



**Mwamose & another (Suing as administrators for and on behalf of the Estate of Mwamose Chirapho - Deceased) v Nyawa & 3 others (Environment and Land Case E051 of 2024) [2026] KEELC 1228 (KLR) (23 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1228 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE E051 OF 2024  
LL NAIKUNI, J  
FEBRUARY 23, 2026**

**BETWEEN**

**HAMIS NYAWA MWAMOSE ..... 1<sup>ST</sup> PLAINTIFF**

**MBEYU RUMBA MBILI ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS ADMINISTRATORS FOR AND ON BEHALF OF THE ESTATE OF  
MWAMOSE CHIRAPHO - DECEASED**

**AND**

**LUVUNO NYAWA ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**NADZUA WATO MVURYA ..... 1<sup>ST</sup> PROPOSED DEFENDANT**

**LUVUNO MCHANJO MWADZE ..... 2<sup>ND</sup> PROPOSED DEFENDANT**

**RULING**

**I. Introduction**

1. Before this Honourable Court for hearing and determination are two Notices of Motion applications dated 11<sup>th</sup> June 2025 filed by the Plaintiff herein. The first application was instituted by Hamis Nyawa Mwamose and Mbeyu Rumba Mbui (Suing as Administrators for and on Behalf of the Estate of Mwamose Chirapho Deceased).
2. Upon effecting service, the Defendants/Respondents' filed a Replying Affidavit sworn by Luvuno Nyawa, the 1<sup>st</sup> Defendant, and dated on 22<sup>nd</sup> August 2025. The Honourable Court shall deliberate on the response in more depth later on in this Ruling.



3. The second Notice of Motion application was filed through a Chamber Summons application dated.....by the proposed Defendants, Nadzua Wato Mvurya Luvuno Mchanjo Mwaidze.
4. Upon effecting service, the Plaintiffs/Respondents filed a Replying Affidavit sworn by Mbeyu Rumba Mbui, the 1<sup>st</sup> Plaintiff, and dated on 30<sup>th</sup> July 2025. The Honourable Court shall deliberate on the response in more depth later on in this Ruling.

## **II. The Notice of Motion Application dated 11<sup>th</sup> June, 2025 by Plaintiff/Applicant.**

5. The application was brought under the provisions Sections 1A, 1B, and 3A of the Civil Procedures Act, Cap. 21 of the Laws of Kenya, Order 40 Rule 1 and 2 of the Civil Procedures, 2010 and Order 51 Rule 1 of the Civil Procedure Rules 2010.
6. The Plaintiff/Applicant sought for the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of this suit an injunction do issue against the Defendants restraining them whether by themselves, their servants and/or agents from paying out any compensation monies, entering, trespassing into, mining, excavating, cultivating, developing, building, selling, disposing of and/ or interfering in any way whatsoever with the Plaintiffs' possession and quiet enjoyment of the suit property measuring approximately 8.79 hectares and numbered title numbers:Kwale/Chigato/1047 and Kwale/Chigato/1096 by the 2nd Defendant for purposes of compensation for the Muache Multi Purpose Dam Project.
  - d. That the costs of this application be provided for.
7. The application was premised on the grounds that: -
  - a. The Estate of the late Mwamose Chirapho, deceased, is the legal and beneficial owner of the suit property measuring approximately 8.79 hectares and numbered title numbers Kwale/Chigato/1047 and Kwale/Chigato/1096 by the 2nd Defendant for purposes of compensation for the Muache Multi Purpose Dam Project.
  - b. The Defendants in brazen violation of the Plaintiff's property rights have set aside a portion of the suit property measuring 2.66 hectares numbered Kwale/Chigato/1096 in favour of the 1<sup>st</sup> Defendant as beneficiary for purposes of compensation for the Muache Multipurpose Dam Project.
  - c. The 1st Defendant has either through acts of trickery and/or outright fraud sought to deprive and disposes the Estate of the late Mwamose Chirapho, deceased of a portion of the suit property measuring 2.66 hectares and have the same numbered Kwale/Chigato/1096 in favour of the 1s defendant as beneficiary for purposes of compensation for the Muachemulti Purpose Dam Project.
  - d. The Defendants' illegal and unlawful actions are a threat property rights that will subject the Estate of the late Mwamose Chirapho, deceased to immense and irreparable loss and damage unless the Defendants are restrained.
  - e. The balance of convenience tilts in favour of the Plaintiffs in the circumstances of this case.



