Mwariama & 18 others (Suing on Their Behalf and on Behalf of About 3,000 Residents of Timau Area In Buuri Subcounty, Meru County) v National Land Commission & 5 others; Meru County & another (Interested Parties) (Environment and Land Petition E010 of 2020 & Petition 1 of 2022 (Consolidated)) [2025] KEELC 8309 (KLR) (20 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8309 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND PETITION E010 OF 2020
& PETITION 1 OF 2022 (CONSOLIDATED)

JO MBOYA, J

NOVEMBER 20, 2025

BETWEEN

JOEL MWARIAMA & 18 OTHERS & 18 OTHERS .... PETITIONER

SUING ON THEIR BEHALF AND ON BEHALF OF ABOUT 3,000 RESIDENTS OF TIMAU AREA IN BUURI SUBCOUNTY, MERU COUNTY

AND

NATIONAL LAND COMMISSION .... 1ST RESPONDENT

THE HON. ATTORNEY GENERAL .... 2ND RESPONDENT

CABINET SECRETARY FOR LANDS AND PHYSICAL PLANNING .... 3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS .... 4TH RESPONDENT

NYAKIO HOLDINGS COMPANY LIMITED .... 5TH RESPONDENT

KABARI WAMBUGU GITUMBI .... 6TH RESPONDENT

AND

MERU COUNTY .... INTERESTED PARTY

COUNTY COMMISSIONER MERU COUNTY .... INTERESTED PARTY

RULING

1. What is before me is the Notice of Motion Application [The Application] dated 24th October 2025 brought pursuant to the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 281

Laws of Kenya, Order 42 Rule 6 of the Civil Procedure Rules, 2010 and all the enabling provisions of the law; and wherein the 5th and 6th respondents/applicants [herein after referred to as the applicants] have sought the following reliefs:

i. That this Application be certified urgent and be heard Ex- parte in the first instance.

ii. That pending the hearing and determination of this application inter partes an injunction pending appeal be issued restraining the 1st respondent, the 1st interested party together with their servants, employees or assigns or agents from in any way alienating or dealing with all that portion of land measuring approximately fifty (50) acres of L.R No. 2890 a portion of which is adjourning the 5th respondent's parcel of land being L.R No. 7452.

iii. That pending the hearing and determination of the appeal, an injunction pending appeal be issued restraining the 1st respondent, the 1st interested party together with their servants, employees or assigns or agents from in any way alienating or dealing with all that portion of land measuring approximately fifty (50) acres of L.R No. 2890 a portion of which is adjourning the 5th respondent's parcel of land being L.R No. 7452.

iv. That the costs of this Application be provided for.

2. The subject application is premised on various grounds which have been enumerated in the body thereof. Furthermore, the application is supported by the affidavit of Wachira Wambugu Gitumbi [the 6th applicant] sworn on even date and wherein the deponent has annexed assorted documents. The documents annexed to the supporting affidavit include a copy of the decree arising from the judgment delivered on 5th October 2022; a copy of the application for regularization of the allotment of the suit property; and a copy of the Notice of Appeal dated 29th October 2025.

3. The instant application has been opposed by the petitioners herein. The petitioners have filed grounds of opposition dated 11th November 2025 and wherein the petitioners have highlighted a plethora of issues. Pertinently, the petitioners have contended that the intended appeal by the applicants herein is neither arguable nor stands any chance of success before the Court of Appeal.

4. The 4th Respondent filed grounds of opposition dated 30th October 2025; and wherein same have raised various issues. The issues raised by/on behalf of the 4th Respondent include; the subject application does not disclose any reasonable cause of action as against the 4th respondent; the application constitutes an abuse of the due process of the court in so far as the 4th Respondent has been improperly dragged into the proceedings; the continued inclusion of the 4th Respondent in these proceedings is unnecessary; and the application is devoid of merits and ought to be struck out with costs to the 4th respondent.

5. The rest of the respondents, the interested parties and the affected parties did not file any response to the subject application. In particular, the Hon. Attorney General intimated that same was neither opposing nor supporting the subject application.

6. The subject application came up for directions on 27th October, 2025, whereupon the court directed that the application be canvassed by way of written submissions. Furthermore, the court also circumscribed the timelines for the filing and exchange of written submissions. Additionally, the court directed that the parties shall be afforded liberty to highlight the written submissions, if deemed apposite.

7. The applicants filed written submissions dated 6th November 2025; and wherein the applicants have adopted the grounds contained in the body of the application; reiterated the averments in the body of

the supporting affidavit and the contents of the annexures thereto. Moreover, learned counsel for the applicants sought to highlight key/salient features of the written submissions.

8. Learned counsel for the applicants has submitted that the applicants herein filed two previous applications, namely; the application dated 14th July 2025 and the application dated 29th September 2025, respectively. Furthermore, it was submitted that the two applications were heard and disposed of by this court in terms of two [2] rulings delivered on 16th October 2025. In particular, it was submitted that the court dismissed the two applications.

9. Additionally, learned counsel for the applicant has submitted that following the dismissal of the two applications, the applicants felt aggrieved and thereby filed a Notice of Appeal dated 29th October 2025. For good measure, it was submitted that the notice of appeal was timeously filed and same has been duly served on the rest of the parties. To this end, learned counsel for the applicants has submitted that the applicants have expressed their desire/intention to pursue an appeal before the Court of Appeal.

10. Secondly, learned counsel for the applicants has submitted that the intended appeal before the Court of Appeal raises arguable issues. In this regard, it has been contended that the appeal may or may not succeed. Nevertheless, learned counsel for the applicants clarified that the determination of whether or not the appeal will succeed is a matter that falls within the jurisdictional remit of the Court of Appeal and not otherwise.

11. Thirdly, learned counsel for the applicants has submitted that the suit property, which underpins the intended appeal, is interlinked with L.R No. 7452 belonging to the applicants and hence the intended alienation/allocation of the suit property during the pendency of the intended appeal shall defeat or negate the substratum of the intended appeal.

12. In particular, learned counsel for the applicants has submitted that the suit property is important to the applicants in so far as same is utilized to provide water for purposes of various agricultural and commercial activities [ranching] undertaken by the applicants on L.R No. 7452. To this end, it was submitted that the alienation of the suit property would substantially affect and impact upon the applicants' activities and thus the necessity to grant the orders sought.

13. Moreover, learned counsel for the applicants has submitted that the factual deposition contained in the body of the supporting affidavit has neither been challenged nor impeached by the respondents. In this regard, it has been contended that the factual/evidential depositions have therefore not been controverted and hence the court ought to adopt and rely on same while considering the subject application.

14. Fourthly, learned counsel for the applicants has submitted that this court is seized of the requisite jurisdiction to grant an order of temporary injunction pending the hearing and determination of the intended appeal. In addition, it was submitted that it is perfectly consistent for the court to grant an order of temporary injunction pending appeal, even where the court has dismissed an application for temporary injunction. To this end, learned counsel for the applicant cited and referenced the evergreen decision in the case of Butt vs Rent Restriction Tribunal (1979) eKLR, wherein Justice Madan J.A – as he was then; addressed a similar situation like the one beforehand.

15. Finally, learned counsel for the applicant has submitted that the suit land will not dissipate and thus the respondents shall not suffer any prejudice or detriment if the orders sought are granted. Furthermore, learned counsel submitted that in the event the intended appeal fails, the land in question would remain available and thus the respondent shall be at liberty to deal with same in accordance with the law.

16. Simply put, learned counsel for the applicants has posited that there is a need to preserve and conserve the substratum of the intended appeal and to avert a situation where the intended appeal is rendered nugatory.

17. Learned counsel for the petitioners relied on the grounds of the position dated 11th November 2025, and thereafter highlighted various issues. Firstly, learned counsel for the petitioners submitted that the land in dispute shall not disappear and or dissipate. In this regard, it was submitted that in the event the applicants succeed in the intended appeal, [which was contended to be frivolous], the land would still be available. To this end, it was submitted that the applicants have neither established nor proved substantial loss.

18. Secondly, it was submitted that the intended appeal, which is being referenced by the applicants, does not espouse [disclose] any reasonable grounds or at all. In this regard, it was contended that the appeal in question is not arguable.

19. Thirdly, learned counsel for the petitioners has submitted that this court is seized of the requisite jurisdiction to determine whether or not the intended appeal is arguable. Moreover, it was contended that in the absence of a draft memorandum of appeal, the applicants had not established the requisite conditions envisaged under the provisions of Order 42 of the Civil Procedure Rules 2010.

