



Theuri & another v Mweni & 4 others; Trend Waves Limited (Interested Party) (Environment and Land Case 223 of 2020) [2025] KEELC 8513 (KLR) (5 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8513 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 223 OF 2020
LL NAIKUNI, J
DECEMBER 5, 2025**

BETWEEN

SIMON MUNYI THEURI 1ST PLAINTIFF

DENNIS GATU WAITHAKA 2ND PLAINTIFF

AND

FREDRICK TSOFA MWENI 1ST DEFENDANT

FADHILI MICRO-ENTREPRISES LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

NICHOLAS MUNYI 4TH DEFENDANT

SIWA LIMITED 5TH DEFENDANT

AND

TREND WAVES LIMITED INTERESTED PARTY

RULING

I. Introduction

1. This Honorable Court is tasked with the determination of the Notice of Motion Application dated 18th June, 2025 by Trend Waves Limited, the Intended Interested Party/Applicant herein. The Application was brought under the provision of Article 40 of *the Constitution* of Kenya 2010, Sections 3 & 3A *Civil Procedure Act*, Order 51 and Order 40 of the Civil Procedure Rules, 2010.
2. Upon service of the Notice of Motion application, the 1st & 2nd Plaintiffs filed their replies accordingly. The Honourable Court shall be dealing with the said replies later on in this Ruling herein.



II. The Intended Interest Party's case

3. The Intended Interested Party sought the following orders from the Honourable Court:-
 - a. Spent.
 - b. That the intended interested party/Applicant herein be granted leave to join the suit as an interested party.
 - c. That pending the inter-party hearing of this Application, this Honourable Court be pleased to arrest the judgment scheduled for the 27th of June 2025.
 - d. That the court does set aside the proceedings in this matter and consolidate this suit with ELCLC/E069/2025.
 - e. That upon the issuance of order 3 above, the court does set down suit number ELCLC/E069/2025 alongside this suit to be heard together to their logical conclusion.
 - f. That costs of this Application should on be provided for.
4. The application by the Applicants herein was premised on the grounds, testimonial facts and averments made out under the 13 Paragraphed Supporting Affidavit of Daniel Samba, a Director of the Intended Interested Party herein sworn and dated the same day with the application. The Deponent averred that: -
 - a. Vide a grant number CR 15048, the applicant as lessee from the Government of the Republic of Kenya for a term of ninety-nine (99) Years from the First day of February, Nineteen Hundred and Seventy Four (01-02-1974) was the registered owner of All Thatpiece of land situated in Mombasa Municipality in Mombasa County in the said Republic described as below comprising by measurement, 0.5782 ha and or thereabouts known as Land reference Number LR MN/1/1927 which said piece of land with the dimensions abuttals and boundaries thereof are delineated on a Plan Numbers 90768 annexed to the Grant.(Annexed in the Affidavit a copy of Certificate of Title and marked as TW - 1).
 - b. The Applicant bought the land from Francis Austin Njiri and registered a transfer on the 16th January, 2001.
 - c. The Applicant had never sold or parted with possession of the land nor sub - divided it. The Applicant also had always had possession of the land that had been overgrown with bushes.
 - d. On or about the 23rd April 2025, while their clients' employees were on the property clearing the overgrown bushes, a gentleman appeared who claimed that the property belonged to him and that he had an order stopping anyone from interfering with the property.
 - e. At the risk of the confrontation turning deadly, all parties turned up at Nyali Police Station, where their clients made an OB report number 31/23/04/2025. (Annexed in the Affidavit was a copy of the OB and marked as TW - 2.)
 - f. The Applicant's agents had been looking for the case number with little success until recently, when they found copies of the pleadings and other documents filed by the Plaintiff at the Director of Survey and realized that the Plaintiff herein had fraudulently created a title of the Applicant's land, conducted a sub - division and, through unscrupulous means, registered the subdivisions at the Ministry of Lands and attempted to sell the land on paper. (Annexed in



the Affidavit a copy of the application for sub - division by B. M. Okumu to the Director of Survey and marked them as TW - 3A to 3D.)

- g. What was of interest was that their clients were never notified of this suit and never got the opportunity to participate in the hearing.
- h. Furthermore, the Plaintiff's intention was either by design or collusion with the Ministry of Lands official who testified, to refuse to avail the forged mother title which they had used in the sub division and which their clients had managed to get their hands on. (Annexed in the affidavit a copy of the Plaintiff's mother title and marked as TW - 4.)
- i. The first red flag the court noted was that the Plaintiffs presented a forged title registered to Swalehe Wachala and Simon Munyi Theuri (the 1st Plaintiff herein) through B. M. Okumu Surveyors. However, the court curiously noted that the resultant sub - divisions now known as 22369/1/MN (CR 72713) and 22370/1/MN (CR 72712) bore the names Simon Munyi Theuri & Dennis Gatu Waithaka and not Swalehe Wachala. (Annexed in the affidavit were copies of the plaintiff's subsequent titles and marked them as TW - 4A & 4B.)
- j. Furthermore, the lease term of the resultant titles presented in court had shifted from the First day of February, Nineteen Hundred and Seventy-Four (O1 – 02 - 1974) to the 1st day of January 1999, each. The court noted that the residual term of their mother title was yet to lapse, and yet they had new sub - divisions that they claimed emanated from a mother title, but with new lease terms.
- k. The Plaintiff's actions were fraudulent, only meant to navigate around the Applicant's title, create new leases and could not be logically explained, and the Applicant sought an opportunity to avail certified documents/records as presented by the Plaintiff's surveyor to the Director of Survey to highlight the mischief involved.
- l. It was also not lost to them that the Defendants in this suit had availed varying positions and titles, which they termed as fraudulent too.
- m. Also, the 3rd Defendant, who was the Chief Land Registrar, purported to support the Plaintiff's title but failed to avail the mother title that had led to the impugned sub - division.
- n. Nonetheless, they realized that this matter was scheduled for a Judgment on the 27th June 2025 in their absence, thus making this application very urgent.
- o. The Applicant herein had elected to file suit number ELCLC/E069/2025 against the Plaintiff herein and all the other Defendants for the fraud they had perpetuated against the proprietary rights of the Applicant. (Annexed in the affidavit were copies of the pleadings in ELCLC/E069/2025 and marked them as TW - 5.)
- p. The Applicant wished to be allowed to arrest the delivery of the Judgment and be allowed to prosecute suit number ELCLC/E069/2025 and, in the fullness of time, present to the court the true picture of the fraud committed by the plaintiff and the defendants herein.
- q. The Plaintiffs' and Defendants' actions had trampled upon their constitutional right to own property.
- r. It was quite clear and he humbly submitted from the documents that he had attached herein in support of this application that indeed they were the legal owners of the suit property and they should have been allowed to present those facts to the court.



