

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC LAND APPEAL No. E015 OF 2024

MARY	NABWIRE	BWIRE	1ST
APPELLANT/APPLICANT				
JAMES	WAFULA	WANGIRA	2ND
APPELLANT/APPLICANT				
		VERSUS		
MARTIN	CHEMONGES	SIWA	
RESPONDENT				

RULING:

1. The Respondent in this Appeal (hereinafter referred to as the “Applicant”) filed a Notice of Motion application dated 6th May, 2025 seeking the following orders:-
 - (1) THAT the Honourable Court be pleased to strike out this Appeal.
 - (2) THAT the Honourable Court be further pleased to hold the Appellants liable for contempt of the court orders issued on 22/11/2024 and sentence the Appellants to imprisonment for a term not exceeding two years.
 - (3) THAT the Honourable Court be pleased to set aside, discharge and vacate the orders of stay of execution issued on the 22/11/2024.
 - (4) THAT the Honourable Court be further pleased to set aside the orders issued on 10/4/2025 by the deputy registrar of the court specifically order no. 2 pending the hearing interpartes of this application.

- (5) THAT the Honourable court do set aside the orders issued on 10/4/2025 by the deputy registrar of this court pending the hearing and determination of this application.
- (6) THAT the Honourable Court be pleased to issue orders of permanent and/or mandatory injunction barring the appellants, their agents, servants, employees and personal representatives from interfering with the applicants vacant occupation of land parcel number UASIN GISHU/MOIBEN SCHEME/3.
- (7) THAT the orders to be supervised and/or executed by the Officer Commanding Station Soy Police Station.
- (8) THAT cost of this application and costs of the appeal be provided for.
2. The Application is supported by the Applicant's very lengthy Affidavit of even date. The Applicant set out the background of the dispute, stating that he purchased the parcel of land parcel no. Uasin Gishu Moiben/Scheme 3 measuring 49 Acres (the suit property), from the Appellants but they refused to sign the relevant transfer documents to enable him get a title. He deponed that he filed suit and in Eldoret CM Land Case No. 73 of 2020 and judgment was delivered in his favour on 21/12/2023 conferring on him 28 Acres of the suit land.
3. The Applicant averred that the Respondents lodged an appeal and vide ruling of this court delivered on 22/11/2024 an order of stay of execution of the judgment of the trial court was granted pending hearing and determination of this Appeal. The Applicant claims that equally, the status quo was to be maintained during the pendency of the Appeal, but allowed him to remain in possession of his 28 Acres. The Applicant averred

that the Respondents were aware of the orders having furnished security of KShs. 100,000/- as per directed under the said ruling.

4. The Applicant claims that despite the status quo orders, the Respondents caused the subdivision of the suit property and generation of new mutations, and as a result the register of the suit property was closed. The Applicant averred accused the Respondents of only seeking the orders to prevent him from executing the judgment, so as to be able to fraudulently and illegally transact on the suit land. The Applicant averred that the substratum of the Appeal had been altered, and any decree arising from this Appeal will be incapable of being executed.
5. The Applicant further averred that the Respondent's actions amount to contempt of the court orders made on 22/11/2024. The Applicant accused the Respondent of perjury having lied in their Supplementary Affidavit of 13/5/2023 that the title for the suit property was lost, yet they could not undertake their offending actions without surrender of the original title. He further accused the Respondents of malice in their dealings with the court and averred that entertaining their appeal would be an abuse of the court process and a waste of judicial time and resources.
6. The Applicant deponed that in an attempt to drive him out of his portion, in March, 2025 the Respondents caused his fence to be destroyed by people acting under them. Upon his refusal, the Respondents filed an application seeking an injunction against him, but later withdrew it. That thereafter, the Respondents wrote to the DR seeking to extract the orders issued by Obaga J. on 22/11/2024. He claims that the orders

extracted incorporated an order requiring supervision of the OCS Soy Police Station, which was not issued in the ruling of 22/11/2024. He asked that this offending order by the DR be discharged as it does not reflect the ruling delivered, and is being misused by the Respondents who have resorted to using the OCS Soy and his officers to frustrate him.