20. Fourthly, it was submitted that the applicants herein do not have title to the suit property. In the absence of title to the suit property, it was submitted that the applicants have no lawful rights or interests capable of being protected vide an order of temporary injunction or at all.

21. The next issue which has been highlighted by the learned counsel for the petitioners is to the effect that the orders which were granted by this court on 16th October 2025, were in the negative. In particular, it was submitted that the court dismissed the applications dated 14th July 2025 and 29th September 2025, respectively. To this end, it has been contended that a negative order or decree cannot be the subject of an order of stay of execution pending the hearing and determination of the intended appeal.

22. Next was the issue of whether the subject application amounts to or constitutes an abuse of the due process of the court. It was contended that the applicants herein have filed multiple applications before the court. The filing of multiple applications before the court was contended to constitute an abuse of the due process of the court.

23. Furthermore, learned counsel for the petitioner has also submitted that the suit property is admittedly public land. To the extent that the suit property is public land, it was contended that the applicants have no lawful rights to or interests thereto. In any event, it was contended that public interest[s] are superior to private interest and hence it behooves the court to protect the public interest.

24. Finally, learned counsel for the petitioners has submitted that the applicants have also approached the court with unclean hands. In particular, it was submitted that the applicants herein have failed to pay/settle the costs that have previously been ordered by the court. The failure to pay/settle the costs was contended to amount to wrongful conduct on the part of the applicants. In this regard, learned counsel for the petitioners has invited the court to find and hold that the applicants are not entitled to the equitable remedy of a temporary injunction.

25. Flowing from the foregoing, learned counsel for the petitioners has invited the court to find and hold that the subject application is premature, misconceived and otherwise amounts to an abuse of the due process of the court. In the premises, the court has been implored to dismiss the application and award costs to the petitioners.

26. The Hon. Attorney General intimated to the court that same had not filed any response to the application. Furthermore, the Hon. Attorney General indicated that same were not participating in the subject application. For good measure, the Hon. Attorney General left the application in the hands of the court.

27. As pointed out elsewhere herein before, the rest of the respondents; the interested parties; and the affected parties did not file any response to the application. Additionally, the named parties did not participate in the hearing of the application.

28. Having reviewed the Notice of Motion Application dated 24th October 2025; the supporting affidavit; the grounds of opposition; and the written submissions filed on behalf of the parties; and upon taking into account the oral highlights by the parties, I come to the conclusion that the determination of the subject application turns on two key issues, namely; whether the applicants have established/ demonstrated the existence of a sufficient cause in terms of order 42 Rule 6 (1) of the civil procedure rules, 2010; and whether the applicants have established a basis to warrant the grant of an order of temporary injunction pending the hearing and determination of the intended appeal or otherwise.

29. Regarding the first issue, namely; whether the applicants have established a sufficient cause/basis in terms of Order 42 Rule 6 (1) of the Civil Procedure Rules 2010, it is imperative to underscore that following the delivery of the ruling on 16th October 2025, the applicants herein felt aggrieved and thereby lodged a notice of appeal. The notice of appeal is dated 29th October 2025. Furthermore, there is no gainsaying that the notice of appeal was lodged/filed within the statutory 14-day period in accordance with the provisions of Rule 77 of the Court of Appeal Rules 2022. In this regard, and taking into account the provisions of order 42 Rule 6 (4) of the Civil Procedure Rules, there is no gainsaying that the applicants have lodged an appeal for purposes of the subject application.

30. Additionally, it is important to underscore that the lodgment of a notice of appeal in accordance with the provisions of the court of appeal rules is deemed to constitute an appeal for purposes of an application for stay of execution pending appeal or for temporary injunction pending the hearing and determination of the intended appeal. This is the import and tenor of Order 42 Rule 6 (4) of the Civil Procedure Rules 2010.

31. I am alive to the submissions by learned counsel for the petitioners. In particular, learned counsel for the petitioners submitted that the applicants herein have neither exhibited nor annexed a draft memorandum of appeal. Furthermore, it was contended that in the absence of a draft memorandum of appeal, this court cannot be invited to find and hold that there is an appeal.

32. Moreover, learned counsel for the petitioners also submitted that the intended appeal anchored on the notice of appeal is neither arguable nor raises any arguable grounds. In this regard, learned counsel for the petitioners invited the court to find and hold that the intended appeal is frivolous and thus no sufficient cause has been exhibited.

