

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC NO. E105 OF 2025**

**CHINA COMMUNICATIONS CONSTRUCTION CO. LTD .....  
PLAINTIFF**

**VERSUS**

**SOUTH SEAS SERVICES LTD ..... DEFENDANT**

**RULING**

1. In this case there are **3** applications: an application dated **8<sup>th</sup> August 2025**, another one dated **2<sup>nd</sup> September 2025** and a third one dated **30<sup>th</sup> October 2025**. The first 2 seek orders diametrically opposed to each other in that each is seeking an injunction against the opposite party in this case.
2. On **3<sup>rd</sup> December 2025** on the matter came up before me and counsel for the respondent indicated that there is an application for consolidation and proposed hearing of the first two applications. It happens that consolidation is only one prayer in the second application.

**Motion Dated 8/8/25**

3. The first application dated **8<sup>th</sup> August 2025** seeks the following orders:
  - a. **An order of injunction restraining the defendant/respondent from in any way interfering with a plaintiff's occupation and/or possession of the property known as Old Kilifi Ferry Ramp at Kilifi Harbor in Kilifi County pending the hearing and determination of this suit;**
  - b. **That the Kenya Ports Authority be joined as an Interested Party in the proceedings/suit to confirm ownership of suit property and issuance of license to the applicant plaintiff;**

**c. That the *status quo* be maintained pending the hearing of the application.**

4. The application is supported by the affidavit of **Liu Tingming**. The grounds upon which the application is brought are that the applicant is the lawful licensee of the suit property; applicant was awarded the permit and license by the Kenya Ports Authority, the owner of the suit premises in the year 2015 and has been enjoying peaceful and an interrupted occupation of the same to date; the license and permit was granted to the applicant in the public interest to ease and facilitate the transportation and movement of materials and goods for the construction of the Lamu Port in which the plaintiff is currently engaged; the applicant constructed the temporary jetty on the suit premises in strict compliance with licenses and approvals issued by all relevant government bodies and authorities; the respondent through its agents without any color of right or consent have attempted to trespass or encroach on the suit premises and are threatening to forcefully occupy the property by chasing away the employees of the applicant as well as its security personnel away; the applicant has heavily invested in the project of the construction of the temporary jetty at the suit premises and stands to suffer irreparable loss if the respondent is not restrained by an order of injunction; that further, unless the respondent is restrained, its activities will hinder the plaintiff in delivering on its mandate in the construction of the Lamu Port, a public project.

**Response to The Motion Dated 8<sup>th</sup> Of August 2025.**

5. The defendant responded to the application through the replying affidavit of **Rama Hamisi Bindo** dated **12<sup>th</sup> September 2025** in which the deponent reiterated the matters contained in the defendant's application dated **2<sup>nd</sup> September 2025**.

## **Motion Dated 2/9/2025**

6. The motion dated **2<sup>nd</sup> September 2025** has been filed by the defendant. The defendant seeks the following orders:
  - a. The court do issue an order injunction restraining the plaintiff or its agents from in any manner interfering with the defendant's occupation and use of the suit premises located along Kilifi Creek, Kilifi County, measuring 4.844 acres pending the hearing and determination of the suit;
  - b. That the suit be consolidated with **Malindi ELC Number 113 Of 2025 China Communication Construction Company Limited Versus Kenya Forest Service;**
  - c. The interim orders of *status quo* be varied, set aside or interpreted to mean that since the applicant defendant was already in occupation of the suit premises when the orders were issued the final to continue to operate from its premises pending the hearing and determination of this suit;
  - d. That an order be issued directing the Kilifi County Commissioner or anyone responsible for the Administration Police in Kilifi County to remove all the Administration Police officers at the suit property forthwith.
  