- f. It is fair and just that the property rights of the Estate of the late Mwamose Chirapho, deceased be safeguarded and further loss be mitigated by restraining the Defendants from acts of plunder and wastage.
8. The application was further premised on the grounds, testimonial facts and averments made out under the supporting affidavit dated 11<sup>th</sup> June 2025 and sworn by Hamisi Nyawa Mwamose and Mbetu Rumba Mbui the Plaintiffs/Applicants herein together with annexures marked as “HM 1 to 4” annexed thereto. It was averred that: -
- a. The Plaintiffs/Applicants averred that they are the duly appointed Administrators of the Estate of the late Mwamose Chirapho (deceased), being his son and mother respectively, and are therefore competent to swear the affidavit on behalf of the estate. Annexed and marked “HM1” were copies of the Limited Grant of Letters of Administration and their respective National Identity Cards.
- b. It was stated that the late Mwamose Chirapho (deceased) was, during his lifetime, the registered, legal and beneficial owner of all that parcel of family land known as Title Number KWALE/CHIGATO/1047, measuring approximately 8.079 Hectares, situate within Chigato Locality, Kwale County, following due adjudication, registration and issuance of title. Annexed and marked “HM2” was a copy of the Certificate of Title.
- c. The Plaintiffs/Applicants deponed that the entire suit property lies within a declared public project zone known as the Muache Multi Purpose Dam Project, and that the land was subject to compulsory acquisition by the National Land Commission for purposes of the said project.
- d. However, upon gazettelement of the acquisition vide Gazette Notice No. 5783 dated 5th May 2023, it emerged that only 6.88 Hectares had been acquired, while the balance of approximately 2.66 Hectares had, for reasons unknown to the Applicants, been hived off on paper and registered as Title Number Kwale/Chigato/1096 in the name of the late Yama Nyawa Baya (deceased), with the 1st Defendant being listed as the legal beneficiary for purposes of compensation. Annexed and marked “HM3” were copies of the relevant Gazette Notice.
- e. The Applicants stated that the circumstances under which the 1st Defendant appeared as proprietor of a portion of Title Number Kwale/Chigato/1047, now registered as Title Number Kwale/Chigato/1096, remained unclear and puzzling, as they had never had such a neighbour on the ground and, to the best of their knowledge, the 1st Defendant and her late husband own separate titled land situated at a considerable distance from the suit property.
- f. It was further stated that following the gazettelement of the acquisition notice, the Applicants confronted the 1st Defendant, who initially feigned ignorance of the existence of Title Number Kwale/Chigato/1096, but later confirmed possession of the title, alleging that it had been given to her for safe-keeping by her late husband.
- g. The 1st Defendant further informed the Applicants that she had been encouraged by local officials to pursue compensation since she held a paper title, notwithstanding that the land did not belong to her family, which actions prompted the Applicants to lodge a formal grievance with the agents of the 2nd Defendant on the ground, Messrs. Frontman Consultants. Annexed and marked “HM4” was a copy of the grievance lodged.
- h. The Applicants averred that the hiving off of their registered suit property and the subsequent registration of a portion thereof for the benefit of the 1st Defendant, through apparent deliberate falsifications and alterations of adjudication records and the Kwale Lands Registry



records, was intended to suppress and deny the Estate of the late Mwamose Chirapho (deceased) its proprietary rights and the right to prompt and just compensation, rendering the actions wrongful, illegal and unlawful.

- i. It was further stated that at all material times, the local officials and the Defendants were fully aware of the true, correct, legal and beneficial ownership of the suit property and that there never existed a parcel known as Kwale/Chigato/1096 neighbouring Title Number Kwale/Chigato/1047 prior to the declaration of the Muache Multi Purpose Dam Project zone.
- j. The Applicants expressed apprehension that unless the Defendants are restrained as a matter of priority, the estate's proprietary rights to the suit property stand to be violated, suppressed and outrightly denied, thereby exposing the estate to immense and irreparable loss and damage.

### **III. The responses by the Defendants/Respondents**

9. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents opposed the Application through filing of an 25 Paragraphed Replying Affidavit sworn by Luvuno Nyawa, the 1<sup>st</sup> Defendant/ Respondent herein on 22<sup>nd</sup> August 2025. The 1<sup>st</sup> Defendant deponed that: -
  - a. She was a female adult of sound mind and understanding and the 1<sup>st</sup> Defendant/Respondent in the suit and was therefore well versed with the application herein and competent to swear the Replying Affidavit.
  - b. She had read and understood the Application dated 11<sup>th</sup> June 2025 together with the Supporting Affidavit sworn by the Plaintiffs/Applicants on the same date, the contents of which were explained to her by her Advocate on record, whose advice she sought where necessary and verily believed to be true.
  - c. The 1<sup>st</sup> Defendant/Respondent averred that the application was mischievous, misleading, a red herring and devoid of merit, having been carefully drafted with the intention of wasting the Court's time.
  - d. She further stated having been advised by her Advocate, which advice she believed to be correct, that the Supporting Affidavit sworn by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants offended the provision of Order 19 Rule 3 (1) and Rule 5 of the Civil Procedure Rules, 2010, in that affidavits ought to be confined to matters within the personal knowledge of the deponent and sworn in the first person.
  - e. The 1<sup>st</sup> Defendant/Respondent deponed that she had been sued in respect of Title Number Kwale/Chigato/1096, registered in the name of her late husband Yama Nyawa Baya (deceased), and contended that the suit and application were fatally defective as she had been sued in her personal capacity and not as a Legal Administratrix of the estate of the deceased.
  - f. She further noted that she had not been cited in the Family Court to enable her take out Grand Letters of administration in respect of the estate of her late husband prior to the institution of the present proceedings.
  - g. The 1<sup>st</sup> Defendant/Respondent stated that Title Number Kwale/Chigato/1096, measuring approximately 2.66 Hectares, was issued to her late husband on 14<sup>th</sup> November 2016, and that a perusal of Part A of page two of the title deed showed that the parcel file was opened on 27<sup>th</sup> July 2016. Annexed and marked as "LN – 1" was a copy of the said title deed.



- h. She further stated that it was undisputed that Title Number Kwale/Chigato/1047, measuring approximately 8.79 Hectares, was issued to Mwamose Chirapho (deceased), and that both parcel files were opened on 27<sup>th</sup> July 2016, with the titles bearing signatures and stamps of the same Land Registrar.
- i. The 1<sup>st</sup> Defendant/Respondent admitted that she was in possession of the original title deed for Kwale/Chigato/1096, issued to her late husband.
- j. She averred that at the time of acquisition, her late husband lawfully and duly acquired the land through allocation by the Kwale Adjudication Office, thereby acquiring all proprietary rights appurtenant thereto, including the right to quiet possession. Annexed and marked as “LN – 2” was a copy of the allotment paper.
- k. The 1<sup>st</sup> Defendant/Respondent stated that upon conclusion of the adjudication process, any aggrieved party was at liberty to lodge complaints with the relevant land officials, but that the late Mwamose Chirapho never lodged any such complaint during his lifetime.
- l. She contended that it was only after the publication of the Kenya Gazette Notice Vol. CXXV No. 103 dated 5<sup>th</sup> May 2023 by the 2<sup>nd</sup> Defendant/Respondent that the Plaintiffs became unsettled, despite the fact that the Gazette Notice merely reflected government records supplied by the Land Registrar.
- m. The 1<sup>st</sup> Defendant/Respondent maintained that neither she nor the 2<sup>nd</sup> Defendant/Respondent bore responsibility for the veracity of government records, and that if the Plaintiffs disputed those records, they ought to have sued the Land Registrar as the custodian thereof.
- n. She stated that the Gazette Notice acknowledged that Kwale/Chigato/1096 belonged to Yama Nyawa Baya (deceased) measuring approximately 2.66 Hectares, while Kwale/Chigato/1047 was recorded as belonging to Mwamose Chirapho (deceased) measuring approximately 6.88 Hectares, and that she had no means of altering government records.
- o. The 1<sup>st</sup> Defendant/Respondent further contended that the Plaintiffs’ assertion that Kwale/Chigato/1096 was hived off from Kwale/Chigato/1047 was mathematically inconsistent and unsupported, as the acreage figures did not reconcile, thereby rendering the allegations absurd.
- p. She noted that from the Limited Grant of Letters of Administration ad litem relied upon by the Plaintiffs, Mwamose Chirapho (deceased) died on or about 27<sup>th</sup> December 2010, by which time he had already been allocated his parcel of land, thereby explaining the processing of the title in 2016 posthumously.
- q. The 1<sup>st</sup> Defendant/Respondent averred that during the lifetime of both deceased proprietors, no dispute ever arose between them regarding land ownership, and that the present dispute was imaginary and driven by greed.
- r. She further stated that it was only after the Government announced the intention to compulsorily acquire land for the Muache Multi-Purpose Dam Project that the Plaintiffs began lodging complaints in an attempt to dispossess her family of its lawful inheritance.
- s. The 1<sup>st</sup> Defendant/Respondent deponed that the matter was reported to the Area Assistant Chief of Chigato on 14<sup>th</sup> March 2025 by the Plaintiffs, and by herself on 21<sup>st</sup> March 2025, culminating in a meeting held on 24<sup>th</sup> March 2025 attended by 25 villagers from Kasemeni Location.



