



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 27 OF 2020

ENASO ENE PARISUE.....1ST PLAINTIFF

ROTIKEN OLE MERIT OLTOKOKOI.....2ND PLAINTIFF

(Suing on behalf of the estate of OLTOKOKOI MERIT KATIYU (DECEASED))

VERSUS

JOSEPH BRADLEY WAWERU GITARI.....1ST DEFENDANT

LANGATA PRESYTERIAN INVESTMENT LTD.....2ND DEFENDANT

TITLE BY WAY OF COUNTERCLAIM

JOSEPH BRADLEY WAWERU GITARI.....1ST DEFENDANT

VERSUS

ENASO ENE PARISUE.....1ST DEFENDANT

ROTIKEN OLE MERIT OLTOKOKOI.....2ND DEFENDANT

(Suing on behalf of the estate of OLTOKOKOI MERIT KATIYU (DECEASED))

WILLIAM SONYOI OLTOKOKOI.....3RD DEFENDANT

JOHNSON NKATISON OLTOKOKOI.....4TH DEFENDANT

(Sued as the Administrators of the Estate of OLTOKOKOI MERIT KATIYU (DECEASED))

JOB NYASIMI MOMANYI.....5TH DEFENDANT

LAND REGISTRAR, KAJIADO.....6TH DEFENDANT

RULING

What is before Court for determination is the 1st Defendant’s Notice of Motion application dated the 19th June, 2020; the Plaintiffs’ and 5th Defendant in the Counterclaim’s Notice of Motion application dated the 1st July, 2020; and 2nd Defendant’s Notice of Motion application dated 2nd July, 2020. In the 1st Defendant’s Notice of Motion application which is brought pursuant to Articles 22 and 23 (3) (b) & (c) of the Constitution; Section 13(7) (a) & (b) of the Environment and Land Court Act as well as Order 40 Rule 1 of the Civil Procedure Rules, the 1st Defendant seeks for an injunction against the Plaintiffs including the 1st, 2nd, 3rd, 4th & 5th Defendants in the Counterclaim from interfering

with land parcel number Kajiado/ Kaputiei North/ 43967 pending the outcome of the suit and Counterclaim. Further, that the Plaintiffs and the 1st, 2nd, 3rd, 4th and 5th Defendants in the Counterclaim remove their structures on land parcel number Kajiado/ Kaputiei North/ 43967 pending the outcome of the suit and counterclaim. The 1st Defendant further seeks the 6th Defendant in the Counterclaim to be restrained from registering a further restriction, caution or caveat or making any entries on the register for land parcel number Kajiado/ Kaputiei North/ 43967 pending the hearing and determination of the suit as well as the Counterclaim. The application is premised on the grounds on the face of it and the supporting affidavit of JOSEPH BRADLEY WAWERU GITARI where he avers that he is the registered proprietor of land parcel number Kajiado/ Kaputiei North/ 800 which he purchased from the 3rd and 4th Defendants in the Counterclaim in their capacity as Administrators to the estate of the late Oltokokoi Katiyu (deceased). Further, he is now the proprietor of land parcel number Kajiado/ Kaputiei North/ 43967. He explains that he adhered to all the legal processes before purchasing the said land. Further, he proceeded to subdivide Kajiado/ Kaputiei North/ 800 into 43966 and 43967 respectively. He confirms selling Kajiado/ Kaputiei North/ 43966 to the 2nd Defendant in January, 2013, that paid him the full purchase price. He insists the 1st to 4th Defendants in the Counterclaim were always aware the suit land was sold to him and he took vacant possession in September, 2006. Further, in the year 2016 the 2nd Defendant fenced its portion and he also decided to reinforce his portion. He avers that in August, 2016, the Administrators filed a Complaint with the Directorate of Criminal Investigations against him vide OB No. 18/ 19/ 8/ 2016 in relation to his purchase of the suit land and a restriction was placed thereon. Further, they realized after investigation that the said allegations were false and baseless. He claims it is thereafter that the Kajiado High Court Misc. Cause No. 18 of 2019 in the matter of the estate of Oltokokoi Merit Katiyu (Deceased) was filed wherein they sought to set aside the Confirmed Grant issued on 8th June, 2006 which Grant was set aside on 23rd April, 2020. He disputes the fact that the Defendants are destitutes and have no place to reside on and provided a list of their other parcels of land. He contends that after the Ruling of the High Court on 23rd April, 2020, the 1st to 4th Defendants in the Counterclaim with advice from the 5th Defendant invaded his land, cut down trees and erected temporary structures therein culminating in his reporting them to Isinya Police Station vide OB 26/23/05/2020 who thereafter intervened. He states that the 5th Defendant proceeded to register a further restriction on his land without consulting him.

The Plaintiffs' and 5th Defendant in the Counterclaim's Notice of Motion application is dated the 1st July, 2020 brought pursuant to Sections 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act; Section 3 of the Environment and Land Court Act; Order 1 Rule 10 (2) & (4), Order 2 Rule 15 and Order 5 Rule 17 (4) of the Civil Procedure Rules. They seek the Court to set aside Order no. 2 issued on 23rd June, 2020 or review/revise/ vary the same to read 'status quo'. Further, the Plaintiffs seek leave to amend the Plaint to enjoin the buyers who purchased portions of the suit property from the 2nd Defendant, and serve the summons including pleadings upon the enjoined Defendants by way of substituted service through a newspaper advertisement. They further seek for the 5th Defendant in the Counterclaim to be struck off the proceedings herein with his costs to be borne by Ochieng James Oduol practising under admission number P. 105/1615/87 in the style of TRIPLE OK LAW LLP. The application is based on the grounds on the face of it and the supporting affidavits of ENASO ENE PARISUE MALEI the 1st Plaintiff and JOB NYASIMI MOMANYI the 5th Defendant in the counterclaim. The 1st Plaintiff deposes that she is one of the administrators to the estate of OLTOKOKOI MERIT KATIYU (deceased) having been appointed on 23rd April, 2020. She confirms that vide High Court Misc Cause No. 18 of 2019, the Court nullified the Certificate of Confirmation of Grant and made an order that they file a suit in this Court for cancellation of the title deeds issued by the 6th Defendant in respect to their deceased father's estate. She contends that the Orders issued on 23rd June, 2020 have been overtaken by events as together with their families, they are in occupation of the suit land and have nowhere else to live. She further confirms that her brothers moved to reside in the suit land and erected temporary structures thereon, after the High Court nullified the Certificate of Confirmation of Grant which gave the 1st and 2nd Defendants' their title deeds. She insists the 1st Defendant acknowledges their occupation of the suit land. She denies interfering with the trees and insists there is none planted thereon. Further, that prior to their occupation, there was no development on the suit land. She contends that together with her family, they do not intend to sell or charge the suit land. She reiterates that the orders issued on 23rd June, 2020 are akin to eviction which ought not to issue, as the 1st Defendant has not exhausted the laid down statutory mechanism on evicting a trespasser. She avers that the proposed amendments will not alter the cause of action. As for the affidavit of JOB NYASIMI MOMANYI he confirms being an advocate of the High Court of Kenya practising in the name and style of Nchogu, Omwanza and Nyasimi Advocates. He explains that in 2019 their firm received instructions from the Plaintiffs' herein seeking to nullify the Certificate of Confirmation of Grant issued on 8th June, 2006 in respect to the estate of OLTOKOKOI MERIT KATIYU (deceased). Further, their firm dutifully instituted Summons for Revocation of Grant before the High Court at Kajiado in Misc Cause No. 18 of 2019 that revoked the same and directed parties to institute proceedings in this court for cancellation of title deeds. He denies participating in the aforementioned proceedings and insists the Plaintiff in the Counter claim had no locus standi to sue him. Further, that there is no legal basis for him to be sued as an individual. He contends that an advocate or law firm cannot be sued for executing its statutory duty. He denies being a neighbour to the Plaintiffs', nor having taken possession or occupation of the property in dispute. He reiterates that the restriction was lodged and registered in accordance with the law and Court Orders. Further, that the 1st Defendant has no cause of action against him. He avers that the Counterclaim against him is scandalous, frivolous or vexatious and only meant to ridicule, defame and or embarrass him as well as his legal profession. Further, the Counterclaim against him is trivial and lacks merit thus an abuse of the court process. He further insists that his application should be allowed and costs assessed by the Hon. Judge, be payable by Ochieng James Oduol. Further, that the Advocate should be made liable for misadvising his client.

The 2nd Defendant's Notice of Motion Application is brought pursuant to Articles 22, 23 (3) (b) & (c), 40, 162 (2) (b) and 259 (1) of the Constitution; Section 13 (7) (a) & (b) of the Environment and Land Court Act; Sections 1A, 1B and 3A of the Civil Procedure Act as well as Order 40 Rule 1 of the Civil Procedure Rules. The 2nd Defendant seeks orders of injunction against the Plaintiffs, their agents, invitees, servants, employees or relatives from interfering with their proprietary rights as well as quiet possession and enjoyment including that of third party purchasers of land reference numbers Kajiado/ Kaputiei North/ 64760 – 65103 which are resultant subdivisions of Kajiado/ Kaputiei North/ 43966 pending the outcome of the suit. Further, that the Land Registrar, Kajiado, be restrained from registering any further restriction, caution or caveat or making any entries on Kajiado/ Kaputiei North/ 64760 – 65103. It further sought that the Plaintiffs including their employees, invitees, agents, servants or relatives to remove all structures erected on any of the plots Kajiado/ Kaputiei North/ 64760 – 65103. The application is premised on the grounds on the face of it and the supporting affidavit of EPHANTUS KARIUKI WAGAIYU who is a Director and shareholder of the 2nd Defendant. He enumerates the process they adhered to, in their acquisition of land reference number Kajiado/ Kaputiei North/ 43966 of which they obtained its title on 13th November, 2013. He explains that they proceeded to subdivide the said land into 343 plots which produced land parcel numbers Kajiado/ Kaputiei North/64760 – 65103 with the said title closed on subdivision on 27th November, 2013. Further, that they have since disposed of 214 plots. He contends that the company is an innocent purchaser for value and passed a good title to the 214 new purchasers and is entitled to sell the remaining 129 plots. He insists the property and subsequent subdivisions do not form part of the deceased estate and the orders sought in the Plaint are misplaced. He reiterates that the title to the suit

land and subsequent subdivisions being absolute and indefeasible are accordingly irrevocable; and consequently neither the Applicant nor the 214 new owners of the subdivided plots can be barred from lawfully, peacefully and quietly occupying or utilizing their respective titles as they deem fit. Further, the Plaintiffs' in the main suit acted in bad faith by failing to enjoin it to the Kajiado High Court Misc Cause No. 18 of 2019 despite readily admitting the Company was the registered owner thereof. He states that the Plaintiffs in total misconstruction of the Orders in Miscellaneous Cause No. 18 of 2019, proceeded to invade the subdivided plots, bringing down fencing posts, cutting trees and erecting structures thereon and unless stopped by the Court, will continue to undermine the proprietary rights of not only the Company but also the innocent members of the Church as well as the Public who purchased the subdivided plots from them.

The Plaintiffs filed their replying affidavit sworn by ENASO ENE PARISUE MALEI in respect to the Defendants' aforementioned applications and reiterated their averments in their supporting affidavit to the application dated 1st July, 2020. She disputes the fact that the 1st Defendant is the registered proprietor of the aforementioned parcels of land. She insists the transaction begun on 7th July, 2003 before the grant was issued to the sellers. Further, that the nullification of Certificate of Confirmation of Grant means that the transfer of the suit land to the 1st Defendant was not valid and cannot stand. She avers that the 1st Defendant's case has no chances of success. Further, that the sellers were illiterate and taken advantage of as they only intended to sell a portion of the land. She claims the sellers never met Seneti & Company Advocates.

The 2nd Defendant filed a further affidavit sworn by EPHANTUS KARIUKI WAGAIYU where he reiterated his claim above.

The three applications were canvassed by way of written submissions.

Submissions

The 1st Defendant in his submissions reiterated his claim above. It insisted it had established a prima facie case to warrant the orders sought. It further contended that the 5th Defendant should not be struck off the Counterclaim and the Orders given on 23rd June, 2020 should not be set aside. To support his averments, he relied on the decisions of **Re Estate of Julius Mimano (Deceased) (2019) eKLR; Mobile Kitale Service Station V Mobil Oil Kenya Ltd & Another (2004) eKLR; Felista Chemaiyo Sosten V Samson Mutai (2012) Eklr; Transcend Media Group Limited V Independent Electoral & Boundaries Commission (IEBC) (2015) Eklr and DT Dobie V Muchina (1982) KLR.**

The Plaintiffs' and 5th Defendant in the Counterclaim reiterated their responses above and insisted the 1st and 2nd Defendants had not established a prima case to warrant the orders sought. Further, that the Orders granted by the Court on 23rd June, 2020 were akin to eviction as they were already in occupation of the land and only an Order of Status Quo should be granted. The 5th Defendant in the counterclaim specifically submitted that he is misjoined in the proceedings herein as he only acted as an Advocate. To buttress their averments they relied on various decision including **Giella Vs Cassman Brown Co. Ltd 1973 EA; Mrao Ltd Vs First American Bank of Kenya Ltd & 2 others (2003) eKLR; Jecinta Wanja Kamau Vs Rosemary Wanjiru Wanyoike & Another (2013) eKLR; Re Estate of Salim Islam Saadan (Deceased) (2016) eKLR; Re Estate of Julius Mimano (deceased) (2019) eKLR; Munyu Maina V Hiram Gathiha Maina (2013) eKLR; Nguruman Limited V Jan Bonde Nielsen & 2 Others (2014) eKLR; Coffee Board of Kenya V Thika Coffee Mills Limited & 2 Others (2014) eKLR and DT Dobie & Co (K) Ltd V Muchina (1982) eKLR.** The 2nd Defendant in its submissions reiterated its claim and contended that it had established a prima facie case with a probability of success. Further that it was a purchaser for value. It relied on the decision of **Elizabeth Wambui Githinji V Kenya Urban Roads Authority & 4 others (2019) eKLR** to support its arguments.

Analysis and Determination

Upon consideration of the three applications including the rivalling affidavits and submissions, the following are the issues for determination:

- Whether the Plaintiffs should be granted leave to amend their Plaintiff.
- Whether the Defendants are entitled to orders of injunction as against the Plaintiffs', 1st , 2nd, 3rd, 4th and 5th Defendants in the Counterclaim pending the outcome of this suit as well as the Counterclaim.
- Whether the Court should review and or vary its order made on 23rd June, 2020.
- Whether the 6th Defendant in the Counterclaim should be restrained from registering a further caution/ restriction on the suit lands.
- Whether the 5th Defendant in the Counterclaim should be struck off this suit.

As to whether the Plaintiffs should be granted leave to amend their Plaintiff. The Plaintiffs have sought leave to amend their Plaintiff to include all the third parties that purchased plots from the 2nd Defendant which were resultant subdivisions of the suit land. The 1st Defendant has not opposed the amendment.

Order 8, rule 1 of the Civil Procedure Rules provides that: **'(1) A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed.'** I note in the current scenario, the Pleadings herein have not closed and in relying on the provisions I have cited above, I will allow the Plaintiffs to amend their Plaintiff to include the third parties who purchased their plots from the 2nd Defendant, which were resultant subdivisions of the suit land. I note the Plaintiffs' further sought to serve the said new Defendants through substituted service. From the List of buyers which was annexed to the Plaintiffs' supporting affidavit, it is evident that they are many people and personal service upon them would be problematic as well as time consuming. In the interest of justice, I will allow the Plaintiffs' to serve them through the Daily Nation Newspaper within 30 days from the date hereof. The 1st and 2nd Defendants are at liberty to amend their respective Defences if need be.

