



**Kulumba & 39 others v Tungu & 2 others (Land Case  
E047 of 2024) [2025] KEELC 41 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 41 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**LAND CASE E047 OF 2024**  
**LL NAIKUNI, J**  
**JANUARY 17, 2025**  
**IN THE MATTER OF: PLOT NUMBER 2095/111/MN & 2097/111/MN**  
**AND**  
**IN THE MATTER OF: AN APPLICATION FOR DECLARATION**  
**THAT THE PLAINTIFFS HAVE OBTAINED OWNERSHIP OF THE**  
**ABOVE SAID PARCEL OF LAND BY WAY OF ADVERSE POSSESSION**  
**AND**  
**IN THE MATTER OF: LIMITATION OF ACTIONS ACT CAP 22 OF LAWS OF KENYA**

**BETWEEN**

**MARKO KULUMBA ..... 1<sup>ST</sup> PLAINTIFF**  
**MWAGANDA BOSCO ..... 2<sup>ND</sup> PLAINTIFF**  
**STEPHEN MWAGANDA & 37 OTHERS & 37 OTHERS & 37**  
**OTHERS ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SOFIA TUNGU ..... 1<sup>ST</sup> DEFENDANT**  
**LAUZI TUNGU ..... 2<sup>ND</sup> DEFENDANT**  
**SDA CHURCH NYALI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. This Honourable Court was called upon to determine the Notice of Motion application dated 27<sup>th</sup> May, 2024. It was instituted by Marko Kulumba, Mwanganda Bosco, Stephen Mwanganda and 37 others,



the Plaintiffs/Applicants herein. The Applicants brought it under the provisions of Order 40 Rule 1 of the Civil Procedure Rules 2010, Sections 3A and 63 of the *Civil Procedure Act* Cap 21 Laws of Kenya and other enabling provisions of the Law.

2. Upon service of the application to the Defendants/Respondents, while opposing it, the 3<sup>rd</sup> Defendant/Respondent filed a Replying Affidavit sworn on 4<sup>th</sup> August, 2024.

## II. The Plaintiffs/ Applicants' case

3. The Plaintiffs/Applicants sought for the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That the Respondents by themselves, its servants and or its agents be restrained by a temporary injunction from evicting, demolishing, harassing and or interfering in any manner with the Plaintiffs/ Applicants occupation of Plot Number 2095/111/MN & 2097/111/MN, Maweni A, Baharini, Kanamai, Kilifi County and the OCPD, DCIO Mtwapa Police Division, OCS Mtwapa Police and OCS Kujipwa Police Station to enforce these orders pending the hearing of the main suit.
  - d. That an order be issued directing the Land Registrar, Mombasa County to prohibit or restrict dealings to all that parcel of land known as Plot Number 2095/111/MN & 2097/111/MN, Maweni A, Baharini, Kanamai, Kilifi County pending the hearing and determination of this application and the main suit thereafter.
  - e. That this Honourable Court be pleased to invoke its inherent powers and issue any further Orders that will be just and fair to safeguard the interests of the Plaintiffs herein.
  - f. That costs be in cause.
4. The application was premised on the grounds, testimonial facts and the averments made out under the 19 Paragraphed annexed supporting affidavit of Marko Kulumba a resident in Mtwapa together with others on Plot Number 2095/111/MN & 2097/111/MN, Maweni A, Baharini, Kanamai, Kilifi County situated in Kanamai in the County of Kilifi. The affidavit was together with three (3) annexures marked as "A to C". The Deponent averred that:-
  - a. They were the residents of Plot Number 2095/111/MN & 2097/111/MN, Maweni A, Baharini, Kanamai, Kilifi County situated in Kanamai, in the County of Kilifi. They had lived and resided as a community on the said parcel of land for about 60 years.
  - b. They had been occupying and utilizing the suit parcel wherein he and sixty others had erected their residence, buried their grandparents, rare livestock and other farming activities. Annexed in the affidavit and marked as 'B' were Photos of his house and other Plaintiff's houses situated in the suit property.
  - c. At no time did the Defendants ever ask any of the Plaintiffs herein including himself for ground rent or any payments for being in occupation and possession of the portion of land stated above.
  - d. In the year 1999 the government surveyors and the then Area Chief RODGERS TUNGU (DECEASED) visited them on their land and claimed that they had been sent by the government to demarcate their land and in return they would secure a title of the piece of land and as a family they welcomed it.