- t. She stated that the Assistant Chief determined that no dispute had ever existed over her late husband's land during his lifetime and further noted that the Assistant Chief lacked jurisdiction to cancel a registered title deed. Annexed and marked as "LN – 3" were copies of the minutes of the meeting.
- u. The 1<sup>st</sup> Defendant/Respondent described herself as a widow of limited financial means and asserted that the Plaintiffs were attempting to take advantage of her vulnerability to dispossess her family of its inheritance.
- v. She reiterated that Kwale/Chigato/1096 forms part of her late husband's estate and that any compensation arising from compulsory acquisition ought lawfully to be paid to her and her family.
- w. The 1<sup>st</sup> Defendant/Respondent averred that the application was an afterthought, malicious and intended to obstruct her from being compensated under the compulsory acquisition process.
- x. She further stated that the application raised no urgent issues warranting consideration under a certificate of urgency and was timed to coincide with the advertisement of the Muache Multi-Purpose Dam Project.
- y. The 1<sup>st</sup> Defendant/Respondent concluded that she swore the affidavit in opposition to the Application dated 11<sup>th</sup> June 2025 and prayed that it be dismissed with costs.
- z. All matters deponed to were true to the best of her knowledge, information and belief.

#### **IV. The Chamber Summons dated 23<sup>rd</sup> July 2025 by the Proposed Defendants/Applicants**

- 10. It was brought under the provisions Sections 1A, 1B, and 3A of the Civil Procedures Act, Cap. 21; Order 1 Rules 3, 10(2), 10 (4) and 14 of the Civil Procedures, 2010, of the Laws of Kenya.
- 11. The Proposed Defendants/Applicant sought for the following orders: -
  - a. Spent.
  - b. That the Proposed 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants be joined as Defendants in this suit;
  - c. That upon joinder, the Plaint be amended in such manner as may be necessary and a copy of the Summons and the Amended Plaint be served on the new Defendants and on the original Defendant;
  - d. That the costs of this application be provided for.
- 12. The application was further premised on the grounds, testimonial facts and averments made out under the supporting affidavit dated 23<sup>rd</sup> July 2025 and sworn by Nadzua Wato Mvurya the 1<sup>st</sup> Proposed Defendant/Applicant herein together with annexures marked as "NWM - 1 to 2" annexed thereto. It was averred that: -
  - a. She was an adult female of sound mind, a resident of Chigato in Kasemeni Ward, Kwale County, and is conversant with the facts giving rise to the suit and the matters deponed to.
  - b. She was duly authorised by her co-Applicant, Luvuno Mchanjo Mwaidze, to swear the affidavit on her behalf, and annexed a copy of the written authority marked as Exhibit as "NWM - 1".



- c. The existed three separate written agreements entered into between Mbeyu Rumba Mbui and Jenifer Mlongo Mwamose on one hand, and Nadzua Wato Mvurya and Luvuno Mchanjo Mwaidze (the Proposed 3rd and 4th Defendants/Applicants) on the other.
- d. According to the said agreements, the parties mutually and unconditionally agreed to share the property known as Kwale/Chigato/1047 equally, such that the Plaintiffs were entitled to 50%, while the remaining 50% belonged to the Applicants.
- e. It was further agreed that any proceeds arising from the compulsory acquisition of the said property would be distributed equally between the Plaintiffs and the Applicants in the same proportions.
- f. The deponent stated that the said agreements were properly executed by all parties, duly witnessed and attested in accordance with the law, with the intention that the parties be bound thereby. Copies of the agreements were annexed and marked collectively as Exhibit “NWM - 2”.
- g. She further averred that following the compulsory acquisition of the property for the Mwache Multipurpose Dam Project, the parties deemed formal registration of the agreements at the Lands Registry unnecessary.
- h. Instead, the parties deposited the agreements with the National Land Commission’s consultant, Frontman Consultants Limited, with the understanding that the National Land Commission would honour and execute the agreements at the time of compensation.
- i. None of the parties had ever disputed the existence or validity of the said agreements, and that the Plaintiffs themselves had annexed the same to their affidavit as part of the evidence they intended to rely on.
- j. She explained that the background to the agreements was that the property originally belonged to the Applicants’ family but was erroneously registered in favour of the Plaintiffs during the land adjudication process.
- k. The said error gave rise to an ownership dispute which was resolved through several dispute resolution meetings, culminating in the execution of the agreements.
- l. Since the execution of the agreements, and notwithstanding the name appearing on the title deed, the Plaintiffs had been holding the property as trustees, holding 50% for themselves and 50% on behalf of the Applicants.
- m. She contended that it would therefore be plainly wrong for the Plaintiffs to seek exclusive entitlement to the compensation proceeds, as such conduct would amount to a blatant breach of trust and the binding agreements.
- n. The Applicants were claiming a 50% beneficial interest in the property known as Kwale/Chigato/1047, or in the proceeds arising from its compulsory acquisition, which interest was now being challenged by the Plaintiffs.
- o. Should the Court grant the Plaintiffs the reliefs sought, the Applicants stood to suffer grave prejudice, having been deprived of their lawful share in the property.
- p. Since both the Plaintiffs’ claim and the Applicants’ intended claim arise from the same subject matter, it was prudent that all issues be heard and determined together to avoid multiplicity of proceedings.



- q. In the circumstances, the presence of the Applicants was necessary to enable the Court to effectually and completely adjudicate upon and settle all questions arising in the suit.
- r. In conclusion, she stated that it was in the interest of fairness and justice that the application be allowed as prayed.
- s. She finally averred that all matters deponed to were true to the best of her knowledge, information and belief.

## **V. The responses by the Plaintiffs/Respondents**

13. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs/Respondents opposed the Chamber Summons Application through filing of 10 Paragraphed Replying Affidavit sworn by Mbeyu Rumba Mbu, the 2<sup>nd</sup> Plaintiff/ Respondent herein on 30<sup>th</sup> July 2025. The 2<sup>nd</sup> Plaintiff deponed that: -
- a. She was the 2<sup>nd</sup> Plaintiff in the suit, suing on behalf of the Estate of Mwamose Chirapho (deceased), and is duly competent to swear the affidavit.
  - b. Her Advocates on record explained to her the application for joinder filed by the Proposed Defendants/Applicants together with the supporting affidavit, and that she fully understood the contents thereof.
  - c. The Proposed Defendants/Applicants' alleged interest in the suit property was limited solely to graves situate on the land, which are compensated for separately and were not in dispute, and that such interest did not entitle them to any proprietary claim over the land or to be joined as parties to the suit.
  - d. She further stated that the purported agreement dated 30<sup>th</sup> July 2024, allegedly signed by herself and her co-widow Mlongo Mwamose and purporting to grant 50% of the estate's core land assets to the Proposed Defendants/Applicants, was invalid and amounted to a misrepresentation, as they lacked the legal capacity to dispose of or give away family land.
  - e. The suit property was ancestral land which had been in their occupation, and that upon adjudication in or about the year 2005, it was not the subject of any objection proceedings by the Proposed Defendants or any other person.
  - f. She stated that a title deed was issued in the year 2016 in respect of the suit property measuring approximately 8.79 acres, and that the estate had held the title without challenge from any person since issuance.
  - g. The deponent categorically denied that the suit property was held in trust for the Proposed Defendants/Applicants as alleged or at all.
  - h. She further stated that to the best of her knowledge and recollection, an employee of Frontman Consultants, one Salim Mohamed, summoned her and her co-widow to the consultants' offices and insisted that they append their signatures to a document as a condition for processing compensation claims.
  - i. The deponent stated that it was never disclosed to them that the document would result in the alienation of their land, and that they never appeared before any Advocate as alleged.
  - j. She averred that the dispute between the Plaintiffs and the Defendants concerned the alleged hiving off of a portion of the suit property measuring approximately 2.66 hectares and the



registration thereof in the name of the 1<sup>st</sup> Defendant for purposes of compensation under the dam project.

- k. The deponent stated that the said dispute did not in any way relate to the Proposed Defendants/Applicants, whose interest was limited to compensation for graves situate on the suit property, which compensation is processed separately by the 2<sup>nd</sup> Defendant without involving the land owners.
- l. She averred that the joinder of the Proposed Defendants/Applicants would unduly and unfairly prejudice the Plaintiffs' suit by occasioning unnecessary delay and additional litigation costs.
- m. The deponent concluded that she swore the affidavit in opposition to the Proposed Defendants/Applicants' application for joinder.
- n. She finally averred that all matters deponed to were true to the best of her knowledge, information and belief.

## **VI. Submissions**

- 14. On 24<sup>th</sup> July 2025, in the presence of all the parties herein, the Honorable Court directed parties to canvass the matter by way of written submissions. Unfortunately, at the time of writing this ruling, the parties had not filed their written submissions. Nonetheless, upon the lapse of the stipulated timeline, the parties were allowed to submit orally and the Court directed to render its ruling on notice accordingly.

## **VII. Oral Submissions**

- 15. On 16<sup>th</sup> September 2025, in the presence of all the parties herein, the Honorable Court directed parties to canvass the matter by way of oral submissions.

### **A. Oral Submissions By The Proposed Defendants/Applicants**

- 16. Mr. Hamisi Advocate for the Proposed Defendants/Applicants submitted that the application was joinder of parties to the suit – Nadzua Wato Mvurya and Luvuno Mchanjo Mwaidze. They were claiming 50% share of the suit property as per the agreement between themselves and the Plaintiffs herein.
- 17. He urged the court to make a determination as to whether the Plaintiffs were entitled to 100% of compensation from the 2<sup>nd</sup> Defendant herein.
- 18. He reiterated that the applicants intend to plead on the issues of trust and the issues of forgery were issues of facts to be attested during the hearing.
- 19. In conclusion, he challenged the assertion advanced by the Respondent to the effect that the right of Easement was not registrable. They intended to plead on the issue of Trust.
- 20. On the issue of forgery these are to be adjudicated during the full trial. He finalized by stating that the proposed parties were claiming the entire land in terms of 50% not merely on easement.

### **B. Oral Submissions By The Proposed Defendants/Applicants**

- 21. M/s Nduku Advocate for the Plaintiffs/Applicants submitted that it was correct that the parties to be joined in a suit was one to be affected by the dispute on land. According to her, the dispute was between



the Applicants and the Respondents. Certainly, not Interested parties herein. were not affected by the suit properties nor any other properties. She further argued that the applicants have only attached a copy of the sale agreements which was only on the easement.

22. The Learned Counsel informed Court that the two widows had obtained the letters of administration recently. The only available right for them was purely on easement and not as affected persons.

### **VIII. Analysis & Determination**

23. This Court has considered all the issues raised in the Notice of Motion application dated 11<sup>th</sup> July, 2025, the Supporting affidavit and Replying Affidavit by the Defendants/Respondents herein dated 22<sup>nd</sup> August 2025, The Chambers Summons application dated 23<sup>rd</sup> July 2025, the Supporting Affidavit and Replying Affidavit by the Plaintiffs/Respondents dated 30<sup>th</sup> July 2025.
24. In order to arrive at an informed, just, fair and reasonable decision, the Court has framed the following three [3] issues for its determination. These are: -
- a. Whether the Notice of Motion application dated 11<sup>th</sup> June 2025 meets the established threshold for granting temporary injunction orders;
  - b. Whether the Proposed Defendants/Applicants have met the threshold for joinder as parties to the suit; and
  - c. Who will bear the Cost of the application?

#### **Issue No. a). Whether the Notice of Motion application dated 11<sup>th</sup> June 2025 meets the established threshold for granting temporary injunction orders.**

25. Under this sub – heading the main substratum of the application is on whether to grant or not the interim injunctive orders. The application herein is premised under Order 40 Rule 1 of the Civil Procedure Rules 2010 amongst the provisions of the law cited. It provides as follows: -

Order 40, Rule 1

Where in any suit it is proved by affidavit or otherwise—

- a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - b) that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
26. It follows, therefore, that the principles applicable in an application for an injunction were laid out in the celebrated case of “Giella – Versus - Cassman Brown & Co Limited (1973) E A 358” set the following conditions for the grant of a temporary injunction:-

“First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise



suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

27. As such, the three (3) conditions set out in “Giella (Supra)”, need all to be present in an application for court to be persuaded to exercise its discretion to grant an order of interlocutory injunction. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of “Nguruman Limited - Versus - Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR” where the Court of Appeal held that:-

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a) establishes his case only at a prima facie level b) demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially....See Kenya Commercial Finance Co. Limited - Versus - Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the Respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between”.

28. Further, in the case of “Kenya Commercial Finance Co. Ltd – Versus - Afraha Education Society [2001] Vol. 1 EA” (the court quoted in the case of: “Nguruman Limited (Supra)”, that the triple requirements in an interlocutory injunction application are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is instructive to note that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. Consequently, the parties ought to, first, establish a prima facie case. In dealing with the first condition of “prima facie case”, the Honorable Court guided by the definition melted down in the case of:- “MRAO Limited – Versus - First American Bank of Kenya Limited & 2 others (2003) KLR 125”, whereby it stated:-

“So what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

29. Similarly, under the same breathe, Court in the case of “Mbuthia – Versus - Jimba credit Corporation Limited 988 KLR 1”, held that:-

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.”



30. Additionally, in the case of “Edwin Kamau Muniu – Versus - Barclays Bank of Kenya Limited” the court stated that:-

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”

31. In the present case, the Plaintiffs/Applicants contend that the Estate of the late Mwamose Chirapho (deceased) is the legal and beneficial owner of Title Number Kwale/Chigato/1047, and that a portion measuring approximately 2.66 hectares was unlawfully hived off and registered as Kwale/Chigato/1096 in the name of the late Yama Nyawa Baya (deceased) for purposes of compensation under the Muache Multi-Purpose Dam Project.

32. On the other hand, the 1<sup>st</sup> Defendant/Respondent maintains that Kwale/Chigato/1096 is a distinct parcel lawfully acquired by her late husband through the adjudication process, duly registered in 2016, and reflected in government records and the Gazette Notice relied upon by the 2<sup>nd</sup> Defendant/Respondent.

33. At this interlocutory stage, this Court is not called upon to determine the ultimate ownership of the disputed parcels. However, the Plaintiffs/Applicants have demonstrated that there exists a serious and arguable dispute regarding the integrity of the adjudication and registration process, the acreage discrepancies reflected in the Gazette Notice, and the competing claims to compensation.

34. The Court is satisfied that the Plaintiffs/Applicants have established a prima facie case, as defined in the case of:0 “Mrao Ltd – Versus - First American Bank of Kenya Ltd (Supra), warranting protection pending full hearing.

35. With regards to the second limb of the Court of Appeal in “Nguruman Limited (Supra)”, held that: -

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

36. On the second issue whether the Applicant will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicants must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured. It is not hidden that the Applicants’ property is at risk.

37. On irreparable harm, the subject matter of the dispute relates to land and compensation proceeds arising from compulsory acquisition, which once paid out may not be easily recoverable. The Court is persuaded that damages may not be an adequate remedy, particularly where competing beneficiaries claim entitlement to the same compensation. A Court had to ensure justice is seen to be done and the Court processes are not abused. The judicial decision of “Pius Kipchirchir Kogo – Versus - Frank



Kimeli Tenai (2018) eKLR” provides an explanation for what is meant by irreparable injury and it states:-

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

38. Thirdly, the Applicants have to demonstrate that the balance of convenience tilts in their favour. In the case of “Pius Kipchirchir Kogo (Supra)” which defined the concept of balance of convenience as:-

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

39. Further, in the case of “Paul Gitonga Wanjau – Versus - Gathuthis Tea Factor Company Limited & 2 others (2016) eKLR”, the court dealing with the issue of balance of convenience expressed itself thus:-

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

40. The decision of “Amir Suleiman – Versus - Amboseli Resort Limited [2004] eKLR” where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated:-

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

41. As regards the balance of convenience, the Court finds that maintaining the status quo by restraining payment of compensation pending determination of the substantive rights of the parties best serves the interests of justice.

42. Accordingly, the Court finds that the Plaintiffs/Applicants have met the threshold for the grant of a temporary injunction.



**Issue No. b). Whether the Proposed Defendants/Applicants have met the threshold for joinder as parties to the suit;**

43. Under this sub title, the Honourable Court shall examine whether Nadzua Wato Mvurya and Luvuno Mchanjo Mwaide ought to be joined as parties, and in what capacity. The provision of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010 provides:

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

44. The Court of Appeal in the case of:- “Departed Asians Property Custodian Board – Versus - Jaffer Brothers Ltd [1999] 1 EA 55” Court held:

“A party may be joined if his presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter.”

45. Further in the case of:- “Kingori – Versus – Chege & 3 Others [2002] 2KLR 243”, Nambuye J, (as she then was) explained that: -

“For a Defendant to be joined, two conditions must be met: first, there must be a right to some relief against him in respect of the matter involved in the suit; and second, his presence should be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.”

46. The Proposed Defendants/Applicants claim a 50% beneficial interest in Kwale/Chigato/1047, or in the compensation proceeds thereof, by virtue of three written agreements allegedly entered into between themselves and the Plaintiffs, and on the basis of an alleged trust arising therefrom.