7. The Applicant asked the court to issue permanent orders barring the Respondents from interfering with his occupation of the 28 Acres of the suit property. He averred that no prejudice will be suffered by the Appellant if the orders sought are granted, and that it is in the interest of justice that the application be allowed to protect the rights of the parties. He urged the court not to admit the Appeal for hearing, claiming that the Record of Appeal filed was defective as it left out pleadings, witness statements and documents he had lodged before the trial court. The Applicant averred that the Appeal is vexatious, incompetent and an abuse of court and should be dismissed with costs.
8. The Applicant also swore a Supplementary Affidavit dated 16th September, 2025 in further support of the Application. He deponed that he had lodged a complaint of perjury against the Respondents with the County Criminal Investigation Office at Eldoret owing to their false claim that the title deed was lost. He averred that with the intervention of the said Office and the ODPP, the County Lands Registrar supplied the instruments relied on by the Respondents to subdivide the suit land. That among them was the original title to the land, surrendered to the Land Registrar Uasin Gishu, thus confirming that the title was not lost and the Respondents had indeed lied.

9. The Applicant claims that upon subdivision, the suit property was split into two portions registered as Uasin Gishu/Moiben/Scheme 28 measuring 18.14Ha and Uasin Gishu/Moiben/ Scheme 29 measuring 0.80Ha. That the Respondents then sold and transferred Uasin Gishu/Moiben/Scheme 28 to one Walter Obonyo Ogola, who has since been issued with a title thereto in his name. That the transaction was solely aimed at defeating the Applicant's rights to the land as well as defeat the Appeal. In addition, that it contravenes the orders of this court issued on 19/4/2024 and 22/11/2024. He once more asked that the Appeal be struck out and the Respondents be held liable for contempt.
10. The 1st Respondent filed a Notice of Preliminary Objection dated 28th October, 2025 opposing the Application and asking that it be dismissed or struck out on the following grounds:-
- (1) **THAT** the Application is bad in law, incompetent, and fatally defective, having been brought in violation of the mandatory provisions of ***the Civil Procedure Act and the Civil Procedure Rules***.
 - (2) **THAT** the Application is misconceived, frivolous, vexatious, and an abuse of the court process, designed to delay and defeat the due and fair determination of the appeal herein.
 - (3) **THAT** the Application is spurious and devoid of any legal or factual foundation, and therefore incapable of sustaining the orders sought.
 - (4) **THAT** the Application offends the provisions of ***Sections 1A, 1B, and 3A of the Civil Procedure Act***, which enjoin this Honourable Court to facilitate the just,

expeditious, proportionate, and affordable resolution of disputes.

(5) **THAT** the issues raised in the Application are matters properly reserved for the determination of the Appeal on its merits, and not suitable for summary disposal through an interlocutory application.

(6) **THAT** the Application has been filed in bad faith, without jurisdiction and contrary to the inherent powers of this Honourable court.

(7) **THAT** the Application is incurably defective and ought to be struck out with costs to the first Appellant.

11. On his part, the 2nd Respondent filed a Replying Affidavit sworn on 24th October, 2025. He deponed that the Appeal herein is merited. That he had filed the record of appeal and he was ready to have it heard and determined. He averred that in case if any pleading had been left out, a supplementary record can be prepared. He denied going against the ruling of 22/11/2024. He claimed that it is the Applicant who defied the order by trespassing into the suit land and begun ploughing in readiness for the planting season. That he sought the court's intervention prompting the court orders for the OCS to assist, thus there is no reason for the orders of 10/4/2025 to be set aside. He asked the court not to allow the Applicant onto the land as it would defeat his Appeal. He accused the Applicant of speculating and putting the court on hold for no reason. He further asked that the application be dismissed for lack of merit.

12. In response to the forgoing, the Applicant filed a further Affidavit urging that the allegation that this court has no power under the Civil Procedure Act to strike out an appeal is

unfounded. He averred that the court has inherent power under Sections 1A, 1B and 3A of the Civil Procedure Act to make such orders as are necessary for the ends of justice to be met. The Applicant accused the Respondents of designing an elaborate scheme to defeat his interests in the suit land by selling it to a third party, which led to the loss of the substratum of the suit to his detriment. He alleged that the Respondent had no interest of being heard on the matter. He asserted that this court has power to strike out an Appeal where the same is lodged to abuse the court process, and asked that the court strike out the instant appeal, and hold the Appellants liable for contempt of court orders.

Submissions:

13. The court directed that the Application as well as the PO be canvassed by way of written submissions. All the parties complied with the said directions. The Applicant filed his submissions which are dated 16th September, 2025. The 1st Respondent's submissions are dated 18th December, 2025 while the 2nd Respondent's submissions are dated 19th December, 2025.

Analysis and Determination:

14. I have carefully considered the application, the 1st Respondent's notice of preliminary objection, the rival affidavits and annexures thereto, the written submissions filed on behalf of the parties herein and authorities cited in support of the parties' respective positions. The issues arising for determination by this court are:-

- (i) *Whether the 1st Respondent's PO is merited*
- (ii) *Whether the Appellants should be held liable for contempt of the orders of this court made vide the ruling delivered on 22/11/2024*
- (iii) *Whether the orders of stay of execution of the judgment of the trial court should be set aside, discharged and/or vacated*
- (iv) *Whether the court should set aside the orders made by the deputy registrar on 10/4/2025*
- (v) *Whether the injunctive relief sought by the Applicant should issue*
- (vi) *Whether this Court should strike out the instant Appeal*
- (vii) *Who shall bear the costs of this application?*

(a) Whether the 1st Respondent's PO is merited

15. The first step is to determine the merits of the 1st Appellant/Respondent's PO, since if merited, it may well have the effect of disposing of this application. On the definition of what a Preliminary Objection is, I draw from the Court of Appeal decision in ***Mukisa Biscuit Manufacturing Co. Ltd. vs West End Distributors Ltd [1969] E.A. 696***, where ***Law, JA*** (p.700) in that case held that:-

"I agree that the application for the suit to be dismissed for want of prosecution should have taken the form of a motion, and not that of a 'preliminary objection' which it was not. So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary

point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration .”

16. Similarly, in the same case, Newbold, P stated (p.701) that:-

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

17. The principle of it is abundantly clear that a PO is a point of law which must not be blurred with factual details which are contested, or such facts that would require to be proved through evidence. A preliminary objection that bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.

18. Applying the above principles, it is clear that the only ground that would qualify as a proper preliminary point is that touching on the jurisdiction of the Court. For that, the 1st Respondent

claims that the Application has been filed in bad faith, without jurisdiction and contrary to the inherent powers of this Honourable court.

19. The jurisdiction of this court to hear Appeals from the lower court is well set at Section 13(4) of the Environment and Land court Act, which provides that:

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

20. In addition, Sections 3 and 3A of the Civil Procedure Act, under which this court operates, provide that:-

3. Saving of special jurisdiction and powers

In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.

3A. Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

21. That notwithstanding, the 1st Respondent proffered an appeal to this court alongside the 2nd Respondent, believing it to have the requisite jurisdiction to determine its grievances. Interestingly, the 1st Respondent now seeks to challenge the jurisdiction of the very court she herself approached. It is misleading for the

1st Respondent to ask the court to determine its appeal, but at the same time attempt to lock out the Applicant's application arising out of her malicious actions arising out of and/or relating to the same appeal.

22. The 1st Respondent's objection on the purported contravention of the inherent powers of this court therefore lacks foundation. As a result, the 1st Respondent's Preliminary objection is not only not a proper PO in the strict sense of the term, but also lacks merit.