As to whether the Defendants are entitled to orders of injunction as against the Plaintiffs', 1st, 2nd, 3rd, 4th and 5th Defendants in the

Counterclaim pending the outcome of this suit as well as the Counterclaim. The 1st and 2nd Defendants sought for orders of injunction to restrain the Plaintiffs, their agents, invitees, assignees and or relatives from interfering and or remaining in occupation of the suit lands. In line with the principles enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I will proceed to analyse whether the Defendants have established a prima facie case to warrant the orders sought. As to whether the Defendants have established a prima facie case, I will use the parameters set in the decision of **Mrao Ltd Vs First American Bank** where the Court defined a prima facie case. It is not in dispute that the 1st and 2nd Defendants including other third parties are the current registered proprietors of the suit lands. The Plaintiffs contend that after the Kajiado High Court vide the Misc Cause No. 18 of 2019 had revoked the Certificate of Confirmation of Grant given to the 3rd and 4th Defendants in the Counterclaim, on 23rd April 2020, their brothers moved to the suit lands and erected structures thereon and have nowhere else to go. The Defendants in the main suit have confirmed that the Plaintiffs including their relatives invaded the suit lands, damaged the fence, cut down trees and erected temporary structures thereon. From the averments herein, it has emerged that the 1st Defendant had acquired the suit land in September 2006 and sold a portion of the land to the 2nd Defendant in 2013. The 2nd Defendant on the other hand has since subdivided its land to 343 plots and sold 214 plots to third parties who are not enjoined in this suit. I note that from 2006 upto April, 2020 the Plaintiffs and their relatives were residing elsewhere and not on the suit lands. Further, on perusal of the aforementioned High Court Ruling, there was no indication that the titles to the suit lands had been cancelled and Plaintiffs including their relatives directed to move therein, after the Certificate of Confirmation of Grant had been revoked. Looking at the documents presented by the 1st and 2nd Defendants, I do not find their claim as baseless. To my mind, it seems that once the Grant was revoked, the Plaintiffs and their relatives took the law unto their own hands and moved to private property without realizing that the said owners still had proprietary rights over their respective parcels of land and are protected by the Law. Since the titles herein are yet to be revoked, with injunctive reliefs being equitable remedies, while relying on the maxim that equity follows the law, I find that the Defendants being the current registered proprietors of the suit lands have indeed established a prima facie as against the Plaintiffs including the 3rd and 4th Defendants, to warrant the granting of the orders sought. As to whether the Defendants will suffer irreparable harm that cannot be compensated by way of damages. It is not in dispute that the Defendants are currently the registered proprietors of the suit land. Further, the 2nd Defendant has even proceeded to subdivide its land and sold to 214 other third parties. The Plaintiffs' in the main suit seek revocation of the said titles citing the acquisition of the land as illegal since the Certificate of Confirmation of Grant that enabled the said transfer was revoked. However, at this juncture, I note the Plaintiffs after revocation of the Grant on 24th April, 2020 proceeded to enter the suit land, cut down trees and put up temporary structures thereon, yet they had not been on the suit from 2006, knowing fully well they were still not its registered proprietors. In the case of **Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, it was held that ‘...the Plaintiff must establish that he ‘might otherwise’ suffer irreparable injury which cannot be adequately compensated remedied by damages in the absence of an injunction, this is a threshold requirement and the burden is on the Plaintiff to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Plaintiff. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot ‘adequately’ be compensated by an award of damages.’

In relying on this decision and based on the circumstances at hand, I find that the Defendants' alleged injuries are not speculative as they have demonstrated the harm they will suffer if the injunctive orders are denied.

As for balance of convenience, from the evidence presented by the parties, I find that the balance at this moment tilts in favour of the Defendants' whose rights have been infringed upon.

I note the Plaintiffs' sought for review/ variation of the orders of this Court dated the 23rd June, 2020 wherein the Court had granted temporary injunctive reliefs to the 1st Defendant pending the determination of his application. The Plaintiffs insist the Court should substitute the same with an order of status quo since there are already on the suit lands and erected temporary structures thereon. However based on my findings above, I am unable to review or vary the said orders with an order of status quo as this will validate their entry into the suit lands without a valid Court Order and before the dispute on title to the same having been determined. In the circumstance, I will proceed to grant the Defendants in the main suit an order of injunction pending the outcome of this suit including the Counterclaim.

As to whether the 6th Defendant in the Counterclaim should be restrained from registering a further caution/ restriction on the suit lands.

The 1st and 2nd Defendants have sought to restrain the 6th Defendant in the Counterclaim from registering a further caution/ restriction on the suit lands. Section 71 of the Land Registration Act provides that ‘**(2) A caution may either— (a) forbid the registration of dispositions and the making of entries; or (b) forbid the registration of dispositions and the making of entries to the extent expressed in the caution.**’

Further section 76 (1) of the Land Registration Act provides that: ‘**(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.**

(2) A restriction may be expressed to endure— (a) for a particular period; (b) until the occurrence of a particular event; or (c) until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.’

In the instant case, I note there is already an existing order which was issued in the High Court Misc Appl No. 18 of 2019 where Judge Chacha Mwita directed the Land Registrar to register a restriction over the suit lands pending the Plaintiffs' filing a suit for revocation of title in this Court. I note the Plaintiffs filed the instant suit seeking revocation of the titles held by the 1st and 2nd Defendants. It is my considered view that since this dispute revolves around ownership of the suit lands, the entry of the restriction is pertinent to preserve the substratum of the suit. Further since a court of competent jurisdiction has already made an order to that effect, I am unable to interfere with the said decision and will decline to grant the said order as sought.

As to whether the 5th Defendant in the counterclaim should be struck off this suit. The 5th Defendant has sought to be struck off the suit and

for his costs to be borne personally by Ochieng James Oduol Advocate for having misadvised his clients. He contends that he is an advocate in the firm representing the Plaintiffs and further that the 1st Defendant had no locus to sue him. He insists that he cannot be condemned for representing and or advising his clients. **Order 2 rule 15 of the Civil Procedure Rules provides as follows:**

‘(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.’

The Court of Appeal in the case of **RAMJI MEGJI GUDKA LTD –Vs- ALFRED MORFAT OMUNDI MICHIRA & 2 OTHERS [2005] eKLR** held as follows:

“In our view, the power to strike out pleadings must be sparingly exercised. It can only be exercised in clearest of cases. The issue of summary procedure and striking out of pleadings was given very careful consideration by this Court in DT DOBIE & COMPANY (KENYA) LTD. V. MUCHINA [1982] KLR 1 in which Madan J.A. at p. 9 said:-

“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits “without discovery, without oral evidence tested by cross-examination in the ordinary way.” (Sellers LJ (supra). As far as possible indeed, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks right.”

It is my considered opinion that it would be pertinent for the 1st Defendant/Plaintiff in the Counterclaim to provide evidence on the allegations levelled against the 5th Defendant in the Counterclaim to enable the court make a determination on the same. However, from a perusal of the pleadings herein, I am unable to decipher what role the 5th Defendant played in respect to the dispute herein. Further, it is trite that an advocate is a legal representative of a client and simply acts on instructions. In the circumstance, I will proceed to strike him off the Counterclaim herein. I however disagree with him on the fact that the costs should be borne by the Plaintiff’s Counsel but direct that the costs are to be borne by the Plaintiff who is a party to this suit.

It is against the foregoing that I will proceed to make the following orders in respect to the 1st Defendant’s Notice of Motion application dated the 19th June, 2020; the Plaintiffs’ and 5th Defendant in the Counterclaim’s Notice of Motion application dated the 1st July, 2020; and 2nd Defendant’s Notice of Motion application dated 2nd July, 2020 filed herein:

a. The Plaintiffs are granted leave to amend their Plaintiff and serve the new Defendants within 30 days from the date hereof via the Daily Nation Newspaper.

b. That an order of injunction be and is hereby issued restraining the Plaintiffs herein together with the 1st , 2nd, 3rd and 4th Defendants to the counterclaim whether by themselves , agents, servants, employees , invitees and or otherwise whomsoever from entering upon or trespassing , constructing of any structures , occupying, cutting down trees , disposing off, charging, sub-dividing, dealing, alienating, letting or otherwise using, or representing to any person that they are owners of or any way whatsoever from interfering with the 1st and 2nd Defendants proprietary rights including the rights to quiet possession and enjoyment over all that piece of land known as Land reference no. Kajiado / Kaputiei – North /43967, Kajiado/ Kaputiei North/ 64760 – 65103 pending the hearing and determination of the suit herein and the counterclaim.

c. The 5th Defendant in the Counterclaim be and is hereby struck off this suit with his costs to be borne by the Plaintiff in the Counterclaim

d. The costs of the applications will be in the cause

Dated Signed and Delivered at Kajiado this 8th Day of October, 2020

CHRISTINE OCHIENG

JUDGE