- e. Unfortunately, it was in the contrary as the above mentioned Area Chief ended up registering the land to this family members names.
- f. The balance of convenience tilted in favour of the Plaintiffs who would be prejudiced if the Defendants evicted and demolished their houses before the suit herein was heard and determined on merit.
- g. The Plaintiffs herein had each occupied a sizeable piece of land in the suit parcel of land.
- h. The deponent had peacefully coexisted with the other Plaintiffs on the subject parcel of Land without any interference for a continuous period of over 60 years.
- i. They had continued to live and carry out their normal lives as families would do including farming, raising families, raring of livestock and running of small scale subsistence businesses. The suit property was their home, their grandparents and parents were buried on the land and they did not know of any other place that they could call home. Annexed in the affidavit and marked as 'C' were a set of Photographs of cemented graves situated in the suit property.
- j. They had acquired an interest by way of land adverse possession over the suit property.
- k. The Plaintiffs who occupied all that parcel of land known as Plot Number 2095/111/MN & 2097/111/MN, Maweni A, Baharini, Kanamaai, Kilifi County were being threatened by eviction by people who were claiming that the land had been earmarked for private development. The said issue had caused allot of tension in the area and it may escalate to violence as witnessed in the past in adjacent areas.
- l. The Plaintiffs were apprehensive that the Defendants, servants and or agents had now resorted to demolitions and evictions by ambush.
- m. Further, on several occasions the said person had been heard informing the Plaintiffs to vacate the suit premises yet the Plaintiffs knew no other home.
- n. The Plaintiffs being desperate and in a helpless position, and not interested in unlawful means to counter the threats meted on them, were seeking the intervention of this Honourable Court through the prayers sought.
- o. What seemed to be a move orchestrated by the Defendants through the Area Chief KANAMAI and its agents, had been accompanied by threats to harm the Plaintiffs in theevent they would want to access the suit property.
- p. The deponent herein applied to this Honourable Court for an order that the entries in the land registry, Mombasa showing the Defendants or any other person for that matter as the proprietor of the suit property be deleted and/or expunged forthwith and Plaintiffs be registered as the joint proprietors of part of the suit property which they occupy.
- q. He had never known any other home hence it was in the interest of justice that this suit was heard and determined by way of viva voce evidence.
- r. He had proved his case on a balance of probability.



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

5. The 3<sup>rd</sup> Defendant/Respondent opposed the application through a 17 Paragraphed Replying Affidavit sworn on 4<sup>th</sup> August, 2024 by Jared O. Kokach, an elder of the Seventh day Adventist Church (SDA), Nyali who averred as follows:
- i. He knew the family of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents/Defendants herein.
  - ii. He recalled from the year 2013 the Church decided to buy land namely parcel of land number Sub - division Number 2097 (Original number 2089/8) Section III Mainland North.
  - iii. The land was purchased from Esther Lauzi Tungu & Sophia Nazi Tungu (administrators of Rodgers Mwalimu Tungu the Registered owner) and he annexed in the affidavit a copy of the title and the transfer to that effect marked as “JOK -1”and “JOK - 2”.
  - iv. The purchasers were himself, Elder Jared Ombati Bosire, Pst Daniel Kahindi Yeri who did so on behalf of the Church
  - v. It was thereafter decided that the land purchased be sub - divided to smaller pieces for purposes of purchasing at a later time.
  - vi. All this time, there was neither any body living on the land, any graves, development on the land nor any objection lodged from any person.
  - vii. They proceeded to successfully sub - divide the land into smaller pieces namely:-
    1. 9411/III/MN.
    2. 9410/III/MN.
    3. 9409/III/MN.
    4. 9399/III/MN.
    5. 9408/III/MN.
    6. 9407/III/MN.
    7. 9400/III/MN.
    8. 9391/III/MN.
    9. 9386/III/MN.
    10. 9387/III/MN.
    11. 9389/III/MN.
    12. 9403/III/MN.
    13. 9394/III/MN.
    14. 9395/III/MN.
    15. 9396/III/MN.
    16. 9390/III/MN.
    17. 9412/III/MN.



18. 9406/III/MN.
19. 9402/III/MN.
20. 9405/III/MN.
21. 9404/III/MN.
22. 9397/III/MN.
23. 9398/III/MN.
24. 9388/III/MN.

viii. Thereafter the said sub – divided parcels were sold to new owners as follows:-

Parcel Numbers Proprietors

1. 9411/III/MN Lucy Nyambura
2. 9410/III/MN Tom Odongo
3. 9409/III/MN Tom Odongo
4. 9399/III/MN David Otieno Oketch
5. 9408/III/MN Exfare Conept
6. 9407/III/MN Carren Moraa Bosire
7. 9400/III/MN Edward Gizemba Ontita
8. 9391/III/MN Anticonnen Gichana Ankiri
9. 9386/III/MN Stella Buyaki Manyura
10. 9387/III/MN Carren Moraa Bosire
11. 9389/III/MN Daniel Kahindi Yeri
12. 9403/III/MN Jared Milton Kokach
13. 9394/III/MN Jared Ombati Bosire
14. 9395/III/MN
15. 9396/III/MN
16. 9390/III/MN
17. 9412/III/MN
18. 9406/III/MN
19. 9402/III/MN
20. 9405/III/MN
21. 9404/III/MN
22. 9397/III/MN



23. 9398/III/MN

24. 9388/III/MN

- ix. Some of those parcels had been properly secured and fenced off while others were not.
- x. In the year 2023, some people attempted to enter the land but the owners swiftly moved to Court and filed a Suit namely Kilifi ELC Case No.146 of 2023 and they were granted an Order annexed in the affidavit and marked as “JOK - 3”.
- xi. The deponent confirmed that the land was not occupied by squatters and he wanted to also confirm that even the Applicants had not occupied the land as the owners who were the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were using the land.
- xii. The suit was an attempt by the Applicants to acquire land without consideration.
- xiii. The set of photographs attached to the affidavit were not taken from the land. Clearly, it was an attempt to deceive the Court.
- xiv. The Applicants had not lived in the land as alleged.

#### IV. Submissions

6. On 22<sup>nd</sup> October, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 27<sup>th</sup> May, 2024 be disposed of by way of written submissions and all the parties complied. Unfortunately, by the time the Honourable Court was penning down the Ruling, it had not been able to access written submissions from any of the parties herein. Pursuant to that, a ruling date was reserved for 17<sup>th</sup> January, 2025 by Court accordingly.

#### V. Analysis and Determination

7. I have carefully read and considered the pleadings herein and the relevant provisions of *the Constitution* of Kenya, 2010 and statutes. In order to arrive at an informed, reasonable and fair decision, the Honourable Court has framed the following three (3) issues for its determination. These are:-
- a. Whether the Notice of Motion application dated 27<sup>th</sup> May, 2024 meets threshold required of a temporary injunction under the provision of Order 40 Rules 1 of the Civil Procedures Rules, 2010.
  - b. Whether the order for a restriction on the suit land can be made on the first instance?
  - c. Who will bear the Costs of Notice of Motion application 27<sup>th</sup> May, 2024.

**Issue No. a). Whether the Notice of Motion application dated 27<sup>th</sup> May, 2024 meets threshold required of a temporary injunction under the provision of Order 40 Rules 1 of the Civil Procedures Rules, 2010.**

8. Under this sub – title, the main issue is whether the Plaintiffs are entitled to be granted the relief of an interlocutory injunctive orders. The application herein is premised under the provision of Order 40 Rule 1 of the Civil Procedure Rules 2010 amongst the provisions of the law. Which provides as follows: -

Order 40, Rule 1

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



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

9. Fundamentally, the principles applicable in an application for an injunction were laid out in the celebrated case of “Giella – Versus - Cassman Brown & Co Limited (1973) EA 358”, where it was stated: -

“First an applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

10. The three conditions set out in “Giella (supra)”, need all to be present in an application for court to be persuaded to exercise its discretion to grant an order of interlocutory injunction. This was set out by the Court of Appeal in the case of “Nguruman Limited – Versus - Jan Bonde Nielsen & 2 others [2014] eKLR”: -

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

11. In dealing with the first condition of “prima facie case”, the Honorable Court guided by the definition melted down in the famous case “MRAO Limited – Versus - First American Bank of Kenya Limited & 2 others (2003) KLR 125” of: -

“So, what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”



12. As the Court previously observed in this ruling, the Plaintiffs/Applicants in the affidavit supporting the Application avers that they were residents of PLOT NUMBER 2095/111/MN & 2097/111/MN, MAWENI A, BAHARINI, KANAMAI, KILIFI COUNTY situated in Kanamai, in the County of Kilifi had lived and resided as a community on the said parcel of land for about 60 years and have been occupying and utilizing the suit parcel wherein he and sixty others have erected their residence, buried their grandparents, rare livestock and other farming activities. At no time did the defendants ever ask any of the plaintiffs herein including himself for ground rent or any payments for being in occupation and possession of the portion of land stated above.
13. In the year 1999 the government surveyors and the then Area Chief RODGERS TUNGU (DECEASED) visited them on their land and claimed that they had been sent by the government to demarcate their land and in return they would secure a title of the piece of land and as a family they welcomed it but unfortunately it was in the contrary as the mentioned chief above ended up registering the land to this family members names.
14. The 3<sup>rd</sup> Defendant on the other hand argued that in 2013 the church decided to purchase the suit land from Esther Lauzi Tungu & Sophia Nazi Tungu (administrators of Rodgers Mwalimu Tungu the Registered owner). All this time, there was no body living on the land, no graves on the land, no development on the land and no objection from any person
15. In the case of “Mbuthia – Versus - Jimba credit Corporation Ltd 988 KLR 1”, the court held that;

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.”
16. Similarly, in the case of “Edwin Kamau Muniu – Versus - Barclays Bank of Kenya Ltd” the court held that;

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality. All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”
17. In the present case, it is clear that the Plaintiffs/Applicants feel threatened by the actions of the Defendants/Respondents, who according to the Plaintiffs were trying to deprive the Plaintiffs of the suit property which they had acquired interests on it through adverse possession. Regarding this first condition, the Plaintiffs/Applicants have demonstrated a prima facie case with a probability of success at the trial as enunciated in the case of “Giella -Versus - Cassman Brown & Co. Limited (Supra)”.
18. The court has further considered the annexures on record against the second principle for the grant of an injunction, that is, whether the Plaintiffs/Applicants might suffer irreparable injury which cannot be adequately compensated by an award of monetary damages. With regards to the second limb of the Court of Appeal in “Nguruman Limited (supra)”, held that:-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be



compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

19. On the issue of whether the Applicants will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicants must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. It is not hidden that the Plaintiffs/Applicants’ property is at risk and being that they live in the suit property they will suffer risk if they are evicted by the Defendants/Respondents if the Court does not intervene. The Plaintiffs/Applicants has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of “Pius Kipchirchir Kogo – Versus - Frank Kimeli Tenai (2018) eKLR” provides an explanation for what is meant by irreparable injury and it states:-

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

20. Quite clearly, the Plaintiffs/Applicants would not be able to be compensated through damages being that they allege this was their home. Therefore, I hold that the Plaintiffs/Applicants have satisfied the second condition as laid down in “Giella’s case”.

