

REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT KWALE

ENVIRONMENT & LAND CASE NO.245 OF 2021

KORE FORESTS LIMITED

PLAINTIFF

- VERSUS -

THE ATTORNEY GENERAL

THE LAND REGISTRAR - KWALE

EN MARWANGA

MWANAJUMA ALI BUWA

DEFENDANTS

AND

URMILABEN G PATEL 1ST INTERESTED PARTY

PANSTAFF DEVELOPMENT

COMPANY LIMITED 2ND INTERESTED

PARTY/APPLICANT

RULING

I. Introduction

1. This Honourable Court was called upon to make a determination unto the Notice of Motion application dated 17th November 2025 by *Panstaff Development Company Limited*, the Applicant herein. The Application was brought under the provision Sections 1A, 1B, 3, 3A, of the Civil Procedure Act, Cap. 21, Sections 68, 69 and 80 of the Land Registration Act, No. 3 of 2012 and Order 22 Rule 22 (1), Order 45 Rule 1, and Order 51 Rule 1 of the Civil Procedure Rules 2010.

II. The Applicant's case

2. The Applicant sought for the following orders: -

a) Spent

b) Spent

c) The Honourable Court be pleased to set aside/vacate the consent order adopted on 6th June 2022 in relation to property Title KWALE/MSAMBWENI 'A'/1708.

d) The Honourable Court be pleased to order rectification of the register as relates to property originally Title Number KWALE/MSAMBWENI 'A'/1708 or any resultant titles thereof to the effect that the 2nd Interested Party is restored as the registered proprietor.

e) Costs be provided for.

3. The application was premised on the grounds, testimonial facts and the averments made out under the 26 Paragraphed supporting affidavit of PATRICK MBOGO, a Director of the Applicant herein

together with annexures marked as “PM” annexed thereto. The Deponent averred that:-

- a) He was a Director of the Applicant fully conversant with the matters surrounding this application. I am competent and duly authorised to swear this affidavit.
- b) The Applicant was at all material times the bona - fide proprietor of property Title Number KWALE/MSAMBWENI 'A'/1708 pursuant to a title deed issued on 8th September 1987 (Hereinafter referred to as “The Suit Property”).
- c) To date, the Applicant had been in possession of the original Title Deed to the suit property. Annexed and mark as “PM - 1” was copy of the Title Deed.
- d) On 6th June 2022, the Honourable Court was moved by some of the parties herein to adopt as an order of the court a consent dated 11th May 2022 (Hereafter referred to as “The Consent”) between the Plaintiff and the 4th and 5th Defendants through their Advocates.
- e) The terms of the consent read as follows in part:

- i. 2) KORE FORESTS Limited be and is hereby declared as the registered and bona - fide proprietor of the property known and registered as KWALE/MSAMBWENI 'A'/1708;***
- ii. 3) The Land Registrar be and is hereby ordered to immediately rectify the original Green Card relating to the property KWALE/MSAMBWENI 'A' 1708 to the effect that KORE FORESTS LIMITED is shown as the lawfully registered absolute proprietor of the property known as KWALE/MSAMBWENI 'A'/1708***
- iii. 4) Plot No. KWALE/MSAMBWENI 'A' 1708 shall revert to KORE FORESTS LIMITED by deleting entries No. 7 & 8 and restoring entries No. 10 and 11 of 30/09/2011.***
- iv. I annex and mark PM-2 copy of the Consent.***

f) The Applicant grieved that the consent was a product of a well choreographed fraudulent scheme, collusion and gross suppression of material facts as narrated below.

g) Prominently, the 4th Defendant, Mwanajuma Ali Buwa, passed away on 2nd October 2019. Annexed and marked as “PM – 3” was a copy of a ruling in Mombasa ELC No. 174 of 2014 where it was reported that Mwanajuma Ali Buwa, a party therein as well, passed away on 2nd October 2019.

- h) There had never been appointed a legal representative to substitute the 4th Defendant in this case.
- i) It was legally unknown from whom counsel for the 4th Defendant obtained instructions to enter into the consent.
- j) The Applicant's proprietorship was cancelled pursuant to a purported High Court Order in Civil Suit 916 of 2007 (O.S), which conferred ownership by adverse possession to Mohamed Said Dosa, Haji Said Shehe, Tumbu Mbaruku, Athumani Hamisi Ali, Ali Kassimu Mkungu and Idi Mohamed Mwatandara (collectively the Mohameds).
- k) A title deed was issued to the Mohameds on 1st March 2010. Annexed and marked as "PM - 4" was copy of the extract of the Green Card showing the various entries discussed below. The title to the Mohameds was entry Numbers 6 and 7.
- l) There was no record of such court proceedings between the parties in any court relating to the suit property. Annexed and marked as:
- i. PM - 5, Letter dated 29th October 2010 addressed to the Deputy Registrar High Court of Kenya Nairobi;

- ii. PM - 6, Letter dated 8th November 2010 from the Deputy Registrar High Court of Kenya, Nairobi;
 - iii. PM - 7, Letter dated 23rd April 2012 from the Chief Land Registrar to the 3rd Defendant and copied to the Deputy Registrar High Court of Kenya, Nairobi;
 - iv. PM - 8, Letter dated 15th May 2012 from the Deputy Registrar Milimani Law Courts, Environment and Land Law Division;
 - v. PM - 9, Letter dated 5th November 2012 addressed to the 3rd Defendant.
- m) While following up and laboring to restore its proprietorship, the Applicant lodged a restriction against the suit property on 25th January 2011. The restriction was entry number 8 on the Green Card extract.
- n) To date, the Applicant was puzzled how the restriction was removed without notice and an opportunity to be heard on the decision to remove the restriction.

- o) The Plaintiff in this case alleged to have purchased the suit property from the Mohameds and a Title Deed issued to it on 30th September 2011. The Plaintiff's title was entry number 10 on the Green Card.
- p) The Plaintiff could not obtain any good title from the Mohameds in the circumstances.
- q) On 23rd August 2013, the office of the 2nd and 3rd Defendant published a notice in the gazette with the effect of cancelling the Mohamed's title to the suit property having learnt that High Court Civil Suit 916 of 2007 [O.S) did not exist. Annexed and mark as "PM - 10" was a copy of the Gazette Notice Number 12047 of 23rd August 2013.
- r) Naturally, it was expected that upon such cancellation, the title reverted to the Applicant but which did not happen.
- s) The 4th and 5th Defendants were registered as proprietors of the suit property pursuant to an order issued in Mombasa High Court Misc. Cause No. 20 of 2011. The 4th and 5th Defendants' title was entry number 9 on the Green Card.
- t) Again, there was no record of such a case in Mombasa High Court relating to the suit property.

- u) Thus, the 4th and 5th Defendants could not confer any good title to the Plaintiff through the consent.
- v) No matter how many hands the suit property had passed through on account of fraud, fictitious suits and recently the illegal consent, the suit property legitimately belonged to the Applicant.
- w) This court had the powers to see through these illegalities and order rectification of the register to restore the Applicant as the proprietor.
- x) The Applicant reasonably apprehended that the Plaintiff was in the process of hurriedly disposing off the suit property to third parties which will only elongate this web hence the need for stay of any further execution of the consent and an order of inhibition to preserve the register as the court considers the Applicant's cry for justice.

I. The responses by the 4th, 5th and 6th Defendants/ Respondents'

4. The 4th, 5th and 6th Defendants/Respondents opposed the application through a 12 Paragraphed Replying Affidavit sworn by ABDULHAKIM ABEID KHAMIS, JAMAL ABEID KHAMIS and MOHAMED ABEID KHAMIS, the 4th, 5th and 6th Defendants/Respondents herein

with three (3) annexures marked as “AJM - 1 to 3” on 29th January, 2024 where they averred that:-

- a. In response to Paragraphs 3 and 4 of the supporting affidavit herein they stated that both parties properly engaged their Advocates and the matter was amicably settled through a Consent dated 21st September 2023 which was duly filed in Court and they had since complied to some of the Orders. (Annexed in the affidavit were copies of the consent, correspondence letter dated 14th March, 2023 and letter by the Plaintiff dated 20th February, 2023 marked as “AJM - 1 - 3”).
- b. The Party to a suit was bound by the actions of his legal representative and therefore the Plaintiffs herein were bound by the consent entered into by their lawyer while representing them.
- c. This was initially an inheritance dispute between three families. The Plaintiffs represented two families while the 1st, 2nd and 3rd Defendants represented the three families.
- d. In order to reach an amicable settlement, they had discussions with the Plaintiffs resulting in the consent

recorded on 21st September, 2023 whereupon the land was sub divided and each family got its separate Title Deed.

- e. On the houses being demolished, those houses belonged to tenants at will who were duly compensated for their structures. That none of the Plaintiffs had any structures demolished on their said plots.
- f. The 2nd Defendant had already gotten his share and Title Deed which he had sold and never wanted anything to do with case.
- g. The Plaintiffs' former Advocates had ostensible authority to deal with their case and that the Applicants had not demonstrated that the Advocates acted negligently or without authority.
- h. They had even given the Plaintiffs their Title Deed for their shares upon the consent being recorded and they did not understand why the Applicants were complaining about six months later.
- i. The Affidavit was in response to the Applicants' application.

II. The responses by the 1st Interested Party, the Defendants and Plaintiff

5. The 1st Interested Party, the Defendants and Plaintiff in this matter never filed any response in respect to the Notice of Motion subject to ruling before this court despite service by HARRISON MURIITHI as per his Affidavit of service dated 20th November 2025, where he deponed as follows:-

i. THAT I am an advocate of the High Court of Kenya practising as such at Muriithi & Masore Law, Taiyebi House, 1st Floor, Suite 2, Nkrumah Road, Mombasa.

ii. THAT I am on record for the 2nd Interested Party. As such I am duly empowered by Rule 8 of the Advocates (Practice) Rules 1966 to depose on non - contentious matters arising in the course of executing the brief.

iii. THAT on 19th November 2025 at 0909hrs, I served the Advocates for the Parties with the 2nd Interested Party's Notice of Motion dated 17.11.2025. In the same breath, notified them that the matter is coming up for mention on 3.12.2025.

iv. THAT I relayed this message across the parties' email addresses disclosed in the various pleadings before the court. We have severally corresponded across these email addresses over the matter. I annex and mark HM - 1 the email extract.

- v. **THAT as far as the Plaintiff is concerned, in addition to serving its advocate on record M/s. Olwande Oballa <olwandeoballaady@gmail.com >, I served the Plaintiff's Director, Mr. Karani Nyamu through the email <karaninyamu@gmail.com >. I got this email address from the Plaintiff's Company CR-12 certificate, which I obtained from the Business Registration Service (BRS) portal on 19th November 2025. I annex and mark HM - 2 copy of the CR-12 certificate.**
- vi. **THAT accordingly, all parties have ample notice of the Interested Party's motion.**
- vii. **THAT what I have said is true to the best of my knowledge, information and belief.**

III. The Supplementary Affidavit by 2nd Interested Party

6. With the leave of Court, the 2nd Interested Party further filed a 14 Paragraphed Supplementary Affidavit sworn by HARRISON MURIITHI on 23rd January 2026 where he deponed as follows:-

- a) He was an advocate of the High Court of Kenya practising as such at Muriithi & Masore Law, Taiyebi House, 1st Floor, Suite 2, Nkrumah Road, Mombasa.
- b) He was on record for the 2nd Interested Party and as such was duly empowered by Rule 8 of the Advocates (Practice) Rules 1966 to depose on non - contentious and formal matters arising in the course of executing a brief.
- c) He swore this affidavit as a supplemental support to the 2nd Interested Party's Notice of Motion application dated 17th November 2025.
- d) On 19th November 2025, he obtained the Company CR - 12 Certificate of the Plaintiff herein from the Business Registration Service (BRS Portal). Annexed and marked as "HM - 1" was a copy of the certificate.
- e) From the CR-12 Certificate, the directors were listed as Charles Carl Karani Nyamu and Luke Ouko Odhiambo Michael.
- f) On the CR - 12 Certificate, the contact E-mail Address was given as karaninyamu@gmail.com.
- g) On 15th January 2026 at 1419hrs, he wrote an email to M/s. Ochoki Associates and the Plaintiff through. In the email, he

reminded the parties that the case was coming up on 28th January 2026. Annexed and mark as “HM - 2” was a copy of the email extract.

- h) On the same day at 1624hrs, Mr. Karani responded to his email.
- i) Mr. Karani was categorical that KORE FORESTS Limited had not sued the Office of the Attorney General and 5 others. Annexed and mark as “HM - 3” was a copy of the email extract.
- j) It was clear that the Plaintiff was unaware of this litigation.
- k) The litigation was initiated and all along steered by a phantom. Therefore, it followed that there were no instructions issued by the Plaintiff to Counsel to enter into the consent of 11th May 2022 with the 4th and 5th Defendants in respect of property Title Number KWALE/MSAMBWENI 'A'/1708.
- l) Thus, he urged the Court to allow the 2nd Interested Party's Notice of Motion application of 17th November 2025 in its entirety.

IV. Submissions

7. On 28th January 2026 while all the parties were present in Court, the court directed that even though the Notice of Motion application dated 17th November, 2025 was unopposed the Honourable court reserved the 5th March 2026 for delivery of its ruling.
8. The Honourable Court has considered the Notice of Motion, the Record of the Court and the Pleadings in the suit.

V. Analysis & Determination.

9. I have carefully read and considered the pleadings herein by all the parties, the relevant provisions of the Constitution of Kenya, 2010 and statutes.
10. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-

a) Whether the 2nd Interested Party has made out a case for the setting aside of the consent order adopted on 6th June 2022 in relation to property Title Number KWALE/ MSAMBWENI 'A' /1708?

b) Whether an order of Rectification of the register as relates to property originally Title Number KWALE/ MSAMBWENI 'A'/1708 or any resultant titles thereof should be issued?

c) Who will bear the Costs of Notices of Motion applications dated 17th November 2025.

ISSUE No. a). Whether the 2nd Interested Party has made out a case for the setting aside of the consent order adopted on 6th June 2022 in relation to property Title Number KWALE/MSAMBWENI 'A' /1708?

11. Under this sub title the Court is tasked with the examination of the Consent order adopted on 6th June 2022 by this Honourable Court differently constituted and whether or not it should be set aside.
12. The legal rationale of setting aside a Consent was same as that of Contract. The Courts would strictly proceeded to set aside Contracts only if they are founded on fraud, collusion, misrepresentation of facts or omission. In the Court of Appeal in the case of:- ***“Brooke Bond Liebig Limited - Versus - Mallya [1975] EA 266 at 269”*** Law Ag. P said:-

“A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”

13. The law on variation of a Consent Order is now settled to the effect that the variation of a Consent Judgment can only be on grounds that would allow for a contract to be vitiated. These grounds include but are not limited to fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the Court,

absence of sufficient material facts and ignorance of material facts.

14. Hancox JA (as he then was) in the famous case of: ***“Flora Wasike - Versus - Destimo Wamboko (1982 -1988)1 KAR 625”***, held as follows:-

“It is now settled law that a Consent Judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.”

15. Additionally, in the case of:- ***“Kenya Commercial Bank Limited - Versus - Specialised Engineering Co. Limited [1982] KLR 485”***, Harris J correctly held *“inter alia”*, that: -

- 1. A Consent order entered into by Counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the Consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.***
- 2. A duly instructed Advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.***

16. In the same case the Court further held that:-

“An Advocate has general authority to compromise on behalf of his client as long as he is acting bona fide and not contrary to express negative direction. In the absence of proof of any express negative direction, the order shall be binding”

17. In the case of: ***“Samson Munikah practicing as Munikah & Company Advocates - Versus - Wedube Estates Limited Nairobi Civil Appeal No. 126 of 2005”*** the court stated:-

“This appeal raises the vexed question: (of) what are the circumstances in which a consent judgment may be set aside” In BROKE BOND LIEBIG (T) Limited - Versus - MALLYA (1975) E.A. 266 the then Court of appeal for East Africa set out the circumstances in which a Judgment freely entered into by parties to a dispute in court would be set aside: -

“The circumstances in which a consent judgment may be interfered with were considered by this court in Hirani - Versus - Kassan (1952)19 EACA 131 where the following passage from Section on Judgments and orders, 7th Edition vol. 1, P. 124 was approved:

“Prima Facie, any order made in the presence and with the consent of the counsel is binding on all parties to the proceedings or action, and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement”.

18. Further in the case of:- ***“Hirani - Versus - Kassam [1952] 19 EACA 131”*** the Court of Appeal with approval quoted the following

passage from Seton on Judgments and Orders, 7th edition, Vol.1 p.124 as follows:-

“Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them..... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court..... or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the Court to set aside an agreement.....

It is now well settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in J. M. Mwakio - Versus - Kenya Commercial Bank Limited Civil Apps 28 of 1982 and 69 of 1983. In Purcell - Versus - F.C. Trigell Limited [1970] 3 All ER 671, Winn LJ said at 676:-

“It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with the knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

19. From the Court record, it is not in dispute that on 6th June 2022 this Honourable Court, differently constituted, adopted a consent dated 11th May 2022 between the Plaintiff and the 4th and 5th

Defendants declaring the Plaintiff as the lawful proprietor of Title Number KWALE/MSAMBWENI 'A'/1708 and directing rectification of the register accordingly. The legal effect of adoption of such consent was to confer upon it the force of a Judgment of the Court capable of execution unless lawfully set aside.

20. The Court has carefully examined the grounds advanced by the Applicant and the 2nd Interested Party in support of the present application. The first critical issue raised is that one of the parties to the consent, namely the 4th Defendant, Mwanajuma Ali Buwa, had died on 2nd October 2019, long before the consent dated 11th May 2022 was entered and subsequently adopted on 6th June 2022. This fact was supported by documentary evidence annexed to the Supporting Affidavit. No evidence was tendered before this Court to demonstrate that substitution of the deceased party had been undertaken in accordance with the law prior to the entry of the said consent.

21. The law is clear that upon the death of a party, any proceedings against such a party can only continue upon substitution of the deceased with his or her legal representative. In the absence of such substitution, any proceedings conducted, including entry into

a consent affecting the estate of the deceased, are rendered legally incompetent and a nullity ab initio. Consequently, any consent entered into purporting to bind a deceased party without substitution is incapable of conferring valid legal rights.

22. Secondly, this Court has considered the averments made in the Supplementary Affidavit of Harrison Muriithi Advocate, wherein it was deponed that upon inquiry from the Plaintiff's own Director, the Plaintiff denied knowledge of the existence of the suit and further denied issuing any instructions to counsel to enter into the consent dated 11th May 2022. This deposition was supported by annexed email correspondence.

23. The legal implication of such evidence, if uncontroverted, is profound. While it is correct that an advocate ordinarily has ostensible authority to bind his client, such authority presupposes the existence of a Client - Advocate relationship grounded on lawful instructions. Where it is demonstrated that no instructions existed at all, any consent entered into is rendered invalid for want of authority.

24. Thirdly, this Court has considered the broader context presented by the Applicant demonstrating apparent irregularities in the

history of ownership of the suit property, including allegations of fictitious court orders, cancellation of titles through Gazette Notice, and lack of traceable court proceedings relating to some of the purported ownership transfers. While this Court refrains from making definitive findings on ownership at this interlocutory stage, such allegations raise serious questions as to the propriety and legitimacy of the consent that was ultimately adopted.

25. Further, it is evident that the Applicant and the 2nd Interested Party were not parties to the consent despite their demonstrated interest in the suit property and despite their alleged proprietary claims. The effect of the consent was to directly affect proprietary rights without affording such affected parties an opportunity to be heard.

26. This Court is guided by the settled principle of law that fraud, mistake, misrepresentation, illegality, lack of authority, and concealment of material facts constitute sufficient grounds for setting aside a consent order. The Court is satisfied that the Applicant and the 2nd Interested Party have established sufficient grounds falling within these recognized exceptions.

27. In particular, this Court finds the following factors to be material and decisive:

- a) The consent was entered into in respect of a deceased party without substitution;
- b) There is credible evidence that the Plaintiff may not have issued instructions to enter into the consent;
- c) The consent directly affected proprietary rights of parties who were not involved in its negotiation or execution;
- d) The circumstances surrounding the consent raise serious questions regarding its legality and procedural propriety.

28. The legal threshold for setting aside a consent order is satisfied where fraud, collusion, illegality, or ignorance of material facts is demonstrated. This court finds that all these grounds have been established in the instant case. The consent order adopted on 6th June 2022 cannot be allowed to stand. It was procured through fraud and collusion, was entered into by parties without valid authority, and was premised on fictitious and non-existent court proceedings. This court holds that the said consent order is null and void and must be set aside in its entirety.

29. In view of the foregoing, this Honourable Court finds and holds that the consent order adopted on 6th June 2022 does not meet the legal threshold of a valid and binding consent capable of being sustained in law. Accordingly, the Applicant and the 2nd Interested Party have successfully established sufficient grounds for its setting aside.

ISSUE No. b). Whether an order of Rectification of the register as relates to property originally Title Number KWALE/MSAMBWENI 'A'/1708 or any resultant titles thereof should be issued?

30. The Applicant and the 2nd Interested Party have urged this Court to order rectification of the land register so as to restore the 2nd Interested Party as the registered proprietor.

31. The power of this Court to order rectification of the Land Register is provided under Section 80 of the Land Registration Act, No. 3 of 2012, which empowers the Court to direct rectification where registration was obtained, made, or omitted through fraud or mistake.

32. However, rectification of title is a drastic remedy that has the effect of conclusively determining proprietary rights. Such orders

should only be made upon full hearing of the parties and evaluation of evidence through a substantive trial unless the circumstances are exceptionally clear and uncontested.

33. In the present case, while serious allegations of fraud and illegality have been raised, this Court finds that the issue of ownership of the suit property remains contested and can only be conclusively determined after a full hearing.

34. The Court therefore finds that while the consent order must be set aside, it would be premature at this stage to order rectification of the register in favour of any particular party.

35. Nevertheless, in order to preserve the suit property and prevent further prejudice, this Court finds it necessary to issue preservatory orders.

ISSUE No. c). Who will bear the Costs of Notices of Motion applications dated 17th November 2025

36. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of

Supreme Court of:- ***“Jasbir Rai Singh - Versus - Tarchalan Singh”***
eKLR (2014) and ***Cecilia Karuru Ngayo - Versus - Barclays Bank of Kenya Limited, eKLR (2014).***

37. In the case of ***“Hussein Muhumed Sirat - Versus - Attorney General & Another [2017] eKLR”***, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In this case, this Honourable Court has reserved its discretion in not awarding costs.

VI. Conclusion & Disposition

38. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to the Preponderance of Probabilities and the balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the application, this court arrives at the following decision and makes below order:-

a) THAT the consent order adopted by this Honourable Court on 6th June 2022 in respect of Title Number KWALE/MSAMBWENI 'A'/1708 be and is hereby SET ASIDE in its entirety.

- b) **THAT** an order of inhibition be and is hereby issued pursuant to the provision of Section 68 (1) & (2) of the Land registration Act, No. 3 of 2012 and Regulation 79 (1) & (2) of the Land (general Regulations) of 2017 against Title Number KWALE/MSAMBWENI 'A'/1708 and any resultant sub - divisions thereof pending the hearing and final determination of this suit.
- c) **THAT** the Land Registrar Kwale County be and is hereby directed to maintain the status quo in the land register relating to Title Number KWALE/MSAMBWENI 'A'/1708 pending final determination of the suit.
- d) **THAT** the prayer for rectification of the land register is deferred pending full hearing and determination of the suit.
- e) **THAT** for expediency sake there shall be a final Pre - Trial Conference conducted on 8th July, 2026 in accordance with the provision of Order 11 of the Civil Procedure Rules, 2010. There shall be hearing on 3rd November, 2026 preferably through Physical Means.
- f) **THAT** there shall be no orders as to costs.

IT IS SO ORDERED ACCORDINGLY.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 5TH DAY OF MARCH 2026.

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

Ruling delivered in the presence of:

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Mureithi Advocate for the Applicant.
- c) M/s. Kiti Advocate for the 1st & 2nd Defendant.
- d) Mr. Sausi Advocate for the 4th Defendant.