47. The Plaintiffs/Respondents vehemently dispute the validity of the said agreements, deny the existence of any trust, and maintain that the Proposed Defendants’ interest, if any, is limited to compensation for graves, which is processed separately by the 2nd Defendant.

48. This Court is mindful that at the stage of joinder, it is not required to determine the merits of the competing claims. The test is whether the Proposed Defendants/Applicants have demonstrated a direct, identifiable and legally recognizable interest in the subject matter which may be affected by the outcome of the suit.

49. Given that the Proposed Defendants/Applicants assert entitlement to half of the land or compensation proceeds, and that such entitlement is directly contested by the Plaintiffs, it is evident that any determination on ownership, trust, or compensation will directly affect their claimed interests.

50. The Court further notes that exclusion of the Proposed Defendants/Applicants may result in multiplicity of suits, inconsistent findings, and incomplete adjudication of the issues surrounding compensation for Kwale/Chigato/1047.



51. Consequently, the Court is satisfied that the Proposed Defendants/Applicants are necessary parties whose joinder will enable the Court to effectually and completely determine all questions arising in the suit.
52. Applying the legal ratio founded under the provision of:- Order 1 Rule 10(2) of the Civil Procedure Rules and the principles in “Departed Asians – Versus - Jaffer Brothers and Kingori – Versus - Chege (Supra)”, I find that Nadzua Wato Mvurya and Luvuno Mchanjo Mwaidze are necessary parties to this suit. Nadzua Wato Mvurya is joined as the 3<sup>rd</sup> Defendant, while Luvuno Mchanjo Mwaidze will be joined as the 4<sup>th</sup> Defendant, to enable the Court effectually and completely adjudicate upon and settle all questions in controversy.

#### **Issue No. b) Who will bear the Cost of the application?**

53. 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 “Jasbir Rai Singh – Versus - Tarchalan Singh” eKLR (2014) and Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited, eKLR (2014)”.  
54. 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.  
55. Given that both applications arise from the same factual matrix and are yet to be determined on their merits, the Court finds it just and equitable that costs be in the cause.

#### **IX. Conclusion & Disposition**

56. In view of the foregoing, having caused an in-depth analysis to the framed issues herein, the Honourable Court based on the principles of Preponderance of Probabilities and the balance of Convenience hold that the Plaintiff/Applicant has met the criteria for grant of orders of temporary injunction as opposed to the Defendants/Respondents herein.
57. For avoidance of doubt, and in order to preserve the suit property awaiting the outcome of the main suit, I do specifically proceed to order as follows: -
  - a. That the Notice of Motion application dated 11<sup>th</sup> June 2025 be and is hereby allowed and to be specific a temporary injunction do hereby issue against the Defendants restraining them whether by themselves, their servants and/or agents from paying out any compensation monies, entering, trespassing into, mining, excavating, cultivating, developing, building, selling, disposing of and/ or interfering in any way whatsoever with the Plaintiffs' possession and quiet enjoyment of the suit property measuring approximately 8.79 hectares and numbered title numbers: Kwale/Chigato/1047 and Kwale/Chigato/1096 by the 2<sup>nd</sup> Defendant for purposes of compensation for the Muache Multi Purpose Dam Project pending the hearing and determination of this suit.
  - b. That the OCS Kwale Police Station directed to ensure that there is compliance with order a) above.



- c. That the Chamber Summons application dated 23<sup>rd</sup> July 2025 be and is hereby allowed, in essence having both Nadzua Wato Mvurya and Luvuno Mchanjo Mwaidze be joined to the suit as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively.
- d. That the Plaintiff granted 14 days leave from this date herein to amend the Plaintiff reflecting this new development whatsoever and have the amended pleadings served upon all parties.
- e. That all the parties be directed to fully comply with the provisions of Orders 7 and 11 of Civil Procedure Rules, 2010 as required on Case Management.
- f. That for expediency sake, there be a mention on 23<sup>rd</sup> June, 2026 for purposes of conducting Pre – Trial Conference in accordance with the provision of Order 11 of the Civil Procedure Rules, 2010. There be a hearing of the matter on 26<sup>th</sup> October, 2026 preferably through Physical means.
- g. That costs of both applications shall be in the cause.

It is ordered accordingly.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2026**

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

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. M/s. Nduku Advocate for the Plaintiffs/Applicants.
- c. M/s Wanjiku Advocate for the 1<sup>st</sup> Defendant/Respondent.
- d. No appearance for the 2<sup>nd</sup> Defendant/respondent
- e. Mr. Hamisi Advocate for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants

