

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KWALE

ELC LAND CASE NO E014 OF 2024

NILESHKUMAR MOHANLAL SHAH

GUY SPENSER ELMS

[Suing as executors and legal representatives of the

Estate of Pritam Singh Panesar[deceased]

.....**PLAINTIFFS/APPLICANTS**

- VERSUS -

MOHAMED RUWA MARIDADI

ANTHONY MICHEAL MWANZIA MULWA

AHMED OUMA RANDA

LAND REGISTRAR -KWALE.....DEFENDANTS/RESPONDENTS

RULING

I. Introduction

1. Before the Honourable Court for its determination are two (2) Notice of Motion Applications dated 11th December 2024 by *Nileshkumar Mohanlal Shah and Guy Spenser Elms [suing as executors and legal representatives of the Estate of Pritam Singh Panesar[deceased]* the Plaintiffs/Applicants herein under the provisions of Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Cap. 21, Sections 13 of the Land & Environment Act, No. 19 of 2011, Sections 86, 87 and 101 of the Land Registration Act, No. 3 of 2012, Order 37 Rule 1 (a) and (g)] and 8 and Order 40 Rule 1 of the Civil Procedure [Amendment] Rules 2020.
2. Upon service of the Application, the 1st , 2nd and 3rd Respondents responded to the application through a Replying affidavit dated 6th February 2025. The 4th Respondent on their part filed grounds of opposition dated 17th March 2025 and a Replying Affidavit dated 26th March 2025 respectively.
3. Subsequently, the 1st, 2nd & 3rd Defendants herein *Mohamed Ruwa Maridadi, Anthony Micheal Mwanzia Mulwa and Ahmed*

Ouma Randa herein filed the second application dated 17th September, 2025. It was brought under the provision of Sections 1A, 1B and 3A of the Civil Procedure Act, Cap. 21; Order 9 Rule 9 (Sic), Orders 51 Rule 1 of the Civil Procedure Rules, 2010. For good order, the Honourable Court directed that the two applications be dealt with simultaneously but distinctly.

II. The Plaintiffs/Applicants Case

4. The Plaintiffs/Applicants sought for the following orders:-

a) Spent.

b) Spent.

c) Spent.

d) That pending hearing and determination of this summons, a temporary order of injunction be and is hereby issued to stay or restrain the 4th Defendant whether by himself or anyone acting under them from cancelling or in any way interfering with the plaintiffs title to the parcel of land title number Kwale/Msambweni A/ 3390 issued on 28/7/2023 executing, implementing, acting and or in any way proceedings with actions threatened in gazette notice no 14724 dated and published on 8th November 2024 by the 4th Defendant in relation to the said property.

e) That costs of this application be in the cause.

5. The application herein was premised on the grounds, testimonial facts on the face of the application and averments made out under the 10 Paragraphed supporting affidavit of NILESHKUMAR MOHANLALAL SHAH the executor/legal representative of the estate of Pritam Singh Panesar. The Applicant averred that:

a) The parcel of land registered as title number KWALE/MSAMBWENI A/ 3390 measuring 21.40 hectares was at all material times registered in the names of Pritam Singh who died testate on 28th July, 2018 and a grant to his estate issued on 26th March, 2019.

b) That on 25th July 2023 the Plaintiffs lodged a transmission to their names and surrendered the original title to the suit

property to the 4th Defendant who duly received the said application for registration and issued the Plaintiffs with a title deed for the said property in the names of the Plaintiffs on 28th July 2023.

- c) It was averred that despite this, the 4th defendant has ultra vires issued a gazette notice no 14724 dated and published on 8th November 2024 demanding the plaintiffs to surrender the original title dated 9th July 2009 in the deceased Pritam Singh Panesar's name and given a notice to cancel the title deed issued on 28th July 2023 in the plaintiffs name in respect of the suit property within 90 days from the day of the said publication despite having received the surrendered original title deed issued on 9th July 2009 and issuing the Plaintiffs with a new title.
- d) The Plaintiffs maintained that they had never received a notice or a demand for the purported surrender of the original title in the name of the deceased and the gazette notice and demand notice were thus issued by error, mistake and ultra vires. That the plaintiffs cannot surrender a title they already surrendered to the 4th defendant and hence the demands in the demand letter are a clear abuse of the court process.

III. Responses to the application dated 11th December 2024 by the Respondents

6. In opposing the application, several responses were filed by the respective Respondents herein.

IV. The responses by the 1st 2nd and 3rd Defendants/Respondents

7. The 1st, 2nd and 3rd Defendant/Respondents responded to the application through a 21 Paragraphed Replying Affidavit dated 6th February 2025 and sworn by ANTHONY MICHAEL MWANZIA MULWA the 2nd Respondent with one (1) annexures marked as "AMM - 001, annexed thereto. The deponent averred that:
8. The Plaintiffs'/Applicants' Application was not only misconceived and misguided but is also lacking in basis and in

law and is a complete waste of this Honorable Court's time as the same is predicated on misguided information and brought about in bad faith.

9. Contrary to what is stated in paragraph 1 of the Supporting Affidavit, the deponent contended that the suit property was registered in favour of PRITAM PANESAR who is now deceased, on 9th July 2009 despite the fact that the 1st, 2nd and 3rd Defendants/Respondents had been in actual occupation since their birth.
10. The 1st , 3rd Respondents/Defendants and the deponent have lived their entire life on the suit property with their parents and siblings and have also raised their families on the said suit property. That the stay on the suit property was continuous and uninterrupted for a period of over fifty-nine (59) years which subsequently led to them obtaining advice from their advocate who informed us that by dint of their families' uninterrupted occupation and possession for that length of period and by dint of the Limitation of Actions Act Cap. 22 of the Laws of Kenya, they were entitled to be registered as the proprietors in place of the deceased herein.
11. On the date of death of PRITAM SINGH PANESAR, the registered proprietor was not in possession or occupation of the suit property and had not made any attempt to recover the property or discontinue our occupation and possession of the property.
12. Therefore the Plaintiffs'/ Applicants' claim for recovery of land is statute barred, for reasons that they are claiming the suit property through PRITAM SINGH PANESAR who was not in actual occupation of the suit property at the time of his death.
13. The deponent averred that the Plaintiff/ Applicants never surrendered the old title deed and instead went ahead and applied for a new title deed which was erroneously issued and as a result of failure to surrender the old title deed, there are two title deeds in circulation which is an irregularity.
14. It was stated that the Gazette Notice No.14724 dated and

published on 8th November 2024 demanding the Plaintiffs/Applicants to surrender the original title dated 9th July 2009 registered in the deceased's name and given notice to cancel the said Title Deed issued on 28th July 2023 in the Plaintiffs' names within 90 days from the date of the said publication was sufficient notice aimed at giving the Plaintiffs/Applicants sufficient time to appear before the said 4th Defendant/Applicant to defend their case.

15. Contrary to the averments of the Plaintiffs/Applicants, the Gazette Notice was done in accordance with the law as it accorded the Plaintiffs/ Applicants herein 90 days to appear before the 4th Defendant/Respondent and air out their grievances hence the Gazette Notice was done within the ambit of the law and did not in any manner abuse the legal process.
16. Further that the Gazette Notice was sufficient invitation and can only lapse after 90 days from the date it was published which was 8th November 2024 thus the Plaintiffs/Applicants ought to have appeared before the 4th Defendant/Respondent upon coming across the Gazette Notice within the indicated timelines.
17. Contrary to the Plaintiffs'/Applicants' averments in paragraph 9 of the Supporting Affidavit, the respondents would be greatly prejudiced if the Application is allowed and not the Plaintiffs/Applicants as claimed as they ought to have availed themselves before the 4th Defendant/Respondent and give sufficient reasons as to why the title should not be cancelled upon coming across the Gazette Notice.
18. The application was termed as being devoid of merits in that the Plaintiffs/Applicants had not seriously demonstrated on the face of the application, as legally required, that there is any just cause to warrant orders as prayed by the Plaintiffs/Applicants. For that reason, the court was urged to dismiss the Plaintiff's/Applicant's Application together with costs and damages to be awarded to the 1st, 2nd and 3rd Defendants/Respondents.