(b) Whether the Appellants should be held liable for contempt of the orders of this court made vide the ruling delivered on 22/11/2024

23. A general definition given to the term contempt of court is the wilful disobedience of a court order, decree or undertaking. In order to establish contempt, an applicant must demonstrate that the following conditions, set out in the case of **Samuel M. N. Mweru & Others vs National Land Commission & 2 others [2020] KEHC 9233 (KLR)**, have been met:-

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the

elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*^[47] who succinctly stated:-

‘There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

(a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

(b) the defendant had knowledge of or proper notice of the terms of the order;

(c) the defendant has acted in breach of the terms of the order; and

(d) the defendant's conduct was deliberate’.”

24. The ruling delivered on 22/11/2024 was with respect to an application dated 16/10/2024 where the Respondents herein sought review and setting aside of an earlier ruling delivered on 15/10/2024 where their application for stay of execution pending appeal had been denied. Upon considering the application dated 16/10/2024, the court in its ruling of 22/11/2024 held as follows:-

“13. ... For this reason, I find that the Applicants have established that there is sufficient cause to have the application reviewed. I accordingly review the ruling dated 15.10.2024 to the extent that there shall be stay of execution of the decree of the lower court pending the hearing and determination of the Appeal herein on

condition that the Applicants deposit security for costs in court in the sum of KShs. 100,000/- within 30 days failing which the stay shall lapse.”

25. There is no doubt that the wording of the order is clear and unambiguous, as well as binding on the parties. There is also no doubt that the 1st and 2nd Respondent were well aware of the existence of the order having paid the required security for costs as directed therein. What is in contention is whether the 1st and 2nd Respondent breached the terms of the order, and whether such conduct was deliberate and/or wilful.
26. Strictly speaking, the 1st and 2nd Respondent did not execute the judgment of the trial court. In any event, the order of stay was not directed at them. The order of stay of execution can only have been aimed at the Applicant herein who was the successful party and the one intending to execute the judgment.
27. What the 1st and 2nd Respondents did was subdivide the suit property and sell it to a third party. The Respondents deliberately went behind the court and stole a march on the Applicant by not only subdividing the suit property, but also disposed of a large portion of it.
28. True to the 2nd Respondent's contention therefore, they cannot be said to have disobeyed any Court order as the ruling of 22/11/2024 only issued an order of stay of execution. In the strict sense of it, illegal though the 1st and 2nd Respondents' conduct might have been, and in as much as it was undoubtedly wilful and deliberate, it was not a direct contravention of the order. If this should be considered, then they cannot indeed be held in contempt of this Court's Orders.

(c) Whether the orders of stay of execution of the judgment of the trial court should be set aside, discharged and/or vacated

29. A stay of execution is a discretionary relief granted by the court, with the sole aim of preventing an appeal from being rendered nugatory. Being a discretionary relief, an order of stay of execution can be set aside if it was obtained through fraud, material misrepresentation, failure to disclose crucial facts, or if the initial grounds for granting it no longer exist or were based on a misunderstanding of facts. It may also be lifted if the applicant fails to comply with conditions set by the court, such as providing security for the decree.
30. In this instance, the Respondents herein moved the court for an order of stay of execution to allow them pursue their undoubted right of Appeal. This court exercised its discretion and issued the order of stay, to ensure that the subject matter of the appeal, which is the suit property herein, was preserved pending the outcome of this Appeal.
31. There is sufficient evidence to show that it is the Respondents who have in fact gone ahead and altered the character of the land before their own appeal is even admitted for hearing. I have seen the mutation form, application for Land Control Board consent for the subdivision, as well as the title deed issued to a third party with respect to one of the parcels arising out of the impugned subdivision.
32. In addition, the 2nd Respondent deponed in his Supplementary Affidavit sworn in support of the application for stay that original title deed was lost and that they were in the process of

obtaining a new title. As averred by the Applicant, the subdivision could not have been possible without the Respondents surrendering the original title in consideration of the subdivision scheme. From the documents annexed to the Applicants Supplementary Affidavit filed in this Application, it appears that indeed the Respondents had the original title and surrendered it when it suited them to achieve the illegal subdivision and sell. No doubt therefore, that the order of stay of execution was granted through misrepresentation and material non-disclosure of facts by the Respondents.

33. The purpose for the grant of stay of execution herein was granted to secure the appeal by the Appellants, so as to enable them to pursue their right to appeal without the threat of execution by the decree-holder. From the foregoing, however, it is clear that the 1st and 2nd Respondent obtained orders of stay and proceeded to blatantly misuse them to the detriment of the Applicant who had been barred from executing his decree and enjoying the fruits of his judgment.
34. The Respondents have been silent on the issue of the alleged sale. However, the 2nd Respondent callously stated that their actions were not in contravention of the order of stay granted to them in good faith by this court. Although the 1st and 2nd Respondent did not contravene the order of stay of execution of the judgment, it goes without saying that their actions go against the principle that he who comes to equity must do so with clean hands.
35. Therefore, in such a case where it is clear that the stay order is causing greater injustice to the Applicant than the execution would to the Respondents, it may set aside the stay order. In

the premises, I find that it is only fair and in the interests of justice that the order of stay of execution pending appeal issued on 22/11/2024 be set aside entirely.

(d) Whether the court should set aside the orders made by the deputy registrar on 10/4/2025;

36. When a court has delivered a ruling on an application, the order extracted pursuant to thereto is the official and/or formal expression of the court's decision. The order defines the rights of the parties as determined in the ruling and is the actionable document that enables the successful party to enforce the Court's decision. It follows therefore that such an order upon extraction must clearly reflect the terms of the ruling as expressed by the court itself.

37. The bone of contention under this issue is the Applicant's claim that the Order extracted with respect to the ruling delivered on 22/11/2024 by the Respondents is not an accurate reflection of the impugned decision of the court.

38. At paragraph 24 herein above, this court has produced an extract of the finding of this court delivered through the ruling of 22/11/2024. However, the order extracted and signed by the Deputy Registrar on 10th April, 2025 added a second relief to wit:-

“(b). The OCS Soy Police Station and the DCI Kamukunji to oversee compliance thereof.”

39. It must be noted clearly, that the Respondents herein never included such a prayer in their application dated 16th October, 2024 which gave rise to the subject ruling. And as a result, the court never issued such a prayer in its ruling of 22/11/2024. If

the Respondents felt the need to have the security organs ensure compliance with the order, they ought to have approached the court for a review or variation of the orders so that the Applicant could be heard on the same before a determination was made.

40. As it is, the Deputy Registrar appears to have sat in review of the ruling delivered by this court on 22/11/2024, a matter for which the said officer had no jurisdiction to undertake. As a result, the way the order was extracted by the Respondents does not reflect a true, accurate and complete position of the findings made by the Court in its Ruling delivered on 22/11/2024.
41. Consequently, it is only fair that the said additional relief not granted by the court be removed from the order extracted on 10/4/2025 and/or discharged.

(e) Whether the injunctive relief sought by the Applicant should issue

42. The Applicant also asked this court to grant a permanent and/or mandatory injunction restraining the Respondents herein from interfering with his occupation of his portion of the suit property as conferred to him by the judgment of the trial court. The question is whether such an injunctive relief can issue at the interlocutory stage.
43. This question is answered at volume 24 **Halsbury's Laws of England**, 4th Edition paragraph 948, where it is explained as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but,

in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff ... a mandatory injunction will be granted on an interlocutory application”.

44. By way of Kenyan case law, in the case of **Kenya Breweries Ltd & another vs Washington O. Okeya (2002) eKLR**, the Court of Appeal stated as follows on mandatory injunctions.

“A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

45. In the case of **Nation Media Group & 2 others vs John Harun Mwau (2014) eKLR**, the Court of Appeal said;

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.”

46. The above cited cases lay down the principles of law to be considered in an application for mandatory injunction. The condition that stands out is that the applicant must establish the existence of special and exceptional circumstances that warrant the granting of an order of mandatory injunction at the interlocutory stage.
47. In the present case, despite having succeeded in the trial court, the Applicant has not been able to execute his decree owing to the orders of stay issue on 22/11/2024. Unfortunately, while he was barred from executing the decree, the Respondents herein moved to have the land subdivided and went ahead to sell a larger portion of the suit property to a third party. At the moment, the Applicant faces the risk of eviction by a third party not known to this court.
48. This in my view presents a special set of circumstances that would allow this court to issue a mandatory order of injunction at this interlocutory stage to protect him and his interests pending the hearing and determination of the appeal. The said order of injunction will not only bind the 1st and 2nd Respondent,

but will also be binding on any other person or third party claiming under them or whose rights accrue from them.

(f) Whether this Court should strike out the instant Appeal

49. Due to the fact that the subject of the appeal has been significantly altered and even sold, the Applicant herein has asked that the present Appeal be struck out for being an abuse of the court process. The Applicant has also averred that the Record of Appeal itself is defective since it left out some pleadings, witness statements and documents he had filed before the trial court.

50. In the locus classicus case of **DT Dobie Company (Kenya) Ltd vs Muchina (1982) KLR**, Madan JA (as he then was) stated as follows:-

“If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it. No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go

forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

51. The fact that the land was subdivided and even sold does not mean that the Appellant will not be able to pursue his judgment should he successfully defend the Appeal. The land is still there, and although the register for the title is closed, its records still exist at the lands Office. No matter the outcome herein, the suit land can still be traced as the Applicant himself has shown through the documents annexed to his supplementary Affidavit. Therefore, not all is lost for the Applicant.
52. As to the claim that some pleadings, witness statements and other documents placed before the trial court are missing in the record of Appeal, as pointed out by the 1st respondent, the same can easily be remedied by filing a Supplementary Record of Appeal.
53. The Appeal does raise substantial questions of law that ought to be heard by the court. Therefore, I see no reason to strike out the Appeal at this stage, seeing as the defects arising out of form can be easily remedied.

(g) Who shall bear the costs of this Application?

54. When it comes to costs, Section 27 of the Civil procedure Act provides that:-

27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to

determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

55. This Application would not have been necessary if the 1st and 2nd Respondent had acted in good faith and allowed the status of the suit property to be maintained pending the hearing and determination of this Appeal. They did not do so however, and their conduct is what had the Applicant rushing to this court for relief.
56. Although the Applicant did not prove contempt against the Respondents, he has largely succeeded in proving the rest of the prayers in his application, and is thus entitled to the costs of the Application. There being no justifiable cause why he should be denied the said costs, the court will exercise its discretion and award him costs as prayed.

Orders:-

57. Consequently, the 1st Appellant/Respondents' Notice of preliminary Objection lacks merit and the same is dismissed.

The Application dated 6th May, 2025 partially succeeds. The following orders hereby issue:-

- (a) The orders of stay of execution issued on the 22/11/2024 be and are hereby set aside and/or vacated.
- (b) The order extracted on 10th April, 2025 and signed by the Deputy Registrar is reviewed/varied to remove the directive that the OCS Soy Police Station and the DCI Kamukunji to oversee compliance thereof.
- (c) An order of mandatory injunction do and is hereby issued barring the appellants, their agents, servants, employees, personal representatives and anyone claiming under or through them in any way from interfering with the applicants vacant occupation of land parcel number UASIN GISHU/MOIBEN SCHEME/3.
- (d) The above order to be supervised and/or executed by the Officer Commanding Station Soy Police Station.
- (e) The Respondent/Applicant shall have the costs of this application and the Preliminary objection.

58. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **12TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mr. Rabala for 1st Appellant.

Mrs. Khayo fro 2nd Appellant.

Ms. Luseria for Respondent.

Court Assistant - Laban.