- s. It was prudent and just for this Honourable Court to intervene and forestall the injustice that was being propagated.
- t. It would have been just and equitable for this Honourable Court to grant them the orders as prayed for in the motion.

III. The Replying Affidavit by the 1st Plaintiff

5. The 1st Plaintiff filed response to the application by the Intended Interested Party dated 18th June, 2025 through a 29 Paragraphed Replying Affidavit sworn by Simon Munyi Theuri and dated 11th September, 2025. He averred as follows that: -
- a. He was the 1st Plaintiff/Respondent herein, fully conversant with the facts of this case and therefore competent to make this affidavit. He had also been duly authorized by the 2nd Plaintiff/ Respondent to swear this affidavit on his behalf.
 - b. He had read and understood the Intended Interested Party's application dated 18th June,2025 and wish to respond in opposition thereof as follows: -
 - c. The application was a mischievous scheme to frustrate the expeditious determination of the ownership dispute herein as the same was premised on outright falsehoods and illegally obtained ownership records.
 - d. Apart from the evidently fake grant exhibited by the Intended Interested Party, no evidence had been adduced to demonstrate its valid acquisition of the suit property as alleged.
 - e. The ownership documents purporting that the suit property was jointly owned by one Swalehe Wachala and himself were acts of forgeries and schemes by the said Intended Interested Party in collusion with fraudsters.
 - f. Notably, he had neither owned any land jointly with any person by the name of Swalehe Wachala nor had he instructed any surveyor to carry out the sub - division of the suit property jointly with such a person.
 - g. He did not know any person by the name of Swalehe Wachala and him had never come across any claim over the suit property from such a person either individually or jointly.
 - h. He owned the suit property jointly with the 2nd Plaintiff/Respondent herein as evidenced by the ownership records filed herein and authenticated by the Chief Land Registrar.
 - i. Indeed, he authorized the 2nd Plaintiff to execute all necessary documents in this matter and testify on his behalf so as to protect their joint interest over the suit property. The letter of authority is produced at page 1 of the bundle of exhibits marked as SMT – 1.
 - j. Also, he wished to confirm that they jointly instructed Licensed Surveyor, B. M Okumu to sub-divide the suit property on their behalf leading to the resultant two sub-plots known as 22369/1/MN and 22370/1/MN which were duly registered in their joint names as evidenced by the titles filed herein. The letter of instruction and subdivision certificates of title for 22369/V/MN and 22370/V/MN were annexed at pages 2 to 8 of the exhibit.
 - k. The said sub - division was preceded by the procurement and obtaining of necessary approvals as evidenced by the certified records from the Director of Survey's office.



- l. The said sub - division was preceded by the procurement and obtaining of necessary approvals as evidenced by the certified records from the Director of Surveys' office filed herein.
- m. The Intended Interested Party in cahoots with other fraudsters had filed doctored and/or contrived questionable records purported to have emanated from the office of the Director of Surveys in a bid to discredit our joint interest and mislead the Court.
- n. It was indeed baffling that the Intended Interested Party that had filed records purporting that the suit property was jointly owned by one Swalehe Wachala and the Deponent would proceed and file a separate suit being Mombasa ELC E069 of 2025 and fail to include the said Swalehe Wachala as a party.
- o. It was further an act of deliberate abuse of the Court process and an attempt to frustrate the conclusion of these proceedings for the Intended Interested Party to proceed and file a separate suit then purport to apply to join these proceedings as an interested party despite admitting knowledge of the existence of these proceedings as evidenced by the contents of its letter dated 13th June,2025 and filed in Mombasa ELC E069 of 2025.
- p. Suffice it to note, BM Okumu conducted the survey of the suit property on the instructions of the 2nd Plaintiff and the Deponent, had vide an affidavit filed herein confirmed acting on their instruction and had disowned knowledge of any person by the name of Swalehe Wachala.
- q. No evidence had been tendered that the alleged Swalehe Wachala was known to the Deponent and that they jointly instructed BM Okumu to carry out the survey jointly with such a person.
- r. He was aware that any party claiming interest over land and seeking to be joined in any proceedings should not only wave a purported title but must demonstrate that the interest was valid and was acquired procedurally.
- s. It was noteworthy that the Intended Interested Party was only waving a purported Grant and shamelessly misleading the Court that it had been in actual and active occupation of the suit property uninterrupted, which was evidently false going by the evidence on record and the orders of the Court directing the maintenance of the status quo.
- t. Indeed, the Counsel for the 4th and 5th Defendants who was aware of their occupation and the existence of the status quo orders vide an email of 22nd April,2025 informed their Advocates on record herein of the Intended Interested Party's agents acts of trespass and inquired as to why they were preparing to develop the property during the pendency of the Judgment. The email extract from 4th and 5th Defendants' Advocates was annexed at page 25 of the exhibit.
- u. The acts of trespass and information prompted their agent to report the trespass to the Nyali Police Station and upon disclosure by both the 4th Defendant and their agents that the dispute over the suit property had been pending in Court since the year 2020 and there was in existence an order preserving the suit property and their occupation, the police ordered the parties to submit their ownership records for investigation.
- v. The Intended Interested Party's agents that had trespassed on the suit property subsequently vacated the premises after their criminal scheme was unmasked.
- w. If the Intended Interested Party had been in occupation as alleged, then how come it only purported to have discovered their occupation of the same when the matter had been pending since the year 2020. Yet, their occupation for the said period had been confirmed by the 1st, 2nd, 4th and 5th Defendants going by the evidence on record.



