

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KWALE**

**ELCL(A) NO E004 OF 2023**

**PETER**

**GITAU.....PLAINTIFF/RESPONDENT**

**- VERSUS -**

**DANIEL OUMU SHANI.....1<sup>ST</sup>**

**DEFENDANT/APPLICANT**

**NELLIE AKINYI SHANI.....2<sup>ND</sup>**

**DEFENDANT/APPLICANT**

**RULING**

**I. Introduction**

1. The Honourable Court was tasked to make a determination unto two (2) Notice of Motion applications dated 15<sup>th</sup> March 2025 and 30<sup>th</sup> May 2025 respectively. The Court will deal with the said applications simultaneously though separately for clarity sake from the time of their institution.

2. Upon service, each of the Respondents in the afore - stated applications filed and served their responses accordingly. The Honourable Court shall be dealing with each of them indepth in this Ruling.

**II. The Notice of Motion application dated 15<sup>th</sup> March, 2025 by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents**

3. The Notice of Motion application dated 15<sup>th</sup> March 2025 was premised upon the provisions of Sections 1A,1B, 3 & 3A of the Civil Procedure Act, Cap. 21, Order 40 Rules 1, 2 & 4, Order 42 Rule 6 of the Civil Procedure Rules 2010, Section 13 (5)[a] of the Environment and Land Act, No. 19 of 2011 and all enabling provisions of the law.

4. The Applicants sought for the following orders: -

**a) Spent.**

**b) That pending the hearing and determination of this application, this Honourable Court do grant orders maintaining status quo of all that parcel of land registered as KWALE/UKUNDA S.S/1702.**

**c) That pending hearing and determination of the appeal being Appeal No COACA No E035 of 2025 MOMBASA DANIEL OUMA**

**SHANI & NELLIE AKINYI SHANI - Versus - PETER GITAU against the judgement delivered on 9<sup>th</sup> December 2024 by Honourable Justice A. E Dena in this matter, this Honourable Court do grant orders of status quo of all that of all that parcel of land registered as KWALE/UKUNDA S.S/1702.**

**d) That costs of this application be in the cause.**

5. The application was premised on the grounds, testimonial facts and the averments found under the 15 Paragraphed Supporting Affidavit sworn on 15<sup>th</sup> March 2025 by DANIEL OUMA SHANI together with the attached six (6) annexures Marked as "DOS - 1 to 6" annexed thereto. He averred that:

- a) He was a male adult of sound mind and understanding and the 1<sup>st</sup> Respondent/Applicant in this matter and hence competent to swear this affidavit on behalf of the 2<sup>nd</sup> Respondent/Applicant who is his wife.
- b) He had entered into a sale agreement dated 20<sup>th</sup> August 2020 with the Appellant for the purchase of a portion of property measuring 0.1Ha of all that parcel of land registered as Land Reference numbers KWALE/UKUNDA S.S/1702 at a consideration of a sum of Kenya Shillings Two Million Two Hundred Thousand (Kshs. 2,200,000/-).

- c) He paid a consideration of a sum of Kenya Shillings One Million Five Hundred Thousand (Kshs. 1,500,000/-) to the Appellant and fully complied with the terms of the said agreement for sale and balance of the purchase price was to be paid after sub - division of the land.
- d) However, despite of this, the land was never sub - divided thus breaching the terms of the agreement prompting the Applicants herein to file a civil suit against the Appellant seeking orders of specific performance. That the deponent filed the Civil suit - "**MCELC No. E004 of 2021 - Msambweni - Daniel Oumu Shani & Nellie Akinyi Shani - Versus - Peter Gitau**". On 15<sup>th</sup> September 2023, Judgement was delivered in which the trial court issued orders of specific performance against the Appellant.
- e) Being aggrieved by the said Judgement, the Appellant preferred an appeal against the said Judgement of the trial court and whereby the Appellant Court overturned the Judgement of the Lower Court in its Judgement dated 9<sup>th</sup> December 2024.
- f) Subsequently, an appeal has been preferred against the Judgement delivered by Judge Dena on 9<sup>th</sup> December 2024 before the Court of Appeal being "**COACA No. E035 of 2025**

**(Mombasa) - Daniel Oumu Shani & Nellie Akinyi Shani - Versus - Peter Gitau**” and the same is arguable with high chances of success.