7. The application is supported by the affidavit of **Rama Hamisi Bindo**, director of the defendant. The grounds upon which the application is brought are as follows: the plaintiff was granted part of the suit premises by the Kenya Forest Service in 2015 for a period of 7 years; the plaintiff's special use license expired in 2022 and the same as not been renewed or extended; the defendant was issued with a special use license for 30 years by the Kenya Forest Service starting from **1<sup>st</sup> August 2025**; the defendant was handed over the suit property by Kenya Forest Service on **31<sup>st</sup> July 2025** and has been operating its business of constructing fishing vessels from the suit premises; the plaintiff has been misusing the orders of *status quo* and has been harassing the defendant's staff using administrative police officers and the provincial administration; the defendant has a program to construct four fishing vessels; the defendant project is part of the blue economy program under the

Ministry Of Mining And Blue Economy; the defendant has engaged other investors to construct 10 fishing trawlers at the site at a great cost and the project has stalled due to actions of the plaintiff who has interrupted the defendant's business; the suit premises are owned by the Kenya Forest Service which has been separately sued by the plaintiff in **Malindi ELC Number 113 Of 2025** and it is in the interest of justice that the two matters be consolidated.

8. When this matter came up first on **13<sup>th</sup> August 2025**, the court in granted **prayer 6** in the application dated **8<sup>th</sup> of August 2025**. That prayer is as follows:

**"That further and for avoidance of any doubt, the *status quo* be maintained pending the hearing of the application."**

9. The plaintiff filed submissions dated **29<sup>th</sup> September 2025** on his application dated **8<sup>th</sup> August 2025**.

10. It is evident from what I have stated herein above that at the heart of the two applications, cumulatively, are only 2 major issues as follows:

- a. Should orders of injunction issue and, if so, against which of the two parties in this case;**
- b. Should the present suit be consolidated with ELC 13 of 2025?**

11. Regarding the first issue, there is no doubt that the plaintiff came to court first. The plaintiff's case is that it is in possession of the suit premises having secured license from the Kenya Ports Authority who owns the suit land. The plaintiff relies on a letter dated **8<sup>th</sup> August 2025** from the Kenya Ports Authority stating as follows:

**RE: APPROVAL FOR CONSTRUCTION OF TEMPORARY GTA AT KILIFI CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED**

**We hereby confirm that Kenya Ports Authority granted approval to China Communication Construction Company**

**Limited in July 2015 to construct a temporary jetty at old Kilifi Ferry ramp in Kilifi Harbour in accordance with the provisions of KPA Act and Harbour Regulations**

**Signed,**

**Harbor Master and General Manager Marine Operations  
For Managing Director.**

12. The plaintiff has a letter dated **20<sup>th</sup> April 2015** from the Office of the Director General, Kenya Maritime Authority, stating that the Kenya Maritime Authority had no objection to the proposed construction of the jetty. Among the requirements in that letter was an approval letter from the Kenya Ports Authority, an approval letter from the Fisheries Department, a letter of approval from the Kenyan National Hydrographic and Oceanographic Committee. The plaintiff also has a letter dated **28<sup>th</sup> April 2015** from the County Government of Kilifi Lands Energy Housing and Urban Development notifying it of the approval of the proposed construction of the Kilifi temporary jetty and setting out the conditions for the project. In another letter dated **31<sup>st</sup> March 2015** County Government of Kilifi indicated that the Office of the County Director of Fisheries had no objection to the construction of the temporary jetty. The same letter warns the plaintiff that the site proposed for the jetty used to be a landing site for the Mnarani BMU, proposing that Mnarani BMU be consulted for an agreement as to how the site will be amicably used by both parties. A NEMA EIA License dated **5<sup>th</sup> June 2015** was exhibited by the Plaintiff; it permitted the project to be implemented. Photographs showing the plaintiff's developments on the site are exhibited also.
13. The defendant does not dispute all those facts set out above, including a claim that the plaintiff has been issued with a license, and in fact it is the defendant who has exhibited a letter dated **7<sup>th</sup> August 2015**, granting the plaintiff the license to use the premises

(*exhibit 5 in the supporting affidavit*). However, the defendant avers that the plaintiff's license expired in 2022 and the plaintiff failed to even seek extension or renewal thereof. Notwithstanding that concession regarding an expired KPA- issued license, the defendant, in the same breath, also says that the suit land does not belong the Kenya Ports Authority but to the Kenya Forests Service who have now allocated the suit premises to the defendant for a period of **30** years with effect from **1<sup>st</sup> August 2025** vide a license. A copy of a receipt for Kenya Shillings **5,169,424/-** is exhibited by the defendant as evidence of payment of the requisite fees to the Kenya Forest Service. The deponent states that the defendant entered into a joint venture with a Chinese Company, Blue Dreams Fisheries Limited, for construct fishing vessels and to start fishing business, but the plaintiff has engaged Administration Police officers who are harassing the defendants staff and stopping them from accessing the premises. Further, the defendant alleges that the plaintiff had approached it to see whether he could be allowed to utilize a portion of the suit premises. The response of the defendant was that the plaintiff should vacate the premises, but the plaintiff on hearing that, rushed to court and filed the present suit. In the same breath the deponent states that by the time the orders of *status quo* were issued by this Court the defendant had already taken possession and ship building had already began. Photographs are exhibited by the defendant to support this statement. Copy of an invoice the plaintiff for the proposed rent exhibited by the deponent.

14. Conspicuously absent from all evidence presented by the defendant is evidence of registered title of the suit land or other evidence in favour of Kenya Forest Service. Also, conspicuously absent from participation in the process that gave the plaintiff its

purported lease from Kenya Ports Authority in the year 2015 is the Kenya Forest Service.

15. The question arises why was there zero participation by Kenya Forest Service if the site was their land? What enthralled Kenya Forest Service into a such a deep spell as to allow their precious land to be developed so extensively by the plaintiff without ever raising a finger? Did the Kenya Forest Service just wake up and find that the plaintiff has been using their land without their knowledge?
16. The extent of developments carried out by the plaintiff on the suit premises defies such a possibility.
17. I do not see any title in the name of the Kenya Ports Authority or the Kenya Forest Service attached to a supporting affidavit or replying affidavit of the plaintiff. {It may appear at a cursory glance that the authority upon which either Kenyan Ports Authority could issue a lease to the plaintiff not been demonstrated. That fact by itself does not however deter this court from determining whether an injunction should issue in respect of one of the parties in this case because there are other indicators of who is deserving of such an injunction.
18. I reiterate that it is noteworthy that Kenya Forest Service does not appear to have been involved at all when the plaintiff was obtaining its purported lease from the Kenya Ports Authority, yet the efforts of the plaintiff culminated in a lease in 2015.
19. It is also crucial that the defendant disclosed a chink in its armour when it stated in its replying affidavit that it demanded that the plaintiff should vacate the suit premises, which meant that the purported exercise of authority by **KFS** in a 30-year lease to the defendant found the plaintiff still on the premises, regardless of the claim of expiry of the license issued to it by the Kenya Ports Authority.

20. If the defendant had ever taken possession of the suit premises, then its possession thereof could not have been exclusive, for there is an admission that the plaintiff was still on site. Nobody evicted the plaintiff after the expiry of its purported lease in the year 2022 and the issue of its departure has only come with the entry of the defendant onto the site. That position is further entrenched by the defendant's own evidence in the form of a letter of **6<sup>th</sup> August 2025** from **KFS** demanding that it vacates the site, which according to the plaintiff's counsel, underscores the fact that the Kenya Forest Service recognized that the applicant was the one in occupation of the suit premises as at the time of filing of the application dated **8<sup>th</sup> August 2025**. This court is convinced that that is the correct position.
21. It is the defendant's reply in an affidavit dated **12<sup>th</sup> September 2025** that has answered some of the crucial questions that have been dominant in this court's mind as it prepared the present ruling. A letter from Kenya Forest Service dated **7<sup>th</sup> August 2015** is attached to that replying affidavit as exhibit **RHB 2**. That letter is addressed to the Project Manager, China Communication Construction Company Limited. It reads as follows:

**"August 7<sup>th</sup> 2015**  
**The Project Manager**  
**China Communication Construction Company Limited**  
**PO Box 39037-00623**  
**Nairobi**

**APPLICATION FOR CONSTRUCTION OF A TEMPORARY JETTY FOR BERTHING BERGE AT MNARANI OLD FERRY SITE WITHIN KILIFI CREEK MANGROVE AREA IN KILIFI COUNTY.**  
**I refer to your letter dated 20th June 2015 requesting for permission to construct a temporary jetty at Mnarani old ferry site within Kilifi Creek Mangrove Area.**

**Authority is hereby granted for construction of a temporary jetty within Kilifi Creek Mangrove Area at Mnarani subject to the following conditions:**

- **Payment of Annual Forest Land Rent for 2.22 acres at Kenya Shillings 20,000 by car per year for 7 years amounting to Kenya Shillings 310, 800.00**
- **Compensation for Mangroves amounting to Kenya Shillings 121, 640.00**
- **Annual Jetty fees at Kenya Shillings 35,000 per year for 7 years amounting to Kenya Shillings 245,000**
- **Undertake rehabilitation of 10.0 hectares of mangrove area within Kilifi Creek with the assistance of Community Forest Association (CFA).**

**The Ecosystem Conservator Kilifi shall supervise the works and ensure minimal impact on the mangrove ecosystem**

**Signed,  
Director.”**

The defendant insists that it was put into possession of the suit premises which was confirmed vide a letter dated **31<sup>st</sup> July 2025** written by the County Forest Conservator Kilifi to the Chief Conservator Of Forests. That letter reads as follows in part:

**“I refer to your letter dated 28<sup>th</sup> July 2025 regarding the user license granted to South Seas Services Limited for the development operation and management of a shipyard within Sokoke Forest Station Kilifi County under the Coast Conservation Area.**

**I wish to formally inform you that the designated area of land has been successfully handed over to the licensee. The handover was conducted today that the 1<sup>st</sup> July 2025 in the presence of representatives from South Seas Services Limited...**

.....

.....

**Yours faithfully  
Ruwa K. Masha  
County Forest Conservator  
Kilifi County  
Kilifi”**

22. Also to the defendant’s replying affidavit are exhibited the following documents:

- a. Permit from Kenya Bureau of Standards dated 19<sup>th</sup> March 2025;
- b. Kilifi County Government single business permit issued on 13<sup>th</sup> February 2025;
- c. Kenya Fisheries Service approval for construction of 4 vessels dated 21<sup>st</sup> March 2025;
- d. Nema's acknowledgment of receipt of an Environmental Impact Assessment Project report dated 12th September 2025;
- e. KFS invoice dated 25<sup>th</sup> July 2025;
- f. KFS official receipt dated 30<sup>th</sup> July 2025 for Kenya Shillings 5,169,420/-;
- g. A Cooperative Bank Funds Transfer Slip for Kenya Shillings 5,169,420/-.

23. This court is convinced that the defendant did all he could to get documentation that could get him on to the land now claimed by the KFS, in order to operate its business thereon. And KFS did all it could to come to the aid of the defendant by filing a replying affidavit in **Malindi ELC No 13 Of 2025** which, in the interest of justice and in view of the consolidation proposal, this court has been compelled to peruse while dealing with the present applications in this file. That affidavit is sworn by Ruwa Kalama Masha, the County Forest Conservator Kilifi County. In that affidavit, he faults the plaintiff for distinguishing between forest land and **KPA** land while referring to the suit land. In classifying the "*forest land*" into two distinct parcels whereas it was, according to the deponent, always only one parcel. In his affidavit evidence, he states that it was not proper to distinguish between the Ferry Site at Kilifi Harbor by saying that it is under **KPA** and that the adjoining area comprising of mangrove forest as falling under the jurisdiction of the **KFS**. He maintains that the entire parcel of land covered by those two descriptions was occupied and utilized by the plaintiff and constitutes "*forest land*" under the jurisdiction of the **KFS**; that under **Article 62(1) (i)** of the Constitution of Kenya all land between high and low water marks belongs to the public and is

vested in the National Government in trust for the people of Kenya. The deponent attempted at **paragraph 6** of the replying affidavit to demonstrate, by way of disclosing the acreage covered by mangroves as well as citing **Proclamation Number 44 1932** and **Legal Notice 174 Of 20<sup>th</sup> May 1964** that the suit land is public land under the protection and management of KFS. The deponent stated that upon expiry of the authorization, the plaintiff engaged the **KFS** several times for the purpose of renewing the license to no avail and that the plaintiff was issued with the Notice to Vacate dated **6<sup>th</sup> August 2025**. The deponent maintains that the plaintiff has blatantly refused neglected and/or failed to obtain a special user license as required by **Section 56** or the Forest Conservation and Management Act 2016 but continues to encroach unlawfully on a protected mangrove forest in open contravention of the law; that the plaintiff having failed to comply with the terms and conditions of the Forest Management and Conservation Act 2016 regarding a special use license after the expiry of their initial lease, the plaintiff has no lawful rights or interest in the mangrove forest land.

24. Despite all that exhibition of a wealth of documentation from Kenya Forest Service the plaintiff maintains that the provisions of the Kenya Ports Authority Act Cap 391 govern the suit premises and vest them in and under the direct control of the Kenya Ports Authority. That the 2<sup>nd</sup> Schedule of the Act has clearly listed the Kilifi Harbour Port as one of the ports under the Kenya Ports Authority.

25. An explanation for the letter dated **7<sup>th</sup> August 2015** from the Kenya Forest Authority is given by the Plaintiff as follows: that the purported letter attached to the further affidavit of the defendant dated **25<sup>th</sup> September 2025** applying to the Kenya Forest Service over premises was in respect of some extra area that the plaintiff needed which unfortunately covered the existing mangrove trees which fell under the jurisdiction of the **KFS** while the jetty area

remained under **KPA**. It was in response to that letter that **KFS** wrote their letter dated **7<sup>th</sup> August 2015** and granted authority to the plaintiff to use the extra area covered by the mangrove trees with stringent conditions that the applicant was to rehabilitate about 10 hectares of the mangrove area. It is submitted that the plaintiff was unable to meet the conditions set out by the **KFS** and abandoned the mangrove area to concentrate their activities on the Jetty area which was under the jurisdiction of the Kenya Ports Authority. It is maintained that the plaintiff does not have any interest in the area under mangrove trees and their only interest is on the harbour where the construction of the jetty was done. This court is convinced that that is the correct position.

26. **Ruwa Kalama Masha's** affidavit dated **19<sup>th</sup> September 2025** is a double-edged sword that is even sharper on the edge that faces **KFS** the defendant. For how can it be said that the plaintiff has no more lawful rights or interests in mangrove forest land when the plaintiff has been operating on a harbour that cannot now be called a mangrove forest land anymore since it was developed into a Jetty area? How can it be said to be encroaching unlawfully on protected mangrove forest while documentary evidence show all infrastructure meant to be used for a harbour is in place on the disputed land? How can he be said to be undermining sustainable forest management by remaining in the premises already so extensively developed? That can not be said unless the plaintiff is seeking to expand its occupation beyond the Jetty area which we are not told is the case, and which in any event the plaintiff has denied.
27. This court has not seen any evidence from the defendant or the **KFS** that any of the sums demanded of the plaintiff in the letter dated **7<sup>th</sup> August 2015** have ever been paid to the **KFS**. What the plaintiff states is that that was only meant for the additional land

covered by mangroves which was in the hands of the **KFS**, and once those demands were made, the Plaintiff dropped the proposal to take up the mangrove forest land, and does not need it even now. This court is convinced that is the correct position.

28. Lastly, for consideration is the plaintiff's Further Affidavit of Liu Tingming dated **14<sup>th</sup> October 2025** filed in **ELC Case E113 of 2025**. That affidavit at **paragraph 4** states that the plaintiff protested to the Kenya Port Authority regarding interference with the suit property by the defendant and the **KPA** wrote to the applicant vide a letter dated third 3<sup>rd</sup> October 2025 stating that they have granted the applicant approval and right to continue using the designated Kilifi Jetty clearly marked with co-ordinates, and which falls within the suit property. That letter is exhibited as "**LT3**" in that affidavit. It is addressed to the Chief Conservator of Forests by the Manager Contracts and Conveyancing within the Kenya Ports of Forest. It reads as follows:

**9<sup>th</sup> October 2025**  
**The Chief Conservator of Forests**  
**Kenya Forest Service**  
**P.O Box 30513-00100**  
**Nairobi**

**Dear Sir/ Madam**

**REF USE OF JETTY AT THE OLD KILIFI RAMP WITHIN THE KILIFI HARBOUR PORT BY CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED.**

**We refer to the subject matter above and ELC Number E105 of 2025 at the Malindi Court.**

**Kenya Ports Authority in 2015 granted approval to China Communications Construction Company Limited (hereinafter CCC) for the construction and use of the subject jetty as a complementary facility during the development of the Lamu Port as per KPA mandate under the KPA Act.**

**Previously the area where the jetty occupies and the landing site abutting the same were used for ferry**

operations before the construction of the Kilifi bridge and has never been forested. The area also falls within Kilifi Harbor and Kilifi Port which is a scheduled seaport under KPA's ambit.

The purpose of this letter is to inform you that KPA (through CCCC) has been utilizing the jetty for development of the Lamu Port and requires the facilities for their ongoing construction of berth 19B within the port of Mombasa. The facility is therefore not available for allocation to any other party. We attach here to copies of various correspondences on the same for your information and reference.

**Robert Warui**  
**Signed**  
**Manager Contracts and Conveyancing**  
**For Managing Director.”**

29. Another letter dated **3<sup>rd</sup> October 2025** from KPA to the plaintiff states as follows:

**3<sup>rd</sup> October 2025**

**China Communications Construction Co. Limited**

**PO Box 390 37-00623**

**Mombasa**

**RECONSTRUCTION OF MOMBASA BIRTH 19B AND ASSOCIATED INFRASTRUCTURE TENDER NUMBER KPA /004/2024-25 /PDM APPROVAL OF CONTINUED USE OF KILIFI JETTY.**

Kenya Ports Authority KPA acknowledges receipt of your request regarding continued use of Kilifi Jetty located at Old Kilifi Ferry Ramp in Kilifi Harbor. This is aimed at facilitating the smooth execution of the Berth 19B Project and subsequent related works.

KPA here by grants China Communications Construction Company Limited approval and the right to continue using

**the designated Kilifi Jetty as illustrated within the attached coordinate boundary P1 to P11 subject to strict adherence to all applicable port regulations and safety guidelines....  
The approval shall remain in force unless express revoked by the KPA.**

**Yours sincerely**

**Signed**

**Harbour Master and General Manager Marine Operations  
For Managing Director.**

30. In yet another letter dated **3<sup>rd</sup> October 2025** from KPA to the County Commissioner it is written as follows:

**The County Commissioner**

**Kilifi County**

**Kilifi**

**RE: USE OF KILIFI PORT BY CHINA COMMUNICATIONS  
CONSTRUCTION COMPANY LIMITED.**

**.....**

**Please note that during the construction of the Lamu Port which is a flagship project of the government, KPA granted approval to China Communications Construction Company (CCCC) in July 2015 to construct a Jetty in the Kilifi Harbour. You will note that the Kilifi Harbor is under the mandate of KPA pursuant to the provisions of the Kenya Ports Authority Act which lists all the scheduled ports under KPA's mandate including Mombasa, Lamu, Mtwapa, Malindi, Kilifi and Shimoni. In that regard any development and use or operations of facilities along the scheduled coastlines are done only with prior approval of KPA.**

**In this case we wish to confirm that the grant of approval to CCCC was informed by various considerations including the projects they undertake for the Ports Authority and various Government Agencies. Further, use of Kilifi Jetty also eases traffic from the Port of Mombasa for non-commercial services.**

**Currently CCCC is undertaking construction of the Berth 19B for KPA which has commenced. This is a capital investment and its importance to the government and the public cannot be gainsaid. The project is time bound with corresponding obligations to both CCCC and KPA .....**

**....."**

31. This court makes 3 vital observations that are conclusive as to the fate of the first two applications before it as follows: **first**, there is considerable weight in the contents of the KPA letters in favour of the plaintiff's present application: if the suit premises used to be part of the Old Kilifi Harbor or the Kilifi Port the claim that the same falls within the jurisdiction of the **KFS** is far much weaker than the claim that it falls under the jurisdiction of the **KPA**. **Secondly**, as opposed to the defendant who is engaged in a purely private business pursuit, the very factor that the plaintiff is engaged in at least **2** public interest projects within Kenya, one of them related to the LAPSET which is a major Kenya Vision 2030, a medium term national plan, and the likelihood that those operations would be disrupted by denial of use of the suit premises by the plaintiff when both the Plaintiff and the KPA need the premises, makes it necessary for an injunction to be issued in the plaintiff's favour. **Thirdly**, it is uncontroverted that the plaintiff has invested considerable and valuable infrastructure on the suit premises. Apparently nothing has been invested by the defendant on the suit premises and it will not be a farfetched conclusion for this court to

find that the defendant is anxious to get rid of the plaintiff in order to use the established Harbour infrastructure which it has not spent a single coin developing, which would be considerably cut out its start-up overheads. That it has not developed anything legally on the suit premises is evident from the letter by **NEMA** dated **12<sup>th</sup> September 2025** written as follows:

**“South Sea Services Limited  
P.O Box 96430 80100 Mombasa GPO**

**RE: ACKNOWLEDGMENT OF AN ENVIRONMENTAL IMPACT ASSESSMENT COMPREHENSIVE PROJECT REPORT.**

**The National Environment Management Authority NEMA acknowledges receipt of your Environmental Impact Assessment Comprehensive Project Report prepared by Rael Nelly Nyanchama EIA/Audit Lead Experts (Firm of Experts) Expert License Number NEMA EIA/ ERPL/22439. The reference number for the EIA Project Report is NEMA/ENVIS/CPR/02029 for future correspondence.**

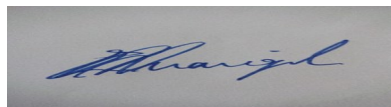
**The report will be reviewed in accordance with the Environmental Impact Assessment and Audit Regulations 2003 and the Authority will review and communicate its decision within the stipulated timelines.**

**In the interim, please do not commence or proceed with any development of the proposed project until you receive official communication on the same. You are advised to comply accordingly.**

**Signed  
For Director General.”**

32. If there are developments carried out by the defendant pursuant to its proposed project on the suit premises (and there is a massive amount of evidence in the form of express claims or admissions of millions of shillings in investment in its supporting affidavits and replying affidavits that suggest this is the correct position) these are subject to further investigation as to whether they are legally authorized under **Section 58** of EMCA, which, as emphasized in NEMA's letter of **12<sup>th</sup> September 2025**, bars any development before an EIA licence has been issued.
33. In the premises, claims of potentially illegal developments by the defendant on the suit premises shall not move this court at all to dismiss the plaintiff's application dated **8<sup>th</sup> August 2025** for grant the defendants' application of **2<sup>nd</sup> September 2025**. It is the case that the plaintiff has satisfied the two conditions for the grant of an interim injunction set out in *Giella Vs Cassman Brown* [1973] EA 358.
34. The upshot of the foregoing is that the plaintiff's application dated **8<sup>th</sup> August 2025** has merit and it is hereby granted in terms of **prayers number 3** and **4** thereof. In the present case I find all merit in ordering that the defendant shall bear the costs of the present application in any event, and I so order.

**Dated, signed and delivered at Malindi on this 11<sup>th</sup> February 2026.**



**MWANGI NJOROGE,  
JUDGE, ELC, MALINDI.**