- x. He wished to confirm that they were still in occupation of the suit property and had not initiated any developments thereon in strict compliance with the orders of the Court. The Intended Interested Party's allegations of occupation were misplaced and deliberate misrepresentation of facts in perpetuation of its illegal scheme.
- y. The Application was evidently an abuse of the Court process. It was only a mischievous attempt at reopening pleadings, delaying and frustrating the expeditious disposal of this matter unjustifiably premised on illegally procured records.
- z. The Intended Interested Party has also approached this Court with tainted hands and was thus undeserving of this Court's equitable discretion and or equitable reliefs.
 - aa. The application was incurably baseless and unmerited as no justification had been given for the arrest of the Court's judgment to include an interested party which had opted to institute distinct proceedings with the knowledge of the existence of these proceedings and was not seeking any substantive reliefs in the suit herein.
 - ab. Given the foregoing, he urged the Court to dismiss the Application with costs in the interest of justice and fairness and to avert deliberate abuse of the Court process.

IV. The Further Affidavit by the Intended Interested Party

- 6. With the leave of Court, the Intended Interested party filed an 11 Paragraphed further affidavit responding to issues raised by the 1st Plaintiff in its Replying Affidavit dated 10th September, 2025. It was sworn by Daniel Samba and dated 23rd October, 2025. He stated as follows that: -
 - a. He was an adult of sound mind and disposition and the director of the Intended Interested Party/Applicant, and was duly authorized to swear this affidavit on its behalf, being conversant with the matters pertaining to this suit.
 - b. He had read and understood the Plaintiff/Respondent's Replying Affidavit dated 10th September, 2025 and where some of contents may not have been immediately clear to him their import and meaning has been explained to him by his Advocates on record.
 - c. He understood that when the matter came up for directions on their application, their Advocate on record informed court that certified copies of documents had been sought from the Director of Survey, though the same had not been supplied. He now sought leave of the court to supply them and annexed the following documents and produce them as a bundle Exhibit A:-
 - i. Letter by his advocates to the Director of Surveys dated 13th June, 2025.
 - ii. Letter by Director of Survey forwarding certified copies of documents dated 23rd June, 2025
 - iii. Certified copies of documents contained in the deed file.
 - d. From the onset, both the Plaintiffs/Respondents and the Intended Interested Party were laying claim as registered proprietors to the suit premises, with each party having their separate and distinct set of documents in support of their claim.
 - e. Therefore, there was need to have the veracity of both sets of documents to be tested in evidence and cross examination to ascertain their veracity.



- f. As they had demonstrated to court, the Intended Interested Party had filed another suit being “Mombasa ELC case No.E069 of 2025 Trend Waves Limited v Simon Munyi Theuri, Dennis Gatu Waithaka & Chief Land Registrar” seeking the validation of their claim as the rightful proprietors of Land Reference No. MN/1/1927(from which sub - division Numbers 22369/1/MN & 223370/1/MN where illegally and/or irregularly created).
- g. In response to the contents of Paragraph 3 of the Replying Affidavit of Simon Munyi Theuri, the deponent makes a very wild allegation that the documents presented by the interested party and originating from the Land Registry and Director of survey were fake without testing their veracity. They were thereafter justifiably apprehensive of a scheme by the Plaintiffs/ Respondents was to mislead this Honourable Court
- h. It should not be lost to the court that the Plaintiffs/Respondents hurriedly created and supplied his own version of “certified documents” after he heard that the Deponent had certified documents from the Director of survey.
- i. The court should allow them to be heard on merit and allow them to call the makers of their documents which information was never relied upon in the initial trial.
- j. On the sound advice of their Advocates on record, he was aware that the Supreme Court of Kenya had held in the Dina Management case that court held that root of title was a preeminent in asserting the legal rights to property
- k. He reiterated that it was in the interest of justice that the Interested Party’s application be allowed as prayed to forestall an injustice where this Honourable Court would determine rights on their property without their involvement.

IV. Submissions

7. While all the Parties were present in Court, they were directed to have the Notice of Motion Applicant dated 18th June, 2025 be disposed of by way of written submissions. Pursuant to that, all parties obliged and the Honourable Court reserved on 5th December, 2025 to deliver its Ruling accordingly.

A. The Written Submissions by the Intended Interested Party.

8. Through the Law firm of Messrs. Angaya & Company Advocates, the Intended Interested Party while in support of their Notice of motion Application dated 18th June 2025, filed their written submissions dated 23rd October, 2025.
9. Mr. Angaya Advocate commenced his submission s by providing the Court with a brief background of the matter and of their interest in it thereof. The Learned Counsel averred that the Intended Interested Party approached this Honourable Court by way of a Notice of Motion Application 2025 brought under Article 40 of *the Constitution* of Kenya, 2010, Sections 3 and 3A of the *Civil Procedure Act*, Cap. 21, Order 51 and Order 40 of the Civil Procedure Rules, 2010. The application sought for leave to be included as an Interested Party in the suit, arrest of a Judgment that had already been reserved for delivery on 27th June 2025 and consolidation of the suit together with Mombasa ELC E069 of 2025 between itself and the Plaintiffs herein over the Land reference No. MN/1/1927 from which sub - division Number 22369/1/MN and 22370/1/MN(the subject to this suit were borne.
10. This application was borne from the backdrop of a discovery that the Plaintiffs had brought suit against individuals who clearly do not have an identifiable stake in the suit premises. The intended interested party learnt of the suit and on interaction with the CTS learnt that the same had infact proceeded for



hearing and a judgment reserved. This discovery came after the Intended Interested Party had brought a suit against the Plaintiffs herein seeking to assert its right over the same suit parcel where it was in possession.

11. The Plaintiffs/Respondents filed 2 Replying Affidavits the first one dated 10th September 2025 sworn by Benson Meshack Okumu and another one dated 19th September 2025 sworn by Simon Munyi Theuri. That succinctly both responses largely address trivial issues on largely untested evidence. However, they both agree that the suit premises that was subject to this dispute was subdivided from Land Reference No. MN/1/1927. The Intended Interested Party filed a further affidavit contemporaneous to these written submissions supplying certified documents from the Director of survey to further assert its rights as the lawful and legal proprietor of the suit premises. It was undisputed that the suit property that was subject to this suit was a sub - division from Land Reference No. MN/1/1927 which parcel was owned by the Intended Interested Party. From the onset, it was the Applicant's contention that they have for the past 2 decades been the registered owners of the said property and that they have not at any time conveyed, sub - divided, transferred, charged and/or assigned any interests in the suit property and would be ready and willing to introduce this evidence before court to demonstrate that the title and/or sub - divisions by the Plaintiffs/Respondent was irregular and/or unlawful.
12. The Learned Counsel crystalized on the following three (3) issues for its determination. Firstly, stripped to the bone, the suit before Court was one where the Plaintiff sought declaration that they were the registered owners of the suit premises. The Plaintiffs/Respondents had falsely alleged that they was in use and occupation of the suit premises. They were not named or joined as Defendants in this suit and only learnt of the suit recently when the matter had been reserved for Judgment. To buttress this point further, they referred this Honourable Court to be guided by the Supreme Court decision in "Dina Management Limited v County Government of Mombasa & 5 others [2023] eKLR" where the Learned Judges held that root of title was pre-eminent in asserting proprietary rights.in the words of the Learned Judges:-

"When a registered proprietor's root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership" (citing "Munyu Maina v Hiram Gathiha [2013] eKLR"). The Applicant's root title (1974 Grant, transferred 2001) remained unchallenged and un-lapsed, rendering subdivisions fraudulent and illogical. The Further Affidavit (para 4) annexes certified documents from the Director of Surveys
13. The Learned Counsel submitted that the interest having possession of the suit premises and having the title deed as evidenced in the supporting affidavit of David Samba and their supporting documents as evidenced in the further affidavit of the Applicant demonstrates the Interested Party's stake in the matter beyond peradventure.
14. Secondly, whether the Applicant had an identifiable take to warrant it being joined as an Intended Interested Party. It was their humble submissions that under the provision of Order 1 Rule 10 (2), Civil Procedure Rules, 2010:-

"The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all question involved in the suit, be added."



15. They had demonstrated that they were a necessary party by way of documents demonstrating that the Intended Interested Party were the lawful owners of the suit property. To buttress this point, they were invited this Honourable Court to be guided by the binding decision in the case of:- *Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR” where the Supreme Court held that an interested party must have a stake in the proceedings, be affected by the decision, and add value without duplicating existing arguments. The Learned Counsel submitted that the interested party’s title to the suit premises remained unchallenged and is conclusive proof of ownership under the provision of Section 26 of the *Land Registration Act*.
16. Further, the Learned Counsel submitted that the issue at stake was assertion and rights and interest to land ownership. It should not be lost to this Honourable Court that land ownership was an emotive issue. The Court had in the case of:- ”*Elton Homes v Davis & Others* [2019] eKLR” in exercising its wide unfettered discretion allowed joinder of an interested party who was a property occupant even after Judgment, citing the constitutional right to be heard and prevent arbitrary deprivation of property; no bar to late-stage joinder if interest is established.
17. Unlike in the above case, Judgment was yet to be rendered and the title document had been placed before this Honourable Court. As it stood and on the strength of the Certificate of Title (Exhibit TW - 1) there was conclusive proof that they were the registered owners of the suit parcel. In any event, being allowed to participate in this matter would accord the respective titles of the Plaintiffs and the Interested Party to ascertain who had better root of title.
18. Secondly, whether the Applicant had met the legal threshold to arrest the Judgment. The inherent power of this court to arrest a Judgment pending its delivery was discretionary power that ought to be exercised judiciously. Learned Counsel invited the Honourable Court to be guided by the Court of Appeal decision in the case of: “*Pressmaster Limited v Elego* [2022]KECA 571(KLR)” where the Learned Judge held that inherent power of this court was discretionary power that is used by the Court with a view to meet the ends of justice or to prevent abuse of the process of the Court. It is trite that once a Judgment was rendered, this Honourable Court became “*functus Officio*” leaving the Applicant herein, which was not a party in a limbo.
19. As they had already demonstrated above, there was the eminent risk of losing the property by the Interested party who contended that it had always had possession of the suit premises. There was no prejudice that would be suffered by the Plaintiffs and the Defendants if the prayers of enjoining and participation in the suit were granted. Furthermore, there was a pending suit between the Interested Party and the Plaintiff herein being “*Mombasa Environment and Land Case No. E 069 of 2025*” that was filed by the Intended Interested Party seeking declaration on the legal owner of the same suit premises.
20. The Counsel emphasized that the Intended Interested Party not being accorded an opportunity to participate in these proceedings gave rise to a likelihood of a grave injustice being allowed to thrive unchecked. This was because this Honourable Court would proceed to decide the fate of its property without according the Applicant a fair hearing. There is also a huge likelihood of 2 contradictory decisions by this court over the ownership of the suit premises to the prejudice of the Applicant.
21. In conclusion, the Learned Counsel invited this Honourable Court to invoke its inherent powers, allow the joining of the applicant as a party to enable this Honourable holistically adjudicate on the issue raised herein. He prayed that the Notice of Motion Application dated 18th June 2025 be allowed. as prayed.



