interest over the said property that such right has been infringed or that is likely to be infringed.

In this instant suit, the court finds and holds that the Applicants have not proved that they have any interest over the suit property that is likely to be infringed as they lack capacity to act on behalf of the 4th Defendant as shareholders. For these reasons this Court further finds and holds that the 1st and 2nd Defendants/ Applicants have not established a **prima facie** case, with probability of success at the trial.

Having failed to establish a prima facie case, the Court finds and holds that the Applicants are **not** entitled to the inhibition orders sought herein. For the Court to grant the temporary injunctive orders, a party must be able to satisfy all the three principles as the same are sequential in nature and failing to satisfy one then automatically the other two limbs must fail. See the case of **Kenya Commercial Finance & Co. Ltd...Vs... Afraha Education Society (2001) 1EA 86**, where the Court held that:-

*“The sequence of granting an interlocutory injunction is firstly that an Applicant must show a prima-facie case with probability of success if this discretionary remedy will inure in his favour. Secondly, that such an injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury; and thirdly where the court is in doubt it will decide the application on a balance of convenience. See **Giella..vs..Cassman Brown & Co. Ltd 1973 EA pg 360 Letter E. The conditions are sequential so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed.(emphasis mine).”***

This court has analyzed the available evidence and it has come to a conclusion that the Notice of Motion Application brought by the 1st and 2nd Defendants/ Applicants dated 15th July 2019, is not merited and the said application is dismissed entirely with costs.

Having now carefully considered the available evidence, the written submissions and the cited authorities, the Court finds that the Plaintiff's/Applicant's **Notice of Motion Application** dated 1st July 2019, is merited and the same is allowed in terms of the following orders;

1. THAT pending the hearing and determination of this suit, a temporary injunction do issue restraining the 1st, 2nd, 3rd, and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees or anyone authorized by them or acting on their behalf from trespassing on occupying, or in any other manner interfering with, or dealing with all that parcel of land known as L.R 11261/76 or any sub-plot ensuring from its sub-division or any portion thereof.

2. That pending the hearing and determination of this suit , a temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees, or anyone authorized by them or acting on their behalf from evicting, threatening to evict, harassing or in any other manner interfering with the quiet enjoying and user by the plaintiff and other occupants and or other purchasers of all that parcel of land know as L.R 11261/76 or any sub-plot ensuing from its sub-division or any portion thereof.

3. That pending the hearing and determination of this suit , a temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees, or anyone authorized by them or acting on their behalf from issuing any caveats emptor or carrying any advertisements in any newspaper or media or by way of any leaflet or similar advertising materials in respect of all that parcel of land know as L.R 11261/76 or any sub-plot ensuing from its sub-division or any portion thereof.

4. That pending the hearing and determination of this suit a temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Defendants jointly and severally, whether by themselves, their agents, servants, employees, or anyone authorized by them or acting on their behalf from registering any caveat or inhibition against the title to all that that parcel of land known as L.R 11261/76 or any sub-plots ensuing from its sub-division or any portions thereof.

5. That the officer commanding station, Ruiru police station, do assist in the enforcement of the order issued by this honourable court.

6. That the costs of this application be borne by the Defendants in any event.

Further, the Court finds and holds that the **Notice of Motion Application** dated 20th January 2020, is also merited. On the issue of whether the Counter Claim is time barred by provisions of **Section 4 (1) (a) of the Limitations of Actions Act**, the Court found and held that the 1st and 2nd Defendants do not have **locus standi** and therefore there is no reason to deal with the issue of Limitation. For avoidance of doubt the orders that are allowed in relation to the Application dated 20th January 2020, are;

1. *THAT as a result, the 1st and 2nd Defendants Counter Claim as against the Plaintiff be and is hereby dismissed in its entirety.*
2. *The Order issued on 22nd August 2019 by this Court of Maintaining status quo and barring any party from dealing with the suit property be and is hereby set aside.*
3. *THAT the Costs of the Counter claim and of the Application be borne by the Defendants/Applicants*

However, the Court further finds and holds that 1st and 2nd Defendants'/ Applicants' **Notice of Motion Application** dated 15th July 2019, is **not** merited and the same is dismissed entirely with costs.

It is so ordered.

Dated, signed and Delivered at Thika this 24th day of September, 2020

L. GACHERU

JUDGE

24/9/2020

Court Assistant – Lucy

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 **15th March 2020**, this **Ruling** 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.

With Consent of and virtual appearance via Video conference

Mr. Nyiha for the Plaintiff/Applicant

Mrs Akedi for the 1st, 2nd and 4th Defendants/Respondents/Applicants

Mr. Ruiru for the 3rd Defendant/Respondent

Mr. Guandarua Thuita and Waweru for the Interested Party

L. GACHERU

JUDGE

24/9/2020