V. The responses by the 4th Respondent

19. The 4th Respondent filed grounds of opposition dated 17th March 2025 and raised the following grounds that: -

- a). By dint of Section 71 of the Land Registration Act, No. 3 of 2012 the Plaintiff's assertion that they were denied the right to be heard is false and bad in law as it does not contravene any of the laid out laws the Plaintiff claims to have been breached.
- b). The objection to the caution as filled is sufficient proof that the applicants were heard and notified of the intention to file a caution by the 1st, 2nd and 3rd Defendants and the registration of a caution by the 4th Defendant .
- c). An order of rectification cannot be said to issue against the caution lodged by the 1st, 2nd & 3rd Defendants as one cannot obtain rectification of a caution pursuant to Section 73(1) of the Land Registration Act. Hence the prayer was devoid of legal merit.
- d). The Plaintiff had not met the threshold set out to obtain a permanent injunction under Sections 1A, 3 & 3A of the Civil Procedure Rule 2010.

20. The 4th Respondent further filed a replying affidavit dated 26th March 2025 sworn by Steve Mokaya the Land Registrar employed and stationed at the Kwale Land Registry within Kwale County who averred that;

21. The gazette Notice impugned by the Applicants is a valid notice for compliance as the Applicants having approached the Land registry for change of title proprietorship through transmission failed to disclose that the said property KWALE/MSAMBWENI "A" 3390 was not subject to the will of the late Pritam Singh Panesar and hence the order of the court dated 26th March 2019 did not apply to the suit property.

22. The Applicants had since the date of the gazette notice failed to approach the Land registrar to clarify where within the Will of Pritam Panesar does the property KWALE/MSAMBWENI "A" 3390 feature to enable a transmission as per the order dated

17th Day of July 2029.

23. The Land Registrar is empowered under Section 79 (2) to issue a notice in the Kenya Gazette in order to rectify the suit property register where it was obvious that an error had occurred.
24. Also that, there was sufficient reason for registering a caution on the Land parcel as the same has been applied for by the 1st to 3rd Defendants and was also served upon the applicants and the Land Registrar on the 16th and 26th September 2024 by the Law firm of Messrs. Akedi & Olalo Advocates. That the registration of the caution was done in compliance with the law as all parties had notice of the application and the Applicant objected to the caution.

VI. The Further Affidavit by the 1st & 2nd Plaintiffs/Applicants

25. The applicants filed a further affidavit in response to the averments raised in the 4th Respondent's replying affidavit dated 26th March 2025 and stated that: -
26. It was clear that the reasons given in the said Replying Affidavit for issuance of the impugned Gazette Notice are inconsistent with the reasons given in the impugned Gazette Notice. While the Gazette Notice alleges that the Applicant did not surrender the original title in deceased name in order to get the title for the suit property in their names during transmission, the Replying Affidavit alleges that the suit property was not disclosed in the deceased written will hence not comprised in the Grant of Probate and Confirmation given in respect of the deceased estate.
27. The Replying Affidavit by the 4th Respondent herein therefore was not only an afterthought but also false and frivolous. The suit property was declared asset of the deceased estate in the Petition for Grant of Probate of the written will of the deceased herein in the said Milimani, High Court P & A NO. 1619/2018

wherefrom the Grant of Probate and Confirmation thereof was issued.

28. Notwithstanding the foregoing, the fact that the will of the deceased does not expressly mention the suit property does not in law or fact impeach the title of the deceased to the suit property. It is not disputed that the deceased was the registered owner of the suit property until the same was transmitted to the Executors of the said deceased estate.

29. The purported Gazette Notice was thus prima facie ultra vires the law, irrational, malicious and abuse of power. Further that the impugned caution is also devoid of merit, a misdirection by the 4th Defendant on the relevant law and evidence before him because, the 1st to 3rd Defendants do not have any legal or proprietary interest in the suit property as stated in the Plaintiffs Affidavits in these proceedings.

VII. The Notice of Motion Application dated 17th September, 2025 by the 1st 2nd & 3rd Defendants.

30. As indicated, the 1st, 2nd & 3rd Defendants herein filed an application dated 17th September, 2025. They sought for the following orders.

a) Spent.

b) That the delivery of Ruling that is slated for 19th September, 2025 be stayed pending the hearing and determination of this application inter - partes.

c) That this Honourable Court be pleased to reopen the hearing of the application whose ruling is pending and grant leave to 1st, 2nd and 3rd Respondents to file a further affidavit and supplementary submissions.

d) That this matter be stayed pending the hearing and determination of the Defendants' application to revoke and/or annul the will before the Family Division, Nairobi is heard and determined.

e) That costs of this application be provided for.

- a) The application was premised on the grounds, testimonial facts and averments made out under the 13 Paragraphed Supporting Affidavit of ANTONY MICHAEL MWANZIA MULWA together with five (5) annexures marked as “AMMM - 1 to 5” annexed thereto. He averred as follows that:-
- b) He was the 1st Defendant herein and competent to swear this Affidavit
- c) Since the hearing of the Application filed by the Plaintiffs seeking reinstatement of their Title Deed issued on 23rd July, 2023, the Deponent had discovered that there was another Title Deed that was charged to the financial institution trading in the names and style of I & M Bank Limited. A copy of the Daily Nation Newspaper of 10th September, 2025 was annexed and marked as “AMMM - 1”.
- d) It had also come to their attention that the purported Will that led to the Plaintiffs to be appointed as executors of the estate of PRITAM SINGH PNESAR could be a forgery.
- e) There was a forensic examination report by Mr. Emmanuel Karisa Kenga dated 8th July, 2022. A copy of the report was annexed and marked as “AMMM - 2”.
- f) The Director of Criminal Investigations had evaluated the Will and concluded through forensic examination that the deceased never executed the Will. A copy of the report by Mr. Alex Mwongera was annexed and marked as “AMMM - 3”.
- g) After the discovery of that information, the deponent filed an Application before the Nairobi Family Division in Succession Cause No. 1619 of 2018 seeking to have the Grant of Probate issued to the Plaintiffs Revoked and/or Annulled. A copy of the Application was annexed and marked as “AMMM - 4”.
- h) Should the Family Court revoke the Grant of Probate, the suit would automatically collapse for lack of authority to file it.

- i) The application was listed for further directions on 4th November, 2025. A copy of the Court order issued on 16th September, 2025 was annexed and marked as “AMMM – 5”.
- j) The Plaintiffs used the Title Deed and brought police officers to the land and demolished all the Deponent’s houses.
- k) It would be prudent to stay this suit pending the finalization of the Summons for Revocation of the Grant of probate which was pending before the Family Court in Nairobi.
- l) No prejudice would be suffered by the Plaintiffs since there was new information that the suit property was charged to a bank.
- m) There was also new information that the deceased had two (2) daughters who were not even mentioned in the Will.

VIII. Further Affidavit by the 1st, 2nd & 3rd Defendants

31. Additionally, the 1st, 2nd & 3rd Defendants filed a Further Affidavit sworn and dated 26th September, 2025 by ANTONY MICHAEL MWANZIA MULWA. He averred that:-

- a) On 22nd September, 2025, the I & M bank stated that it was holding a legal charge over the property.
- b) If the bank had been holding a Charge over the

property, it must be holding a Title Deed and therefore the Kwale Land registrar was correct in recalling the said title.

IX. The Replying Affidavit by the Plaintiff to the application dated 17th September, 2025 by the 1st, 2nd & 3rd Defendants.

32. In reply to the application by the 1st, 2nd & 3rd Defendants/Respondents application dated 17th September, 2025, NILESHKUMAR MOHANLAL SHAH, swore a 23 Paragraphed Replying Affidavit dated 28th September, 2025. He averred as follows that:-

- a) He was the Executor/Legal Representative with the 2nd Plaintiff herein of the Estate of Pritam Singh Panesar, conversant with matters relating to this suit and duly authorised by my Co-Executor herein to swear this suit.
- b) The Application was an afterthought, devoid of merit, frivolous, vexatious and otherwise an abuse of court process as well as overriding objective of this court.
- c) The matters sought to be introduced in the Application were irrelevant without any bearing to the Plaintiffs Application or suit. The cause of action in the suit herein by the Plaintiffs was a challenge against the 4th Defendants registration of a caution on the Title to the suit property Title Number Kwale/Msabweni A/3390 and the said 4th Defendant's Gazette Notice 14724 dated 8th November ,2024 giving notice of intention to cancel the Title Deed dated 28th July, 2023 issued to the Plaintiffs in respect of the said suit property on alleged grounds

that the Title Deed dated 9th July, 2009 in the name of the Pritam Panesar (deceased) was not surrendered by the Plaintiffs during registration of transmission of the suit property from the deceased name to the Executors names. The foregoing is clear from the Originating Summons filed in this matter and the Gazette Notice at page 28 of the Originating Summons bundle.

