



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ELC LC NO. E024 OF 2025**

**MARA NORTH HOLDING**  
**LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**SKYSHIP COMPANY**  
**LIMITED.....DEFENDANT/RESPONDENT**

## **RULING**

1. The matter for determination is a **Notice of Motion application** dated **14<sup>th</sup> July 2025**, by the Plaintiff/Applicant, **Mara North Holding Limited**, brought under **Sections 1A, 1B, 3 and 3A** of the **Civil Procedure Act**, **Order 40 Rules 1, 2, 4**, and **order 51 of the Civil Procedure Rules, 2010 and Section 3** of the **Trespass Act**.
2. The Plaintiff/Applicant has sought for these orders;-
  - i) **An order of injunction restraining the Defendant whether by itself, employees, agents, or clients, from trespassing upon the Plaintiff's parcels of land numbers Cis-Mara/KoiyakiDagurugurueti/63, Cis-Mara /Koiyaki /Dagurugurueti/3703, Cis-Mara/Koiyaki Dagurugurueti /2621, Cis Mara/Koiyaki/Dagurugurueti /230, Cis-Mara/ Koiyaki/ Dagurugurueti/2669, Cis-Mara/Koiyaki/Dagurugurueti/111, Cis-**

**Mara/Koiyaki Dagurugurueti /3325, Cis-Mara/ Koiyaki/ Dagurugurueti /61, Cis-Mara/KoiyakiDagurugurueti/62, Cis-Mara/Koiyaki/Dagurugurueti/64, Cis-Mara/Koiyaki Dagurugurueti/61, Cis-Mara/Koiyaki/Dagurugurueti/60, Mara/Koiyaki/Dagurugurueti/65, Cis-Mara/Koiyaki Dagurugurueti /54, Cis-Mara/Koiyaki/Dagurugurueti/2652, Cis-Mara/Koiyaki/Dagurugurueti/2653,CisMara/Koiyaki/Dagurugurueti/52, Mara/Koiyaki/Dagurugurueti /51, Cis-Mara/Koiyaki Dagurugurueti /74, Cis-Mara/Koiyaki/Dagurugurueti/75, Cis-Mara/Koiyaki Dagurugurueti/356, Cis-Mara/ Koiyaki /Dagurugurueti/352, Mara/Koiyaki/Dagurugurueti /358, Cis-Mara/ Koiyaki Dagurugurueti /268 or any other Plaintiff's parcels of land in Mara North Conservancy situated in Narok County pending the hearing and determination of this suit .**

- ii) The Plaintiff further sought for an injunction to restrain the Defendant, its agents, or employees from flying hot-air balloons below 1,000 feet over the Plaintiff's member camps or in a manner endangering property, tourists, or persons within the Plaintiff's member's camps pending the hearing and determination of the suit.**

**iii) Additionally, the Plaintiff/Applicant has sought for orders that the Officer Commanding Mulot Police Station assist in the enforcement of the Court's orders.**

**iv) That the costs of this Application be in the cause.**

3. The application is premised on several grounds that are stated on the face of the application. Among these grounds are;- that the Plaintiff/Applicant operates a **private wildlife conservancy** known as **Mara North Conservancy** located in Maasai Mara, Narok County; The Plaintiff is duly registered and licensed by the **Kenya Wildlife Service** to operate as a **Wildlife Conservancy**, and manages over 700 parcels of land leased from various landowners in the Maasai Mara area, with the leases registered at the Narok District Lands Registry; The Plaintiff also undertakes **wildlife conservation work** in accordance with approved management plans and policies designed to protect wildlife habitats from human or commercial interference, in collaboration with the **Kenya Wildlife Service** and the **Narok County Wildlife Conservation and Compensation Committee.**
4. That to generate revenue for supporting conservation work, paying lease rents to over **800 landowners**, and meeting operational expenses, the Plaintiff/Applicant has licensed and authorized the establishment of **13 high-end eco-tourism camps** within designated areas of the **Mara North Conservancy**, referred to as **member camps**. Guests and tourists visiting these camps pay park fees, which contribute

to the conservancy's maintenance. The member camps offer **premium tourism experiences**, including regulated game drives and other controlled tourism activities, conducted in accordance with the **conservancy's management plan** and **policies** approved by relevant authorities.

5. The Plaintiff/Applicant lists specific parcels of land that form part of the Mara North Conservancy, identified by their **Cis-Mara/Koiyaki Dagurugurueti numbers 63, 3703, 2621, 230, 2669, 11, 3325, 61, 64, 62, 61, 60, 65, 54, 2652, 2653, 52, 51, 74, 75, 356, 352, 358** and **268**, which are duly registered in the Narok District Lands Registry. These parcels are collectively referred to as the **"suit properties."**
  
6. The Plaintiff/Applicant alleges that from **January 2024 to June 2025**, the Defendant/Respondent, either personally or through its employees, agents, and clients, has been **trespassing upon these suit properties**, thereby interfering with the Plaintiff/Applicant's lawful possession and operations within the conservancy.
  
7. The Plaintiff/Applicant also alleged that the Defendant/Respondent has unlawfully entered and remained on the suit properties **without consent or authorization**. The Defendant/Respondent, who operates **hot-air balloon tours** from its parcel of land known as **Cis-Mara/Dagurugurueti/517**, has been landing its **hot-air balloons** within the Plaintiff/Applicant's properties, and conducting **unauthorized game drives and tourism activities** on the Mara North Conservancy lands.

8. Further, that the Defendant/Respondent's conduct amounts to **commercial exploitation** of land designated for Wildlife Conservation, THUS endangering **wildlife** that the Plaintiff/Applicant works to protect. Some of these unauthorized landings reportedly occur in **sensitive breeding and nesting zones**, causing harm to wildlife.
9. The Plaintiff/Applicant also asserted that the Defendant/Respondent's actions pose a **serious threat to tourist safety**, and its business reputation, as unauthorized tourists are brought into the conservancy where their safety cannot be guaranteed. By continuously trespassing, the Defendant *has interfered with the Plaintiff's legal rights* to quiet enjoyment and unhindered possession of its land.
10. Despite the Plaintiff/Applicant making several **oral and written demands** for the Defendant/Respondent to cease trespassing, the Defendant has allegedly **persisted in its unlawful activities**, compelling the Plaintiff to seek the Court's intervention through the present application.
11. The Plaintiff attached a detailed record of **incidents of trespass** allegedly committed by the Defendant/Respondent, listing dates, plot numbers, vehicle registration details, and witnesses. The alleged trespasses occurred between **April 2024 and June 2025**, with the latest incidents reported on **7th June 2025 and 29th June 2025**. Further that, aside from the listed occurrences, there have been **numerous other instances of trespass** across the suit properties, including parcels identified as **Cis-Mara/Koiyaki Dagurugurueti Nos 63, 3703, 2621, 230, 2669, 111,**

**3325, 61, 64, 62, 60, 65, 54, 2652, 52, 51, 74, 75, 356, 352, 358, and 268.**

12. Additionally, the Plaintiff/Applicant claims that when confronted and requested to cease the trespassing, the Defendant/Respondent **intentionally aggravated the situation** by flying its hot-air balloons dangerously low over the Plaintiff's member camps, allegedly as an act of retaliation. These acts endangered both property and the safety of tourists, particularly affecting **Kicheche Camp**, one of the Plaintiff's **premium member camps** within the Mara North Conservancy.
13. Further, that the Defendant/Respondent 's conduct of **flying hot-air balloons at dangerously low altitudes** poses a serious **risk to the safety of tourists and property** within the Mara North Conservancy. Such low flights over member camps are said to cause **massive noise, disturbance, and nuisance**, disrupting the peace of guests staying in the camps.
14. The Plaintiff/Applicant invokes the **Civil Aviation Act, 2013** and the **Kenya Civil Aviation (Rules of the Air) Regulations, 2018**, which prohibit the flying of aircraft—including hot-air balloons—below **1,000 feet above the highest fixed object**, or in a manner likely to **endanger persons or property** on the surface.
15. Further, Plaintiff/Applicant alleged that the wildlife **near the camps**, such as **hippopotamuses and gazelles**, are affected by the Defendant/Respondent 's low-altitude balloon flights, which cause **massive disturbance and**

**environmental damage** to the ecosystem around the conservancy.

16. Additionally, the Defendant's **persistent acts of trespass and sabotage** have reportedly caused tourists to **avoid the Plaintiff's conservancy** and member camps, leading to **financial losses** and a **damaged reputation** as a premium eco-tourism destination.
17. The Plaintiff/Applicant claims that the Defendant's actions are part of a **blackmail strategy** aimed at coercing the Plaintiff/Applicant into entering **business arrangements** for **hot-air balloon operations** within the conservancy—arrangements the Plaintiff has **expressly declined**.
18. To further pressure the Plaintiff, the Defendant/Respondent is said to have **filed a frivolous lawsuit, Narok CMCC No. E195 of 2023**, against a **non-existent entity**, alleging breach of non-existent business contracts, which the Plaintiff/Applicant describes as an **abuse of the court process** and an **act of intimidation**.
19. It is the Plaintiff/ Applicant's allegations that the Defendant **does not have any legal or beneficial rights** over the suit properties or any other parcels of land that constitute the Plaintiff's wildlife conservancy. Consequently, the Defendant **has no lawful authority** to enter upon or remain on the Plaintiff's land without the Plaintiff's consent.
20. The Plaintiff/Applicant contends that it has **faithfully met all obligations** to the respective landowners under the

subsisting lease agreements by **paying rent duly and promptly**. However, the Defendant's acts of **trespass and sabotage** have led to **massive financial losses**, depriving the Plaintiff of essential revenue required to meet its commitments to landowners and other stakeholders.

21. Further, the Plaintiff/Applicant averred that it has shown that it holds **clear legal rights** over the said parcels of land, and the conservancy parcels forming the subject matter of this case. As such, it has established a **prima facie case** with a **high likelihood of success** upon the full hearing of this suit.
22. That if the Defendant's **illegal activities**—including **trespass, sabotage, and low-altitude balloon operations**—are not restrained by an *injunction*, both the Plaintiff and ongoing environmental conservation initiatives will suffer **irreparable harm**, for which **monetary damages would not be adequate compensation**.
23. Lastly, the Plaintiff deponed that the **balance of convenience** weighs heavily in its favour. That the Defendant/Respondent will suffer **no prejudice or inconvenience** if barred from trespassing upon Plaintiff/Applicant parcels of land over which it has no legal rights. Equally, allowing the Defendant's actions to persist would continue **endangering lives, property, wildlife, and tourism activities** within the conservancy.
24. The Plaintiff/Applicant urged the court to **grant the injunctive reliefs sought** and restrain the Defendant/Respondent from further unlawful conduct

pending the determination of this suit, since the Plaintiff and its tourists stand to **suffer great inconvenience and potential harm** if the Defendant is not restrained from continuing its **unlawful and unauthorized activities** as described above.

25. That the continuous trespass and low-altitude balloon operations threaten both **tourist safety and the sustainability** of the Plaintiff's conservation operations. Further, the Defendant/Respondent's reckless conduct further poses a **serious risk to Kenya's tourism industry**, particularly within the **Maasai Mara ecosystem**, a key international tourism destination.
26. The Plaintiff/Applicant contends that should any tourists be **injured or endangered** as a result of the Defendant's **unsafe or illegal activities**, the incidents would likely attract **negative publicity, discouraging visitors** from the region. Accordingly, the Plaintiff/Applicant averred that granting the orders sought would serve **the public interest**, and **protect** the integrity of Kenya's tourism and wildlife conservation sectors.
27. The application is also premised on the **Supporting Affidavit** of **Konet Leperes**, a Director of *Mara North Holding Limited*, who reiterated that the Plaintiff/Applicant is a duly registered private wildlife conservancy licensed by the **Kenya Wildlife Service** to operate as such under the *Wildlife Conservation and Management Act (Cap. 376 of the Laws of Kenya)*. The conservancy, known as *Mara North Conservancy*, is located in the Maasai Mara, Narok County, and comprises over **700 parcels of land** leased from

various landowners to the Plaintiff. These leases are properly registered at the Narok District Lands Registry.

28. The deponent reiterated the contents of the grounds in support of the Application. In addition, he averred that *Mara North Holding Limited support and* conducts wildlife conservation and preservation activities within its leased parcels of land through policies designed to promote natural habitats and prevent interference from human or commercial activities. These efforts are guided by a duly approved **Conservancy Management Plan**, registered with the **Kenya Wildlife Service** and the **Narok County Wildlife Conservation and Compensation Committee**, annexed as **KL-3**.
29. The deponent further averred that from around **January 2024 to June 2025**, the Defendant/Respondent, through its employees, agents, and clients, **unlawfully trespassed** on the suit properties without consent or lawful justification. He annexed photographs marked **KL-6**, showing the Defendant's employees, agents, clients, **hot-air balloons**, and motor vehicles trespassing on the said properties.
30. He alleged that by trespassing onto the Plaintiff's properties, the Defendant/ Respondent is interfering with and prevents the Plaintiff/Applicant from exercising its legal and contractual rights over the leased lands, including the right to quiet enjoyment and unhindered possession of the suit properties
31. That the Defendant/ Respondent has **no legal** or **beneficial interest** in the suit properties or any other parcels of land

that constitute the Plaintiff's **Wildlife conservancy**. Consequently, the Defendant/Respondent has no authority to enter, remain, or conduct any activities on the Plaintiff's land without its consent.

32. The deponent contended that unless the Defendant/Respondent's unlawful activities are restrained by an order of this Court, the Plaintiff, the environment, and ongoing conservation efforts will suffer irreparable harm, for which damages would not be an adequate remedy.
33. He also deposed that the Plaintiff/Applicant was ready to provide any security that this Court may deem appropriate in support of its application for injunctive relief. That despite issuing several notices of intention to sue and cease-and-desist letters, the Defendant has ignored or dismissed all such correspondence.
34. The Application is opposed by the Defendant/ Respondent vide Replying Affidavit of **Adi Vinner's**, the Managing Director dated **24th July 2025**. The deponent averred that after reading and understanding the Plaintiff's application and Supporting Affidavit sworn by **Konet Leperes**, together with the annexures, the facts therein do not justify the grant of a temporary injunction as sought.
35. The deponent further averred that the Defendant/ Respondent is a well-established Company specializing in **hot air balloon rides**, and related **tourism services** for individuals, groups, and tourists, offering unique aerial perspectives of landmarks, wildlife, and attractions. Its operations have been based primarily on the **Western Bank**

**of the Mara River**, and the Company holds a valid operating license annexed and marked **AV-1**.

36. Additionally, the Defendant/ Respondent business involves **picking up and dropping off tourists** from various camps, and lodges located within **Mara North Conservancy** and the **Mara Triangle**, utilizing purpose-built vehicles for **efficiency** and **safety**. Further, that the Defendant/Respondent has been conducting this business **continuously since 2006**, as evidenced by the Company registration documents annexed and marked **AV-2**.
37. He also deposed that on **14th July 2021**, the Defendant/Respondent lawfully entered into a **leasehold agreement** with **Norkisarunie Enole Sengeny**, granting it proprietary rights over **Title Number CIS MARA/KOIYAKI DAGURUGURUETI/517**, which is duly registered in the Narok District Land Registry. A copy of the lease was annexed and marked **AV-3**.
38. It was his contention that the Plaintiff/ Applicant's application seeks to restrain the Defendant/Respondent from alleged trespass over several parcels of land identified **Cis-Mara/Koiyaki Dagurugurueti/63, 3703, 2621, 230, 2669, 111, 3325, 61, 64, 62, 60, 65, 54, 2652, 2653, 52, 51, 74, 75, 356, 352, 358, and 268 within the Mara North area**. However, he contended that the Plaintiff has **failed to establish a prima facie case** with a likelihood of success, which is necessary for the issuance of temporary injunctive orders.

39. It is was his contention that the parcels of land mentioned by the Plaintiff lie within the **same geographical area** as the Defendant's leased parcel **No. 517**, and since the Defendant's business involves the movement of **hot air balloons and vehicles across** wide regions for tourism purposes, such traversing is part of its legitimate operations.
40. Further, the deponent contended that for over **15 years**, the Defendant/Respondent has operated consistently and openly within the **Mara region**, using the said parcels of land for legitimate right of way and business purposes, co-existing peacefully with the Plaintiff without interference.
41. However, when the Plaintiff/Applicant began blocking the Defendant/Respondent's access to parts of the *Mara North Conservancy*, the Defendant/ Applicant sought amicable resolution through correspondence, which revealed that the Plaintiff's actions were aimed at extortion rather than genuine dispute resolution. Copies of these correspondences were annexed and marked **AV-5a and AV-5b**.
42. He contended that the Defendant/Respondent has filed a **Counterclaim** in this suit, seeking a declaration of **overriding interests** including rights of way, rights to profits (*profits à prendre*), and easements over the subject properties. Further, that the Defendant's operations cannot be confined to one land parcel since its tourism business naturally extends across the wider **Mara region**, encompassing diverse landscapes necessary for comprehensive tourism experiences.
43. He also contended that by virtue of long-established and recognized overriding interests, the Defendant/Respondent

has not trespassed upon the Plaintiff/Applicant's land and its actions are a **lawful actualization** of those rights. Therefore, the balance of convenience, therefore, tilts in favour of denying the Plaintiff/ Applicant's application, given that the Defendant's continuous operations for over **15 years** have established a significant reputation and client base.

44. Further, that the Plaintiff's own Supporting Affidavit concedes that several camps within the **Mara North Conservancy** are licensed for commercial purposes, thereby discrediting claims that the Defendant's activities are a nuisance to tourists and wildlife.
45. The deponent further contended that the Defendant's operations are a **legitimate and integral part** of the conservancy's tourism ecosystem. Granting the injunction would cause immediate and severe disruption to the Defendant's business, leading to loss of revenue, breach of contractual obligations, and irreparable harm to its established reputation. It was his contention that the substantive suit will determine whether its operations constitute lawful exercise of overriding interests or trespass, and that these issues should not be pre-empted at the interlocutory stage.
46. In response to allegations that it filed a frivolous suit in **Narok CMCC No. E195 of 2023** to coerce the Plaintiff, the deponent categorically denies the said allegation and , asserted that the suit was lawfully filed to seek damages for loss of income resulting from the Plaintiff's unilateral obstruction of its business. He contended that the suit in

**Narok CMCC No. E195 of 2023**, is based on clear legal and factual grounds, and is not **frivolous, vexatious**, or **an abuse of process**.

47. That matter remains pending before a competent court, which has jurisdiction over it, and this Court should refrain from entertaining or issuing orders that would interfere with or contradict the lower court's proceedings. Indeed, the Narok court has already issued restraining orders against the Plaintiff, preventing interference with the Defendant's operations over the same properties listed in this matter.
48. Further, that issuing injunctive orders in the current application would result in conflicting decisions, causing confusion and prejudice to the administration of justice. Such interference would undermine the trial court's authority, and deny the Defendant/Respondent its right to a fair hearing on the merits of its claim.
49. The Defendant urged the Court to avoid any determination that would encroach upon the jurisdiction of the trial court seized with **Narok CMCC No. E195 of 2023** or pre-empt the substantive resolution of the issues therein. Granting the temporary injunction as sought at this interlocutory stage would, in effect, amount to a final determination of the case in favour of the Plaintiff, contrary to principles of justice and fair hearing.
50. **Konet Leperes**, swore Supplementary Affidavit in opposition to the Replying Affidavit of **Adi Vinner**, and reiterated that the Defendant has **admitted** to **entering, remaining** on, and **using** the Plaintiff's parcels of land for

commercial purposes, particularly **hot air balloons** and tourism activities, **without the Plaintiff's consent or authorization.**

51. Further, he contended that the Defendant/Respondent also admitted to having **no registered legal or proprietary rights** over the suit properties, but claims to have overriding interests, easements, or *profit à prendre* rights — which the Plaintiff/Applicant disputes as **inapplicable to private commercial entities.**
52. **Leperes** asserted that the Defendant's operations are conducted on **private properties** owned by individuals with title deeds and located **outside the Maasai Mara National Reserve.** He emphasized that a private commercial company cannot acquire overriding interests or easement rights over private land for profit-making ventures.
53. He contended that the fact that the Plaintiff's land and the Defendant's leased parcel **No. 517** are situated in the same geographical region does not entitle the Defendant/Respondent to access or use the Plaintiff's property. He also clarified that there is **no conflict** between this case and **Narok CMCC No. E195 of 2023**, as that matter involves different parcels and no court order from it affects the present suit.
54. It was his further contention that the Plaintiff has demonstrated ownership and legal rights over the suit properties, and that the Defendant's actions amount to **infringement.** Therefore, the Plaintiff/Applicant has thus established a **prima facie case** with a high chance of success.

55. He reiterated that, the Plaintiff/ Applicant will suffer hardship and loss if the Defendant/ Respondent continues to exploit its land for commercial profit, especially since the Plaintiff bears the costs of maintaining the property for **wildlife conservation**. The Defendant's actions also endanger wildlife and obstruct the Plaintiff's conservation efforts.

56. The application was canvassed by way of written submissions. The Plaintiff/Applicant filed its written submissions dated **16<sup>th</sup> September 2025**, through **Oyomba, Mosota & Wamwea Advocates** and relied on the established **legal principles governing temporary injunctions** as outlined in **Giella vs Cassman Brown Ltd [1973] EA 348**. It also cited the case of **Thomas Mumo Maingey v Sarah Nyiva Hillman & Others (Nairobi Civil Appeal No. 323 of 2017)**, where the Court of Appeal reiterated the principles as follows;

***"In Keeping with the Principles in Giella vs Cassmam Brown & Co. Ltd all the court was required to do at that stage was to satisfy itself if either party had shown a prima facie case with a probability of success and whether, if the temporary injunction was refused, the party seeking it stood to suffer irreparable harm for which damages would not be adequate remedy. If in doubt, the court was to consider the balance of convenience and determine, on the facts of the case, whether the balance of convenience lay with the appellants or with the respondents."***

57. Further reliance was sought in case of ***Suleiman v Amboseli Resort Ltd [2004] eKLR 589***, wherein the court stated that courts should apply a ***progressive and equitable approach***, ensuring that in cases of uncertainty, the court should ***lean toward the lower risk of injustice***—granting interlocutory injunctions to preserve rights until the matter is fully heard.
58. Further, the Plaintiff/Applicant A relied on the case of ***Mrao v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125***, which defines a prima facie case as one where the presented evidence shows an apparent right that has been infringed, warranting an explanation or rebuttal from the opposing party.
59. The Plaintiff/Applicant submitted that it holds ***registered leases over 24 parcels of land*** forming part of the ***Mara North Conservancy***, a private wildlife conservancy. Further, it was submitted that the Defendant's actions, including trespassing and unauthorized use of the land, have infringed upon the Plaintiff's ***legal, proprietary, and contractual rights***.
60. The Plaintiff also submitted that it presented concrete evidence of the Defendant's alleged trespass and unlawful commercial activities within the suit properties, and that the Defendant has ***breached and infringed*** on the Plaintiff's legal, proprietary, and contractual rights by ***entering and remaining on the properties***, conducting ***unauthorized commercial operations***, and disturbing the peace of the conservancy without permission.

61. The Plaintiff/Applicant also submitted that it has conclusively shown its proprietary and contractual rights over the suit lands, and that the Defendant/Respondent has infringed those rights by conducting unauthorized ballooning activities, and this establishes a ***prima facie case*** with a strong likelihood of success at trial.
62. On ***irreparable harm***, the Plaintiff/Applicant cited the case of ***Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] Eklr***, and submitted that the Defendant's actions specifically unauthorized use of the conservancy and dangerously low balloon flights pose irreparable harm — not only to its commercial interests, but also to the ecological integrity and safety of the Mara North Conservancy.
63. Further, that the Defendant's operation of ***hot air balloons*** below the legally required minimum altitude of ***1,000 feet*** above ground level, except during authorized take-off or landing, violates aviation safety standards. The Kenya Civil Aviation Authority is in the process of developing the ***Civil Aviation (Hot Air Balloons Operations) Regulations, 2024***, which emphasize maintaining safe vertical separation to reduce risks to people and property on the ground.
64. The Plaintiff relied on the case of ***Skyship Company Limited & 3 others v Kenya Civil Aviation Authority; Ishara Air Balloon Safaris Limited (2025) KENCART 81 (KLR)*** to highlight the legal significance of compliance with Aviation Regulations and the consequences of operating below prescribed safety limits.

65. It was the Plaintiff/ Applicant further submissions that the Defendant/Respondent's unauthorized **hot air balloon operations**, carried out in violation of **Aviation Safety Laws** and without consent, have disrupted **Wildlife behavior, caused distress to tourists**, and **damaged the Plaintiff's reputation** as a responsible conservancy operator. The low-altitude hot air balloons are said to **threaten nesting areas, migratory routes**, and **sensitive habitats**, leading to ecological disturbances that are not easily reversible or compensable through monetary damages.
66. The Plaintiff/Applicant emphasizes that its operations depend on maintaining delicate ecological balances and contractual relationships with landowners, tour operators, and conservation partners. That the Defendant/Respondent's continued trespass and balloon operations not only harm these partnerships but also compromise the Plaintiff's ability to enforce its rights and sustain the integrity of its conservation model.
67. Therefore, it was the Plaintiff submissions that the harm caused by the Defendant's activities is **irreparable**, justifying injunctive relief to preserve the **status quo**, protect proprietary and ecological interests, and prevent further environmental degradation. It is urged that the court grant the orders sought in the interest of justice.
68. On the **balance of convenience** , the Plaintiff submitted that it strongly favors granting the injunctive orders sought. Referring to the case of **Giella vs Cassman Brown & Co. Ltd**, the Plaintiff submitted that once a prima facie case and

irreparable harm are established, the court should only consider balance of convenience if any doubt remains. It was submitted that the **balance of convenience** herein still lies in favor of the Plaintiff because, the Defendant/Respondent will not suffer any hardship or inconvenience by being restrained from trespassing on land where it holds no legal rights.

69. Further, by stopping the Defendant from continuing with the unauthorized activities, that would prevent potential risks to tourists and property within the conservancy. Conversely, the Plaintiff would suffer great hardship and loss if the Defendant is allowed to continue occupying and using the disputed parcels of land, despite the Plaintiff being the lawful leaseholder and paying for them.
70. The Plaintiff sought to have the **status quo** maintained to prevent any **risk of injustice** pending the determination of the dispute. Reliance was sought in the case of **James R. Ketuyio & Others v. Mara North Holdings Ltd & Another (Nakuru HCC No. 154 of 2011)**, which established that the purpose of a temporary injunction is to preserve the existing state of affairs until the case is fully heard and determined. The Plaintiff/ Applicant submitted that granting the injunction would maintain the current position, wherein it lawfully possesses and manages the suit properties. Failure to issue the injunction would allow the Defendant to continue its unlawful actions, undermining the case and rendering any future trial meaningless.
71. On **Risk of Injustice**, the Plaintiff/Applicant referred to the case of **Suleiman v. Amboseli Resort Limited (supra)**,

and urged the court to adopt the *risk of injustice* test, which test advises the court to choose the option that poses the least risk of injustice between the parties. The Plaintiff submitted that denying the injunction would expose it to greater injustice, as it would lose the benefit of its legal and financial investment in the suit properties. Conversely, the Defendant would suffer minimal, if any, prejudice if the injunction is granted, given they lack lawful ownership or rights over the land.

72. The Plaintiff further submitted that though the Defendant, lacked any **registered interest** in the suit properties, it still contended that it is entitled to access and use the land for **tourism** and **hot-air balloon activities** based on alleged **overriding interests**. The Plaintiff refuted this position, citing **Section 28 of the Land Registration Act**, which defines **overriding interests** to include rights of way, rights of water, and profits subsisting **at the time of the first registration** of the land under this Act.
73. That for such a right to exist, it must have been in force at the time of the **first registration** of the property. The Defendant, however, has neither demonstrated nor provided evidence that any such rights existed when the 24 parcels of land comprising the suit properties were first registered.
74. Further, the Plaintiff submitted that **commercial exploitation or use** of another person's land without their consent does not qualify as an **overriding interest or easement**, and that the Defendant only obtained a **lease over parcel number Cis-Mara/Koiyaki-Dagurugurueti/51** in July 2021, just four

years prior, thereby disproving any claim of long-standing or prescriptive rights.

75. It is argued that if the Defendant/Respondent truly had such rights, it would not have needed to **acquire a lease over parcel number Cis-Mara/Koiyaki-Dagurugurueti/517**. The Plaintiff relied on the Court of Appeal case of **Mirigo & 550 others v Minister for Lands & 4 others [2014] KECA 881 (KLR)**, which held that **unregistered or informal claims over land must be supported by legal instruments or statutory authority**, and that mere occupation or use does not create proprietary rights.
76. The Plaintiff/Applicant also submitted that land right especially those involving commercial use must be proven through **formal documentation or recognized long-term legal entitlement**. However, the Defendant/Respondent has provided no evidence to demonstrate such long-standing recognition or legal basis for its claims.
77. Relying on **Section 138 of the Land Act, 2012**, the Plaintiff/Applicant submitted that easements arise where one parcel of land (**the dominant land**) benefits from rights over another parcel (**the servient land**). Under **Section 136**, this right vests in land and **not in an individual or company**, meaning the Defendant cannot personally hold an easement right unless properly documented.
78. Ultimately, the Plaintiff reiterated that one essential feature of an easement under English and Kenyan law is that it must be **capable of forming the subject matter of a legal grant**. The Plaintiff elaborated on the legal framework governing easements under Kenyan land law, emphasizing

that the Defendant/ Respondent has not satisfied any of the statutory requirements to claim such rights.

79. Reliance was sought in the case of ***Kenya Electricity Generating Company PLC v Tribe Investments Limited & Another (Land Case E045 of 2024) (2025) KEELC 3031 (KLR), and Ruth Wamuchi Kamau v Monica Mirae Kamau [1984] eKLR***, The Plaintiff/Applicant submitted that the Defendant ***failed to prove the existence of a dominant tenement*** over the 24 parcels of land at issue.
80. Reliance was made in the case of ***Gitata (Suing as Administrator of the Estate of Robert Gitata Gichohi - Deceased) v Athi Water Service Board [2023] KELC 21039 (KLR)***, where the court held that a Defendant cannot lawfully acquire a ***wayleave right by prescription***, as ***Section 98(7) of the Land Registration Act*** explicitly prohibits such acquisition.
81. On ***profit à prendre rights***, it was submitted that it could only be created through a ***formal instrument***, that specifies the nature of the profit, its duration, and whether it is to be enjoyed exclusively or jointly with the landowner. These rights ***cannot arise by implication or prescription***, meaning they cannot be acquired through long-term use. They must be ***voluntarily granted*** by the landowner and ***properly documented***.
82. Furthermore, ***profit à prendre*** does ***not grant ownership, possession, or general access rights*** to the land. Such rights must be expressly granted, and any unauthorized use of land — for instance, tourism activities conducted without

proper agreements — amounts to **trespass or illegal exploitation**.

83. The Plaintiff concluded that the **Defendant lacks any overriding interest, easement, or profit à prendre rights** over the suit properties.
84. The Defendant/Respondent filed its written submissions dated **17<sup>th</sup> September 2025**, through **Ifile Casmir Advocates LLP**, in opposition to the Plaintiff/Applicant's application for interim injunctive orders. The Defendant/Respondent submitted that the allegations of trespass are unsubstantiated and that it enjoys long-standing **easement and overriding interests** over the said properties. Further that the suit herein is still pending hearing, and at this interlocutory stage, the Court must balance unproven allegations against the Defendant/Respondent as pleaded and substantiated assertion.
85. The Defendant/Respondent raised these issues for determination;
- i. Whether the Applicant has established a prima facie case with a probability of success.**
  - ii. Whether the Applicant will suffer irreparable harm if the injunction is not granted.**
  - iii. Whether the balance of convenience tilts in favour of granting the orders sought**
86. On the issue of a **prima facie case**, the Defendant/Respondent relied on the principles in **Giella v Cassman Brown & Co. Ltd (1973) EA 358 and Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR**

**125**, and submitted that the Plaintiff/ Applicant has failed to establish a **prima facie** case. It contended that the photographs produced by the Plaintiff/ Applicant do not amount to credible proof of trespass or low balloon flights, as they are incapable of demonstrating boundaries.

87. Further, it submitted that the Plaintiff has not produced cadastral or registry maps to identify the boundaries of the **24 parcels** of land or to show where the alleged ingress occurred. The Defendant / Respondent also submitted that the only credible evidence would be scientific and mathematical calibrated measurements, expert reports, or aviation data showing altitude without such objective and scientific evidence, the Court cannot determine whether any entry occurred within the Plaintiff/ Applicant's parcels of land or along established access routes.
88. Consequently, the Defendant submitted and maintained that the Plaintiff/ Applicant's Application lacks merit and should be dismissed with costs, since the Defendant has demonstrated long-term easementary rights arising from continuous operations. Therefore, the court should decline to grant the interlocutory injunctive orders sought.
89. On the issue of **irreparable harm**, the Defendant/ Respondent relied on the second limb of **Giella v Cassman Brown & Co. Ltd [1973]EA 358**, which requires that an applicant must demonstrate irreparable harm; harm that cannot be adequately remedied by an award of damages. It's the Defendant's submission that the Plaintiff/ Applicant has

not shown any injury incapable of compensation by damages. Trespass, if proven, is compensable in damage.

90. Conversely, the Defendant submitted that it would suffer devastating consequences if the injunctive Orders were granted. Its entire tourism enterprise is centred on **hot air balloons** and **safari operations** would collapse, resulting in loss of clientele, contractual breaches, reputational damage, and the destruction of goodwill built over many years. Further, that such harm, the would be **irreversible** and cannot be remedied by an award of damages, whereas the Plaintiff/Applicant 's alleged losses remain speculative and quantifiable.
91. With respect to the **balance of convenience**, the Defendant/ Respondent relied on the case of **Mateli v Kieti (ELC E062 of 2022) [2023] KEMC 289 and Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] 1 EA 86**, where the court held that when the Court is in doubt, it will decide an application based on the balance of convenience.
92. Further, the Defendant/ Respondent submitted that its legitimate and long-standing business would be destroyed overnight if the injunctive Orders were issued, while the Plaintiff /Applicant has merely aggregated various leasehold parcels under the name "**Mara North Conservancy**," which are neither contiguous nor exclusive. There exist established access routes through the area, and the Defendant's activities contribute positively to the broader tourism ecosystem. Therefore, the Plaintiff's claim of harm to the conservancy is unfounded.

93. In conclusion, the Defendant/ Respondent submitted that the Plaintiff/ Applicant has not established **a prima facie case, has failed to demonstrate irreparable harm, and that the balance of convenience strongly favours the Defendant**. Accordingly, the Defendant/ Respondent urged the court to dismiss the Plaintiff's'/Applicant's Application for Interlocutory Injunction, with costs to the Defendant/Respondent.
94. The above are the grounds in support of the instant Application and against the said Application, which Application basically seeks for **injunctive orders** against the Defendant/ Respondent herein. What is evident is that the Plaintiff/ Applicant and the Defendant/ Respondent carry tourism activities within **Maasai Mara region**. Both the Plaintiff and Defendant have leased various parcels of land to carry out the said tourism activities, which activities earns them income and are commercial in nature.
95. The Plaintiff/ Applicant has alleged that the Defendant/ Respondent also operates **hot air balloons**, and that the said **hot air balloons** have been flying **too low** over the parcels of land being manned by the Plaintiff/ Application for wildlife conservation, thus jeopardising the Plaintiff/ Applicant **tourism** and **Wildlife** conservation activities.
96. The Defendant/ Respondent has not denied the above allegations but contended that it has **easement rights** over the said parcels of land and it has filed a **Counter-claim** together with Defence to assert its **easementary rights**.

97. The Plaintiff/ Applicant has made allegations, which allegations have been denied by the Defendant/ Respondent. The Applicant therefore has a duty to avail sufficient evidence to establish that it is deserving of the temporary injunctive orders sought.

98. It is not in doubt that injunctive orders are **equitable remedies** issued by the court to protect legal rights and prevent harm that cannot be adequately compensated by damages, with the aim of preserving the situation or the suit property until a final judgment is made. See the case of **Showind Industries Ltd vs Guardian Bank Ltd(2002)1 EA 284** where the court held;

***“As I understand the law, an interlocutory mandatory injunction is granted very sparingly and only in exceptional circumstances such as where the applicant’s case is very strong and straight forward. Moreover, as the remedy is an equitable one, it may be denied where it would be inequitable to grant the relief for the reason, for example, that the applicant’s conduct does not meet the approval of a court of equity or his equity has been defeated by laches. I will determine this application on the basis of the above broad principles.[emphasis added].”***

99. Further, as provided by **Order 40 Rules (1)(a) & (b)** of **CPR**, courts have discretion to issue injunctive orders to preserve the suit property/ies where there is a dispute until the matter is heard and determined. Injunctive orders, being equitable remedies are granted at the discretion of the

court, wherein the said discretion must be exercised judiciously. See the case of **David Kamau Gakuru vs National Industrial Credit Bank Ltd, Civil Appeal No. 84 of 2001**, where the court held;

***“it is trite law that the granting of an interim injunction is an exercise of judicial discretion and an appellate Court will not interfere unless it is shown that the discretion has not been exercised judicially”***

100. Further, while determining whether to grant or not to grant the injunctive orders, the court should take **caution** not to determine the issues in dispute definitively based on Affidavit evidence. See the case of **Mbuthia - Versus - Jimba credit Corporation Ltd 988 KLR 1** where 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.”***

101. Further, in the case of **Edwin Kamau Muniu - Versus - Barclays Bank of Kenya Ltd**, the court held that;

***“ In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled at that stage is whether the Applicant is entitled to an injunction sought on the usual criteria...”***

102.As submitted by both the Plaintiff/ Applicant and the Defendant/ Respondent herein, the principles to be considered in an Application for injunction are the ones set out in case of ***Giella vs Cassman Brown Co Ltd***, where the court held;

***“first the applicant must robability of success; secondly, an interlocushow a prima facie case with a ptory injunction will not normally be granted unless it is shown that the applicant would otherwise suffer an irreparable injury which could not adequately be compensated in damages; and thirdly, that if the Court is in doubt as to the existence or otherwise of a prima facie case, it should decide the application on a balance of convenience.”***

103.The key principles are; the Applicant must establish; a ***Prima facie case***: The applicant must show that it has a "***prima facie case***," wherein, it must establish that there is an arguable and genuine case with a probability of success at trial; ***Irreparable injury***: The applicant must establish that it will suffer irreparable injury that cannot be adequately compensated by an award of damages alone if the injunction is not granted. ***Balance of convenience***: Further, before an injunction is issued if the court is in doubt, it will weigh the potential harm to the applicant against the potential harm to the Respondent , and based on balance of convenience ,an injunction may be granted or not granted.

104. The above are the key principles to be considered. However, the court is at liberty to consider other elements like, **Clean hands**: The applicant must have "clean hands" and must not have engaged in misconduct related to the case that is connected to the equity being sought. **Underlying legal right**: An injunction must be based on a legal or equitable right or cause of action that has been, or is threatened to be violated.

105. The court will now proceed to consider the available evidence, and juxtapose it with the above principles and come up with a determination on whether the Plaintiff/Applicant is deserving the Orders sought. The court will be mindful not to determine the disputed facts with finality.

106. On **prima facie** case, the same was defined in the case of [\*\*Mrao Ltd vs First American Bank Kenya Ltd & 2 others \[2003\] eKLR\*\*](#) as follows;-

***“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude 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.”***

107. The Plaintiff/Applicant has alleged that as a lease holder of the the 24 parcels of land, it has established that the Defendant/ Respondent herein who operates **hot air**

**balloons** has been flying the said **hot air balloons** so low, that the said action has affected the wild animals in the conservancy and also pose danger to the tourists or guests who are ordinarily visitors in the premium tented camps within the conservancies, and which camps are owned by the Plaintiff/Applicant.

108. The Defendant/ Respondent has not denied operating the said **hot air balloons**, but has alleged that the activity of transporting tourists within the **Mara region** cannot be confined to the suit land leased by the Defendant only. It also claimed that it has **easement rights** over the properties adjacent to the Plaintiff/Applicants leased parcels of land, and therefore, there is no way, it can be restrained from flying its **hot air balloons** over the Plaintiffs/ Parcels of land.

109. Further, the Defendant/ Respondent alleged that the averments made by the Plaintiff /Applicant can only be determined after calling of the evidence in the main suit, but not at this stage.

110. For a **prima facie** to be established, the Plaintiff/ Applicant who is a lease holder of all the named parcels of land needed to establish that the Defendant/ Respondent has no right to fly the said **Hot Air balloons** over other parcels of land within **Maasai Mara**, the Plaintiff/Applicants parcels of land included. It also needed to avail evidence that the Defendants **hot air balloons** were flown so low and they even landed on the Plaintiff's land.

111. This could only be established by calling of witnesses in the main trial, and testing the said evidence through the usual

cross examination. However, at this juncture, it would be difficult to find and hold that the Defendant/ Respondent's activities of flying **Hot air balloons** are only confined to land parcel **No. 517**, held by the Defendant through leasehold. The Defendant/ Respondent has alleged that it enjoys easement rights, and it should not be restrained from such enjoyment.

112. These allegations have been denied by the Plaintiff/ Applicant. Whether, easement rights exists or whether the Defendant /Respondent has overriding rights over the Plaintiff/Applicant parcels of right or the adjacent one, cannot be determined at this juncture through Affidavit evidence. These disputed issues can only be determined after calling of evidence at the main trial. See the case of **Edwin Kamau Muniu (Supra)**.

113. For the above reason, this court finds and holds that the Plaintiff/Applicant has not established that it has a prima facies case with probability of success at the trial. To establish **a prima** facie case for an injunction the Plaintiff/ Applicant must show a "**genuine and arguable case**" with a probability of success by presenting evidence that appears to have a legally protected right that has been infringed.

114. This would require demonstrating that **a prima facie case** exists with a reasonable chance of winning the case, showing a probability of success, and proving that the Plaintiff/ Applicant would suffer **irreparable harm** not compensable by damages if the injunction is not granted. However, this court has found and held that the allegations made by the Plaintiff/ Applicant need to be substantiated through calling

of evidence, thus no prima facie case has been established. In the case of **Naftali Ruthi Kinyua Vs Patrick Thuita Gachure & another [2015] eKLR**, the Court of Appeal stated that:

***"With reference to the establishment of a prima facie case, Lord Diplock in the case of American Cyanamid vs Ethicon Limited [1975] AC 396 stated thus, "If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities that is the end of any claim to interlocutory relief."***

115. On whether the Plaintiff/ Applicant has established that it will suffer **irreparable loss/harm** which cannot be compensated by an award of damages, the Plaintiff/ Applicant averred and submitted that the Defendant/ Respondent actions of flying the **hot air Balloons** so low over the Plaintiff/ Applicant's parcels of land has the effect of affecting its tourism activities and wildlife conservation, and the loss that it would incur or is incurring is not capable of being compensated by award of damages.

116. On the other hand, the Defendant/Respondent has contended and submitted that issuance of injunctive orders would cause more harm and loss to the Defendant/ Respondent than the harm that the Plaintiff would allegedly suffer if no injunctive orders are issued. These are competing allegations, and this court has a duty to balance the competing interests herein, for the end of justice to be met.

117. **Irreparable harm or loss** that cannot be compensated by an award of damages refers to injury that is *actual, substantial, and demonstrable, but for which there is no adequate monetary standard of measurement or where monetary compensation will not be a sufficient or appropriate remedy.*

118. The case 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.”***

119. In the case of **Muriethi vs the City Council of Nairobi(1979) KECA 1(KLR)** the court held that an *injunction cannot be granted where damages would be an adequate remedy.* Further, in **Nguruman Limited vs. Jane Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal held that in cases *where an award of damages could be adequate compensation, an injunction should not be granted.*

**120.** The Applicant has alleged that it would incur loss and or **irreparable harm** that cannot be compensated by an award of damages. However, the Defendant/ Respondent submitted that it runs a **tourism business** and operates **hot air balloons** on commercial basis. In the event, that the court was to find in favour of the Plaintiff/ Applicant, then it would be in a position to compensate the Plaintiff/Applicant by way of damages.

**121.** It is not in doubt that the Defendant/ Respondent operates a **hot air balloon business**. The Plaintiff/Applicant alleged the Defendant/Respondent acquired the parcel of land where it carries its **hot air balloons** operations or business in **2021**. The Defendant /Respondent has alleged that any **injunctive orders** if granted would cause more harm to it, than to the Plaintiff/Applicant. Though the Plaintiff/ Applicant has alleged that the low flying **hot air balloons** have caused it to lose tourism business and has affected the breeding of wildlife that it conserves, this allegation can only be determined after the full trial.

**122.** Further, there is no evidence that the Defendant/ Respondent herein would not be in a position to compensate the Plaintiff/ Applicant through damages in the event the Applicant would be successful in its suit. Consequently, the court finds and holds that the Plaintiff/ Applicant has not adequately established that it will suffer irreparable loss which cannot be compensated by an award of damages.

**123.** On the **balance of convenience**, it is evident that the balance of convenience is a legal principle which is used when the court is in doubt after considering a "**prima facie**"

case and irreparable harm. This balance of convenience involves weighing the potential injustice to the applicant if an injunction is denied, or against the potential injustice to the Respondent if the injunction is granted. The court will grant the injunction if the inconvenience to the applicant would be greater than the inconvenience to the Respondent.

**124.** In the case of ***Chebii Kipkoech Vs Barnabas Tuitoek Bargaría & Another [2019] eKLR***, the court held that:

***“The meaning of balance of convenience in 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 them would be greater than that caused to the defendants if an injunction is granted and suit is ultimately dismissed.”***

125. Further, in the case of ***“Paul Gitonga Wanjau - Versus - Gathuthis Tea Factor Company Ltd & 2 others*** the court while dealing with the issue of ***balance of convenience*** held as follows;-

***“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 decides 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 favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies”***

**126.** The Defendant/Respondent is engaged in tourism business, and as its name indicates, its main activities are on the **sky**, or **flying** the **hot air balloons**, for purposes of transporting visitors( tourists) from **Mara triangle** to **Mara North** area for tourism purposes. Therefore, issuing injunctive orders before determining whether the Defendant/Respondent has acquired **easement rights** or **overriding interest** over the disputed parcels of land , would cause more harm to the Defendant /Respondent than the harm and/or loss that would be suffered by the Plaintiff/Applicant. The balance of convenience tilt in favour of the Defendant /Respondent.

127. Though the court is not in doubt, this court finds and holds that the balance of convenience tilt in maintaining the status quo, and the **status quo** herein is to allow the parties to continue carrying on their tourism business and /or activities on their respective parcels of land without issuing any injunctive orders. See the case of **Joseph Ochieng Ougo & Another vs Virginia Edith Wambui Otieno[1987]eklr.**

128. Having found that the Plaintiff/ Applicant failed to establish all the three principles for grant of injunctive orders, this the court finds and holds that the Plaintiff/ Applicant's Application dated **14<sup>TH</sup> July 2025**, is ***not merited***. Consequently, the court finds no merit in the instant Application, and will proceed to dismiss it entirely. See the case of **Nguruman vs Nielsen Bonde Jan Bonde Nielsen & 2 others ( 2014) elkr.**

***"The court, in exercising its discretion, must weigh the respective hardship likely to be caused to either party."***

129. Having found that the Plaintiff/Applicant is not deserving of the injunctive orders, then the court cannot direct the **OCPD Mulot Police Station** to enforce any orders.

130. On the issue of costs, this court has discretion to issue award costs, but costs ordinarily follow the event. Given that the main suit is yet to be determined, the court directs that costs be in the cause.

131. In a nutshell, this court finds the instant Application dated **14<sup>th</sup> July 2025**, **Not merited**. The said Application is dismissed entirely with costs being in the cause.

**It is so ordered.**

**Dated, Signed and delivered virtually at Narok this 12<sup>th</sup> Day of November 2025**

**L. Gacheru  
Judge.**

**Delivered online in the presence of  
Elijah Meyoki -Court Assistant**

***Ms Omamo holding brief Mr. Oyomba for the  
Plaintiff/Applicant  
Mr. Wamunyolo for Defendant/ Respondent.***

**L. Gacheru  
Judge.**