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

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

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

22. In the case of “Paul Gitonga Wanjau – Versus - Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR”, the court dealing with the issue of balance of convenience expressed itself thus:-

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



injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

23. The balance of convenience tilts in the favour of the Applicants. The decision of “Amir Suleiman – Versus - Amboseli Resort Limited [2004] eKLR” where the Learned Judge offered further elaboration on what is meant by “balance of convenience” and stated: -

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

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

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

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

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

**Issue No. b). Whether the order for a restriction on the suit land can be made on the first instance.**

27. The provisions of Section 76 of the [Land Registration Act, 2012](#) provides that

“(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

- (a) for a particular period;
- (b) until the occurrence of a particular event; or
- (c) until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with



specified conditions, and the restriction shall be registered in the appropriate register.

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions”.

28. It follows that the Register of Lands has power to register a restriction in three instances; prevention of fraud; or improper dealings on land; or for any sufficient cause. The Registrar may be moved suo moto or on application of any persons interested in the land. The Registrar on receipt of the application is duty bound to direct inquiries to be made, notices to be served and hearing such persons as he considers fit and make an order prohibiting or restricting dealings with any land. The restriction may be for a particular period, until the occurrence of a particular event or until a further order is made. The Registrar shall give notice in writing of a restriction to the proprietor effected by the restriction.
29. In the case of “Matoya – Versus - Standard Chartered Bank (K) Limited & others (2003) I EA 140” it was held that:-

“A restriction is ordered to prevent any fraud or improper dealing with a given parcel of land and the land registrar does this whether on its own motion or if so asked by way of an application by the person interested in that land but before ordering the restriction the registrar is bound by law to make inquiries, send out notices and hear all those other people he may think fit first and he is not to move by whim, caprice or whatever influence personal or otherwise just to impose a restriction since he has a duty to inquire and be satisfied that his duty to order restriction is not hurting a person who was not heard and that indeed the restriction is in general good that frauds and other improper dealings are prevented”.

30. Thus, it is my conclusion that, unlike the case of inhibition as provided for under Section 68 (1), (2) & (3) of the *Land Registration Act*, No. 3 of 2012, it is only the Land Registrar who has the mandate to place a restriction onto the suit land and not this Honourable Court. For that reason, therefore, this prayer fails.

**Issue No. c). Who will bear the Costs of Notice of Motion application 27<sup>th</sup> May, 2024.**

31. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.
32. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazeru Mwangi & another (Suing as the Executors of Eliud Timothy Mwangi – Deceased) [2022] eKLR”, that:

“58. The Black Law Dictionary defines “Cost” to mean, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.



The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7<sup>th</sup> December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21<sup>st</sup> December, 2021.”

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

## **VI. Conclusion and Disposition**

34. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards the Preponderance of Probabilities and the balance of convenience. Clearly, the Plaintiff/ Applicant has a case against the Defendants/Respondents.
35. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
- a. That the Notice of Motion application dated May 27, 2024 be and is hereby found to have merit and is allowed.
  - b. That an order of Temporary injunction do issue restraining the respondents by themselves, its servants and or its agents from evicting, demolishing, harassing and or interfering in any manner with the Plaintiffs/ Applicants occupation of Plot Number 2095/111/MN & 2097/111/MN, in Maweni A, Baharini, Kanamai, Kilifi County and the OCPD, DCIO Mtwapa Police Division, OCS Mtwapa Police and OCS Kujipwa Police Station to enforce these orders pending the hearing of the main suit.
  - c. That there shall be a mention on February 27, 2025 for purposes of conducting a Pre – Trial Conference trial pursuant to the provision of Order 11 of the Civil Procedure Rules, 2010
  - d. That the cost of the Notice of Motion application dated May 27, 2024 shall be in the cause.

It is so ordered accordingly.

**RULING DELIEVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 17<sup>TH</sup> DAY OF JANUARY 2025.**

.....

**HON. MR. JUSTICE L. L. NAIKUNI**

**ENVIRONMENT AND LAND COURT AT MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula the Court Assistant.
- b. No appearance for the Plaintiffs/Applicants.
- c. Mr. Magolo Advocate for the Defendants/Respondents.