- d) The Originating Summons premising the suit was filed along with a Notice of Motion Application dated 11th December, 2025 for interim orders to stay and/or restrain the 4th Defendant from executing the Gazette Notice pending hearing of the suit and the said application.
- e) He was aware that this Court considered the above Plaintiffs said application filed with the suit under a Certificate of Urgency and granted interim Orders dated 11th December, 2024, which had been extended from time to time with the last extension on 19th September, 2025 pending hearing and determination of the Plaintiffs said Application.
- f) He was aware that the Court on diverse dates including 11th December, 2024, 30th January, 2024 and 26th March, 2024 gave directions on filing of responses and submissions in respect of the Plaintiffs Application.
- g) He was further aware that the 1st, 2nd & 3rd Defendants duly filed and served a Replying Affidavit sworn by the 2nd Defendants herein on 6th February, 2025 while the 4th Defendant duly filed and served a Replying Affidavit sworn by Steve Mokaya on 26th March, 2025 in this matter and

which forms part of the Court record.

- h) He was aware that the Plaintiff duly filed a Further Replying Affidavit sworn by himself on 11th April, 2025 in reply to the 4th Defendants above said belated Replying Affidavit and written submissions dated 14th March, 2025 on the Plaintiffs, pursuant to Courts directions.
- i) Neither the 1st, 2nd and 3rd Defendants nor 4th Defendants had filed or served written submissions in respect of the Plaintiffs pending Application which was scheduled for ruling on 26th March, 2025 and thereafter deferred to 2nd April, 2025, 8th April, 2025, 28th May, 2025 and 19th September, 2025.
- j) The instant Defendants Application seeking to stay the ruling on the Plaintiffs Application, re-open the hearing of the pending Plaintiffs and leave to file additional evidence and stay this matter pending an alleged Defendants application in the High Court to revoke the Grant of Probate issued to the Plaintiffs was not only an afterthought but also devoid of merit and otherwise an abuse of court process.
- k) The purported additional or new evidence forming basis of the Application herein fails to satisfy legal threshold set out by judicial precedents on admission of additional evidence and re - opening of a case more particularly in the case of:- **“Mohamed Abdi Mahamud Ahmed Abdi Abdullahi Mohamad & 3 Others [2018] eKLR”** and the Supreme Court ruling in **“Hon. Mike Mbuvi Sonko - Versus - The Clerk County Assembly of Nairobi City & 11 Others [2022] eKLR”** in

that among others:

- i) The purported additional evidence was irrelevant to the ruling on the Plaintiffs Application pending before the Court. It was noteworthy that the alleged reasons for the impugned gazette are well set out in the said Gazette Notice and the purported additional evidence are extraneous grounds neither pleaded by the Defendants in their affidavits nor even the said gazette notice thus lacking any bearing or relevance to the matters in issue.
- ii) Furthermore, it was noteworthy that the purported evidence was at all material times in the Defendants knowledge or custody and no reasonable explanation has been given why it was neither pleaded nor adduced during filing of their Replying Affidavits in this matter. The alleged document examination reports are all dated July and September 2022 and were all sanctioned or requested by the 1st and 3rd Defendants, which meant they had such evidence at all material time hence could have with reasonable diligence produced them if at all they were relevant and material to this matter.
- iii) It was also noteworthy that the 4th Respondent was a custodian of all land records including the suit property hence would have produced an official search or extract of the green card to the suit property to give information on whether there was a charge registered on the suit property if at all it was relevant and that would determine when the same was registered and to which

title -2008or 2018 Title in this matter. Besides, whether the suit property was charged or not was irrelevant and without any bearing to the Application pending ruling herein. Newspaper article could not be authoritative determination on the status of encumbrance on a title.

- iv) Credibility of the additional evidence was also doubtful noting that it was hearsay and opinion evidence of experts who were all exclusively instructed by Applicants herein which must be subjected to trial by examination of witnesses and such is a matter for full trial of the main suit and not the instant application. The purported handwriting examiners reports was additional evidence that was impossible to respond or determine by affidavits.
- v) The purported additional evidence disclosed no reasonable prima facie defence in law against the Plaintiffs Application before Court.
- vi) The purported additional evidence was an afterthought and belated frivolous attempt to patch up or remove lacuna's in the defence to the Plaintiffs application and make a belated fresh case in the suit or raise extraneous grounds not raised in the Gazette Notice or the reasons for the caution under challenge in this suit.
- vii) The purported additional evidence was clearly an attempt to delay or convolute the matter before court and obstruct the course of justice.
- viii) No case or evidence of deception, non-disclosure of material facts or misrepresentation had been demonstrated on the part of the Plaintiffs in this matter by the Defendants

application herein.

- ix) This court was neither a division of the High Court of Kenya nor a sub - ordinate of the High Court of Kenya. The alleged pending application in the High Court to revoke the Grant of Probate of the written Will of the estate of the deceased was a separate and distinct matter to the matter before this Court and irrelevant to the matter before this Court. The impugned Gazette Notice forming the subject of the Plaintiffs application never cited or impugn the Grant of Probate issued to the Plaintiffs or written Will of the deceased.
- x) There was great prejudice and irreparable loss to the estate of the deceased if the Application by the 1st, 2nd & 3rd Defendants are granted as the Plaintiffs will not be able to protect the estate of the deceased yet there was no order by the High Court of Kenya revoking the Grant of Probate issued to the Plaintiffs or suspending the Executors of the said estate work at all.
- n). There was equally no basis to stay the suit herein pending hearing and determination of the 1st, 2nd & 3rd Defendants alleged Application in the High Court of Kenya to revoke the Grant of Probate issued to the Plaintiffs in respect of the deceased estate.
- o). It was noteworthy that there was no order of the High Court issued to suspend administration of the estate of the late Pritam Panesar and therefore, staying this suit was putting a cart before the horse and encouraging intermeddling and abuse of court process which borders on

asking this court to usurp jurisdiction of the High Court of Kenya in relation to the powers and duties of Executors/Legal Representatives of the deceased estate.

- p). The allegations that the Applicants had discovered that the written Will of the deceased upon which the Grant of Probate was issued to the Plaintiffs in respect of Pritamn Panesar's estate was not executed by the deceased or the same was a forgery, although denied, is not new evidence as alleged for the reason that it was clear that the basis of the allegations were Expert Opinions dated July and September 2022 made upon a request or instruction by the said 1st , 2nd & 3rd Defendants; the said Defendant had knowledge of the said evidence as early as July 2022.
- q). The dispute and determination on validity of the written Will of the late Pritam Panesar was within the exclusive jurisdiction of the High Court of Kenya and not this Court. It was noteworthy that the alleged application in the High Court of Kenya was an afterthought because it was only filed on 16th September, 2025 which was after over 5 years from 17th July, 2019 when the Grant of Probate in respect of Pritam Panesar was issued and over 3 years since the alleged expert opinions was obtained by the 1st , 2nd & 3rd Defendants.
- s). Notwithstanding the foregoing, the heirs and daughters of the late Pritam Panesar publicly by a newspaper advert on 10th September, 2025 refuted the Applicants allegations and claims. The dispute of whether they were daughters of the deceased was a matter which again was not within the

jurisdiction of this court and irrelevant to the determination of the Plaintiffs Application before this Court. Their Affidavits could not be obtained into this court due to the short time for filing responses herein. Attached was a copy of the Newspaper Public Notice by Jasmeet Kaur Panesar and Tameet Kaur Panesar in Daily Nation Newspaper Issue of 10th September, 2025 marked as “NMS - 4” at pages. 8.

- t). The allegation that the Plaintiffs never informed the Court that there was another title that had already been issued in the year 2009 was not only false and denied but also misrepresentation of material facts and irrelevant to the determination of the Plaintiffs application before this Court.
- u). There was great prejudice in granting the 1st, 2nd & 3rd Defendants application because the orders granted would curtail the Plaintiffs legal obligations and duty to protect the estate of the deceased when there was no such order by the High Court or court of competent jurisdiction to interfere with the powers of the Plaintiffs to commence, continue and sustain this suit in the best interest and welfare of the estate of Pritam Panesar. The 1st, 2nd & 3rd Defendants application is tantamount to asking this Court to usurp jurisdiction of the High Court of Kenya to curtail the powers of the Executors of a deceased estate thereby cause a miscarriage of justice to the Plaintiffs.
- v). The Defendants stood to suffer no prejudice if their application was dismissed or declined because they would have an opportunity to respond to the Originating Summons where they could tender or produce the alleged evidence

notwithstanding the relevance thereof and this Court would make a final Judgement on the matter.

- w). The pending ruling sought to be arrested was interlocutory in nature for purposes of preserving the subject matter of this suit pending hearing and determination of the main suit. The matters or issues sought to be introduced in the Application could only be raised and adjudicated after examination of the witnesses and the documents in a full hearing and not on affidavit evidence at interlocutory stage.
- x). The 1st , 2nd and 3rd Defendants had failed to demonstrate sufficient cause or grounds to grant their Application. He swore this Affidavit to oppose the said Application and prayed that it be dismissed with costs to the Plaintiffs. He prayed that the pending ruling in respect of the Plaintiffs Application dated 11th December, 2024 be delivered.

X. Submissions

33. On 30th January 2025 and 19th September, 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 11th December 2025 and 17th September, 2025 be disposed of by way of written submissions.

34. Subsequently, all the parties herein complied to the two (2) applications. Thus, the Honourable Court then shall proceed to render its Ruling on its own merit accordingly.

A. The Written Submissions by the Plaintiffs/Applicants to the application dated 11th December, 2025

35. On 14th March 2025, the Learned Counsel for

the Plaintiff/Applicant through the Law firm of Messrs. Litoro & Omwebu Advocate filed their written submissions in support of the application. Mr. Litoro Advocate submitted that the principles for grant of the reliefs sought in the application under the provision of Order 40 Rule 1 of the Civil Procedure Rules, 2010 was well settled in the celebrated decision of the Court in the case of "**Giella - Versus - Cassman Brown & Company Limited 1973. E.A 358**". That the Applicant must demonstrate: a) A prima facie case with good chances of success; b) That he will suffer irreparable loss if the injunction is not granted, c) That on balance of convenience, an injunction should issue.

36. The Applicants state that the instant circumstances met the threshold set out above and therefore warrant the grant of the prayers sought. On Whether the Applicants had demonstrated "**a prima facie case**" with good chances of success? The Applicant made reference to the Court in the celebrated decision of "**Nguruman Limited - Versus - Jan Bonde Nielsen & 2 Others [2014] eKLR**" where it was observed that in determining whether a prima facie case had been established, the court does not hold a mini trial and must not examine the merits of the case closely, except to see that the applicant has a right which has been or is threatened with violation.

37. The Learned Counsel contended that in the instant case, it was not in dispute that the Pritam Singh Panesar (Deceased) was at all material period registered as the sole proprietor of the suit property. After the testate demise of the said sole proprietor, a grant of probate was issued by

the Court to the Applicants herein on 26th March, 2019.

38. The Applicant had further demonstrated that after issuance of the Grant of Probate they made an application for transmission of the suit property to their names by sending the relevant documentation to the 4th Defendant, through registered post as seen on the letter dated 25th July, 2023, where a new title in the names of the Applicants was issued by the Registrar on 28th July, 2023.

39. Despite, the compliance with the Law of Succession Act, Cap. 160 on administration of the deceased's estate and the subsequent adherence with the Land Registration Act, No. 3 of 2012 and the regulations therein, the 4th Respondent had without giving the Applicant's an opportunity to be heard and or explain, issued a notice giving the Applicant's herein a 60 days' notice to surrender the title in the name of Pritam Singh Panesar (Deceased) or risk the new title in their names being cancelled.

40. Despite being served, the 4th Defendant had failed to appear and or give an explanation on how the notice was issued without affording the Applicants an opportunity to be heard contrary to the provision of Section 87 of the Land Registration Act, No. 3 of 2012 and further explain why the new title issued is to be cancelled when there is no denial that letter of 25th July, 2023 was sent and received by the 4th Respondent enclosing all the requisite documents.

41. The Applicants submitted that they have demonstrated a prima facie case with good chances of success since the Applicants rights under the provision of Article 40 of the

Constitution was evidently being threatened as there is a good chance that despite following all due process and being registered as owners of the suit property, the 4th Defendant may at any time cancel their title on mere allegations, without affording them an opportunity to be heard. Reliance was placed in the case of "**Tinga Traders Limited - Versus - Patrobas Owino [2016] eKLR**" where this Court in granting a temporary injunction observed that the Plaintiff had demonstrated its interest in the property as opposed to the Defendant.

42. Reference was made by counsel to the 2nd Respondent's Replying Affidavit, which alleged albeit without any evidence, that the 1st to 3rd Respondents had always been in possession of the suit property for period of more than 59 years. That was trite that that if the 1st to 3rd Respondents allegations were true, then nothing would have stopped them from acquiring possession of the suit property through adverse possession by Court decree. No Court decree had however been produced to support their claim.

43. The court was invited to find that the Respondents opposition to the application was loaded with malice and only intended to occasion an illegality on the Applicant's even as this suit is pending. In the case of "**Kamau Mucuha - Versus - Ripples Limited [1993] eKLR**", the Court of Appeal was faced with a similar dismissed a case where a Defendant had occasioned an illegality and opposed an injunction so that he can further the illegalities.

44. On whether the Applicants would suffer irreparable loss if

the injunction was not granted, reference was made to the dictum in the case of:- **“ABSAs Kenya Limited - Versus - Barclays Bank of Kenya [2018] eKLR”**, at page 3 the Superior Court cited with approval the decision in the case of:- **“Kenya Commercial Finance Company Limited - Versus - Afraha Education Society [2001] 1 E.A. 86 & 89,”** where the Court of Appeal held that the principles established by the landmark case in the case of:- **“Giella - Versus - Cassman Brown [supra]”** was sequentially satisfied so that once prima facie case was established, an injunction should issue and the Court would only consider the 2nd and 3rd limb sequentially if in doubt with each.

45. It was not in dispute that the Applicants were the presently registered as proprietors of the suit property and that the 1st to 3rd Respondents intend to pounce and claim possession and title of the property if the Applicant’s title is to be cancelled by the 4th Respondent. That it was clear that the 4th Respondent will at any time cancel the title and expose the Applicants to irreparable loss. Reference was made in the case of:- **“Tinga Traders Limited - Versus - Patrobas Owino [2016] eKLR”**, at page 5-6, the Superior Court adopted with approval the decision of the Court of Appeal in the Court of Appeal decision in the case of **“George Orango Orago - Versus - George Liewa Jagalo & others, Kisumu CA No. 62 of 2009”** which held that where the Plaintiff has established a bonafide title and prima facie case, denial of injunction in such circumstances would cause such a person such loss that may not be adequately compensated by an award of damages.

46. It was submitted, that the Applicants' have demonstrated the limb of irreparable harm and are as such entitled to the prayer for injunction pending hearing a determination of the suit. The Plaintiffs further submitted that the balance of convenience tilted towards an injunction to prevent further breaches and illegalities by the Respondents as observed by the Superior Court in the case of:- ***"Tabitha Kagira Muriuki - Versus - Stephen Mainga Michoro & 4 Others [2012] eKLR"*** where the Court observed that it could not countenance the Defendants illegalities by permitting them to further illegalities and fraud upon the Plaintiff. Therefore, it would be just and fair that the Injunction be allowed to preserve status quo.

B. The Written Submissions by the 1st 2nd and 3rd Defendants/Respondents to the application dated 11th December, 2025

47. The 1st to 3rd Respondents/Defendants also filed their submissions before court and identified the following two (2) issues for determination.

- a) Whether the Gazette Notice issued by the 4th Defendant was done in accordance with the law?
- b) Who should bear costs of the Suit?

48. On whether the Gazette Notice issued by the 4th Defendant/Respondent was done in accordance with the law. The Learned Counsel averred that the Land Registrars were vested with a wide range of powers that are derived from the law, in particular, the Land Registration Act, No. 3 of 2012 under the provision of Section 14 which provides

that:-

'The Chief Land Registrar, County Land Registrars or any other land registrars may, in addition to the powers conferred on the office of the Registrar by this Act) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same; b) summon any person to appear and give any information or explanation in respect to land, a lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;'

49. The 4th Defendant/ Respondent herein being the Land Registrar of Kwale and having noted that there were two title deeds on the same property known as Kwale/Msambweni "A"/3390 that were in circulation, one being under Pritam Panesar which was issued on 9th July, 2009 and the other under Nileshkumar Mohanlal Shah and Guy Spencer Elms issued on 28th July, 2023 went ahead and summoned the Plaintiffs/ Applicants vide Gazette Notice No. 14724 dated and published on 8th November 2024. That it was evident that Plaintiffs/Applicants herein never surrendered the old title while applying for a new title deed.

50. The Learned Counsel for the Respondents submitted that the circulation of two title deeds under the same parcel of land prompted the 4th Defendant/Respondent to summon the Plaintiffs/Applicants vide Gazette Notice No. 14724 dated and published on 8th November 2024, demanding the

Plaintiffs'/Applicants' to surrender the original title deed dated 9th July, 2009 registered in the deceased's name within 90 days from the date of the said publication.

51. Further that the actions of the 4th Defendant/ Respondent are within the ambit of the law, noting that the Notice was published in the Kenya Gazette which is an official Government issued publication under nationwide circulation. We humbly submit that the Plaintiffs/ Applicants were duly notified vide a notice which was published on 8th November 2024, giving the Plaintiffs/Applicants sufficient time to appear before the 4th Defendant/Respondent to defend their case and demonstrate how they were able to apply and be issued with another title deed on 28th July 2023 without surrendering the original title deed issued on 9th July, 2009 which is still in circulation.

52. It was submitted that the 4th Defendant/ Respondent having noted that the title was acquired illegally and or unprocedurally was within his mandate to request for the surrender of the original title issued to the Plaintiffs/ Applicants on 28th July, 2023 in order to ascertain how the transmission was done and harmonize their records at the registry. That the 4th Defendant/Respondent afforded the Plaintiffs/Applicants an opportunity to be heard by publishing the Notice in the Kenya Gazette on 8th November, 2024 which the Plaintiffs were aware of and even objected to. It was evident that the 4th Defendant/Respondent afforded the Plaintiffs/Applicants ninety (90) days to appear and defend their case as per the provision of Section 87 of the Land Registration Act which gives a brief description of

what an 'opportunity to be heard' amount to.

53. The Plaintiffs/Applicants herein failed to appear before the 4th Defendant/Respondent despite them being given an ample time to defend their case vide the Gazette Notice published on 8th November 2024. Therefore, the Plaintiff/Applicants had approached this Honourable Court with Unclean hands and made this Application as an afterthought after ignoring the summons by the 4th Defendant/Respondent, despite being aware of the Gazette Notice. That the Gazette Notice was done in accordance to the law and that the Plaintiffs/Applicants were duly served with the notice as per regulation 96 of The Land Registration (General) Regulations, 2017.

54. On the issue of costs Counsel asserted that cost ought to be awarded in favour of the 1st 2nd and 3rd Defendants/Respondents as against the Plaintiffs/Applicants. The court was urged to dismiss the Application dated 11th December 2024 as the Plaintiffs/Applicants herein filed it as an afterthought.

C. The Written Submissions by the 1st, 2nd & 3rd Defendants on the Application dated 17th September, 2025

55. The Learned Counsel for the 1st, 2nd & 3rd Defendants herein the Law firm of Messrs. Osundwa & Company Advocates in support of their application dated 17th September, 2025 filed a written submissions dated 26th September, 2025. Dr. Chitembwe Advocate commenced the submissions by stating that the Applicants sought for the above reliefs.

56. The Learned Counsel averred that, on 19th September, 2025 the Honourable Court postponed the delivery of its Ruling that was slated for even date until 3rd October, 2025 upon the request by the parties. He stated that the Application was grounded on the fact that the Defendants had come across new information that may assist the Court in determining the Application by the Plaintiff/Applicants' seeking to reinstate a Title Deed that was revoked by the Kwale Land Registrar. The Applicants submitted that the following information was not presented to the Court namely;

- i. That the WILL that led to the issuance of a grant of probate in favour of the two Plaintiffs had been found not to have been signed by the deceased owner of the suit property.
- ii. The Defendants had filed an Application before the Family Division in Succession Cause No. 1618 of 2018 seeking the revocation of the Grant of Probate.
- iii. The I & M Bank Limited had come up with information that it holds a legal Charge over the suit property, Plot Number KWALE/MSAMBWENI/'A'/3390.
- iv. On 10th September, 2025 there was a Public Notice on the Daily Nation Newspaper purportedly made by two daughters of the Late Pritam Singh Panesar whereby the issue of a Charge over the suit property is mentioned.

57. Two forensic documents examination reports relating to the WILL which led to the issuance of the Grant of Probate was

not part of the record. The Applicants submit that if this Honourable Court grants the Applicants leave to re-open their case and file a Further Affidavit and Supplementary Submissions, this would assist the Court in making its Ruling from a well-informed position.

58. According to the Land Registration Procedures, a duly registered property cannot have two separate Titles referring to the same land. It was now evident that the Title Deed for the suit land was charged to the I & M Bank. If this was established, then the Land Registrar correctly recalled the Plaintiff's Title for cancellation. The Applicant's would like to procedurally place the two forensic reports that were annexed to their Supporting Affidavit. This Honourable Court would be able to evaluate the reports and reach its own conclusion. Further, the two reports have enabled the Defendants to apply for the revocation of the Grant of Probate issued to the Plaintiffs. In the event that the Grant was revoked, this suit would automatically collapse. This being the case, it would be prudent for this Honourable Court not to issue final orders while the focal point which enabled the Plaintiff to file the suit is under attack. It would be wise for this Honourable Court to keep this suit pending until the issue of the WILL was finalised.

59. The provision of Section 25 of the Land Registration Act requires that leases, charges and all other encumbrances be shown in the register. There was no Title Deed that had been produced showing the entry of a charge or encumbrance. If the Plaintiffs knew that the land was Charged, why did they proceed and

obtain a new Title Deed on 28th July, 2023. The original Title Deed according to the Land Registrar's Gazette Notice was issued on 9th July, 2009.

60. The Defendants position was that this Honourable Court was of equal status to the High Court. All what the Defendants were stating was that should this Honourable Court proceed and hear this matter and make a final determination, its decision may be in conflict with the decision of the Family Division Court. Once the Family Division makes a decision on the validity or otherwise of the WILL, such a decision would have an impact on this case. The Family Court decision may terminate this case should the Defendant's application be upheld.
61. The Applicants had been able to demonstrate that there was a new information that was not brought to the attention of this Court. Such information includes the admission by I&M Bank that it is holding the Title Deed, that the WILL may not have been executed by the deceased as per the two forensic investigation reports and that the Defendants had filed an application for the revocation of the **WILL** before the Family Division, Nairobi.
62. The Plaintiff's application was that the Title issued to them should be retained. They had not explained why they obtained a second Title Deed yet there was another one being held by the Bank. Since they were not submitting on the main application but on the Defendants' request to re-open its case and file a further affidavit, they shall not make substantive submissions on the Plaintiffs' application

for reinstatement of their Title.

63. By informing this Honourable Court of the existence of an application to revoke the Grant of Probate, the Applicants were not putting the cart before the horse. They were just alerting the Honourable that the substratum of the Plaintiff's case was being challenged. This was not an afterthought or abuse of the Court process. The advertisement in the Daily Nation newspaper the edition of 10th September, 2025 was done after the parties had submitted on the Plaintiff's application. The information by I & M Bank that they were holding a legal Charge over the same property was not availed to the Court. This additional evidence directly relates to the issues at hand.
64. The additional evidence would show that the Plaintiffs became executors and/or administrators of the deceased through fraud and deception. This application had been made right on time before the Court had made its decision on the Plaintiffs' application.
65. In conclusion, the Learned Counsel submitted that the Applicants had laid down good reasons and information necessitating the production of the new evidence and information before the Court. This new information would assist this Honourable Court to objectively decide whether to stay the proceedings pending the final determination of Milimani HC. P & A No.1619 of 2018 or to proceed.

C. The Written Submissions by the Plaintiffs to the application dated 17th September, 2025

66. While opposing the Notice of Motion application dated 17th

September, 2025 by the 1st , 2nd & 3rd Respondents, the Learned Counsels for the Plaintiff the Law firm of Messrs. Litoro & Omwembu Advocates filed their submission dated 26th September, 2025. Mr. Litoro Advocate commenced his submission by stating that the submissions had been tendered pursuant to the directions of this Court issued on 19th September, 2025. He averred that the Plaintiffs filed a response dated 25th September, 2025 and sworn by NILESHKUMAR MOHANLAL SHAH.

67. The Learned Counsel provided the Court to a brief background of the matter. He opined that while the matter was pending Ruling of the Plaintiff's Application dated 11th December, 2024, the 1st, 2nd & 3rd Defendants filed an application dated 17th September, 2025, the Response to the said application being the Replying Affidavit of NILESHKUMAR MOHANLAL SHAH dated 25th September, 2025. The said application sought among other orders that the Court be pleased to re-open the hearing of the application whose Ruling was pending and grant leave to 1st ,2nd & 3rd Respondents to file further Affidavit and supplementary submissions. It was the Counsel's submission that the application was an afterthought, devoid of merit, frivolous, vexatious and otherwise an abuse of the Court process as well as overriding objective of this Court.
68. Consequently, the Learned Counsel held that the said application intended to introduce matters that were irrelevant without any bearing to the application or suit as filed in the Plaintiff. It was evident that the cause of action

in the suit herein by the Plaintiffs was a challenge against the 4th Defendants registration of a caution on the Title to the suit property Title Number Kwale/Msabweni A/3390 and the said 4th Defendant's Gazette Notice 14724 dated 8th November, 2024 giving notice of intention to cancel the Title Deed dated 28th July, 2023 issued to the Plaintiffs in respect of the said suit property on alleged grounds that the Title Deed dated 9th July, 2009 in the name of the Pritam Panesar (deceased) was not surrendered by the Plaintiffs during registration of transmission of the suit property from the deceased name to the Executors names. The foregoing was clear from the Originating Summons filed in this matter and the Gazette Notice at page 28 of the Originating Summons bundle.

69. The Counsel stated that the Originating Summons premising the suit was filed along with a Notice of Motion Application dated 11th December, 2025 for interim orders to stay and or restrain the 4th Defendant from executing the Gazette Notice pending hearing of the suit and the said application. Further this Court considered the above Plaintiffs said application filed with the suit under a Certificate of Urgency and granted interim Orders dated 11th December, 2024, which had been extended from time to time with the last extension on 19th September, 2025 pending hearing and determination of the Plaintiffs said Application.

70. It was trite that the pending Ruling sought to be arrested was interlocutory in nature for purposes of preserving the subject matter of this suit pending hearing and

determination of the main suit. The matters or issues sought to be introduced in the Application can only be raised and adjudicated after examination of the witnesses and the documents in a full hearing and not on affidavit evidence at interlocutory stage.

71. The Learned Counsel submitted on the following three (3) issues for determination by Court. These were as follows:-

Firstly, whether the Ruling of the Plaintiffs application should be stayed pending hearing and determination of the application by the 1st, 2nd & 3rd Defendants. The Learned Counsel opined that instead of staying the Plaintiffs application should, it should take priority. As demonstrated the Plaintiffs application was under a Certificate of Urgency whereby this court granted interim Orders dated 11th December, 2024, which had been extended from time to time with the last extension on 19th September, 2025. The Plaintiffs application sought for injunctive orders to stay or restrain the 4th Defendant whether by himself or anyone acting under them from cancelling or in any way interfering with the Plaintiffs Title or the parcel of land Title Number Kwale/Msabweni "A"/3390 issued on 28th July, 2023, executing, Implementing, acting and or in any way proceeding with actions threatened in the Gazette Notice No.14724 dated and published on 8th November 2024 by the 4th Defendant in relation to the said property. Ideally, therefore, the 1st , 2nd & 3rd Defendants application dated 17th September, 2025 could not be determined first as there was no order of the High Court issued to suspend administration of the estate of the late Pritam Panesar. Therefore, staying

this suit was putting a cart before the horse and encouraging intermeddling and abuse of court process which borders on asking this court to usurp jurisdiction of the High Court of Kenya in relation to the powers and duties of Executors/Legal Representatives of the deceased estate.

Secondly, whether this Court should re - open hearing of the Plaintiffs application and grant leave to the 1st to 3rd Defendants to file Affidavits and Supplementary submissions. Evidently, the 1st, 2nd & 3rd Defendants duly filed and served a Replying Affidavit sworn by the 2nd Defendants herein on 6th February, 2025 while the 4th Defendant duly filed and served a Replying Affidavit sworn by Steve Mokaya on 26th March, 2025 in this matter and which forms part of the Court record. Equally the Plaintiff duly filed a Further Replying Affidavit sworn by the 1st Plaintiff on 11th April, 2025 in reply to the 4th Defendants above said belated Replying Affidavit and written submissions dated 14th March, 2025 on the Plaintiffs, pursuant to Courts directions.

Further as per the Court record neither the 1st , 2nd & 3rd Defendants nor 4th Defendants had filed or served written submissions in respect of the Plaintiffs pending Application which was scheduled for ruling on 26th March, 2025 and thereafter deferred to 2nd April, 2025, 8th April, 2025, 28th May, 2025 and 19th September, 2025. Thus, to re-open the hearing of the pending Plaintiffs and leave to file additional evidence and stay this matter pending an alleged Defendants application in the High Court to revoke the Grant of Probate issued to the Plaintiffs was only an afterthought, devoid of merit and otherwise an abuse of court process. The Counsel

submitted that the threshold set out by judicial precedents on admission of additional evidence and re-opening of a case was established in the Supreme Court ruling in “**Hon. Mike Mbuvi Sonko - Versus - The Clerk County Assembly of Nairobi City & 11 Others [2022] eKLR**” that held and place reliance on the case of:-“**Mohamed Abdi Mahamud Ahmed Abdi Abdullahi Mohamad & 3 Others [2018] eKLR**” where it was held that:-

- a. the additional evidence must be directly relevant to the matter before the court and be in the interest of Justice;***
- b. It must be such that if given, it would influence or impact upon the result and verdict m although it need not be decisive.***
- c. It is shown that it would not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or Petition by the party seeking to adduce the additional evidence;***
- d. Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;***
- e. The evidence must be credible in the sense that it was capable of belief;***
- f. The additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;***
- g. Whether a party would reasonably have been made aware of and procured the further evidence in the course of the trial***

is an essential consideration to ensure fairness and due process;

h. Where the additional evidence discloses a strong prima facie case of wilful deception of the Court;

i. The Court must be satisfied that the additional evidence is not utilized for purposes of removing the lacunae and filling gaps in evidence. The Court must find further evidence needful.

j. A party who has been unsuccessful at the trial must not seek to adduce additional evidence to make fresh case in appeal, fill up omissions or patch up the weak points in his/her case.

k. The Court will consider the proportionality and prejudice of allowing the additional evidence. This requires the Court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other”.

72. It was their submission that the above thresh hold set had not been achieved by the 1st , 2nd & 3rd Defendant/Applicant as demonstrated in the Plaintiffs Replying Affidavit at paragraph 12 (I-X).. Therefore this Court should decline from granting leave to re-open the case for the 1st, 2nd & 3rd Defendants to file additional evidence having failed to achieve the threshold.

73. Thirdly, whether this matter should be stayed pending

determination of application to annul the will before the Family Division at Nairobi. The Learned Counsel asserted that to stay the proceedings on the mere apprehension that the application for annulment or revocation of the Will may succeed, yet the same had not been determined, would be prejudicial to the Plaintiff. In the case of ***“Kenya Wildlife Service - Versus - James Mutembei [2019] KEHC 10478 (KLR)Justice F.M Gikonyo*** in a similar application stated that:-

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.” This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the Plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.

In the instant case it is my considered opinion that it would not be in the interest of justice to exercise court's discretion and grant stay of proceedings as it will only serve the purpose of delaying the matter...”

74. The Learned Counsel contended that the allegations that the Applicants had discovered that the written Will of the deceased upon which the Grant of Probate was issued to the Plaintiffs in respect of Pritam Panesar's estate was not executed by the deceased or the same is a forgery, although denied, is not new evidence as alleged for the reason that it is clear that the basis of the allegations are Expert Opinions dated July and September 2022 made upon a request or instruction by the said 1st , 2nd & 3rd Defendants; the said Defendant had knowledge of the said evidence as early as July 2022.
75. Consequently, it was trite that the dispute and determination on validity of the written will of the late Pritam Panesar was within the exclusive jurisdiction of the High Court of Kenya and not this Court. It is noteworthy that the alleged application in the High Court of Kenya is an afterthought because it was only filed on 16th September, 2025 which was after over 5 years from 17th July, 2019 when the Grant of Probate in respect of Pritam Panesar was issued and over 3 years since the alleged expert opinions was obtained by the 1st, 2nd & 3rd Defendants.
76. Further, the allegation that the Plaintiffs did not inform the Court that there was another title that had already been issued in the year 2009 is not only false and denied but also misrepresentation of material facts and irrelevant to the determination of the Plaintiffs application before this Court. No single material fact relevant to the Plaintiffs Application or suit was withheld by the Plaintiffs. See ***“Kenya Airports Authority - Versus - Modern Holdings [E.A] Ltd [2017] eKLR”***

77. The Learned Counsel also submitted that the purported document examination reports as well as the purported newspaper article are irrelevant pieces of evidence in this case. Document examiners reports are hearsay evidence whose admissibility to prove validity of the written Will was within jurisdiction of the High Court of Kenya. The Will of the deceased was not subject of these proceedings. The competency or locus of the Plaintiffs is not under challenge in this suit. Suffice to say, the Document Examiners Reports appear to be titled towards however briefed the Document Examiners. The Court was not bound to rely on the Expert Opinions.
78. The upshot was that the purported new evidence or material was not only an afterthoughts which the Applicants had prior knowledge and could have produced in their Replying Affidavit but neglected. It is also irrelevant to this case. A news paper article does not benefit or amount to conclusive proof of title, encumbrance or proof of interest in land under section 28 of the Land Registration Act. It was neither a search or green card. The question of whether the land was charge or not and which title was charged is neither in issue in this suit nor basis for the impugned Gazette Notice.
79. The Learned Counsel averred that there was great prejudice in granting the 1st , 2nd & 3rd Defendants application because the orders if granted will curtail the Plaintiffs legal obligations and duty to protect the estate of the deceased when there is no such order by the High Court or court of competent jurisdiction to interfere with the powers of the Plaintiffs to commence, continue and sustain this suit in the

best interest and welfare of the estate of Pritam Panesar. The 1st, 2nd & 3rd Defendants application was tantamount to asking this Court usurp jurisdiction of the High Court of Kenya to curtail the powers of the Executors of a deceased estate thereby cause a miscarriage of justice to the Plaintiffs.

80. The Defendants stood to suffer no prejudice if their application is dismissed or declined because they will have an opportunity to respond to the Originating Summons where they can tender or produce the alleged evidence notwithstanding the relevance thereof and this Court will make a final judgment on the matter.

81. In conclusion, the Learned Counsel invited this Court to find that the 1st, 2nd & 3rd Defendants' application dated 17th September, 2025 was an afterthought, frivolous, and never met the legal threshold for re-opening proceedings or introducing further evidence Equally, the prayer for stay of proceedings is without merit, as stay is a grave judicial action only available in exceptional circumstances, which the Applicants have failed to demonstrate.

82. Therefore, he urged this Honourable Court to dismiss the 1st, 2nd & 3rd Defendants' application with costs, and to allow the Plaintiffs' pending application dated 11th December, 2024 to proceed to ruling as earlier scheduled. This was in order to safeguard the estate of the deceased and advance the overriding objective of expeditious and just determination of disputes.

XI. Analysis and Determination

83. The Honourable Court has carefully read and considered the

pleadings herein and the relevant provisions of the Constitution of Kenya, 2010 and the statutes. In order to arrive at an informed, reasonable and Equitable decision, the Honourable Court has four (4) framed issues for its determination. These are: -

a) Whether the Notice of Motion application dated 11th December 2024 meets threshold required of a temporary injunction under the provision of Order 40 Rules 1 of the Civil Procedures Rules, 2010.

b) Whether the Notice of Motion application dated 17th September, 2025 by the 1st , 2nd & 3rd Defendants has any merit.

c) Whether the parties are entitled to the reliefs sought?

d) Who will bear the Costs of Notice of Motion applications 11th December 2024

ISSUE No. a). Whether the Notice of Motion dated 11th December 2024 meets threshold required of a temporary injunction under the provision of Order 40 Rules 1 of the Civil Procedures Rules, 2010.

84. Under this sub - heading, the main issue is whether the Plaintiffs/Applicants are granted the relief of an interlocutory injunction and/or conservatory orders. According to the applicants, the 4th Respondent is keen on cancellation of the title deed to the suit property herein by reason that the suit property currently has two title deeds and which is in contravention of the law.

85. The application 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.

86. Fundamentally, the principles applicable in an application for an injunction were laid out in the celebrated case of ***“Giella - Versus - Cassman Brown & Co Limited (1973) EA 358”***, 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.”

87. 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”.

88. 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”

89. 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.”

90. Similarly, in the case of **“Edwin Kamau Muniu - Versus - Barclays Bank of Kenya Limited”** 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.”

91. In the present case, it is clear that the Plaintiffs/Applicants had further discovered that the Defendants/Respondents were without the Plaintiffs knowledge, consent or authority. The Defendants had further invited his customers to further trespass on the suit property without the consent and approval of the Plaintiffs. Regarding this first condition, the Plaintiffs/ Applicants had demonstrated a *prima facie* case with a probability of success at the trial as enunciated in the case of **“Giella -Versus - Cassman Brown & Co. Ltd (Supra)”**.

92. The court has further considered the annextures on record against the second principle for the grant of an injunction, that is, whether the Plaintiffs/Applicants might suffer irreparable injury which cannot be adequately compensated by an award of monetary damages. With regards to the second limb of the Court of Appeal in **“Nguruman Limited (supra)”**, held that:-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, 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 applicant. 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. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

93. On the issue whether the Applicants will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicants must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. It is not hidden that the Applicant’s property. The Plaintiffs/Applicants contended that if the Defendants were not enjoined, the Plaintiffs stood to suffer irreparably.
94. The Plaintiffs/Applicants have to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of ***“Pius Kipchirchir Kogo - Versus - Frank Kimeli Tenai (2018) eKLR”*** provides an explanation for what is meant by irreparable injury and it states:-

“Irreparable injury means that the injury must be one that

cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

95. Quite clearly, the Applicant would not be able to be compensated through damages being that this was their home. The Applicant has therefore satisfied the second condition as laid down in ***“Giella’s case”***.

96. Thirdly, the Applicant has to demonstrate that the balance of convenience tilts in their favour. In the case of ***“Pius Kipchirchir Kogo - Versus - Frank Kimeli Tenai (Supra)”*** which defined the concept of balance of convenience as:

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

97. In the case of ***“Paul Gitonga Wanjau - Versus - Gathuthis Tea***

Factor Company Ltd & 2 others (2016) eKLR", the court dealing with the issue of balance of convenience expressed itself thus:-

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

98. The balance of convenience tilts in the favour of the Applicant as the Defendant would not suffer any prejudice whatsoever if the Orders sought in this Application were granted as he did not have any legal justification to be on the suit property before the suit herein is heard and determined on merit. The decision of ***"Amir Suleiman - Versus - Amboseli Resort Limited [2004] eKLR"*** where the learned judge offered further elaboration on what is meant by "balance of convenience" and stated; -

"The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather

than the higher risk of injustice.”

99. Thus, in this case, the balance of convenience lies with the Plaintiffs/Applicants. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the claim of the Plaintiffs/Applicants and it will be in the interest of both the Applicants and the Defendants/Respondents that the suit property is preserved until the hearing and determination of the suit.

100. In the case of:- ***“Robert Mugo wa Karanja - Versus - Ecobank (Kenya) Limited & Another [2019] eKLR”*** where the court in deciding on an injunction application stated:-

“circumstances for consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

101. I am convinced that if orders of temporary injunction are not granted in this suit, the property in dispute might be in danger of being dealt in the manner set out in the application and apprehended by the Plaintiffs/Applicants. In view of the foregoing, I strongly find that the

Plaintiffs/Applicants have met the criteria for grant of orders of temporary injunction.

ISSUE No. b). Whether the Notice of Motion application dated 17th September, 2025 by the 1st, 2nd & 3rd Defendants has any merit.

102. Under this Sub - heading the Honourable Court will be critically examining the merits on the application dated 17th September, 2025 by the 1st, 2nd & 3rd Defendants herein. In a nutshell, and without belabouring the point, the Applicants sought for the stay of the delivery of Ruling which was slated for 19th September, 2025 pending the hearing and determination of this application “*inter - partes*”; re - opening of the hearing of the application by the Plaintiffs whose ruling was pending and grant them leave to file a further affidavit and supplementary submissions; and to have the main suit stayed pending the hearing and determination of the Defendants' application to revoke and/or annul the Probate Will before the Family Division, Nairobi was heard and determined.
103. It is instructive to note that on 19th September, 2025 when the parties appeared before the Court, it was persuaded to defer the delivery of the Ruling to 3rd October, 2025 in order to allow parties file replies and submissions to the said application. I fully concur with the Counsel for the Plaintiffs/Applicant to the effect that instead of seeking for stay of the said application which is primarily for injunctive orders to stay or restrain the 4th Defendant whether by himself or anyone acting under them from cancelling or in any way interfering with the Plaintiffs Title or the parcel of

land Title Number Kwale/Msabweni "A"/3390 issued on 28th July, 2023, executing, implementing, acting and/or in any way proceeding with actions threatened in the Gazette Notice No.14724 dated and published on 8th November 2024 by the 4th Defendant in relation to the said property. Thus, in essence, the prayer on deferring the ruling for the material date was spent. What remains are the other reliefs sought.

104. From a quick assessment of the pleadings by the 1st, 2nd & 3rd Defendants, and in their own admission, they were strictly not opposing the Plaintiffs' application but were more concerned on two main issues. Firstly, that this Court be informed of some new information pertaining to the subject matter. Hence, the need for them to be allowed to file and serve the said documentary evidence as it would assist the Court arrive at an informed decision. Certainly, this being a land matter and its sensitivities, based on the provision of Article 159 (1) & (2) of the Constitution of Kenya, 2010 I find this request rather cogent and plausible. Hence, it should be allowed. Secondly, the Applicant has informed this Court that there was a subsisting Succession Cause pending hearing and awaiting determination before the High Court Family Division, Nairobi. According to the 1st, 2nd & 3rd Defendants, that being the appropriate Court with full jurisdiction to entertain the said subject matter should be allowed to do so. On the contrary, to allow the Plaintiffs' application would lead to conflicting decisions which is likely to arise into embarrassment and confusion. Without appearing to be splitting hairs, I have taken cognisance of the fact that they moved Court under the provision of Order 9

Rule 9 of the Civil Procedure Rules, 2010 rather than Section 6 of the Civil Procedure Act, Cap. 21. Be that as it may, that error is curable under the provision of Article 159 (2) (d) of the Constitution of Kenya, 2010. Upon keen assessment from the filed pleadings, none of them places any Court order from the High Court Family Division restraining this Court from proceeding with the matter. The only order issued by the said Court on 16th September, 2025 which is annexed and marked as “AMMM - 5”. It is on the direction of the proceedings before the said Court and not restraining this Court from conducting the proceedings before it.

105. Ideally, I discern that it would not be plausible to stay the Plaintiffs’ application and have the 1st , 2nd & 3rd Defendants application dated 17th September, 2025 determined first as there was no order of the High Court issued to suspend administration of the estate of the late Pritam Panesar. I am convinced that to stay the proceedings on the mere apprehension that the application for annulment or revocation of the Will may succeed, yet the same had not been determined, would be prejudicial to the Plaintiff

106. On whether this Court should re - open hearing of the Plaintiffs application and grant leave to the 1st to 3rd Defendants to file Affidavits and Supplementary submissions. Evidently, the 1st, 2nd & 3rd Defendants duly filed and served a Replying Affidavit sworn by the 2nd Defendants herein on 6th February, 2025 while the 4th Defendant duly filed and served a Replying Affidavit sworn by Steve Mokaya on 26th March, 2025 in this matter and which forms part of the Court record. Equally the Plaintiff duly filed a Further Replying Affidavit

sworn by the 1st Plaintiff on 11th April, 2025 in reply to the 4th Defendants above said belated Replying Affidavit and written submissions dated 14th March, 2025 on the Plaintiffs, pursuant to Courts directions. However, in as much as it would be unfair to re - open the case but this being a land matter which is ordinarily sensitive and emotive, guided by the principles of fair hearing under the provisions of Articles 25 (c); 50 (1) & (2) and 159 (1) & (2) of the Constitution of Kenya, 2010; Sections 3 and 13 of the Environment & Land Court Act, No. 19 of 2011 and capped by the Principle of natural Justice, Conscience and Equity I find it fair and reasonable to accord the 1st, 2nd & 3rd Defendants an opportunity to be heard through filing of any additional documents that they would find relevant in support of their case. I see no prejudice that the Plaintiffs will suffer by that as they will also be granted corresponding leave to counter the said documents whatsoever.

107. In the meantime and in all fairness, this Honourable Court will completely stir off the alleged matters pending before any other Court including the High Court, Family Division, at Nairobi.

ISSUE No. c). Whether the parties are entitled to the reliefs sought

108. I have had the chance to peruse the contents of the gazette notice dated 8th November 2024 being gazette notice no 14724 and which has clearly stipulated that the Applicants having failed to surrender the title deed issued to them on 28th July 2023 were therefore being given sixty [60] days from the date of the gazette notice for the title deed in

question to be cancelled and the same will thus be null and void. It is this notice that has prompted the instant application before court.

109. The Plaintiffs/Applicants state that they have at no given point been served with any notice to be heard in defence informing them to surrender title, that if anything, the title deed was procedurally surrendered to the land registrar vide courier services and which was evidenced by a certificate of the courier service being Wells Fargo indicating that the title was delivered to the lands office hence prompting the issuance of the new title. The Respondents on the other hand have stated that a notice was issued and the applicants having failed to avail themselves before the 4th Respondent prompted the notice to be gazetted.

110. I wish to point out that despite the allegations that a notice was served upon the applicants before the contested gazette notice, the respondents have failed to produce this notice before court. It is trite that the legal burden of proof lies with the person who alleges. The Respondents bear the legal burden of proof to prove the allegation that the notice was indeed served as against the Plaintiffs. Section 107 (1) of the Evidence Act, Chapter 80 Laws of Kenya provides as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”

111. It is standard practice that a party cannot be condemned unheard, this right is among the basic tenets of the rules of

natural justice. The 4th respondent has raised several issues with regards to the contested title deed. The same includes the will presented at the time of transmission and registration of the suit property in the names of the applicants. In my view these are issues that can only be canvassed at a full hearing. For now, the main issue is whether the court should grant the temporary orders sought in preservation of the suit property pending a full ventilation of the issues at hand by both parties.

112. I am convinced that a prima facie case has been made out by the applicants, the failure to grant them a hearing before gazettelement of the notice by the 4th Respondent is indeed an infringement of their rights to a fair hearing and as such the court cannot at this point uphold the attempt to de register them as the proprietors of the suit property. I am further of the opinion that the instant application has a bit of public interest in it as the same touches on the conduct of a public officer and the mandate to carry out his mandate. I am guided by the dictum in the holding of the Supreme Court of Kenya in the case of "***Gatirau Peter Munya v Dickson Mwenda Kithinji, Independent Electoral and Boundaries Commission & Fredrick Njeru Kamundi County Returning Officer, Meru County (Petition 2 of 2014) [2014] KESC 49 (KLR) (Civ) (2 April 2014) (Ruling)***", where the court stated and held thus;

(85) These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are

issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light. (86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.

ISSUE No. d). Who will bear the Costs of Notice of Motion applications dated 11th December 2025 and 17th September, 2025

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

114. In the present case, taking that this matter is still on going

for full trial as is directed herein below, the Honourable Court elects to have the costs in the cause.

XII. Conclusion and Disposition

115. 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. Hence, the Honourable Court proceeds to order the following: -

- a) THAT the Notice of Motion application dated 11th December 2024 be and is hereby found to be meritorious and thus the prayers sought are allowed.**
- b) THAT pending hearing and determination of this suit, a temporary order of injunction be and is hereby issued to stay or restrain the 4th Defendant whether by himself or anyone acting under them from cancelling or in any way interfering with the Plaintiffs title to the parcel of land title number Kwale/Msambweni A/ 3390 issued on 28/7/2023 executing, implementing, acting and or in any way proceedings with actions threatened in gazette notice no 14724 dated and published on 8th November 2024 by the 4th Defendant in relation to the said property.**
- c) THAT the Notice of Motion application dated 17th September, 2025 by the 1st, 2nd & 3rd Defendants herein be and is hereby found to be partially meritorious strictly only granting the 1st, 2nd & 3rd Defendants herein 14 days leave to file and serve**

further documents in support of their case.

- d) **THAT** further to this, the 1st & 2nd Plaintiffs granted corresponding leave of 14 days to file and serve further documents in response to the ones filed by the 1st, 2nd & 3rd Defendants herein.
- e) **THAT** for expediency sake, there be a mention of this matter on 27th November, 2025 for purposes of conducting a Pre - Trial Session and taking directions in accordance with the provision of Orders 11 & 37 Rules, 13, 16 & 18 of the Civil Procedure Rules, 2010 to the Originating Summons dated 10th December, 2024 thereof. There shall be a hearing of the matter on 25th March, 2026.
- f) **THAT** costs of the applications to be in the cause.

IT IS ORDERED ACCORDINGLY.

**RULING DELIVERED THROUGH THE MICRO - SOFT TEAMS
VIRTUAL MEANS, SIGNED AND DATED AT KWALE
THIS.....14TH DAY OFOCTOBER2025**

.....

**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) Mr. Litoro Advocate for the Plaintiffs/Applicants.

- c)** Dr. Chitembwe & Mr. Jefwah Advocates for the 1st, 2nd & 3rd Defendants/Respondents.
- d)** Mr. Penda Advocate holding brief for M/s. Kiti Advocate for the 4th Defendant.