

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT IN KWALE**  
**ELC CASE E041 OF 2022**

**KELVIN MAINA NJOROGI** (*suing as the administrator of the Estate Samuel Mwangi Njoroge*).....

**PLAINTIFF**

**- VERSUS -**

**1.SAHARA KISUPI MWICHAMBE**  
**2.HUNTINGTON LIMITED**  
**3.LAND REGISTRAR,KWALE COUNTY**  
**4.HON.ATTORNEY**

**GENERAL.....DEFENDANT**

**RULING**

**I. Introduction.**

1. Before the Honourable Court for its determination is the Notice of Motion application dated 20<sup>th</sup> June, 2025 by *Huntington Limited*, the 2<sup>nd</sup> Defendant/Applicant herein. It was brought under the provision of Sections 1A,1B, 3, 3A & Section 63 (e) of the Civil Procedure Act, Cap. 21, Section 26 (1) of the Land Registration Act, No. 3 of 2012, Article 50 (1) of the Constitution of Kenya, 2010 and Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. Upon effecting service, while opposing the application the Plaintiff/Respondent filed their replies vide a Replying Affidavit dated 1<sup>st</sup> July, 2025, whilst the 3<sup>rd</sup> & 4<sup>th</sup> Defendant/Respondent filed their responses through a Replying Affidavit dated 27<sup>th</sup> June, 2025. On 2<sup>nd</sup> July, 2025 when the matter was slated for ***“inter - parte”*** hearing, the 1<sup>st</sup> Defendant indicated that they would not be opposing the application. The Honourable Court will be dealing with said pleadings at a later stage of this Ruling hereinbelow.

## **II. The 2<sup>nd</sup> Defendant/Applicant's case.**

3. The 2<sup>nd</sup> Defendant/Applicant sought for the following orders.

**a) Spent.**

**b) That pending the hearing and determination of this application, the Honourable Court be pleased to arrest the writing and delivery of the Judgment slated for 2<sup>nd</sup> July 2025.**

**c) That pending the hearing and determination of this application, the Honourable Court be pleased to review and suspend its order directing that the hearing of the matter has been closed and that Judgment is slated for 2<sup>nd</sup> July 2025.**

**d) That the Honourable Court be pleased to set aside the proceedings and grant leave to the 2<sup>nd</sup> Defendant to defend the suit on the merits.**

**e) That the Honourable Court be pleased to order that the matter starts de novo with the participation of the 2<sup>nd</sup> Defendant.**

**f) That costs be in the cause.**

**g) That any other order in the interest of justice.**

4. The application was premised upon the grounds, testimonial facts and the averments made of the 21 Paragraphed Supporting Affidavit of JOSEPH MWELLA together with annexures marked as "JM - 1 to 5" annexed hereto. He averred as follows that:-

a) He was an advocate of the High Court of Kenya, currently serving as the Legal Officer of the 2<sup>nd</sup> Defendant/Applicant. He had full knowledge of the matters surrounding this application. In his capacity, he had authority to swear this affidavit on behalf of the 2<sup>nd</sup> Defendant/Applicant.

b) He was aware that the 2<sup>nd</sup> Defendant/Applicant is registered as proprietor of property title number KWALE/SHIMONI ADJ/635 (Hereinafter referred to as "The Property") and annex and mark as "JM - 1" was a copy of the title deed for the property.

c) He was aware that recently on 9<sup>th</sup> June 2025, their Operations Manager, Mr. Twalib Khamis was in attendance in Kwale Law Courts for the hearing of Kwale Chief Magistrates Court "**Criminal Case**

**Number E277 of 2021: R - Versus - Sahare Kisupi Mwichambe**” and annexed and marked as “JM - 2” was a copy of the day's cause list for 9<sup>th</sup> June 2025.

- d) He was aware that the criminal case surrounded the suit property. The accused person in that case was impleaded herein as the 1<sup>st</sup> Defendant.
- e) He was aware that while in the court vicinity, their Operations Manager conferred with the prosecutor and the investigation officer. It was at that point that he learnt that the Plaintiff/Respondent had since filed this suit seeking to cancel the 2<sup>nd</sup> Defendant/Applicant's title to the property.
- f) This revelation was brought to the attention of the Deponent and who quickly laboured to peruse the Court file. Indeed, he discovered that the Plaintiff filed this suit on 27<sup>th</sup> September 2022 with the assistance of the advocates on record.
- g) The Deponent had noted that service upon the 2<sup>nd</sup> Defendant/Applicant was done via substituted service by way of newspaper advertisement following the Honourable Court's orders of 30<sup>th</sup> November, 2022.
- h) He had seen that an advertisement was published in the newspapers - “*the Standard*” of the 25<sup>th</sup> January 2023 edition and “*the Daily Nation*” of 1<sup>st</sup> February 2023.
- i) Regrettably, none of them from the 2<sup>nd</sup> Defendant/Applicant saw the advertisements.
- j) While the 2<sup>nd</sup> Defendant/Applicant never faulted the Honourable Court at all for ordering substituted service by way of advertisement, the 2<sup>nd</sup> Defendant/Applicant grieved that the Plaintiff was not forthright when he deposed that service upon the 2<sup>nd</sup> Defendant/Applicant was impossible through the usual modes set out under the provision of

Order 5 Rule 3 of the Civil Procedure Rules, 2010 hence resorting to service by advertisement for reasons:

- i. The 2<sup>nd</sup> Defendant/Applicant had always had its registered office at Dedan Kimathi Road, Plot No. Msa/Block XXV/49 & 50; Mombasa. He annexed and marked as “JM - 3” was a copy of the CR-12 form bespeaking the 2<sup>nd</sup> Defendant/Applicant's registered office.
  - ii. The 2<sup>nd</sup> Defendant/Applicant's Postal address is P.O. Box 99662, Kilindini. The Plaintiff had captured this address in all his pleadings as well as the summons to enter appearance given on 27<sup>th</sup> September 2022. Annexed and mark as “JM - 4” was a copy of the summons to enter appearance; and
  - iii. Further, the Plaintiff/Respondent captured the mobile number 0722 415 087 in his pleadings as well as the summons to enter appearance. That mobile number was operated by Mr. Twalib Khamis, the 2<sup>nd</sup> Defendant/Applicant's Operations Manage. Annexed and marked as “JM - 5” was an M-pesa screenshot associating ownership of the number with Mr. Twalib Khamis.
- k). By failing to demonstrate to the court all due and reasonable diligence he employed in attempts to serve the 2<sup>nd</sup> Defendant/Applicant through the usual modes before moving the court for substituted service by advertisement, the Plaintiff withheld to the court the assistance contemplated under the provision of Section 1A (3) of the Civil Procedure Act, Cap. 21.