B. The Written Submissions by the 1st & 2nd Plaintiffs/Respondents

22. The 1st & 2nd Plaintiffs/Respondents filed their Written submissions through the Law firm of Messrs. Rapando Odunga & Company Advocates dated 23rd October, 2025. Mr. Odunga Advocate commenced by stating that these submissions were in opposition to the Intended Interested Party's Application dated 18th June, 2025. The Plaintiffs had in opposition to the Application also filed and served two affidavits sworn by Mr. Okumu, Licensed Surveyor and the 1st Plaintiff herein on 10th September, 2025 and 11th September, 2025 respectively. As at the time of filing the submissions, the Applicant had not filed and served its submissions despite directions by the Court to that effect by the Court.
23. The Learned Counsel informed Court that the Application basically seeks joinder of a legal entity trading in the names and style of "Trend Waves Limited" as an Intended Interested Party, setting aside of proceedings and consolidation of this matter with a civil case of: "Mombasa ELC E069 of 2025" filed by Trend Waves Limited against the Plaintiffs herein. The Counsel averred that it is trite that any party claiming interest over land and seeking to be joined in any proceedings should not only wave a purported title but must demonstrate that the interest was valid and was acquired procedurally as well as its identifiable stake in the matter. It was further noteworthy that the Intended Interested Party was only waving a purported Grant and misleading the Court that it had been in actual and active occupation of the suit property uninterrupted, which was evidently false going by the evidence on record and the orders of the Court directing the maintenance of the status quo. The status of an interested party as opposed to a principal party had been settled by this Court and the other superior courts. The Supreme Court in the case of "Petition No. 16 of 2016 - Methodist Church of Kenya and Mohamed Fugicha & 2 others" observed thus:-

"Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court"

24. The Counsel stated that the Supreme Court clarified that an interested party could not introduce a new cause of action before the court. Indeed, this was purposely what this application sought post the hearing of the principal parties' cases and reservation of the matter for Judgment. Further, the Supreme Court further reaffirmed that joinder is at the discretion of the Court and not a right and an applicant must meet the set conditions before joinder application can be granted. Therefore, any party seeking discretionary orders must have approached the Court in good faith and not through deliberate misrepresentation of facts. It was an absurdity that the Applicant could claim to have been in active occupation and use of the suit property when parties herein have been in active litigation for the last 5 years, the suit property was subject of a transaction that was equally subject of litigation and the Court issued status quo orders to preserve the status of the suit property which has been occupied by the Plaintiffs. Similarly, the Supreme Court in the case of:- "Francis Kariuki Muruatetu & another v



Republic & 5 others, SC. Petition No. 15 as consolidated with SC. Petition No. 16 of 2013 [2016] eKLR” held as follows with regard to joinder of an interested party:-

“One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

25. The Learned Counsel contended that the Applicant had failed to firstly, demonstrate the identifiable stake it had on the matter. Secondly, what prejudice it would suffer if it was not joined in the proceedings at this stage. Indeed, the Applicant had confirmed that it had already filed its own suit and its joinder in these proceedings at this stage when it was not seeking any substantive relief and had not laid any cause of action against any party would unnecessarily delay justice for the substantive parties herein. The same would equally be prejudicial to the principal parties who have been litigating since the year 2020 while no prejudice would be suffered by the Applicant which had already opted to institute its own proceedings.

26. The Counsel cited a case where Justice Oundo had recently, while considering and dismissing an application for joinder of a party as a Defendant in the case of “Githere v Mwangi & 2 others; Waithaka (Proposed Defendant) (Environment & Land Case 95 of 2024) [2025] KEELC 3049 (KLR) held thus:-

“Dominus litis is a Latin term that literally translates to "master of the suit" or "owner of the litigation." In legal terms, it refers to the party who has the right to control and direct the course of a law suit. This is typically the Plaintiff in a civil case, as she is the one who initiated the action and is seeking a remedy. 38. The Plaintiff therefore has the right to choose the parties to sue (Defendants), determine the claim and the relief sought, select the jurisdiction or forum where the case will be heard (within legal limits), decide whether to pursue or abandon the claim, and to instruct counsel on the strategy and direction of the case. This means that a party cannot be added as a Defendant in any suit without the consent of the Plaintiff as to do so would be to introduce a new cause of action or to alter the nature of the suit altogether. A Plaintiff cannot therefore be forced to sue any person as a Defendant. (see also Okiru .4 others v Ombangai; Omukaga (Applicant) (Environment and Land Appeal E017 of 2021)[2025]KEELC 244 (KLR)(31 January 2025)(Ruling)”

27. The Learned Counsel argued that neither the Plaintiffs nor the Defendant had any claim nor sought any relief against the Applicant in this suit. It was only the Applicant who sought to be joined as an Intended Interested Party in the matter and shall thus not be seeking any substantive relief against any of the parties to these proceedings to warrant the arrest of the Judgment and its joinder in the matter. Arresting the judgment, joining the Applicant and reopening the matter without a just cause would be a total waste of judicial time when the Applicant had already opted to file its own separate suit against the Plaintiffs.



28. The Court in determining this Application should give due regard and weigh the time and resources expended by the parties herein in hearing the suit, judicial time and resources dedicated to the hearing of the matter, the fact that hearing of the matter had been concluded and the matter is due for judgment and finally the prejudice to be suffered by the Applicant if it is not added as an interested party considering they were neither seeking to be added as a principal party, it was not seeking any substantive relief and no adverse relief had been sought against it in these proceedings.
29. This Court in a related application while dismissing the application in the case of “Chisenga & 3 others (Representing over 150 residents residing on LR No 176/IV/MN CR 27920) v Estate of Onesmus Nyamae Kyengo & 3 others; Mwanganda & 3 others (Applicant)(Environment & Land Case 94 of 2022) [2024] KEELC 3280 (KLR)” held as follows:-

“Further, the Court of Appeal in the case of “EG v Attorney General; David Kuria Mbote & 10 others (Interested Parties) [2021] eKLR” shedding more light on the application of this principle held as follows:“(1)The core of the court’s power to join a party to any proceedings including at the appellate stage, as aptly discussed in Hamisi Yawa & 36,000 others v Tsangwa Ngala Chome & 19 others [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied that: -i. The intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral. ii. The intended party’s presence would enable court to resolve all the matters in the dispute. iii. The intended party would suffer prejudice in case of non-joinder. iv. The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.” PARAGRAPH 25.

Thus, the Counsel urged the Court to be guided by its reasoning in the above case and have the said Application be dismissed with costs. It should find that the Applicant’s sole purpose was to derail the conclusion of these proceedings by vexing the parties herein and convoluting the proceedings with new matters unnecessarily when it has neither laid out any cause of action nor seeking any substantive relief in these proceedings as an Interested Party.

V. Analysis and Determination

30. I have keenly considered all the pleadings and arguments on record for both parties, the written submissions the myriad of cited legal authorities, the relevant provision of *the Constitution* of Kenya, 2010 and the statutes.
31. For the purposes of this ruling, in order to attain a reasonable, fair and Equitable decision, the Honourable Court has identified the following five (5) key issues for its determination: -
- a. Whether the Intended Interested Party/Applicant should be joined as an Interested Party in this suit.
 - b. Whether the proceedings herein in this suit should be set aside.
 - c. Whether the Court has jurisdiction and hence proceed to arrest Judgment.
 - d. Whether consolidation of this suit with that of ELC Case No. E069 of 2025 is appropriate?



- e. Who bears the Costs of the Notice of Motion application dated 18th June, 2025?

IssueNo. a). Whether the Intended Interested Party/Applicant should be joined as an Interested Party.

32. Under this substratum, the Court is called upon to determine whether a legal entity trading in the Trend Waves Limited ought to be joined as an interested party in ELC Case No. 223 of 2020. The principles which guide courts in determining an application for joinder of an interested party are now well settled. The parties in this matter have highlighted and relied upon the relevant law and authorities that outline the conditions required to be fulfilled for one to be admitted to proceedings as an interested party.
33. The provision of Order 1 Rule 10(1) of the Rules specifically allows the court, either on its own motion or on application of either party, to join to the suit any party whose presence may be necessary to enable it effectually and completely to adjudicate upon and settle all questions involved in the suit. This can be done at any stage of the proceedings.
34. The applicable principles in an application for joinder as an interested party were set in the Supreme Court decision of “Francis Kariuki Muruatetu & another (Supra) as follows:
- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
35. Furthermore, the Supreme Court observed in the same judgement that:
- “(41) Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.”
36. In the case of “JMK v MWM & Another (2015) eKLR”, the Court of Appeal held that:
- “We would however agree with the respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in



pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *Tang Gas Distributors Ltd V. Said & Others* [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”

36. The term ‘Interested Party’ is defined in Black’s Law Dictionary, 9th Edition, at pg. 1232 as: -

“A party who has a recognizable stake (and therefore standing) in a matter”.

37. The term is also defined in the Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, but not by the *Civil Procedure Act*, Cap. 21 and Rules made thereunder. The Court of Appeal Rules, 2022, define an interested party as:

“a person or entity that has an identifiable stake, legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation but has been allowed by the Court upon application, to appear as an interested party to address it in respect of a matter of law or fact.”

38. An Interested Party must be a person who has an identifiable stake or legal interest in the proceedings before the court, whose presence will help in settling the issues in the case. This is to avoid multiplicity of suits or litigation by instalments. Joinder as an interested party is therefore not as a matter of right. An application for joinder will therefore be examined on its own merits and circumstances as against the established principles governing admission to proceedings. It is always important to appreciate that a case belongs to the primary parties and any party that seek to join the proceedings as an interested party must demonstrate a clear connection between the applicant and the case. Not every busy body (Tom, Dick and Harry) will be admitted to proceedings simply because of an averment of an interest in the matter where such an interest cannot be clearly discerned.

39. The Supreme Court of Kenya in the case of “Attorney General v David Ndi & 73 Others (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR)”, the court enumerated the applicable principles in an application of joinder by an interested party as follows:

“An Applicant to be enjoined as an Interested Party has to satisfy this Court that it has met the legal requirements for joinder. This court has laid down the guiding principles applicable in determining an application to be enjoined as an interested party in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others SC Petition (Application) No. 12 of 2013*. The principles were affirmed in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others (supra)* where the court stated: “... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:(i)The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.(ii)The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. (iii)Lastly, a party must, in its application, set out the case and/or submissions it intends to



make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court” (Emphasis Added).