- g) The deponent was apprehensive of suffering loss in the event the instant application was not allowed as he has already made a deposit of a sum of Kenya Shillings One Million Five Hundred Thousand (Kshs. 1,500,000/-) to the Appellant and that he had reliable information that the said Appellant was planning to leave the jurisdiction of the court and in the process of disposing off the suit property.
- h) It would be in the interest of Justice to preserve “*the status quo*” of the suit property pending the hearing and determination of the appeal.
- i) If the orders sought herein were not granted, the intended appeal would be rendered nugatory since the Applicants had already requested for the original copy of the title deed from the mutual Lawyer who was holding it pending sub - division and hence the Deponent was apprehensive that he may dispose of it or sub - divide it further to their detriment.

j) It was deposed that the Applicants were of means and hence ready and willing to comply with the conditions that the court would grant.

### **III. The responses by the Appellant**

6. The Appellant herein opposed the application. He filed an eighteen (18) pointer Grounds of Opposition dated 21<sup>st</sup> March 2025 through the law firm of Messrs. Kithinji Mutembei & Associates Advocates. In summary, it was argued that:-

- a) The application for status quo was defective and bad in law.
- b) As per the court Judgement delivered on 9<sup>th</sup> December 2024 there is no pending dispute between the parties before this court.
- c) The application sought to rely on the provision of Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Cap. 21 whereby the Court had specific duties and powers regarding the resolution of Civil disputes. Specifically, Section 1A outlined the Act's objectives to facilitate the

just and expeditious resolution of disputes, Section 1B of the Act emphasised the duty of the Court to ensure the just and expeditious resolution of disputes while Section 3 saves the special jurisdiction and powers of Courts. Section 3A preserves the Court's inherent powers to make orders necessary for the ends of justice. Based on this and based on the Judgement delivered by this Court on 9<sup>th</sup> December, 2024 there was no pending dispute between the parties before this Court.

- d) The application never raised triable issues that would invoke the jurisdiction of this court. Further, the application sought to rely on the provisions of Order 40 Rule 1 of the Civil Procedure Rules, 2010 which was on injunctions and order 42 Rule 6 on stay of execution.
- e) The orders of status quo were not the same as those of stay of execution and the application before court could not be granted as the court was "***functus officio***" and could not re - open the case. Thus, this Court lacks jurisdiction to make any determination sought as an appeal had already been filed.

- f) The interim orders of the court dated 17<sup>th</sup> March 2025 ought to be vacated and dismissed together with the application invoking Order 51 Rule 15 of the Civil Procedure Rules as the same was infact brought before court under wrong provisions of the law.
- g) The meaning of **“the Status Quo”** was defined in the case of **“Shimmers Plaza Limited - Versus - National Bank of Kenya Limited (2015) eKLR”** as follows:-  
**“the present situation, the way things stand as at the time of the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events”**  
nor attempt to set aside the Judgement of the Court.
- h) Technically, an order of status quo meant that things be left as they were until the determination thereof.
- i) The interim orders of the Court dated 17<sup>th</sup> March, 2025 ought to be vacated and/or dismissed together with the application invoking the provision of Order 51 Rule 15 of the Civil Procedure Rules, 2010.

#### **IV. The Notice of Motion application dated 30<sup>th</sup> May, 2025 by the Appellant**

7. The Appellant also filed a Notice of Motion application dated 30<sup>th</sup> May, 2025 under certificate of urgency by the

Law firm of Messrs. Kithinji Mutembei & Associates Advocates. The application was brought under the provisions of Order 50, Order 51 Rule 1,5, Order 12 Rule 7 of the Civil Procedure Rules, 2010.

8. The Applicant sought for the following orders:-

**a) Spent.**

**b) That the Plaintiff herein prays for orders to set aside the Ex - Parte orders under the provisions of Order 51, Rule 15 of the Civil Procedure Rules and Order 12 Rule 7 of the same rules.**

**c) That Order for removal of caution placed on land reference KWALE/UKUNDA SS/1702 on the grounds of the Respondent's application dated 15<sup>th</sup> March 2025 and ex parte orders granted on the 17<sup>th</sup> March 2025**

**d) That the application be heard Inter - Partes on such date and time as this honourable court may direct.**

9. The application was supported by the 15 Paragraphed Supporting dated 30<sup>th</sup> May 2025 and sworn by the Appellant PETER GITAU. In summary, he averred as follows that:-

a) He was an adult male of sound mind and understanding and the Appellant herein.