- l). Away from matters service, the 2<sup>nd</sup> Defendant/Applicant had a meritorious defence to the suit, warranting juridical investigation.
- m). The Plaintiff recognized that the property was sold to and a title issued to the 2<sup>nd</sup> Defendant/Applicant herein.
- n). Whereas the Plaintiff alleged forgery and fraud, the 2<sup>nd</sup> Defendant/Applicant maintained that it was a bona fide purchaser for value without notice. Annexed and mark as "JM - 6" was a draft of the intended Statement of Defence & Counter - Claim.
- o). Faced with these competing claims, it was important that the 2<sup>nd</sup> Defendant/Applicant was given an opportunity to present its case so that the court could determine which of the titles should be given jural recognition.
- p). The Deponent was aware that this would be in line with the provision of Section 26 (1) of the Land Registration Act, 2012 that guaranteed a proprietor hearing and adduction of credible evidence before a Certificate of Title was cancelled on grounds of fraud, misrepresentation or corrupt scheme.
- q). Short of that, the 2<sup>nd</sup> Defendant/Applicant may be condemned unheard in dissonance with the rules of natural justice and Article 50 (1) of the Constitution of Kenya of 2010.
- s). The prejudice of being condemned unheard by far outweighs the prejudice that the other parties would suffer should the matter restart with the 2<sup>nd</sup> Defendant/Applicant's participation.
- t). To demonstrate its bona fides, the 2<sup>nd</sup> Defendant/Applicant was ready to pay minimal throw away costs as an elixir for the expense of restarting the case "**de - novo**".
- u). It was in the interests of justice and fairness that the motion herein be allowed.

### **III. The responses by the Plaintiff/Respondent.**

5. While opposing the application, the Plaintiff/Respondent herein filed a 26 Paragraphed Replying Affidavit sworn by KEVIN MAINA NJOROGI and dated 1<sup>st</sup> July, 2025. He stated as follows that:-
- a) He was an adult Kenyan male of sound mind and the Plaintiff/Respondent herein.
  - b) He was conversant with the facts of this matter and could competently swear thereto in response to the 2<sup>nd</sup> Defendant/Applicant's Notice of Motion Application dated 20<sup>th</sup> June 2025.
  - c) From the outset, he opposed the said Application in its entirety together with all the corresponding allegations made in the Supporting Affidavit filed alongside the Application and state that the 2<sup>nd</sup> Defendant/Applicant herein was undeserving of the Orders sought.
  - d) He personally got to meet Mr. Twalib Khamis Ali who was also known by the name Captain Hamisi during the investigations by the Kwale DCI Office. It was during that time that the deponent informed him that he would proceed and file a case seeking to cancel the fraudulent title and he did admit that he had been conned of money in the purchase if indeed he still had his father's title.
  - e) Contrary to the 2<sup>nd</sup> Defendant/Applicant's averments at paragraph 2 of their Supporting Affidavit, the Plaintiff/Respondent contended that the 2<sup>nd</sup> Defendant/Applicant's Title was a forgery having been acquired illegally and fraudulently. Indeed the lands office had absolutely no lawful and valid record of the said title and green card.
  - f) The 1<sup>st</sup> Defendant fraudulently using forged documents caused the suit property to have a fraudulent parallel Green Card as well as a Title allegedly issued on 5<sup>th</sup> October 2022 all of which was done with

the sole purpose of selling and/or disposing off the suit property to the 2<sup>nd</sup> Defendant/Applicant using forged and fraudulent documents.

- g) As a result of the foregoing, the 1<sup>st</sup> Defendant never had any valid title to pass to the 2<sup>nd</sup> Defendant/Applicant as he did not have any title. Instead, all he did was pass a parallel fraudulent Title to the 2<sup>nd</sup> Defendant/Applicant which Title the Plaintiff/Respondent contended was fraudulent and forged and thus could not pass good title. In support of this assertion, was a Charge Sheet for (Kwale Criminal Case No. E277 of 2021) evidencing that the 1<sup>st</sup> Defendant had indeed been charged with obtaining land registration by false pretense as well as obtaining money vide false pretense by purporting to dispose off the suit property to the 2<sup>nd</sup> Defendant/Applicant. Annexed hereto and marked as "KM - 1" was a copy of the Charge Sheet.
- h) In response to the contents made under Paragraphs 3,4 and 5 of their Supporting Affidavit, the 2<sup>nd</sup> Defendant/Applicant was merely misleading this Honourable Court into issuing adverse orders which the 2<sup>nd</sup> Defendant/Applicant was undeserving of.
- i) The Deponent of the 2<sup>nd</sup> Defendant/Applicant knew about this case but chose not to participate in it as shown hereunder.
- j) The 2<sup>nd</sup> Defendant/Applicant's Operation Manager Mr. Twalib Khamis Ali was a witness in the above cited "**Criminal Matter (Kwale Criminal Case No. E277 of 2021)**". The 2<sup>nd</sup> Defendant/Applicant in their Supporting Affidavit at Paragraph 4 had admitted that they were aware the Criminal Matter related to the suit property. In fact they were aware that the 1<sup>st</sup> Defendant was charged with obtaining money by false pretenses from the 2<sup>nd</sup> Defendant/Applicant. If indeed he was so charged, he could not have had a valid title to sell to the 2<sup>nd</sup> Defendant/Applicant, neither could he have passed a valid title.

- k) Pending the hearing of the criminal case Mr. Twalib Khamis Ali a.k.a. Captain Hamisi did approach the Deponent and made an offer to purchase the property at the same amount they had paid the 1<sup>st</sup> Defendant but the Deponent declined and informed him a Civil suit had been filed challenging the sale and seeking the re-opening of the green card that had been intentionally destroyed to hide his late Dad's ownership of the suit land and that he would receive a call and receive the court documents.
- l) The Deponent gave the process server, one Mr. Vincent Mambuya the number of Mr. Twalib Khamis Ali whom they would be calling severally seeking to have him receive the summons and Plaint and supporting documents but he declined to do so. Further he also declined to disclose the location of the offices of the 2<sup>nd</sup> Defendant/Applicant contrary to the averments that had been made. Attached and marked as "KM - 2" was a copy of the affidavit of service.
- m) The Deponent knew the 2<sup>nd</sup> Defendant/Applicant through officer Khamis Ali, was therefore aware that this present suit had been filed against it but chose to ignore this fact. He personally informed Mr. Khamis Ali about the civil case. Indeed, it was him who gave the Process Server and his Advocates the subject telephone number that was put in the summons to enter appearance and the Plaint.
- n) This Honourable Court's record would bear him witness that the Plaintiff attempted to effect direct service of the Summons to Enter Appearance upon the 2<sup>nd</sup> Defendant/Applicant through Mr. Twalib Khamis Ali without success as the 2<sup>nd</sup> Defendant/Applicant's Operations Manager the said Mr. Twalib Khamis Ali refused and/or neglected to give the Process Server the physical location of the 2<sup>nd</sup> Defendant/Applicant.

- o) Due to those failed attempts at physical service, there was no other choice but for him to file the application for service by substituted means been an advert in the two daily newspapers. This was done as the Process Server and himself had been unable to trace and effect service of summons upon the 2<sup>nd</sup> Defendant/Applicant's directors for the principal reason that its physical offices were unknown and efforts to have Mr. Twalib Khamis Ali A.K.A Captain Hamisi the Operations Manager assist with the information bore no fruits.
- p) Vide the Application dated 24<sup>th</sup> November 2022, the deponent sought leave of Court to effect substituted service in accordance with the provision of Order 5 Rule 17 of the Civil Procedure Rules, 2010 and which leave was granted.
- q) Thus contrary to what the 2<sup>nd</sup> Defendant/Applicant had deposed, it was aware about the suit but chose to hide its physical location to hide its office to avoid service of summons, and also chose not to come to court to defend the claim as indeed the service by advertisement was proper service. The averment that the 2<sup>nd</sup> Defendant/Applicant's officials never saw it was meant to hoodwink the Court into issuing adverse orders that the 2<sup>nd</sup> Defendant/Applicant was undeserving of.
- r) The fact that the registered office of the 2<sup>nd</sup> Defendant/Applicant was indicated in the CR - 12 form as being Plot Number Msa/Block XXV/49 & 50 Mombasa. That did not in any manner whatsoever disclose where this was at all as it did not state the Building on which was situated if indeed it was the correct position. Neither had there been anything annexed to support that assertion of the registered office being in that plot.

- s) Therefore, this Honourable Court properly granted the Plaintiff/Respondent leave to serve the 2<sup>nd</sup> Defendant/Applicant with summons through substituted service by advertisement vide an Order made on 9<sup>th</sup> December 2022. The Plaintiff/Respondent duly returned an Affidavit of Service as proof of service through advertisement in Two (2) of the local dailies. Attached and marked as "KM - 3" was a copy of the Affidavit of Service as well as Advertisements.
- t) The Plaintiff/Respondent shall wholly rely on the Presumption of service as stated in the above cited Process Server's Affidavit of Service. That the burden lies on the party questioning it, to show that the return/service is incorrect. The burden of proof therefore lies with the 2<sup>nd</sup> Defendant/Applicant to show that service was incorrect. They only contend they never saw the two adverts. That was indeed proper service.,
- u) Further, he was informed by his Advocates that the 2<sup>nd</sup> Defendant/Applicant had also not complied with the requirements needed in an Application for setting aside proceedings so as to be granted leave to defend the suit. The law was now settled that in such an Application for setting aside proceedings, the Court must consider not only the reasons why the Defence was not filed or why the 2<sup>nd</sup> Defendant/Applicant herein failed to turn up for Hearing but also whether the 2<sup>nd</sup> Defendant/Applicant has a reasonable Draft Defence annexed to the Application which raised triable issues.
- v) A perusal of the 2<sup>nd</sup> Defendant/Applicant's Application reveals that the 2<sup>nd</sup> Defendant/Applicant had attached a Draft Defence in which they claim to had been a bona fide purchaser for value without notice but which was just a sham defence. The Deponent contended that the 2<sup>nd</sup> Defendant's purported draft defence raises no triable issues at all. The 2<sup>nd</sup> Defendant had not elaborated how

they acquired their alleged Title document in the defence neither have they indicated the due diligence they undertook.

- w) The 2<sup>nd</sup> Defendant/Applicant's averments at the contents made under Paragraphs 15, 16 and 17 of their Supporting Affidavit was meant to blatantly mislead this Honourable Court with a view of cunningly obtaining Orders yet the 2<sup>nd</sup> Defendant/Applicant had not proved and/or satisfied the required legal threshold for granting the Orders sought.
- x) In response to the averment made under Paragraph 19 of their Supporting Affidavit, it was the Plaintiff/Respondent assertion that in the event this Honourable Court is inclined to grant the Orders sought herein, then the thrown away costs to be paid by the 2<sup>nd</sup> Defendant should be inclusive of the advertisement costs, and all travel and accommodation expenses incurred by the Plaintiff/Respondent as well as the Advocate on Record when they had travelled to Kwale for Hearing and other Court attendances.
- y) Due to the foregoing, the 2<sup>nd</sup> Defendant/Applicant's Application was a mere afterthought, a delay tactic, a replete of outright falsehood and misrepresentation. The 2<sup>nd</sup> Defendant herein had come to court with unclean hands and the Application in its entirety is incompetent and reeks of *mala fide*.
- z) It was evident that the 2<sup>nd</sup> Defendant/Applicant had brought an unmeritorious Application, which deserved to be dismissed with costs to the Plaintiff/Respondent herein.
- aa) Therefore, it was in the interest of justice that the Application dated 20<sup>th</sup> June 2025 together with Supporting Affidavit thereof be dismissed with costs.

#### **IV. The responses by the 3<sup>rd</sup> Defendant/Respondent.**

6. Additionally, the 3<sup>rd</sup> Defendant opposed the application by filing their 19 Paragraphed Replying Affidavit dated 27<sup>th</sup> June, 2025 and sworn by AMBETSA WILMER. She stated as follows:-

- a) She was an Advocate of High Court of Kenya, and the Advocate in conduct of the matter; officer of the 4<sup>th</sup> Defendant herein conversant with the facts of the case and with authority to swear this Affidavit.
- b) She had perused and understood the contents of the supporting affidavit of the Applicant dated 20<sup>th</sup> June, 2025 sworn in aid of the Notice of Motion application of even date, and hereby respond hereto.
- c) This matter was commenced by way of a Plaint dated 9<sup>th</sup> September, 2022. The Plaintiff filed a bundle of documents and witness statement of even date.
- d) The pleadings having closed and the parties having held a pre-trial conference, on 19<sup>th</sup> September, 2023. The matter was to proceed for hearing on 23<sup>rd</sup> July, 2024 and 22<sup>nd</sup> January, 2025 but it was adjourned but finally took off on 2<sup>nd</sup> April, 2025.
- e) It was instructive to note that the intention of the Applicant to re - open the case, introduce new evidence and give further evidence was a mere afterthought after the Plaintiff/Respondent, 1<sup>st</sup> , 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents hearings proceeded and their case closed.
- f) This suit was filed way back in 9<sup>th</sup> September, 2022. All this time, (3 years) the Applicant had a chance to participate in the proceedings but chose not to, no exceptional circumstances have been demonstrated to justify the application now, after all the parties had closed their case.

- g) The 2<sup>nd</sup> Defendant/Applicant was bent on delaying or obstructing justice. The Plaintiff/Respondent served the Applicant via substituted service by way of advertisement on 25<sup>th</sup> January, 2023 via the Standard Newspaper and 1<sup>st</sup> February, 2023 via the Daily Nation. The Applicant is thus seeking leave now to participate in the proceedings after a
- h) Judgment date had been issued by the court for 2<sup>nd</sup> July, 2025. More than 2 years after the said advertisement was published. The Defendant/Applicant's acts amount to obstructing the cause of justice. The delay was not only inordinate but it was inexcusable and unexplainable.
- i) There was inordinate and unexplained delay. No explanation had been given by the Applicant as to why he failed to participate in the said proceedings even after service was effected.
- j) Equity aids the vigilant and not the indolent.
- k) The instant application only amounted to and/or constituted a fishing expedition and/or excursion, which was frowned upon by the due process of the law and consequently, the instant application amounted to playing a lottery with the court.
- l) The application was not made in good faith and was not in the interests of doing justice to all the parties as the 4<sup>th</sup> Defendant would be greatly prejudiced in all aspects if the leave to re-open the case was granted.
- m) Parties were bound by their pleadings. In this case, the 2<sup>nd</sup> Defendant/Applicant was bound by her pleading (if any filed) before court and in compliance with pre - trial directions as such the application should fail.
- n) A trial would not be a fair trial, if a party is allowed to hide evidence and ambush the other party after close of proceedings in an attempt to sneak in documents.

- o) The Civil Procedure Rules of 2010 require parties to furnish and exchange their evidence in advance before the commencement of the trial. That there was no right to adduce new evidence after close of pleadings. The discretion was intended to be exercised to avoid injustice due to hardship arising from inadvertence.
- p) The 2<sup>nd</sup> Defendant/Applicant had not demonstrated any sufficient reason to warrant grant of the orders sought and as such the application herein should be dismissed.
- q) In the premises it was clear that the Application consists of inaccuracies of facts and full of misrepresentation and untruths. The 2<sup>nd</sup> Defendant/Applicant herein had come to court with unclean hands and the same should not be given the light of day.
- r) Therefore, the 4<sup>th</sup> Defendant urged the court to dismiss the application herein as prejudice or substantial loss would be occasioned on the Defendants in allowing the application.
- s) It was only fair and just that the application be dismissed with costs as it was wholly devoid of merit.

#### **V. Submission.**

7. On 2<sup>nd</sup> July, 2025 while all parties were present in Court, it was agreed by consensus that the application dated 20<sup>th</sup> June, 2025 to dispose off by way of oral submissions. Pursuant to that the 2<sup>nd</sup> Defendant/Applicant, the Plaintiff/Respondent, the 3<sup>rd</sup> & 4<sup>th</sup> Defendant/Respondent proceeded on accordingly. The 1<sup>st</sup> Defendant opted not to participate in the proceedings.
8. The parties were accorded an opportunity to highlight their submission orally as follows.

#### **A. The Oral Submissions by the 2<sup>nd</sup> Defendant/Applicant.**

9. Mr. Mureithi Advocate commenced his submissions by stating that before Court for hearing was the Notice of Motion application dated 20<sup>th</sup> June, 2025. The application sought to arrest the delivery of Judgement writing and delivering by court. The Counsel stated that

the 2<sup>nd</sup> Defendant/Applicant needed to participate in the proceedings before the final decision was arrived at. His submission was that they were served with replies from the Plaintiffs/Respondents, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents. He was yet to receive replies from the 1<sup>st</sup> Defendant. We had filed skeletal arguments and ready to have it orally highlighted subject to the availability of time.

10. The application was supported by an Affidavit sworn same date by Joseph Mwela - 2<sup>nd</sup> Defendant Legal Officer. There were attached several annexures to it. They had filed skeletal submissions dated 1<sup>st</sup> July, 2025. In principles, the 2<sup>nd</sup> Defendant/Applicant wished to urge the Court to arrest the writing of Judgement and allow them to be joined and heard on its merit. The grounds had been set out.
11. According to the Counsel, all the parties concurred that the court has jurisdiction to hear and entertain the matter altogether. It should not present in justice and hence it has powers to arrest the Judgement. The Learned Counsel contended that there existed two (2) Certificates of title deeds for the same suit. However, one of the title was held by the police while the second one was held by the 2<sup>nd</sup> Defendant/Applicant.
12. Primarily, the main contention in the case was on the ownership of the land. One of the parties and the title would carry the day. To buttress his argument, the Learned Counsel referred Court to the provision of Sections 24, 25 and 26 (I) of Land Registration Act, No. 3 of 2012. His strong contention was that there would be need for parties to prove ownership as per the title - see annexure marked as "JM-1". The Learned Counsel argued that despite of all this, during the hearing of the matter the 2<sup>nd</sup> Defendant/Applicant never participated in the suit hence not gotten opportunity to defend its case. The Learned Counsel raised strong issues on the alleged service upon the 2<sup>nd</sup> Defendant/Applicant. He stated that the Plaintiff/Respondents though knowing the full contacts of the 2<sup>nd</sup> Defendant/Applicant being a an incorporated legal entity still never effected it upon them. Instead, they sought for leave to effect

service by substituted ways. These were the main reasons for not participating in the suit. They wondered why and in as much as they did not question the propriety of the service but all along the Police had all the postal and physical address. According to the Counsel, the provision of Order 5 Rule 3 of the Civil Procedure Rules, 2010 spells out the grounds for serving a legally constituted Corporation. The Counsel held that the 2<sup>nd</sup> Defendant/Applicant never saw the Advertisement published in the local dailies of “*The Daily Nation*” nor “*The Standard*” newspapers. They only came to learn of the civil case from attending related criminal case over the same subject matter whatsoever. They sought to be allowed to participate in the proceedings. As a way of demonstrating their commitment to the matter, the 2<sup>nd</sup> Defendant/Applicant had already drafted and attached a Draft Statement of Defence and a Counter – Claim. From the said pleadings and their evidence, they would demonstrate that they were bone - fide purchaser for value.