40. I must take note of some fundamental legal parameters here. Firstly, although not stated but from the face of it “Trend Waves Limited” is assumed to be incorporated as a Company by limited guarantee under the *Companies Act*, Cap. 486 of the Laws of Kenya. Therefore, it is bound by the Articles and memorandum of Association of the said legal entity. For instance, it is trite law and already support by a plethora of Court decisions to this effect that a Resolution by the company to file this application is mandatory as it demonstrates a collective decision by the Board of Directors. None of such a document was annexed to support its case. Secondly, that the Affiant of the affidavit in support of the Application there was no authority attached to authorize the Affiant to file the application.
41. Further, the Applicant has exhibited Grant No. CR 15048, issued in the year 1974, showing ownership of LR MN/1/1927, the very property in contention. It alleges that the Plaintiffs fraudulently created parallel titles, sub - divided the land, and registered new leases without its knowledge or consent. These allegations, if proven, go to the root of the dispute and directly affect proprietary rights protected under Article 40 of *the Constitution*.
42. Admittedly, therefore, the substratum of the dispute is the question of legal and proprietary ownership and validity of titles over LR MN/1/1927. The Applicant’s claim is not remote; it is central to the determination of the true legal owner of the suit property. Without its participation, the Court risks rendering a judgment that excludes a party with a registered interest, thereby undermining the principle of fair hearing as clearly enshrined under the provision of Articles 25 (c) and 50(1) & (2) of *the Constitution* of Kenya, 2010.
43. Based on the foregoing, therefore, from a face value and in an ideal situation there is no doubt that the Applicant has satisfied the threshold for being a joinder as an Interested Party. Its presence is necessary for the complete and effectual adjudication of the matter save for the other circumstances arising, related and in connection with the subject matter herein and shall be stated herein below.

IssueNo. b). Whether the proceedings herein in ELC No. 223 of 2020 should be set aside

44. Under this sub - heading, the Court is invited to consider whether the proceedings already undertaken in ELC Case No. 223 of 2020 should be set aside at the instance of the Applicant. The law is clear that once parties have closed their cases and judgment has been reserved, the Court’s jurisdiction to interfere with the proceedings is limited.
45. The Court of Appeal in the case of:- “Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd [2014] eKLR” emphasized that litigation must come to an end, and reopening concluded proceedings should only occur in the clearest of circumstances, usually through review or appeal. Likewise, in “Uhuru Highway Development Ltd v Central Bank of Kenya [1999] eKLR”, the Court warned against reopening proceedings after parties have closed their cases, save for exceptional statutory grounds.
46. In the present matter which is a 2020 one, close to five years ago, it is not in doubt that the matter has already proceeded and all parties closed their case and were at the stage of penning down their Submissions and hence delivery of Judgment. At no point in the pleadings has the Intended Interested Party explained nor furnished the Court with any empirical documentary nor justifiable cause and/or reason for not having made this application much more earlier of the proceedings rather than to have waited for all these years to have lapsed. Additionally, it is admitted that the Applicant has already filed a separate suit, ELC Case No. E069 of 2025, where its allegations of fraud and proprietary rights can be



ventilated fully. That suit provides the appropriate forum for the Applicant to present its case without disturbing proceedings that have already reached the judgment stage in this matter. Furthermore the suit in question was filed in 2020 I am sure all this time the Applicant should have had an idea that it existed. I am compelled to seek refuge from the Legal Maxim “Equity does not Aid the Indolent” here.

47. Certainly, to allow this application at this stage would tantamount on having a wanton waste of resources – time, man hour and financial resources for all the parties and the Court as well. Thus, the prayer to set aside the proceedings herein is declined. The Applicant’s remedy lies in pursuing its independent suit or seeking review/appeal after Judgment is delivered.

IssueNo. c). Whether the Court has jurisdiction to arrest Judgment and is it meritorious

48. Under this sub title, the Court is to examine whether it has the jurisdiction to arrest Judgment. One of the principal issues is whether, and in what circumstances, this Court—the Environment and Land Court—has jurisdiction to ‘arrest’ delivery of its own judgment at the stage reached in these proceedings. Upon conducting an intensive research and while writing this Ruling, I have not found any specific provision of this concept for the arrest of Judgment in civil suits in the Civil Procedure Act or its Rules. Luckily, the legal jurisprudence on the authority for arresting judgment is much clearer in criminal practice. The provision of Section 324 of the Criminal Procedure Code expressly provides: -

“ 324. Motion in arrest of judgment

- (1) The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state an offence which the court has power to try...”

49. As indicated, in civil matters, arrest of judgment is not expressly provided for. Instead, litigants may only scratch through by invoking the provision of Section 6 or Section 80 of the Civil Procedure Act, Cap. 21 for stay of proceedings or review and/or Orders 12 (7) or 45 of the Civil Procedure Rules, 2010 for review, varying or setting aside Judgment or to amend pleadings under before Judgment is delivered. My understanding of the law, is that if Judgment has already been pronounced under Order 21 of the Rules, the proper recourse is through preferring an appeal, not by attempting to arrest or stay the Judgment at the trial court. The jurisdiction of this Court is derived from Article 162(2)(b) of the Constitution, the provision of Section 13 of the Environment and Land Court Act, No. 19 of 2011 and the Civil Procedure Act, Cap. 21. While the Court has wide discretionary and inherent powers to ensure justice is done, those powers are circumscribed by the principle of finality in litigation. Legally speaking, once parties have closed their cases and Judgment has been scheduled, the Court becomes “functus officio” in respect of the hearing process, save for limited statutory exceptions.
50. The doctrine of “functus officio” was explained by the Court of Appeal in the case of:- “Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR”, where it was held that once a court has performed its task of hearing and reserving Judgment, it cannot reopen the matter except as provided for by law.
51. Similarly, in the case of:- “Patel v EA Cargo Handling Services Limited [1974] EA 75”, the Court stressed that discretion exists to prevent injustice, but must be exercised judiciously. I dare state that research indicates that the so-called ‘arrest of judgment’ in civil practice is a misnomer; (and really picking credence in practice of late) the court’s inherent jurisdiction allows it to control its own process, including recalling or staying its own Judgment in rare, exceptional circumstances prior to delivery,



where clear injustice would otherwise result. See also Order 21 Rule 4 of the Civil Procedure Rules on the format and timing of Judgments.