- b) As per Order 51 Rule 15 of the Civil Procedure Rules the court has discretion to set aside or vary an ex - parte judgement or order upon application as stated in Order 12 Rule 7 of the same rules.
- c) The Respondent through their application dated 15<sup>th</sup> March 2024 sought for orders of status quo in their application. Ex - Parte orders were issued that status quo be maintained prior to delivery of Judgement on 9<sup>th</sup> December 2024 as per the order 8.
- d) No consideration was accorded that Judgement had been already issued in the appeal before this Court.
- e) This Honourable Court issued Ex - Parte orders that an order of status quo be maintained meaning the situation remains as it was prior to the delivery of the Judgement dated 9<sup>th</sup> December, 2024 as per order 8.
- f) The same sought to indirectly set aside the honourable court Judgement and act as an appeal of the Judgement. The deponent reiterated the averments raised in the grounds of opposition that had been stated above herein and the court does not wish to reproduce the same in the interest of time.

g) The said Ex - Parte orders bears the citation of the case between the parties but a different case numbers being ELCA No. E005 of 2023 instead of E004 of 2025.

## **V. Submissions**

10. On 9<sup>th</sup> June 2025 while all the parties were present in Court, they were directed to have both the Notice of Motion applications be disposed of by way of written submissions. It was further ordered that the suit property be preserved through interim orders of status quo until date of this ruling.

11. For some reason or the other, by the time of penning down this Ruling, the Honourable Court had not been able to access any of the filed submissions by the parties herein from neither the Judiciary CTS portal nor the Court file hereof. Thus, the Honourable Court proceeded to make the determination based on its own merit. A ruling date was reserved for 16<sup>th</sup> September 2025 accordingly.

## **VI. Analysis & Determination**

12. I have carefully read and considered the pleadings herein by the parties, the relevant provisions of the Constitution of Kenya, 2010 and statutes.

13. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has four (4) framed issues for its determination. These are: -

- a) ***Whether an application under Order 42 Rule 6 and Order 40 Rules 1 and 2 of the Civil Procedure Rules, 2010 in the form of seeking status quo orders can be made after delivery of judgement.***
- b) ***Whether the Appellant has made a case for setting aside the Ex - Parte status quo orders earlier issued by this court on 17<sup>th</sup> March 2025***
- c) ***Whether or not a case has been made for removal of caution on the disputed parcel pending hearing and determination of the appeal***
- d) ***Who bears the costs of the twin applications herein?***

**ISSUE No. a). Whether an application under Order 42 Rule 6 and Order 40 Rules 1 and 2 of the Civil Procedure Rules, 2010 in the form of seeking status quo orders can be made after delivery of Judgement.**

14. Under this Sub - heading, the Honourable Court will deliberate on the concept of ***“the status quo”*** and whether it is available after the Court has already made its pronouncement of a Judgement under Order 21 of the Civil Procedure Rules, 2010. Briefly, the Court feels imperative

to recount the facts of this rather protracted case for clarity sake.

**15.** It is not in dispute that the Appellant and the Respondents entered into sale agreement for the sell of the suit land upon sub - division terms and conditions stipulated thereof. For some reason or the other this sale did not sail through and being aggrieved the Respondents instituted a civil suit before the trial court at Msambweni seeking for the relief of specific performance for the breach of contract. The trial Court delivered its Judgement to their favour. Being aggrieved, the Appellant preferred an Appeal before this Court and on 9<sup>th</sup> December, 2024 the Court delivered its Judgement to his favour. The Respondents were dissatisfied and they filed appeal before the Court of appeal. Thus, it was while awaiting the hearing and determination of the appeal and in order to preserve the suit property that the Respondents filed the application seeking for orders of status quo. Subsequently, the said application was vehemently opposed through grounds of opposition and a further application to set aside the orders that this Court had issued on 17<sup>th</sup> March,

2025 thereof. That is the pith and substance of these matters.

**16.** As stated herein, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed an application seeking for the orders of the status quo premised on the provisions of law on injunctions and stay of execution pending appeal. Ideally, its trite law that injunctions are brought under Order 40 of the Civil Procedure Rules, 2010, where Rules 1 and 2 thereof provides that: -

**1. Cases in which temporary injunction may be granted [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 it until the disposal of the suit or until further orders.**

17. On the other hand, the principles upon which the court exercises discretion under the provision of Order 42 Rule 6 of the Civil Procedure Rules, 2010 are firmly settled. The discretion under the provision of Order 42 Rule 6 is on its terms unfettered but the aggrieved party must satisfy the court on a well set of conditions precedent to be made before such exercise of discretion in his or her favour. The application under the provision of Order 42 rule 6 is to be viewed in reference to the following factors:

- 1) That the application has been filed without undue delay.
- 2) That the Applicant had demonstrated that substantial loss may result unless stay orders are granted.

3) That the Applicant is ready to give security for due performance of the decree or order as may ultimately be binding on him at the end of the determination of the appeal.

18. It is noteworthy that while opposing the application, the Appellant raised the issue of the jurisdiction of this court to address the issues laid before it and maintained that the court is now "***functus officio***" an appeal having been lodged against its decision.

19. It is trite that jurisdiction is everything as the same gives the court the power to determine matters before it. To affirm this position, I wish to refer to the provision of Article 162[2][b] of the Constitution of Kenya, 2010. The importance of a court's jurisdiction was illustrated in the cases of "***Owners of Motor Vessels "Lillian S" - Versus - Caltex Oil Limited [1989] KLR 1***" and "***Samuel Kamau Macharia and another - Versus - Kenya Commercial Bank Limited and 2 others [2012] eKLR***".

20. The supreme Court in an extensive analysis of the issue of its own jurisdiction quoted with approval the oft cited

case of ***“Owners of Motor Vessel ‘Lillian S’ (Supra)*** in the first advisory opinion rendered by the Court in the case of:- ***“In Re the Matter of the Interim Independent Electoral Commission”*** where the Court stated: -

***“[29] Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ - Versus - Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):***

***“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”***

***[30] The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of***

***legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”***

**21.** Additionally, in the case of:- ***“Samuel Kamau Macharia & Another v. Kenya commercial Bank & 2 Others, Application No. 2 of 2011 [2012] eKLR”***, the Supreme Court pronounced itself on jurisdiction thus [paragraph 68]:-

***“(68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the***

***jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."***

22. Similarly, the provision of Article 162 (2) (b) of the Constitution of Kenya, 2010 provides for the establishment of the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Section 13 of the Environment & Land Court Act, No. 19 of 2011 on the other hand provides that the Court shall have power to hear and determine disputes:—

- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**

- b. relating to compulsory acquisition of land;**
- c. relating to land administration and management;**
- d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and**
- e. any other dispute relating to environment and land.**

23. From the record, this Honourable Court is aware that an appeal has been preferred against its decision of 9<sup>th</sup> December 2024 at the Court of Appeal. It is designated as **“COCA No. E035 of 2025 - Mombasa - Daniel Oumu Shani & Nellie Akinyi Shani - Versus - Peter Gitau”**. Based on legal principles, and I fully concur with the Learned Counsel for the Applicant herein that having already rendered its decision, this court is now **“functus officio”**. This means that the most appropriate forum to canvass the issue of status quo orders which are preservative orders is the court in which the appeal lies and not the court from which the decision being appealed against emanated.

24. In saying so, I am guided by the decision in the case of **“Dickson Muricho Muriuki - Versus - Timothy Kagundu**

**Muruiki & 6 others, Civil Application, Nyeri 21 of 2013 (UR 5/2013) [2013] eKLR**” the Court of Appeal held thus: -

**“On the issue of whether this Court has jurisdiction to stay execution of its orders or stay any proceedings after the final delivery of its judgment and pending the hearing and determination of an intended appeal to the Supreme Court, we are of the view that once this Court has pronounced the final judgment, it is functus officio and must down its tools. In the absence of statutory authority, the principle of functus officio prevents this Court from re-opening a case where a final decision and Judgment has been made. We bear in mind that in the new constitutional dispensation, most cases will end at the Court of Appeal and it is inadvisable for this Court to be able to issue stay orders after delivery of its judgment. We remind ourselves that the principle of functus officio is grounded on public policy which favours finality of proceedings. If a court is permitted to continually revisit or reconsider final orders simply because a party intends to appeal to the Supreme Court or the Court may change its mind or wishes to continue exercising jurisdiction over a matter, there would never be finality to a proceeding. The structure of the Kenyan courts is that there must be finality of proceedings at the Court of Appeal in those cases where certification to the Supreme**

***Court has not been granted. Allowing this Court to issue stay orders after judgment would be detrimental to the concept of finality in litigation within hierarchy and structure of the Kenyan courts.”***

25. Bearing the above in mind, I find that this court does not have the requisite jurisdiction to act on the application for status quo orders. In my humble view, I reiterate that the most appropriate forum to grant the orders sought will be the Court of Appeal which now has the seize of the matter.

**ISSUE No. b). Whether the Appellant has made a case for setting aside the Ex - Parte status quo orders earlier issued by this court on 17<sup>th</sup> March 2025**

26. Under this Sub - heading, essentially, the issues arise from the second application dated 30<sup>th</sup> May, 2025 made by the Appellant herein. On the 17<sup>th</sup> March 2025 this Court issued status quo orders ex - parte pending hearing and determination of the instant application. Subsequently, the Appellant filed his application seeking for the said orders to be varied/set aside. Those are the issues to be deliberated on herein.