13. To counter the argument by the Plaintiffs/Respondents that they would suffer prejudice if the application was allowed was baseless and unfounded. According to the 2<sup>nd</sup> Defendant/Applicant, there could be no other person to suffer prejudice than them. They underscored to the fact that, land was a sensitive issue in Kenya and it was protected under the provision of Article 40 (1) of the Constitution of Kenya, 2010. The Counsel beseeched the Court to invoke the principles of natural justice.

14. In conclusion, the 2<sup>nd</sup> Defendant/Applicant took cognizance and recognizes the fact that the parties had incurred expenses incurred while prosecuting this case so far. With regards to it, they apologized. Hence, they would be willing and ready to give thrown away costs but at a reasonable sum. They urged Court to be allow the application.

**B. The Oral submissions by the 3<sup>rd</sup> & 4<sup>th</sup> Defendants/Respondents.**

15. M/s. Ambetsa Advocate for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants/Respondents informed Court that they had filed both their replies and submissions in the main suit. They were ready to highlight them accordingly. They opposed the application. The Learned Counsel provided the Court with a brief facts of the case. She stated that the suit was filed on 9<sup>th</sup> September, 2022 by the Plaintiff/Respondent herein.
16. It was the Counsel's contention that the 2<sup>nd</sup> Defendant/Applicant had the chance to participate in the proceedings but chose not. Instead, they chose to appear today when the Judgement was supposed to be delivered. It is excusable and inordinate. The Learned Counsel opined that there no cogent reason had been given. To state that they never saw the advertisement in the newspaper was no good reason enough to justify the granting of the orders sought from the application. The Learned Counsel held that she had perused the pleading. With the leave of Court, in accordance with the provision of law, the advertisements were published on 25<sup>th</sup> January, 2023 in "*The Standard*" newspaper and on 1<sup>st</sup> February, 2023 in the edition of "*The Daily Nation*" newspaper. These were proper service in accordance to the provision of the law. There were no exceptional circumstances. Besides, the application had not been made on good faith. It should be dismissed with costs.

### **C. The Oral Submissions by the Plaintiff/Respondent**

17. Mr. Thimba Advocate stated that he wished to fully align himself with the submissions made by M/s. Ambetsa Advocate. He stated that the 2<sup>nd</sup> Defendant/Applicant had been properly and adequately served with the pleadings as clearly shown by the Affidavit of Service by the Court Process server and the two (2) advertisement in newspaper on two (2) of different dates. This decision was made after all efforts were made to locate them but found to be in vain.

18. The Learned Counsel referred Court to the Replying Affidavit the contents under Paragraph numbers 10 to 16 by the Plaintiff/Respondent. They clearly explained how he got the cell phone number while in the DCIO offices. Through their interaction with Captain Hamisi, but he declined to inform the Plaintiff/Respondent of the Physical address for the 2<sup>nd</sup> Defendant/Applicant. The Counsel alerted him the 2<sup>nd</sup> Defendant/Applicant were to be sued in a Civil matter. Hence its out of the frustration that the police came to court for assistance to serve by substitution means.
19. Captain Hamisi the operation manager had not deposed to the facts/averments in an affidavit. Hence they ought to be disregarded. There was no application made for the cross examination. The Counsel relied in the case of: "**Philip Mula Mulaya - Versus - Samwuel Muinde**" on substituted service.
20. He made reference to the Defendant's title attached to the Defence. They had not attached an official search from the Land Registrar's office. From the record, the matter had already gone very far. There was nowhere that the Plaintiff had sought for the cancellation of the 2<sup>nd</sup> Defendant's title. On the contrary, its actually the 2<sup>nd</sup> Defendant who was seeking for the cancellation of the Plaintiff's title.
21. The Learned Counsel argued that his client had incurred a lot of expenses while prosecuting the case. Thus, in the event that the court was inclined to allow the application, they would be seeking for full compensation for costs during the proceedings.

#### **D.A rejoinder by the 2<sup>nd</sup> Defendant/Applicant**

22. Mr. Mureithi Advocate for the 2<sup>nd</sup> Defendant/Applicant was a corded an opportunity to make brief rejoinder. He stated that M/s. Ambetsa was the Counsel seized to act for 3<sup>rd</sup> & 4<sup>th</sup> Defendants. Therefore, she could not comment on the prejudice to be faced by the 2<sup>nd</sup> Defendant/Applicant. The Counsel referred Court to the

contents of Paragraphs 10 to 16 of the Plaintiff/Respondent's Replying Affidavit. There was no date of his intention to file the civil suit as alleged. It admitted they had the cell phone and postal address numbers of the operational manager. He averred that the provision of Order 5 Rule 22 B of the Civil Procedure Rules, 2010 allowed service by way of electronic device. According to the Counsel, this means of service was not exhausted. The Counsel referred Court to the contents of Paragraphs 10 to 16 of the Replying Affidavit by the Plaintiff/Respondent. It explained how he got the number while in the DCIO offices; though interacting by the two of Captain Hamisi, but he declined to inform the Plaintiff of the Physical address the 2<sup>nd</sup> Defendant/Applicant.

23. The Learned Counsel contended that to state that the title held by the Plaintiff was the first to be registered, was an issue to be determined by the court. There was need for these issues to be deliberated adequately through a trial where the 2<sup>nd</sup> Defendant/Applicant was allowed a chance to participate. It was only this Court that had the legal mandate to cancel or revoke a title. He averred that an official search was not proof of ownership of land.

24. The Learned Counsel submitted that from their replies they had not informed court they were seeking for the reconstitution of the Green Card. He reiterated that the 2<sup>nd</sup> Defendant/Applicant needed to be given time to defend its case.

25. As already indicated above, M/s. Kyalo Advocate informed Court that they would not be opposing the application.

#### **VI. Analysis & Determination.**

26. I have critically assessed the filed pleadings particularly the Notice of Motion application dated 20<sup>th</sup> June, 2025 by the 2<sup>nd</sup> Defendant/Applicant herein, the responses by the Plaintiff/Respondent, the submissions, the relevant provision of the Constitution of Kenya, 2010 and the statutes.

27. In order for the Honourable Court to arrive at an informed, reasonable and Equitable decision, it has framed the following four ( 4 ) issues for its determination. These are:-

- a) Whether the Notice of Motion application dated 20<sup>th</sup> June, 2025 by the 2<sup>nd</sup> Defendant/Applicant has any merit whatsoever.***
- b) Whether service of the pleadings were properly effected upon the 2<sup>nd</sup> Defendant herein by the Plaintiff/Respondent.***
- c) Whether the delivery of Judgement should be deferred in order to allow the re - opening of the suit and participation of the matter by the 2<sup>nd</sup> Defendant/Applicant herein.***
- d) Who will bear the cost of the application herein.***

**ISSUE No. a). Whether the Notice of Motion application dated 20<sup>th</sup> June, 2025 by the 2<sup>nd</sup> Defendant/Applicant has any merit whatsoever.**

28. Under this sub - title, the Honourable Court will be examining whether the application by the 2<sup>nd</sup> Defendant/Applicant herein has any merit or not. In a nutshell, the Applicant sought for orders that pending the hearing and determination of this application, the Honourable Court be pleased to review its orders and/or arrest the writing and delivery of the Judgment slated for 2<sup>nd</sup> July 2025. Further, that the Honourable Court be pleased to set aside the proceedings and grant leave to the 2<sup>nd</sup> Defendant to defend the suit on the merits by starting the matter "***de novo***" with the participation of the 2<sup>nd</sup> Defendant/Applicant herein.

29. As indicated above, the application was anchored upon several grounds. In summary, these were the Deponent as the Legal Officer of the 2<sup>nd</sup> Defendant/Applicant was aware the 2<sup>nd</sup> Defendant/Applicant was registered proprietor of property title number KWALE/SHIMONI ADJ/635 - The suit

Property. He was aware that on 9<sup>th</sup> June 2025, their Operations Manager, Mr. Twalib Khamis was in attendance in Kwale Law Courts for the hearing of Kwale Chief Magistrates Court "***Criminal Case Number E277 of 2021: R - Versus - Sahare Kisupi Mwichambe***" - the criminal case which surrounded the suit property.

30. The facts of the matter is that the accused person in that case was impleaded herein as the 1<sup>st</sup> Defendant. While in the court vicinity, their Operations Manager conferred with the prosecutor and the investigation officer. It was at that point that he learnt that the Plaintiff/Respondent had since filed this suit seeking to cancel the 2<sup>nd</sup> Defendant/Applicant's title to the property. This revelation was brought to the attention of the Deponent and who quickly laboured to peruse the Court file.
31. The Plaintiff/Respondent recognized that the property was sold to and a title issued to the 2<sup>nd</sup> Defendant/Applicant herein. Whereas the Plaintiff/Respondent alleged forgery and fraud, the 2<sup>nd</sup> Defendant/Applicant maintained that it was a bona fide purchaser for value without notice. The 2<sup>nd</sup> Defendant/Applicant argued that faced with these competing claims, it was important that it was given an opportunity to present its case so that the court could determine which of the titles should be given jural recognition.
32. Contrary to the 2<sup>nd</sup> Defendant/Applicant's averments at paragraph 2 of their Supporting Affidavit, the Plaintiff/Respondent contended that the 2<sup>nd</sup> Defendant/Applicant's Title was a forgery having been acquired illegally and fraudulently. Indeed the lands office had absolutely no lawful and valid record of the said title and green card. The 1<sup>st</sup> Defendant fraudulently using forged documents caused the suit property to have a fraudulent parallel Green Card as well as a Title allegedly issued on 5<sup>th</sup> October 2022 all of which was done with the sole purpose of selling and/or disposing off the suit property to the 2<sup>nd</sup> Defendant/Applicant using forged and fraudulent documents.

33. As a result of the foregoing, the 1<sup>st</sup> Defendant never had any valid title to pass to the 2<sup>nd</sup> Defendant/Applicant as he did not have any title. Instead, all he did was pass a parallel fraudulent Title to the 2<sup>nd</sup> Defendant/Applicant which Title the Plaintiff/Respondent contended was fraudulent and forged and thus could not pass good title. In support of this assertion, was a Charge Sheet for (Kwale Criminal Case No. E277 of 2021) evidencing that the 1<sup>st</sup> Defendant had indeed been charged with obtaining land registration by false pretense as well as obtaining money vide false pretense by purporting to dispose off the suit property to the 2<sup>nd</sup> Defendant/Applicant. Annexed hereto and marked as "KM - 1" was a copy of the Charge Sheet.
34. In response to the contents made under Paragraphs 3,4 and 5 of their Supporting Affidavit, the 2<sup>nd</sup> Defendant/Applicant was merely misleading this Honourable Court into issuing adverse orders which the 2<sup>nd</sup> Defendant/Applicant was undeserving of.
35. Clearly, the main bone of contention here is on the ownership of the title deed. There two conflicting title deed whereby one is held by the Plaintiff/Respondent on one hand while on the other, the 2<sup>nd</sup> Defendant/Applicant holds the other. From the proceedings allegations on the title deed having been acquired fraudulently have been raised. Indeed, there exists a criminal case which is on going based on the said allegations.
36. These issues are weighty issues which are line with the need to ascertain the root and the provision of Sections 24, 25, 26 (1) and 80 of the Land Registration Act, No. 3 of 2012 that guaranteed a proprietor hearing and adduction of credible evidence before a Certificate of Title was cancelled on grounds of fraud, misrepresentation or corrupt scheme.
37. I discern that, land being such a sensitive commodity in Kenya as it touches on the source of livelihoods. Guided by the provisions of Article 25 ( c ); 47, 48, 50 ( 1 ) & ( 2 ) and 159 (1) & ( 2 ) of the Constitution of Kenya, 2010; Sections 3 & 13 of the Environment

& Land Court Act, No. 19, of 2011 on the principles of natural Justice, Equity, Conscience, fair hearing, need to facilitate the just, expeditious, proportionate and accessible resolution of disputes, it is imperative that parties are accorded an opportunity to be heard. Otherwise, short of that, the 2<sup>nd</sup> Defendant/Applicant may be condemned unheard which by far outweighs the prejudice that the other parties would suffer should the matter re - start with the 2<sup>nd</sup> Defendant/Applicant's participation.

38. As a sign of good faith, I have taken cognizance that the 2<sup>nd</sup> Defendant/Applicant has demonstrated its bona fide and good faith for its willingness and readiness to pay minimal throw away costs as an elixir for the expense of restarting the case "*de - novo*". For these reasons, therefore, I find that the application by the 2<sup>nd</sup> Defendant/Applicant has merit and needs to be allowed.

**ISSUE No. b). Whether service of the pleadings were properly effected upon the 2<sup>nd</sup> Defendant herein by the Plaintiff/Respondent.**

39. Under this sub - title, the issue of service upon the 2<sup>nd</sup> Defendant/Applicant with the pleadings - summons to enter appearance and the Plaint by the Plaintiff/Respondent. Through its application the 2<sup>nd</sup> Defendant/Applicant have vehemently refuted having been properly served. They claimed to have discovered that the Plaintiff/Applicant filed this suit on 27<sup>th</sup> September 2022 with the assistance of the advocates on record. They noted that service upon them was done via substituted service by way of newspaper advertisement following the Honourable Court's orders of 30<sup>th</sup> November, 2022. However, it was unfortunate that they had seen the advertisement published in the newspapers - "*the Standard*" of the 25<sup>th</sup> January 2023 edition and "*the Daily Nation*" of 1<sup>st</sup> February 2023. While the 2<sup>nd</sup> Defendant/Applicant never faulted the Honourable Court at all for ordering substituted service by way of advertisement, the 2<sup>nd</sup> Defendant/Applicant grieved that the Plaintiff/Respondent was not

forthright when he deposed that service upon the 2<sup>nd</sup> Defendant/Applicant was impossible through the usual modes set out under the provision of Order 5 Rule 3 of the Civil Procedure Rules, 2010.

40. Hence, resorting to service by advertisement they argued that the 2<sup>nd</sup> Defendant/Applicant had always had its registered office at Dedan Kimathi Road, Plot No. Msa/Block XXV/49 & 50; Mombasa. That the 2<sup>nd</sup> Defendant/Applicant's Postal address is P.O. Box 99662, Kilindini. The Plaintiff/Applicant had captured this address in all his pleadings as well as the summons to enter appearance given on 27<sup>th</sup> September 2022. Further, the Plaintiff/Respondent captured the mobile number 0722 415 087 in his pleadings as well as the summons to enter appearance. That mobile number was operated by Mr. Twalib Khamis, the 2<sup>nd</sup> Defendant/Applicant's Operations Manager. By failing to demonstrate to the court all due and reasonable diligence he employed in attempts to serve the 2<sup>nd</sup> Defendant/Applicant through the usual modes before moving the court for substituted service by advertisement, the Plaintiff/Respondent withheld to the court the assistance contemplated under the provision of Section 1A (3) of the Civil Procedure Act, Cap. 21. They have held that they never saw the advertisement published in the two ( 2 ) newspapers and wondered the Plaintiff/Respondent would not exhausted all the available avenues on service as provided for in law as they were fully aware of their postal address and the cell - phone numbers.

41. From the outset, the Plaintiff/Respondent opposed the said Application in its entirety together with all the corresponding allegations made in the Supporting Affidavit filed alongside the Application and state that the 2<sup>nd</sup> Defendant/Applicant herein was undeserving of the Orders sought. He claimed to have personally got to meet Mr. Twalib Khamis Ali who was also known by the name Captain Hamisi during the investigations by the Kwale DCI Office. It was during that time that the deponent informed him that he would

proceed and file a case seeking to cancel the fraudulent title and he did admit that he had been conned of money in the purchase if indeed he still had his father's title.

42. The Plaintiff/Respondent argued that the 2<sup>nd</sup> Defendant/Applicant knew about this case but chose not to participate in it as shown hereunder. The 2<sup>nd</sup> Defendant/Applicant's Operation Manager Mr. Twalib Khamis Ali was a witness in the above cited "**Criminal Matter (Kwale Criminal Case No. E277 of 2021)**". The 2<sup>nd</sup> Defendant/Applicant in their Supporting Affidavit at Paragraph 4 had admitted that they were aware the Criminal Matter related to the suit property. In fact they were aware that the 1<sup>st</sup> Defendant was charged with obtaining money by false pretenses from the 2<sup>nd</sup> Defendant/Applicant. If indeed he was so charged, he could not have had a valid title to sell to the 2<sup>nd</sup> Defendant/Applicant, neither could he have passed a valid title.

43. Undoubtedly, service of the pleadings were effected. This Honourable Court strongly holds that the service was adequately and properly done. It has seen the Affidavit of Service sworn by one Mr. Vincent Mambuya, a Court Process server in accordance with the provision of Order 5 Rule 15 of the Civil Procedure Rules, 2010. Attached and marked as "KM - 2" was a copy of the affidavit of service.

44. Due to those failed attempts at physical service, there was no other choice but for them to file the application for service by substituted means under the provision of Order 5 Rule, 17 of the Civil Procedure Rules, 2010 been an advert in the two daily newspapers. This was done as the Process Server and himself had been unable to trace and effect service of summons upon the 2<sup>nd</sup> Defendant/Applicant's directors for the principal reason that its physical offices were unknown and efforts to have Mr. Twalib Khamis Ali A.K.A Captain Hamisi the Operations Manager assist with the information bore no fruits.

45. In view of the foregoing, the Court is fully satisfied the 2<sup>nd</sup> Defendant/Applicant was properly served in accordance with the laid - down provision of the law.

**ISSUE No. c). Whether the delivery of Judgement should be deferred in order to allow the re - opening of the suit and participation of the matter by the 2<sup>nd</sup> Defendant/Applicant herein.**

46. As already indicated above, there would be great need to accord the 2<sup>nd</sup> Defendant/Applicant an opportunity to be heard based on the principles of natural Justice and fair hearing.

47. However, in order to dispense substantive decision, it is reasonable, just, fair and Equitable to balance the scale of justice and the interest of all parties herein. From the record, the Plaintiff's case and that of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants have already commenced and closed. They are only awaiting for Judgement to have been delivered on 2<sup>nd</sup> July, 2025. Forward moving and in the fullness of time, three ( 3 ) main issues do arise herein as guide to this Court. Firstly, despite of there being proper service, the 2<sup>nd</sup> Defendant/Applicant opted to ignore the proceedings despite of having a claim over the suit property. They cannot be excused here at all. Secondly, the parties have expended a lot of resources - manhour, finances and time in preparing for the case. It would be extremely prejudicial to re - open the matter to commence a afresh - "**de novo**". At least in all fairness, the 2<sup>nd</sup> Defendant/Applicant has been magnanimous and offered to pay some thrown away costs in order to compensate the parties for the expenses incurred. That is encouraging. Finally, luckily, the Judgement scheduled for delivery on 2<sup>nd</sup>, July, 2025 has now been overtaken by time.

48. Based on the above three ( 3 ) considerations, the Honourable Court seeks refuge from the provision of Orders 7, 11 & 18 Rule 10 of the Civil Procedure Rules, 2010 and Section 146 Rule 4 of the Evidence Act, Cap. 80 by allowing the 2<sup>nd</sup> Defendant to file their Defence and Counter - Claim and other supporting documents within a certain stipulated timeframe, be accorded an opportunity to re - call the witnesses who have testified for cross - examination and examination in Chief by the other parties. Additionally, the 1<sup>st</sup> Defendant/Applicant will be directed to pay the Plaintiff/Respondent, 3<sup>rd</sup> & 4<sup>th</sup> Defendants some reasonable thrown away costs which the Honourable Court has based on the resources expended by the parties and the market value of the suit property altogether.

**ISSUE No. d). Who will bear the cost of the application herein.**

49. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. 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. 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. 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.

50. In the present case, although the application by the 2<sup>nd</sup> Defendant/Applicant is partially successful, but in the given circumstances, the Honourable Court finds it reasonable and just to award the Plaintiff/Respondent, 3<sup>rd</sup> & 4<sup>th</sup> Defendants/Respondents herein costs for the application.

**VII. Conclusion & Disposition.**

51. Ultimately, having caused an indepth analysis to the framed issues herein, the Honourable Court based on the Principles of Preponderance of Probabilities and the balance of Convenience arrives at this conclusion and grants the following specific orders. These are:-

- a) **THAT the Notice of Motion application dated 20<sup>th</sup> June, 2025 by the 2<sup>nd</sup> Defendant/Applicant found to be meritorious and hence be and is hereby allowed as prayed subject to the fulfilment of the Pre - conditions stipulated herein below.**
- b) **THAT the scheduled delivery of Judgement in this matter be and is hereby deferred until the matter is heard by the participation of the 2<sup>nd</sup> Defendant/Applicant herein.**
- c) **THAT the 2<sup>nd</sup> Defendant/Applicant be granted 21 days leave to file and serve their Statement of Defence and Counter - Claim in accordance with the provision of Order 7 of the Civil Procedure Rules, 2010 as per the attached annexure marked as "JM - 6" attached to the Supporting Affidavit of Joseph Mwella, the 2<sup>nd</sup> Defendant/Applicant Operations manager sworn and dated 20<sup>th</sup> June, 2025.**

- d) **THAT** thereafter upon service, the Plaintiff/Respondent herein granted corresponding 21 days leave to file and serve replies to the Defence and Defence to the Counter - Claim and any further document responding to any new issues raised from the filed pleadings by the 2<sup>nd</sup> Defendant/Applicant herein.
- e) **THAT** there be a Pre - Trial Conference conducted on 8<sup>th</sup> December, 2015 pursuant to the provision of Order 11 of the Civil Procedure Rules, 2010 and a hearing on 25<sup>th</sup> March, 2026 on priority basis
- f) **THAT** in accordance to the provision of Articles 25 ( c ), 48, 50 ( 1 ) & ( 2 ), 159 ( 1 ) & ( 2 ) of the Constitution of Kenya, 2010, Sections 3 & 13 of the Environment & Land Court Act, No. 19 of 2011; Section 146 ( 6 ) of the Evidence Act, Cap. 80 and Order 18 Rule 10 of the Civil Procedure Rules, the 2<sup>nd</sup> Defendant/Applicant herein to be at liberty to recall any of the witnesses by the Plaintiff/Respondent, 1<sup>st</sup> and 3<sup>rd</sup> Defendant/Respondents who have already tendered their testimonies in the matter for Cross - Examination and Re - Examination as provided for in law.
- g) **THAT** the 2<sup>nd</sup> Defendant/Applicant directed to pay the Plaintiff/Respondent and 3<sup>rd</sup> Defendant/Respondent herein a sum of Kenya Shillings Four Hundred Thousand (Kshs. 400, 000/=) as thrown away costs as an elixir for the expenses of re - opening the case and enabling the participation of the 2<sup>nd</sup> Defendant/Applicant in the matter whatsoever **WITHIN THE NEXT THIRTY (30) DAYS** from the date of this Ruling.

**h) THAT in default to compliance to the directions provided herein the Notice of Motion application dated 20<sup>th</sup> June, 2025 shall stand dismissed automatically by effusion of time.**

**i) THAT cost of the application to be borne by the 2<sup>nd</sup> Defendant/Applicant to be awarded to the Plaintiff/Respondent and the 3<sup>rd</sup> & 4<sup>th</sup> Defendants/Respondents herein.**

**IT IS SO ORDERED ACCORDINGLY**

**RULING DELIVERED THROUGH THE MICRO - SOFT TEANS VIRTUAL MEANS, SIGNED AND DATED AT KWALE ON THIS .....14<sup>TH</sup> .....DAY OF .....OCTOBER.....2025.**

.....  
**HON. MR. JUSTICE LL. NAIKUNI**  
**ENVIRONMENT & LAND COURT**  
**AT**  
**KWALE**

**Ruling delivered in the presence of:-**

- a). Mr. Daniel Disii, the Court Assistant.
- b). Mr. Mutemi Advocate holding brief for Mr. Thimba Advocate for the Plaintiff/Respondent.
- c). No appearance for the 1<sup>st</sup> Defendant/Respondent.
- d). Mr. Mureithi Advocate for the 2<sup>nd</sup> Defendant/Applicant.
- e). M/s. Ambesta Advocate for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants/Respondents.