Julo (Suing on their own Behalf and on Behalf of 40 others of Mwadzani Clan Samburu) v Gude & 9 others (Environment and Land Case E037 of 2025) [2025] KEELC 6324 (KLR) (22 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6324 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KWALE

ENVIRONMENT AND LAND CASE E037 OF 2025

LL NAIKUNI, J

SEPTEMBER 22, 2025

BETWEEN

JULO TSUMA JULO ..... PLAINTIFF

SUING ON THEIR OWN BEHALF AND ON BEHALF OF 40 OTHERS OF MWADZANI CLAN SAMBURU

AND

LEWA CHOYO GUDE ..... 1ST DEFENDANT

GUDE CHOYO ..... 2ND DEFENDANT

PEHO CHOYO ..... 3RD DEFENDANT

ZANGO CHOYO ..... 4TH DEFENDANT

KOMBO CHOYO ..... 5TH DEFENDANT

MWANJOWA DZANGO ..... 6TH DEFENDANT

FUMO CHOYO ..... 7TH DEFENDANT

CHOYO NGELEKELE ..... 8TH DEFENDANT

NYAMAWI MAGALE ..... 9TH DEFENDANT

NYAMAWI NDAIKWA ..... 10TH DEFENDANT

RULING

I. Introduction

1. Before this Honourable Court is a ruling pertaining the Notice of Motion application dated 5th May 2025. It was brought by the Plaintiffs/Applicants herein under the provision of Sections 1A,1B & 3A

of the *Civil Procedure Act*, Cap. 21 and Order 1 Rule 8, Order 40 Rules 1 & 2 and Order 51 Rule 1 of the Civil Procedure Rules, 2010.

2. Upon service and while opposing it, the Defendants filed their replies accordingly. The Honourable Court shall be dealing with them indepth.

II. The Plaintiffs/Applicant's case.

3. The Plaintiffs/Applicants through their application sought for the following orders:-

    a. Spent.

    b. That this being a representative suit on behalf of 48 other familial persons resident within the same geographical space, notice of the institution of suit be effected by way of personal service

    c. Spent.

    d. That pending the hearing and determination of this suit an injunction do issue against the Defendants restraining them whether by themselves, their servants and/ or agents from entering, trespassing into, mining, excavating cultivating developing, building, selling, disposing of and/or in any way interfering whatsoever with the Plaintiffs possession and quiet enjoyment of the suit property being all that unsurveyed ancestral lands measuring 3,000 acres or thereabouts of the Mwandzani Clan situated within the Silaloni Adjudication Section, Silaloni and Chengoni Sub Locations of Samburu Kinango Sub County Kwale County.

    e. That the officer in charge of the police station, Samburu police station be directed to enforce compliance with the court orders in respect of the suit property measuring approximately 3,000 acres or thereabouts of the Mwadzani clan situated within the Silaloni Adjudication Section, Silaloni and Chengoni Sub Locations of Samburu Kinango Sub County Kwale County.

    f. That the costs of this application be provided for.

4. The application was premised on the grounds, testimonial facts and the averments supported by a joint affidavit sworn by Julo Tsuma Julo and Gwaru Ngowa the Plaintiffs/Applicants herein on behalf of the rest of the Plaintiffs/Applicants. They averred as follows that:-

    a. The suit was a representative suit on behalf of 48 familial persons who were residents of the same geographical area with a common interest in an unsurveyed suit property measuring approximately 3,000 Acres and notice of institution of suit shall be served upon them personally.

    b. The Plaintiffs/Applicants were at all material times to the suit the legal and beneficial owners of all that unsurveyed ancestral lands measuring approximately 3, 000 acres or thereabouts situated within the Silaloni Adjudication Section, Silaloni and Chengoni Sub - locations of Samburu, Kinango Sub County of Kwale.

    c. The Defendants/Respondents had previously filed a civil suit against the 1st Plaintiff being Mombasa ELC No 149 of 2018 in respect of the suit property in disregard and without consent of the adjudication officer which suit was dismissed on 1st November 2023.

    d. The Defendants/Respondents had trespassed onto the suit property. They had through acts of intimidation started constructing and building houses on the suit property with a view of altering the actual situation on the grounds as adjudication was stalled.

e. Further that the suit property fell within the Silaloni Adjudication Zone but the Defendants/Respondents had led to the failure of the process taking off. Thus, it forced the Plaintiffs/Applicants to seek the requisite statutory consent from the Land Adjudication Officer to bring this suit which consent was granted on 5th July 2024.

f. The Plaintiffs/Applicants were keen on effectively subjecting the suit property to a fair adjudication process but the Defendants/Respondents were keen on frustrating it.

g. They maintained that the suit property was ancestral land which was affirmed by a dispute resolution process whose decision was rendered on 15th November 2013.

h. The conduct of the Defendants/Respondents in respect of the suit property was unjustifiable and apparent fraud.

i. It was in the interest of justice that they urged the Honourable Court to allow the application as prayed.

III. The replies by the 1st Defendants/Respondents

5. As indicated above, the application was opposed by the Defendants/Respondents through a Replying Affidavit sworn by the 1st Defendant/Respondent, Lewa Choyo Gude. The affidavit was dated 26th May 2025. The Honourable Court keenly perused the contents of the said affidavit and realised that it simply denied each and every allegation raised in the affidavit in support of the application. In a nutshell, there was nothing more was averred save for the denials.

IV. Further Replying Affidavit by the Defendants/Respondents

6. The Defendants/Respondents filed a further replying affidavit dated 3rd June 2025. The deponent stated that he was the great great grandson of the late Mwangoka Mwadiga who was born around 1800 years and had two sons Mwandinga Mwangoka and Kambi Mwangoka.

7. That the 1st son of the late Mwangoka Mwandinga that is Mwadiga Mwangoka was blessed with one son Gude Mwandika Mwangoka who was born around 1870's.

8. That Gude Mwandika Mwangoka was blessed with four sons namely Ndegwa Nyamawi Kambi, Fumo Nyamawi Kambi, Mangale Nyamawi Kambi and Ndaikwa Nyamawi Kambi. That Choyo Gude married five wives and he was blessed with fourteen sons.

9. That the Defendants/Respondents was from this lineage and were born on the suit property as demonstrated above as from previous generations.

10. The allegations that they were trespassers upon the land was thus refuted. It was alleged that they had a family graveyard on the suit property.

11. Therefore, that the land belonged to them and the court should not allow the orders sought.

V. Further Supporting Affidavit by the Plaintiffs/Applicants

12. The Plaintiffs/Applicants herein filed a further supporting affidavit jointly sworn by them. It was dated 16th June 2025. They averred that they had read the contacts of the replying affidavit and further affidavit by the Defendants/Respondents and wished to reply by stating that:-

a. They were the grandsons of Mrisa Tsuma the patriarch of the mwadzine clan who acquired the suit property sometime in the 1700's years.

b. The Defendants/Respondents grandfather Gude Mwadiga Mwangoka had sought refuge on the suit property from his land in Ngoni after having tension and fights there and was welcomed temporarily by the Plaintiff's patriarchs. Upon his death Gude Mwadiga was buried on the suit property.

c. The Defendants/Respondents grandfathers one Choyo and one Bwemangoka continued with the occupation of the suit property.

d. The occupation was about 800 acres and the Defendants/Respondents had maintained the said side to date. That the place was even named Kwa Bwemangoka.

e. Later on Bwemangoka moved to another place called Mwavumbo and Choyo and his clan maintained being on the suit parcel.

f. However, sometime in the year 1963 after an intra family quarrel between the remaining Gude son, Choyo on the one hand and his brothers Mwajowa and Chome on the other hand who were supported by one Ngoli of the Mwakai Clan. This forced Choyo to temporarily move from Kwa Bemwangoka Area to Mwarophesa and seek refuge with one Ndegwa Sembe Nyamawi.

g. The said Choyo's tormentors were later jailed for the attempts on his life but he feared returning to Kwa Bemwangoka Area and he approached Mzee Bechaka Mrabu and Mzee Julo Mwabwanga of Mwadzine clan who then allowed him to build a temporary homestead near the Mwadzine homesteads but on the understanding that when it came to farming his family was to undertake it at Kwa Bemwangoka until such time that they were able to go back there.

h. The position of a temporary homestead prevailed until Mzee Choyo died and he was buried at Kwa Bemwangoka.

i. A long while after Mzee Choyo's death, around the year 2012, his children, among them, the Defendants herein, Dzango Choyo, Lewa Choyo, Peho Choyo, Kombo Choyo, Mwangoka Choyo with the co-operation of one Nyamawi Ndaikwa, Nyamawi Mangale, Yawa Mangale who currently have temporary homesteads within Mwadzine Clan Lands as opposed to the ceded Kwa Bemwangoka Lands, now demanded permanent occupation and also sought to have those occupied lands withinMwadzine Clan adjudicated to them.

j. The Defendants/Respondents had refused to relocate to the ceded Kwa Bemwangoka area which they naturally claim as theirs. Legitimately, Mwadzine Clan were opposed to conceding twice to persons they regard as "temporary visitors" within "clan timelines" whilst the Defendants/Respondents were keeping the ceded lands as "land banks".

k. The aforegoing was the genesis and present obstacle to adjudication as the Defendants have stubbornly refused to move from the temporary locations and have instead sought to increase their numbers within what was regarded traditionally as the Plaintiffs/Applicants' lands with a view to acquiring more land.

l. The disputed homestead occupied by the Defendants and the Choyo family members within the Plaintiffs/Applicants' lands was about 3 acres but they were farming in other Mwadzine Lands which they had parcelled out for themselves as follows: -

    i. Gude Choyo, Katambo Zango, Choyo Ngelekele, Madiga Ngelekele, Kombo Choyo & Fumo Choyo, ...50 acres

ii. Benson Nyamawi Mangale.....1 Acre

iii. Yawa Mangale.....15 Acres

iv. Nyamawi Ndaigwa.....9 Acres

v. Kadzo Zango.....6 Acres

m. In a bid to resolve the matter of adjudication, the Plaintiffs/Applicants offered to cede the homestead area to the Defendants/Respondents but instead they refused and brought in more people to demand further land as outlined above resulting in a stalemate.

n. In addition, one Pewa Choyo, a member of the Defendants/Respondents' clan owned as an individually purchased and titled parcel of land measuring about 30 acres acquired from one Mzuka neighbouring Mwadzine Lands. Mwadzine Clan had no claim over the same.

o. Similarly Gude Choyo, also, a member of the Defendants/Respondents' clan owned an individually purchased and titled parcel of land measuring about 20 acres acquired from one Mzuka neighbouring Mwadzine Lands. Mwadzine had no claim over the same.

p. The Plaintiffs/Applicants, Mwadzine Clan, had over the years ceded portions of their lands in good faith for public purposes including access roads and others as follows: -

i). Church--- cross of Christ Church;

ii). Mwarovesa Dispensary;

iii). Mwarovesa Dam;

iv). Mwaruphesa Miracle Church.

q. Infact all the neighbouring clans of Mwadzine had no boundary issues or claims and in some cases agreements and boundary markers had been reduced to writing namely; i. Mchanda Clan ii. Mwanyota Clan iii. Mwamundu Clan iv. Mtinda v. Mwachingodza Clan.

VI. Submissions

13. While all the parties were present in Court, they were directed to have the Notice of Motion application dated 5th May 2025 disposed of by way of written submissions and all the parties complied. Pursuant to that, by the time the Court was proceeding to pen down this Ruling, only the Plaintiffs/Applicants had obliged. Thus, a ruling date on its own merit was set as 22nd September 2025 by Court accordingly.

A. The Written Submissions by the Plaintiffs/Applicants

14. Through the Law firm of Messrs. Mburu Kamau & Co Advocates on behalf of the Plaintiffs/Applicants filed their written submissions dated 26th June 2025. M/s. Nduku Advocate commenced the submissions by giving a brief historical background of the suit property. She stated that the land fell under the Silaloni Adjudication Section. It was submitted that the Plaintiffs/Applicants had laid a proper basis for grant of the injunction orders as was stated by the Court of Appeal in East Africa in the case of "Giella – Versus -Cassman Brown & Co. Limited (1973) EA" as follows:

a) The Applicant must first establish a prima facie case with a probability of success.

b) The Applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.

c) Where there is doubt on the above, then the balance of convenience should tilt in favour of the Applicant.

15. The Plaintiffs/Applicants further relied in the case of "MRAO Limited – Versus - First American Bank of Kenya Limited & 2 others [2003] KLR 125" fashioned a definition for "prima facie case" and further referred to the holding in the case of "Nguruman Limited – Versus - Jan Bonde Nielsen & 2others [2014] eKLR" by the Court of Appeal on the threshold for grant of injunctive orders.

16. The Learned Counsel submitted that the Plaintiffs/Applicants had established a prima facie case and demonstrated before this Honourable court that the Defendants/Respondents had taken over occupation of the suit property forcefully and are extending their occupation by inviting more members on the land. Thus, they had trespassed upon portions that ought to be occupied by the Plaintiffs/Applicants. That the said occupation was without any colour of right as the Defendants/Respondents already had their own land. Hence, they were interfering with the Plaintiffs/Applicants peaceful occupation of the suit property.

17. On whether the threshold for injunction orders had been met. The Learned Counsel contended that the Plaintiffs/Applicants had satisfied the conditions to grant a temporary injunction and as such this Honourable court should grant the orders herein as prayed for pending hearing and determination of the main suit.

18. In conclusion the court was urged to grant prayers 2, 4 and 5 of the application. It was averred that prayer 5 was being sought for purposes of maintaining law and order.

VII. Analysis and Determination

19. I have carefully read and considered all the pleadings herein being the application dated 5th May 2025, the replies and further affidavits by the parties herein, the written submissions by the Plaintiffs/Applicants, the authorities cited to bolster, the relevant and appropriate provisions of the *Constitution* of Kenya, 2010 and the statutes.

20. In order to arrive at an informed, fair, just and reasonable decision, the Honourable Court has framed three (3) issues for determination. These are: -

a. Whether the Plaintiffs/Applicants through its application dated 5th May, 2025 have made a case for grant of orders sought.

b. Whether the parties herein were entitled to the reliefs sought.

c. Who bears the costs of the application dated 5th May 2025?

Issue No. a) Whether the Plaintiffs/Applicants through its application dated 5th May, 2025 have made a case for grant of orders sought

21. Under this sub heading, the main substratum of this matter is whether to grant temporary injunctive orders or not. The application by the Plaintiffs/Applicants herein is premised under the provision of Order 40 Rule 1 of the Civil Procedure Rules 2010 amongst the provisions of the law. Which provides as follows: -

Order 40, Rule 1

Where in any suit it is proved by affidavit or otherwise—

a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

b) that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

22. Fundamentally, the principles applicable in an application for an injunction were laid out in the celebrated case of "Giella – Versus - Cassman Brown & Co Limited ((Supra), as already cited by the Learned Counsel for the Plaintiffs/Applicants herein where it was stated: -

> " First an 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 would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."

23. The three conditions set out in "Giella (supra)", need all to be present in an application for court to be persuaded to exercise its discretion to grant an order of interlocutory injunction. This was set out by the Court of Appeal in the case of "Nguruman Limited – Versus - Jan Bonde Nielsen & 2 others (Supra)": -,

> " These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Limited - Versus - Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the Respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between".

24. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition melted down in the famous case "MRAO Limited – Versus - First American Bank of Kenya Limited (Supra)" of: -,

> " So, what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would 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"

25. In the case of "Mbuthia – Versus - Jimba credit Corporation Ltd 988 KLR 1", the court held that;

> " In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party's cases."

26. Similarly, in the case of "Edwin Kamau Muniu – Versus - Barclays Bank of Kenya Ltd" the court held that;

> " In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria."

27. The principles upon which an interlocutory injunction may be granted are well settled in the famous case of Giella – Versus - Cassman Brown & Co Ltd (Supra). One has to establish a prima facie case with a probability of success and an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. If in doubt, the court will decide the matter on a balance of convenience.

28. I reiterate that the three pillars on which rests the foundation of any order of injunction have already been well stated. The High Court of Tanzania further established principles guiding the courts in exercising their discretion to grant or not to grant temporary injunction orders in the famous case of "Atilio – Versus - Mbowe, [1969] HCD n. 284 namely: -

> There is a prima facie case in the sense that there are serious questions to be tried on the facts with a probability that the suit would ultimately be decreed in favour of the Applicant.
>
> That the award of damages to the Applicant at the conclusion of the suit would not provide an adequate remedy for any loss that the Applicant may suffer; and
>
> That the balance of convenience that the Applicant stands to suffer greater hardship from the withholding of the injunction than will be suffered by the Respondent if it is granted.

29. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd – Versus - Afraha Education Society [2001] Vol. 1 EA 86. If the Applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted, will be irreparable.

30. Have the Applicants established a prima facie case? In the case of:- "Mrao Limited – Versus - First American Bank of Kenya and 2 others, (Supra)" which was cited with approval in the case:- "Moses C. Muhia Njoroge & 2 others – Versus - Jane W Lesaloi and 5 others, (2014) eKLR, the Court of Appeal defined a prima facie case as: -

> " A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later".

31. Additionally, I wish to also refer to a commentary by Justice P. S. Narayan in his Book, Law of Injunctions, 9th Edition (2005) at page 85 where it is commented as follows: -

> " When the court is called upon whether the Plaintiff has a prima facie case for the purpose of granting temporary injunction, the court must perforce examine the merits of the case and consider whether there is a likelihood of the suit being decreed and the depth of investigation which the court pursue may vary with each case."

32. In the instant case, the Plaintiffs/Applicants herein moved this Court seeking to be granted injunctive orders based on a flurry of allegations against the Defendants/Respondents. Primarily, they stated that the Defendants/Respondents invaded the suit property despite the fact that earlier on and which is sometime back, they were allocated their own part of the suit property which they have been in occupation of. That however, the Defendants/Respondents had now trespassed into the Plaintiffs/Applicants portion and are in occupation of the same. it was stated that the occupation included the putting up of permanent structures and the invasion of more people brought into the land by the Defendants/Respondents.

33. On the other hand, the Defendants/Respondents disparage all the allegations made by the Applicants. They have held all these being falsified. It was averred that the suit property is ancestral land and the Defendants/Respondents are rightfully occupying the same. It is noted that the Defendants/Respondents have in their affidavits opposing the application given a detailed historical analogy of their ancestry and maintain that they were born on the property and so were their ancestors and they are thus entitled to being in use and occupation of the suit property.

Issue No. b). Whether the parties herein were entitled to the reliefs sought.

34. Under this sub heading, the Honourable Court will deliberate whether the parties herein are entitled to the reliefs sought. I have carefully interrogated the evidence tendered by the Plaintiffs/Applicants in support of the application. It is trite that the principle of "the burden of Proof" anchored on the provision of Sections 107, 108 and 109 of the *Evidence Act*, Cap. 80, holds that he who alleges must proof see the supreme court holding in the case of:- "Gatirau Peter Munya – Versus - Dickson Mwenda Kithinji & 3 Others (2014) eKLR. I must first state that the parties herein have alluded to the land being under the Silaloni Adjudication Zone. Though it is noted that the right procedure was followed before the suit was filed before this court.

35. However, what the court cannot be able to conclusively make a determination at this point is ownership of the suit property. Both parties herein claim ownership and majorly base their claim on the property being ancestral land. The court can only make a fair and just determination on this issue once it has heard the parties by way of viva voice evidence.

36. The evidence annexed indicating the occupation and which includes graves is not conclusive. If anything I have only noted one grave. In my humble view, what has been presented before court are allegations without sufficient evidence to back the same up. I note the apprehension by the Applicants over the suit property but then the court cannot issue orders based on the emotive state of litigants but rather facts and evidence presented before it.

37. Therefore, the court is not satisfied that the Plaintiffs/Applicants has established "a prima facie case' so as to warrant the granting of the orders of injunction as sought by them. I am guided by the decision of

Ringera J. (as he was then was) in the case of "Showind Industries – Versus - Guardian Bank Limited & Another (2002) 1 EA 284 where the Learned Judge stated as follows: -

> "……..an injunction is granted very sparingly and only in exceptional circumstances such as where the Applicant's case is very strong and straight forward. Moreover, as the remedy is an equitable one, it may be denied where the Applicant's conduct does not meet the approval of Court of equity or his equity has been defeated by laches"

38. As was earlier observed, the threshold for grant of injunctive orders are rather sequential, conjunctive and not disjunctive, all aspects are to be satisfied. In the event that one aspect of the principles for grant of injunction has not been met then the court has no business further interrogating the rest. I am guided by the decision in "Nguruman Limited – Versus - Jan Bonde Nielsen & 2 Others, CA NO. 77 OF 2012", where the Court expressed itself on the importance of satisfying all the three requirements for an order of injunction as follows: -

> "In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
>
> (a) establish his case only at a prima facie level,
>
> (b) demonstrate irreparable injury if a temporary injunction is not granted, and
>
> (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.
>
> These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the Respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the Applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."

39. For the forgoing reasons, the Honourable Court will not belabour the point by dwelling on the other prerequisite conditions to be considered in granting injunctive orders. In a nutshell, the court is of the view that the application was simply not properly discharged by the Plaintiffs/Applicants for any orders to be issued in terms of an injunction. The application must fail.

Issue No. c). Who will bear the Costs of Notice of motion application dated 5th May 2025

40. It is now well established that the issue of Costs is at the discretion of the Court. Costs is the award that is granted to a party at the conclusion of legal action or proceedings in any litigation process. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action.

41. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of: "Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and "Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.

42. In the case of "Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

43. In the instant case, and from the circumstances of this case taking that the parties are related and live next to each other, it will be only fair and reasonable that each party shall bear its costs of the application herein.

VIII. Conclusion and Disposition

44. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to the Preponderance of Probabilities and the balance of convenience. Clearly, the Applicants have failed to make out a case against the Respondent. Consequently, I proceed to order as follows:-

    a. That the Notice of Motion application dated 5th May 2025 be and is hereby dismissed for lack of merit.

    b. That for expediency sake there be a mention of this matter on 12th November, 2025 for conducting a Pre – Trial Conference in accordance with the provision of Order 11 of the Civil Procedure Rules, 2010 on case management. There shall be a hearing on 24th February, 2026 by physical means whatsoever.

    c. That each party shall bear its costs of the application herein.

    It is ordered accordingly.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 22ND DAY OF SEPTEMBER 2025

.....

HON. MR. JUSTICE L.L NAIKUNI,

ENVIRONMENT & LAND COURT AT KWALE.

Ruling delivered in the presence of: -

a. Mr. Daniel Disii, the Court Assistant.

b. M/s. Nduku Advocate for the Plaintiff/Applicant.

c. Mr. Waithera Advocate for the Defendant/Respondent