52. This court has only limited, residual jurisdiction to stay its own hand and “arrest” the delivery of judgment prior to pronouncement, usually in the rarest of cases to prevent manifest injustice, typically involving fraud or gross error coming to light before pronouncement. Review and appeal remain the primary routes for challenging a judgment. Jurisprudence leans against the abuse of the process by ‘arresting’ judgment to defeat finality, except for strong and justifiable grounds shown by affidavit evidence.
53. This Court is not vested with general jurisdiction to ‘arrest’ Judgment in civil practice under the ELC Act or the *Civil Procedure Act*. Only in the rarest of circumstances—where manifest injustice or fraud arises before pronouncement—will the court stay its own judgment. Otherwise, the proper recourse is through review, appeal, or under expressly provided rules.
54. In the present case, the Plaintiffs and Defendants have closed their cases, and judgment has already been scheduled. At no point of the pleadings nor submissions has this exceptional circumstances been alluded to by the Applicant. The Applicant has not satisfied the high threshold to warrant being considered nor have they cited a persuasive precedent applying to civil claims. Therefore, the Honourable Court strongly holds that it lacks jurisdiction to arrest Judgment at this stage where it has been heard and only awaiting the final decision. Juxtapose, the Applicant’s remedy lies in pursuing its independent suit (ELC Case No. E069 of 2025) or seeking review/appeal after Judgment is delivered. In a nutshell, I discern that the ground to arrest judgment is accordingly declined.

IssueNo. d). Whether consolidation with ELC Case No. E069 of 2025 was appropriate.

55. Under this substratum, the Court is invited to determine whether ELC Case No. 223 of 2020 should be consolidated with ELC Case No. E069 of 2025, which the Applicant has filed separately against the Plaintiffs and Defendants herein. The legal principles for consolidation of suits as provided for under the provision of Section 81 (h) of the *Civil Procedure Act*, 2010 and Rules Committee were set out in the case of “Nyati Security Guards & Services Ltd v Municipal Council of Mombasa (2000) eKLR”, where the Court held as follows: -

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where:-

- a. Some common question of law or fact arises in both or all of them;
 - b. The rights or reliefs claimed in them are in respect of or arise out of the same transaction;
 - c. For some other reason, it is desirable to make an order for consolidating them;
56. Hence, it is incumbent upon this Court to carefully examine the two suits to be consolidated and determine whether the same involve common questions of law or fact, whether the reliefs sought arise out of the same transaction and whether it would be convenient and efficient to consider the same in a consolidated suit.
 57. From the scanty facts availed, at this early stage, the Court takes cognizance of the fact that this matter was filed earlier. In the present matter, both suits revolve around ownership of LR MN/1/1927 and allegations of fraudulent sub - division and registration of titles. On the face of it, the substratum of the disputes is identical, and consolidation would ordinarily be appropriate to ensure consistency and avoid multiplicity of proceedings.



58. However, the timing of this application is surgically critical. As already stated the umpteenth times, this Civil case - ELC Case No. 223 of 2020 has already been fully heard, with parties closing their cases and Judgment reserved. Consolidation at this stage would be impractical and prejudicial, as it would require reopening concluded proceedings. Therefore, while the subject matter of the two suits is similar, consolidation cannot be ordered after one suit has reached the Judgment stage. The Applicant's remedy lies in prosecuting the civil case ELC Case No. E069 of 2025 independently, and if necessary, seeking directions for joint consideration of evidence or invoking review/appeal mechanisms once Judgment in this matter is delivered. The Judgment in this case can be used as a persuasive precedent.
59. For the foregoing reasons, therefore, I firmly hold that the Consolidation of suits – ELC No. 223 of 2020 and with ELC Case No. E069 of 2025 in the given circumstances and the timings is completely not appropriate at this stage, as this suit has already been heard and judgment reserved.

Issue No. e). Who bears the Costs of the Notice of Motion application dated 18th June, 2025

60. 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 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 v Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers v 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. In the case of “Hussein Muhumed Sirat v 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.
60. In the present case, the Honourable Court reserves the discretion not to award costs.

V. Conclusion and Disposition.

61. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, the Honourable Court based on the principles of Preponderance of Probabilities and the balance of convenience arrives at the following decision and make below orders: -
- a. That the Notice of Motion Application dated 18th June, 2025 be and is hereby found to lack merit thus dismissed.
 - b. That the prayer seeking to ostensibly arrest Judgment and to set aside proceedings in the Civil Case - ELC No. 223 of 2020, be and is hereby declined.
 - c. That the Judgement shall proceed to be delivered as scheduled on 6th February, 2026 through the Micro - Soft Teams Virtual means.
 - d. That although parties were earlier on already directed on filing of Written Submissions, out of magnanimity of the Court and taking the wide lapse of time, parties are granted an extension of 14 days from the date of the delivery of this Ruling to have filed and exchanged the said Submissions. _____
 - e. That there shall be no orders as to costs.

It Is So Ordered Accordingly.



**RULING DELIVERED THROUGH MICRO - SOFT TEAM VIRTUAL, SIGNED AND DATED
AT MOMBASA THIS 5TH DAY OF DECEMBER 2025**

.....

**HON. MR. JUSTICE L. L. NAIKUNI
ENVIRONMENT AND LAND COURT
AT MOMBASA**

Judgement delivered in the presence of: -

- a. M/s. Firdaus Mbula – the Court Assistant.
- b. M/s. Morara Advocate for the 1st & 2nd Plaintiffs.
- c. Mr. Masea Advocate holding brief for Mr, Otieno Advocate for the 2nd Defendant.
- d. Mr. Kirui Advocate for the 4th & 5th Defendants.
- e. Mr. Angaya Advocate for the Intended Interested Party.