33. My answer to the submissions by learned counsel for the petitioners is two-fold. Firstly, the provisions of Order 42 Rule 6 (4) of the Civil Procedure Rules deem the notice of appeal filed as an appeal. In this regard, there is no law that requires the applicant to annex and or exhibit a draft memorandum of appeal. To my mind, the submission by learned counsel for the petitioners was premised on a misapprehension of the established law and principle.

34. Secondly, I wish to state that the question as to whether the intended appeal before the court of appeal is arguable or otherwise does not fall for determination by this court. For good measure, the provisions of Order 42, Rule 6 of the Civil Procedure Rules which govern the grant of an order of stay of execution

pending appeal or temporary injunction pending appeal, do not reference an arguable appeal as a condition for consideration. It is important to highlight that an arguable appeal is only a condition to be established in terms of Rule 5 (2) (b) of the Court of Appeal Rules. Nevertheless, it is common ground that the said provisions do not apply to this court.

35. Furthermore, it is imperative to underscore that the arguability of an appeal is a question for determination by the court of appeal and not otherwise. Suffice it to state that the invitation by learned counsel for the petitioners to this court to determine whether the intended appeal is arguable, would amount to jurisdictional overreach. Such endeavour[s] must not be countenanced.

36. Back to the issue of whether sufficient cause has been established? I have pointed out that the applicants have since filed/lodged a notice of appeal in accordance with the provisions of section 77 of the court of Appeal Rules 2022. Moreover, the applicants have also filed a letter bespeaking the proceedings. In short, the applicants have established a sufficient cause on the basis of a timeous notice of appeal filed in accordance with the Court of Appeal Rules.

37. In the premises, my answer to the first issue is to the effect that the applicants have established and demonstrated sufficient cause. Notably, what constitutes sufficient cause was illuminated by the court in the case of Wachira Karani v Bildad Wachira [2016] KEHC 6334 (KLR).

38. Next is the issue as to whether the applicants have established and proven the requisite conditions to warrant the grant of orders of temporary injunction pending the hearing and determination of the appeal or otherwise.

39. To start with, it is common ground that an applicant desirous to procure and obtain an order of temporary injunction pending the hearing and determination of an appeal is obligated to prove the existence of the conditions that were highlighted in Giella vs Cassman Brown Ltd (1973) E.A.

40. The foregoing position was highlighted by the court[Justice Visram-J; as he then was] in the case of Patricia Njeri & 3 Others V National Museum Of Kenya [2004] KEHC 1614 (KLR), where the court stated as hereunder:

> There was no dispute that the court can, in a proper case grant an injunction pending appeal. What are the principles that guide the court in dealing with such an application? In the Venture Capital case the Court of Appeal said that an order for injunction pending appeal is a discretionary matter. The discretion must, however, be "exercised judicially and not in whimsical or arbitrary fashion." This discretion is guided by certain principles some of which are as follows:
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> (a) The discretion will be exercised against an Applicant whose appeal is frivolous (See Madhupaper International Limited vs Kerr (1985) KLR 840 (cited in Venture Capital). The Applicant must state that a reasonable argument can be put forward in support of his appeal (J. K. Industries vs KCB (1982 – 88) KLR 1088 (also cited in Venture Capital)
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> (b) The discretion should be refused where it would inflict greater hardship than it would avoid (See Madhupaper supra).
>
> (c) The Applicant must show that to refuse the injunction would render his appeal nugatory (See Butt vs Rent Restriction Tribunal (1982) KLR 417 (cited also in Venture Capital).

(d) The Court should also be guided by the principles in Giella vs Cassman Brown & Company Ltd (1973) EA 358 as set out in the case of Shitukha Mwamodo & Others (1986) KLR 445 (also cited in Venture Capital).

41. Has the applicant established the existence of a prima facie case or appeal? I have stated elsewhere herein before that the question as to whether the intended appeal is arguable or otherwise falls within the jurisdictional remit of the court of appeal. Nevertheless, I am alive to the fact that I have since ruled on the question as to whether the applicants herein accrued/acquired any legal rights to the suit property. Furthermore, it is not lost on me that the process for alienation or allocation of public land is structured and governed by both *the Constitution*, 2010; the *Land Act* 2012; the *National Land Commission Act* 2012; and the land [Allocation of Public Land] Regulations 2017.

42. Despite my ruling and decision, it is important to highlight that the court of appeal may [I say may] be of a contrary position. However, I do not wish to second-guess what the Court of Appeal would say. It suffices to state that I am human and thus fallible. Moreover, it is not lost on me that no mortal human being can lay a claim to infallibility. For good measure, it is only God in heaven who is infallible.

43. In the premises, and for the sake of enabling the court of appeal to have a bite on the question pertaining to the application by the applicants and taking into account the words of wisdom by Madam J.A in the case of Butt vs Rent Restriction Tribunal (1979) eKLR, I find and hold that there exists some semblance of prima facie appeal.

44. Moreover, it is imperative to adopt and reiterate the holding in the case of Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR), 16 July 1979, where the court stated thus;

> It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in Wilson v Church (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458:
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> "I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory."
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> Megarry J, as he then was, followed Wilson (supra) in Erinford Properties Limited v Cheshire County Council [1974] 2 All ER 448 at p 454 and also held that there was no inconsistency in granting such an injunction after dismissing the motion, for the purpose of the order is to prevent the Court of Appeal's decision being rendered nugatory should that court reverse the judge's decision. The court will grant a stay where special circumstances of the case so require, per Lopes LJ in the Attorney General v Emerson and Others 24 QBD (1889) 56 at p 59. The special circumstances in this case are that there is a large amount of rent in dispute between the parties and the appellant has an undoubted right of appeal.

45. Turning to the question of the irreparable loss; it is imperative to observe that the deponent of the supporting affidavit sworn on 24th October 2025, has clearly articulated the manner in which the applicants have been using the suit property. In particular, it was averred that the applicants have been using the suit property for purposes of accessing water for use in the applicant's property in L.R 7452. Moreover, the applicants contended that the security of and the activities on L.R. No. 7452 are such that the subject property is critical and essential. In any event, it was stated that if the intended alienation of the suit property is allowed during the pendency of the intended appeal, the applicant's agricultural and commercial activities [ranching] on L.R No. 7452 shall be prejudiced and or interfered with.

46. It is instructive to note that the factual deposition/averments contained in the body of the supporting affidavit have neither been challenged nor controverted. In any event, it is not lost on me that the petitioners and the 4th respondent only filed grounds of opposition and not replying affidavits. Notably, grounds of opposition cannot be deployed to impugn or controvert factual depositions.

47. In the case of Daniel Kibet Mutai & 9 others v Attorney General [2019] KECA 125 (KLR), the Court of Appeal had occasion to deal with a similar situation.

48. For coherence, the court stated and observed as hereunder:

> 33. Similarly, in the case of Peter O. Nyakundi & 68 others v Principal Secreary, State Department of Planning, Ministry of Devolution and Planning & another [2016] eKLR Odero, J addressing a claim where the Attorney General as the respondent failed to file a replying affidavit stated:
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> "As stated earlier the Respondents did not file any Replying Affidavit to challenge and/or controvert the sworn averment by the Petitioners that they were victims of the post-election violence. Ground of Opposition which were filed are only deemed to address issues of law. They are general averments and cannot amount to a proper or valid denial of allegations made on oath. (see Mereka & Co. Advocates Vs Unesco Co. Ltd 2015 Eklr, Prof Olaka Onyango & 10 Others Vs Hon. Attorney General Constitution Petition No. 8 Of 2014 And Eliud Nyauma Omwoyo & 2 Others –vs Kenyatta University). The Respondents have failed to refute specifically the allegations in the Petitioner's sworn affidavit in support. Failure to file a Replying Affidavit can only mean that those facts are admitted. Therefore, in the absence of any evidence to the contrary I find that the petitioners are indeed victims of the 2007/2008 post-election violence."
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> (34) The position before us is that the appellants averred to certain facts under oath in an affidavit. These facts were not controverted by the respondents either through an affidavit in response or through cross-examination. An affidavit is sworn evidence. It occupies a higher pedestal than grounds of opposition that are basically issues of law intended to be argued. Two things flow from this. First, by the mere fact of the affidavits not having been controverted, there is an assumption that what is averred in the affidavit as factual evidence is admitted. Secondly, a question arises regarding the weight or probative value of the averred factual evidence. In other words, are the facts as averred in the affidavits sufficient to prove the appellants' claims?

49. Flowing from the fact that the contents of the supporting affidavit by the deponent have neither been challenged nor impeached; and coupled with the fact that the alienation of the suit property during the pendency of the intended appeal may negate the substratum of the appeal, I come to the conclusion that the applicants have proven a likelihood of irreparable loss arising. Simply put, the evidence on record establishes the existence of irreparable loss, which is essential/intergral in an application for temporary injunction.

50. Before concluding on this issue, it is instructive to cite and reference the holding of the Court of Appeal in the case of Hutchings Biemer Ltd v Barclays Bank of Kenya Ltd & 2 others [2006] KECA 287 (KLR), where the court discussed the significance of an order of temporary injunction pending the hearing of an appeal or better still an intended appeal.

51. The court stated as hereunder;

> We have considered carefully the rival arguments and the principle we have stated hereinabove. In our view, injunctive orders are meant to preserve property and maintain

the status quo. This is the light in which we read the holdings in the case of Madhupaper International Limited vs. Kerr (1985) KLR 840 where this Court referred to concurrent jurisdiction of the superior court as well as of this Court in as far as granting injunction application is concerned. We therefore hold that we have jurisdiction to grant an injunction in respect of a deserving matter before us if only to preserve the status quo during the period the matter is in this Court pending the hearing and final disposal. That of course does not detract from the need to ensure that the principles of granting the same are strictly adhered to.

52. In view of the observations that I have made herein before, it must have become apparent that the applicants herein shall be disposed to suffer irreparable loss; harm; injury; and or prejudice, if the suit property were to be alienated during the pendency of the intended appeal. Furthermore, if the intended appeal were to succeed, yet the suit property shall have been alienated then the success at the court of appeal would be in vain. Instructively, the success at the court of appeal [if any] shall be a pyrrhic victory.

53. Suffice it to state that courts of law do not act in vanity or futility.

54. In the case of Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others [2013] eKLR (Civil Appeal No. 154 of 2013), the Court of Appeal stated thus;

> So central and determinative is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. <u>Courts, like nature, must not act and must not sit in vain</u>. [emphasis supplied].

Final Disposition

55. Having analyzed the twin issues which were highlighted in the body of the Ruling, it must have become apparent that the application beforehand is meritorious. In particular, the applicants have established that irreparable loss shall arise and or accrue, if the suit property which is the substratum of the intended appeal were to be alienated during the pendency of the intended appeal.

56. Such alienation would negate the appeal and thus same ought to be averted in the intervening period.

57. In the upshot, the final orders that commend themselves to this court are as hereunder;

    i. The Application dated 24th October 2025; be and is hereby allowed in terms of prayer 3 thereof.

    ii. For the avoidance of doubt, an order of temporary injunction be and is hereby issued restraining the 1st respondent, the 1st interested party together with their servants, employees or assigns or agents from in any way alienating or dealing with all that portion of land measuring approximately fifty (50) acres of L.R No. 2890 a portion of which is adjourning the 5th respondent's parcel of land being L.R No. 7452.

    iii. The Applicants herein shall provide security for the due performance of the decree that may ultimately arise [undertaking of damages] in the sum of Kshs.3,000,000/= only.

    iv. The security in terms of clause [iii] hereof shall be deposited in an escrow account in the names of the advocates for the petitioners and the 5th and 6th respondents/applicants to be opened

and operationalized in a reputable bank/financial institution to be agreed upon between the named advocates.

v. Furthermore, the security in terms of clause [iv] shall be deposited within a timeline of 30 days from the date hereof.

vi. In default by the applicants to provide/deposit the security within the stipulated timeline the orders of temporary injunction shall lapse and or stand extinguished automatically.

vii. Costs of the Application shall abide the outcome of the intended appeal.

58. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH DAY OF NOVEMBER 2025.

OGUTTU MBOYA, FCIArb, CPM [MTI].

JUDGE.

In the presence of:

Hussein – Court Assistant

Mr. Gikandi for the Applicants

Mr. Kurauka for the Petitioners/respondents

Ms. Mwanyika for the 1st Respondent

Ms. Miranda [Senior Litigation Counsel] holding brief for Mr. Eric Obura for the 2nd & 3rd respondents; 2nd interested party.

No appearance for the 4th respondent

No appearance for the 1st interested party

No appearance for the affected parties