27. While the fundamental issue of law here is setting aside and/or varying the orders of this Court. I wish to seek

refuge from the provision of Order 12 of the Civil Procedure Rules, 2010 and the decision of “**Atlas Copco Customer Finance AB - Versus - Polarize Enterprises (2016) eKLR**”, distilled the factors that may be considered when faced with a question of discharge, varying or setting aside of an injunction. The court held as follows:

**“... .....it is now trite that some of the factors that guide the exercise of the courts' discretion in this area of law are, but not limited to:**

**a. proof that the injunction was obtained by concealment of facts which if presented would have worked against the granting of the injunction;**

**b. a radical change in the circumstances of the suit, such that it is no longer necessary to have the injunction;**

**c. proof that the general conduct of the holder of injunction is such that the court is impelled to discharge the injunction, for instance, where the injunction is being used to intimidate the Defendant or achieve an ulterior purpose;**

**d. proof that the sustenance of the injunction would cause an injustice.”**

28. As it has been extensively discussed above, the court opines that since an appeal is already before the court of

appeal in this matter, then perhaps the said court is the proper forum to issue any further orders in this matter. For that reason, the prayer to discharge the ex - parte interim orders granted on 17<sup>th</sup> March 2015 be and is hereby allowed.

**ISSUE No. c). Whether or not a case has been made for removal of caution on the disputed parcel pending hearing and determination of the appeal**

29. On the prayer for removal of caution on the suit property and which is the third issue for determination. The provision of Section 73 of the [Land Registration Act](#), No. 3 of 2012 makes provisions on removal of a caution and stipulates thus:

**(1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection**

**(2), by order of the Registrar. (2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.**

**(3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.**

**(4) If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make such order as the Registrar considers fit, and may in the order provide for the payment of costs.**

**(5) After the expiry of thirty days from the date of the registration of a transfer by a chargee in exercise of the chargee's power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.**

**(6) On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under section 74 shall not be affected by the cancellation.'**

30. It is noted that the ownership of the suit property is vigorously contested by the parties herein. As it is, the caution on the land was placed by the Respondents herein. Ideally, a determination as to the ownership of the property is yet to be made given that an appeal is now before the court of appeal. In the interest of justice this court opines that it will be proper for the suit property to

be preserved by the caution to avoid any further dealings on the same pending the final determination on who the rightful proprietor is. However, as indicated, in the long run the whole issue on ownership of the land lies squarely in the hands of the Court of Appeal. The said Court now bears the full discretion on to the suit land. I need not say more.

**ISSUE No. d). Who will bear the Costs of the two ( 2 ) applications?**

31. It is the general rule is that the issue of costs are at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of a matter in any litigation. The provision of provision of Section 27 of the Civil Procedure Act, cap. 21 holds that costs follow the event. By event it means the result or out come of the legal action. A successful party should ordinarily be awarded cost of an action unless the court, for good reasons, directs otherwise.

32. In the instant case and in the given the circumstances, I find it reasonable and Equitable for each party to bear their own

**VII. Conclusion & Disposition**

33. Consequently, having caused an indepth analysis of the framed the issues, the Honourable court proceeds to make the following specific orders:-

a) **THAT** the Notice of Motion application dated 15<sup>th</sup> March, 2025 be and is hereby dismissed. In essence, the Honourable Court declines to grant the status quo orders.

b) **THAT** the Notice of Motion application dated 30<sup>th</sup> May 2025 be and is hereby allowed strictly on one ground - that the orders issued ex - parte by this Honourable Court on 17<sup>th</sup> March 2025 be discharged/ set aside.

c) **THAT** subject to any other orders to the contrary by the Court of Appeal, the registered Caution against the suit property pursuant to the provision of Sections 71, 72 and 73 of the Land Registration Act, No. 3 of 2012 to be sustained in order to preserve the property pending the hearing and final determination of the appeal. \_

d) **THAT** each party to bear its own costs.

**IT IS ORDERED ACCORDINGLY.**

**RULING DELIVERED THROUGH THE MICRO - SOFT TEAMS  
VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....  
9<sup>TH</sup> . ..... DAY OF .....DECEMBER.....2025**

.....  
**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT**

**AT  
KWALE.**

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

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Mutembei Advocate for the Appellant/Applicant.
- c) Mr. Mungai Kamau Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents.