



Runda & another v County Director of Physical Planning & another (Environment and Land Judicial Review Case E004 of 2023) [2024] KEELC 5010 (KLR) (24 June 2024) (Ruling)

Neutral citation: [2024] KEELC 5010 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2023**

LL NAIKUNI, J

JUNE 24, 2024

BETWEEN

HARJI GOVIND RUNDA 1ST APPLICANT

COCKATOOS LIMITED 2ND APPLICANT

AND

COUNTY DIRECTOR OF PHYSICAL PLANNING 1ST RESPONDENT

MOMBASA COUNTY GOVERNMENT 2ND RESPONDENT

RULING

I. Introduction

1. This Honorable Court is tasked to make a determination of three (3) applications being the Chamber summons dated 25th October, 2023 and the Notice of Motion application dated 31st October, 2023 both of these by Harji Govind Runda the Applicant herein and the third one being Notice of Motion application dated 2nd November, 2023 by the County Director of Physical Planning and the County Government of Mombasa, the Respondents herein.
2. Upon service of the application dated 31st October, 2023, each the Respondents to the said applications. The 1st and 2nd Respondents responded through filing of the Replying Affidavit sworn on 28th February, 2024 by the County Attorney.

II. The Applicant’s case in the Notice of Motion application dated 25th October, 2023

3. The Applicant sought for the following orders:-
 - i. Spent.



- ii. That this Honourable Court be pleased to grant leave to the Applicant herein to apply for an order of certiorari to bring before this Court and quash the 1st Respondent decision to vacate Plot No. XXVI/187, Kizingo communicated in the notice dated 19th October, 2023 to the detriment of the Applicants herein and general residents of plot no XXVI/187 Kizingo.
 - iii. That this honorable court be pleased to grant leave to the Applicant herein to apply for an order of certiorari to bring before this Court and quash the enforcement notice dated 23rd October, 2023 issued by the 1st Respondent.
 - iv. That upon the grant of leave, an ex-parte injunction do issue to restrain the Respondents whether by themselves, their servants or agents or howsoever otherwise from trespassing, evicting, leasing or in any way interfering with the Applicants quiet possession of plot no XXVI/187 Kizingo until the hearing of the application for judicial review or further orders.
 - v. That upon grant of leave, an ex-parte injunction do issue to restrain the Respondents whether by themselves, their servants or agents from harassing and or intimidating the Applicants and/ or their servants or agents in connection to activities around plot no. XXVI/187 Kizingo until the hearing of the application for judicial review or further orders.
 - vi. That the grant of leave to operate as a stay of the decision of the Respondents issued on 19th and 23rd October, 2023 respectively.
 - vii. That if leave is so granted, a direction that the hearing of the application for judicial review be expedited.
4. The Application was brought under the dint of the provision of Section 8(2) of the Law Reforms Act, Chapter 26 of the laws of Kenya and order 53 rule (1) of the Civil Procedure Rules, 2010. The application by the Applicant herein was premised on the grounds, testimonial facts and averments made out under the 10 Paragraphed Verifying Affidavit of – Harji Govind Ruda, the 1st Applicant herein sworn and dated 25th October, 2023 with seven (7) annexures marked “A to G”. The Applicant averred that:-
- a. The 2nd Applicant was and still is the registered owner and developer of various apartments on Mombasa plot no. XXVI/187 Kizingo.
 - b. However, the said developer had long sold various apartments regarding the said land and issued several sub - leases for the individual apartments. (annexed in the affidavit and marked as “B” was a copy of the requisite occupational permits for the flats).
 - c. The 2nd Applicant has also obtained requisite permission for electricity supply from the relevant statutory corporate body.(annexed in the affidavit and marked as “C” was a copy of correspondence from Kenya power).
 - d. On 19th October 2023 the 1st Respondent acting on behalf of the 2nd Respondent issued with impunity what it purported to be a three-day notice to the 2nd Applicant ordering all the residents of Mombasa plot no. XXVI/187, Kizingo to vacate the premises over alleged power transformer faults. (annexed in the affidavit and marked as “D” was a copy of the notice).
 - e. Further on 23rd October, 2023 the 1st Respondent acting on behalf of the 2nd Respondent again issued what was purported to be an enforcement notice in relation to a power transformer structure. This time the letter was addressed to the 1st Applicant. (annexed herewith and marked as “E” was a copy of the notice).



- f. It was clear from the said notices that the Respondents intended to move with speed to evict and or substantially interfere with the residents quiet and exclusive possession of the said property with a view to harassing the 1st Applicant herein for a collateral purpose.
- g. The collateral purpose of the Respondents is demonstrated through the harassment, arrest and subsequent charging of the 2nd Applicants employee with the offence of failing to seek permit for repair and painting works while the said employee is not an employee for the sub-contractor who was carrying out the impugned painting and repair works.(annexed in the affidavit and marked as “F” and “G” were copies of the offence charged on Dhiren Halai an employee of the 2nd Applicant as well as permit issued to Tinting as Associates in connection with the painting works).

III. The Applicant’s case according to the Notice of Motion dated 31st October, 2023

- 5. From this second application, the Applicant sought for the following orders:-
 - i. Spent.
 - ii. That pending the hearing and determination of judicial review E004 OF 2023 this Honorable Court be pleased to stay the proceedings in County Court Case no MCGCRR/EO77/2023 R v Harji Govind Ruda And Meshack Agosa.
- 6. The Application was brought under the dint of the provision of Section 8 (2) of the Law Reforms Act, Chapter 26 of the laws of Kenya and order 53 rule (1) of the Civil Procedure Rules, 2010. The application by the Applicant herein was premised on the grounds, testimonial facts and averments made out under the 7 Paragraphed Supporting Affidavit of – Harji Govind Ruda, the 1st Applicant herein sworn and dated 31st October, 2023 with four (4) annexures marked as “A to D”. The Applicant averred that:-
 - a. On 25th October 2023 he instructed his advocate on record Mr. Borona to file Judicial Review proceedings under certificate of urgency application wherein this honorable court granted orders issued on 27th October, 2023. (annexed in the affidavit and marked as “B” was a copy of the court order).
 - b. On 27th October 2023 despite being notified of the court orders that had been issued by this Honorable court the Respondents issued summons on him indicating that they had instituted charges against him at the County Court in relation to MCGCRR/EO77/23.(annexed in the affidavit marked as “C” and “D” respectively a copy of the summons and charge sheet).
 - c. The said charges raised live legal and factual issues which are already being considered by this honorable court especially in relation to the power transformer structure alluded to in the charge sheet.
 - d. If the lower court county proceedings were allowed to continue then the same would render this judicial review proceedings nugatory and of mere academic nature.
 - e. In the premises, he respectfully asked for this Honorable court to stay the proceedings in MCGCRR/EO77/23 pending the hearing and determination of ELC JR. NO of 2023.



IV. The Response to the Notice of Motion application dated 31st October, 2023

7. The Respondents through a 11th paragraphed Replying Affidavit sworn by Jimmy Waliaula, the County Attorney of Mombasa County Government, the 2nd Respondent, oppose the application by the Applicant where the Deponent stated:-
- a. This Application was bad in law, irregular and improper bearing in mind the Director of Public Prosecution and the Judiciary were not parties to this suit and/or the instant Application.
 - b. Further to the above paragraph, all powers of prosecution are conferred upon the Director of Public Prosecution as per Article 157 of *the Constitution* of Kenya 2010 and the Respondents do not prosecute any matters before the County Court thus the orders being sought by the Applicant could not be granted in the absence of the Director of Public Prosecutions being a party to this suit and/or the instant Application.
 - c. To the foregoing above, the County Court was a judicial function vested as per Article 159 and 160 of *the Constitution* of Kenya 2010 and once more the Respondents did not have any judicial functions, thus in the absence of the Honourable Attorney or the judiciary as a party the orders being sought could not be granted in their absence as those orders cannot apply on the Respondents.
 - d. The Applicant herein contravened the provision of Section 57 of the *Physical and Land Use Planning Act* 2019 and the provision of Section 57 (2) of the said Act creates an offence for which the Applicant has since been charged vide 'County Court Case No. MCCGCRR/E077/2023 Republic - Versus - Harji Govind Ruda and Meshak Agosa.
 - e. The Applicant should not be protected through the back door means in contravening the law as captioned above and this Honourable Court should shy away from according the Applicant with any "protection" and to allow the due process of the law to take its course.
 - f. This instant Application should not stand as it no longer had a basis in law bearing in mind the Applicant since granted leave by this Honourable Court on 26th October 2023 to file the substantive motion within 21 days had failed and/or neglected to do so thus there was no suit before this Honourable Court and this Application could not stand in "air".
 - g. Further, to the above, this Application and suit was inconsistent with Order 53 of the Civil Procedure Rules, 2010 as neither had the Applicant filed the substantive motion nor sought formally for an extension of time to file the substantive motion out of time.
 - h. The Applicant's whole intention to seek the injunctive orders was to derail the enforcement mandate of the 2nd Respondent acquired through *the Constitution* of Kenya 2010 and the *Physical and Land Use Planning Act* 2019.

V. The Respondent's claim in the Notice of Motion application dated 2nd November, 2023

8. The Applicant sought for the following orders:-
- i. Spent.
 - ii. Spent.
 - iii. That after inter - partes hearing this Honourable Court be pleased to set aside and/or review the orders dated 27th October 2023.



- iv. That the costs of this Application be in the cause.
9. The Application was brought under the dint of the provision Article 1(4) 47, 48, 50, 176 of *the Constitution* of Kenya 2010, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Cap. 21, Section 16 of the *Government Proceedings Act*, Order 40 Rule 7, Order 51 Rule 1 and Order 51 Rule 15 of the Civil Procedure Rules 2010. The application by the Applicant herein was premised on the grounds, testimonial facts and averments made out under the 20 Paragraphed Verifying Affidavit of – Paul Manyala, the Director Physical Planning stationed at the Department of Lands, Physical Planning and Urban Renewal of Mombasa County Government, 1st Applicant herein sworn and dated 2nd November, 2023 with seven (7) annextures marked “PM - 1 to 2”. The Applicant averred that:-
- a. The County Government of Mombasa through their office was alerted of some repairs being done of Plot No. XXVI/187 situated at Kizingo within Mombasa County.
 - b. The Applicants had applied for the development, however they had misrepresented as to the scope of the work being carried out thus contravening the conditions of the approval.
 - c. The Applicants and/or their agents were stopped from carrying out any further development and arraigned not the Mombasa County Court where they pleaded guilty and were fined a sum Kenya Shillings Fourty Thousand (Kshs. 40, 000/-). (Attached and marked as “PM – 1” was an extract of the proceedings are County Court and the Charge sheet).
 - d. While their team went to enforce the developments being carried out at the Applicant/ Respondent's property, they noticed a Kenya Power transformer inside a structure.
 - e. Upon investigation they noticed that the structure housed a Kenya Power Transformer that was placed on the ground and the same structure had toilets and changing rooms utilized by house helps who work at the various apartments on Plot No. XXVI/187 Kizingo, within Mombasa County. (Attached and marked as “PM -2a” were photographs of the structure taken by the Chief Building Inspector and “PM - 2b” the electronic certificate).
 - f. His team then informed the Fire Department to intervene and carry out further investigations.
 - g. The Department of Fire then did a report to the Department of Lands, Housing and Urban Planning and they took the necessary steps to ensure enforcement was carried out. (Attached and marked PM-3 a copy of the report by the Fire Department).
 - h. Consequently, they issued an enforcement notice upon the Applicant/Respondent to remedy the situation. (Attached and marked as “PM – 4” was a copy of the enforcement notice dated 23rd October 2023).
 - i. It was further established that there were power fluctuations within the premises and a likely threat to endangering lives of those staying in those premises and to the visitors.
 - j. Further to the foregoing, they then had to issue a notice to the developer to vacate the premises for safety and precautionary measures.
 - k. The structure housing the transformer was never demolished by the Applicants herein and thus were summoned to the Mombasa County Court on 30th October 2023. (Attached and marked as “PM – 5” was a copy of the summons and the charge sheet).
 - l. Unfortunately, on 30th October 2023, the matter before the Mombasa County Court did not proceed as the Applicants/Respondents did not attend court and in addition the Advocate



representing the Applicant/Respondents informed the court there was an injunction issued as against the County Government of Mombasa.

- m. This Honourable Court's order had nothing to do with those proceedings, however, bearing in mind the Applicants were using this Honourable Court's ex - parte orders to negate the wheels of justice it was important for this Honourable Court to set aside the ex - parte orders. (Attached and marked as "PM – 6" was a copy of the Court order dated 27th October 2023 issued by this Honourable Court).
- n. The injunctive orders could not be issued through a judicial review application and in addition, injunctive orders as sought is inconsistent with the provision of Section 16 of the Government Proceedings Act Chapter 40 Laws of Kenya.
- o. The Applicants/Respondents whole intention to seek the injunctive orders was to derail the enforcement mandate of the 2nd Respondent acquired through the Constitution of Kenya 2010 and the Physical and Land Use Planning Act 2019.
- p. The orders as granted was against public policy and it prohibited and/or stopped the Respondents from carrying out enforcement for any wrong doings on the said Plot No. XXVI/187 Kizingo within the County of Mombasa.
- q. This matter had a date for 2nd November 2023 for an inter parte hearing over the Applicants/ Respondents Application dated 25th October 2023 with regards to prayer 6 of that Application but the matter was neither listed in the day's cause list or called after during the virtual court session thus did not proceed. (Attached and marked as "PM – 7" was a copy of the cause list of this Honourable Court for the 2nd day of November 2023).

VI. Submissions

- 10. On 16th January, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 20th May, 2024 be disposed of by way of written submissions. By the time the Honourable Court was penning down this Ruling, it had only been able to access the submissions by the Applicants. Pursuant to that the Applicant obliged and on 29th February, 2024 a ruling date was reserved on 10th June, 2024 by Court accordingly.

A. The Written Submissions by the Applicants to the Chamber summons dated 25th October, 2023

- 11. On 28th February, 2024 the Applicants, through the Law firm of Messrs. Borona & Associates Advocates' filed their written submissions dated 27th February, 2024. Mr. Borona Advocate commenced the submissions by stating that the Applicants Application dated 25th October 2023 sought for injunctions as against the Respondents as well as a stay of their decision issued on 19th and 23rd October 2023 pending the hearing and determination of the suit. The Application was supported by the Applicants pleadings including the Applicants, Statutory Statement, Grounds Upon which reliefs were sought and Verifying affidavit.
- 12. The Respondents herein had not responded to the said application. Instead, the Respondents opted on filing a different application dated 2nd November 2023 seeking to have the Applicants herein denied leave to file a substantive motion or suit. In the said application, vide supporting affidavit by Paul Munyala the Respondent submitted that granting injunctive orders/ relief was inconsistent with the provision of Section 16 of the Government Proceeding Act Chapter 40 Laws of Kenya. The Counsel



held that this legal question was answered in the case of “James Muigai Thungu v County Government of Trans-Nzoia & 2 others [2015] eKLR”, where the Honourable Court held that:

“The aforesaid Act forbids courts from giving an injunction against the Government. The section quoted hereinabove extends the same protection to Government Officers. This Act was in place even before the devolved system of Government came into force. The question which then arises is whether the Act can extend to the County Government. The County Governments are body corporate with power to sue and be sued. There is no provision in the County Government Act of 2012 which protects them from injunction orders. I do not think that it was the intention of the legislature that the County Governments were to enjoy the same status as the National Government. If this was the intention, then the Government Proceedings Act would have been amended to expressly include County Governments. I therefore do not find that the County Government can come under the umbrella of the Government Proceedings Act, when it comes to injunctions against them as well as their officers.”

13. In the instant suit, the Respondents were not covered by the umbrella of the Government Proceedings Act. The injunctive orders were not inconsistent with the provision of Section 16 of the Government Proceedings Act.
14. Further the Learned Counsel asserted that the other issue for consideration by this honorable court was the issue of whether the Applicants were deserving of the injunctive orders sought. On this point, the Counsel referred Court to the much cited case of:- “Giella v Cassman Brown & Co Ltd 1973 EA 358”, the court was guided by three parameters:
 - a. The applicant must demonstrate a prima facie case with probability of success.
 - b. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer irreparable loss which will not be adequately compensated in damages.
 - c. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.
15. In conclusion, the Learned Counsel averred that the Applicant herein had in his annexed verifying affidavit demonstrated that the Respondents were acting outside their mandate in a bid to unlawfully harass and if possible prevent the Applicant and others from enjoying peaceful and quiet possession of the suit property.

B. The Written submissions of the Applicants on the Notice of Motion application dated 31st October, 2023

16. On 28th February, 2024 the Applicants, through the Law firm of Messrs. Borona & Associates Advocates’ filed their written submissions dated 27th February, 2024. Mr. Borona Advocate commenced the submissions by stating that the Applicants Application dated 31st October sought a stay of proceedings in County Court Case no “MCCGCRR/e077/2023 - R v Harji Govind Ruda and Meshack Agosa” pending the hearing and determination of this suit.
17. As regards the grounds supporting the said affidavit the same were well enumerated in the Applicants supporting affidavit dated 31st October 2023. In a nutshell, the Learned Counsel submitted that the application was grounded on the fact that the proceedings currently ongoing at the lower court touch on the same issues being considered by this honorable court except that there is a quasi- criminal sanction attached to the proceedings of the lower court. They urged the Honourable Court to examine the charge sheet and particulars thereon which they submitted spoke for itself.



18. The Learned Counsel submitted that the approach that the high court had taken when considering application for stay of proceedings could be seen in the case of:- “Mary Wanjiku Kamonde Suing as the Administrator of the estate of Stephano Kamonde Kubuta – v Daniel Muriithi [2015] eKLR” the court found:-

“It is curious that under Order 42 Rule 6 (1) of the Civil Procedure Rules which stipulate the conditions by the same principles, remembering always that each case must be determined on its own peculiar circumstances and further, that a courts discretion must always be exercised judiciously.” In the instant case, the same principles are applicable as cited in the above authority. It is our submission that the Application for Judicial Review application is arguable. It is also our further submissions that if the lower court proceedings are allowed to proceed the same would be tantamount to making this suit nugatory.

19. According to the Learned Counsel it was the Respondents assertion in his replying affidavit dated 28th February 2024 that this application had no legs to stand on as there was no suit before this court as per the provisions of Order 53 of the Civil Procedure Rules, 2010. The Applicant submitted that he had filed its pleadings as required under the provision of Order 53 of the Civil Procedure Rules, 2010 save for the Notice of Motion seeking the reliefs sought.

20. The Learned Counsel also invited the court to note that there was a subsisting application dated 2nd November 2023 seeking to set aside the entirety of the orders granted by this honorable court on 27th October 2023.

21. In conclusion it was the Learned Counsel’s submission, that until the application dated 2nd November 2023, by the Respondents was dealt with as a preliminary matter, the Applicant out of an abundance of caution could not file any substantive motion as the said application also challenges the decision by this honorable court to grant leave to the applicant to apply for orders of certiorari.

C. The Written Submission by the Applicants in opposition to the Notice of Motion dated 2nd November, 2023

22. On 28th February, 2024 the Applicants, through the Law firm of Messrs. Borona & Associates Advocates’ filed their written submissions dated 27th February, 2024. Mr. Borona Advocate commenced the submissions by stating that the Respondent herein had filed its application which sought that after inter-parties hearing this Honorable court be pleased to set aside and/or review the orders dated 27th October 2023.

23. The orders granted by this honorable court on 27th October 2023 were as set out above. According to the Learned Counsel, on 16th January, 2024. They were directed to re-serve the Respondents, applications dated 31st October, 2023 and 25th October, 2023 which they did. As of the date of filing these submissions, no replies and/or submissions to the respective submissions had been served on the Applicant. In the given circumstances, the judicial review application dated 25th October 2023 deserved to be struck out or dismissed. This question arose because by virtue of this honorable courts order dated 27th October 2023, the Applicant herein was granted leave to apply for the judicial review orders of certiorari which the Applicant had already done.

24. The Learned Counsel submitted that the matter of striking out or dismissal of suits had been considered severally in the courts in Kenya. The law is trite on the issue. Striking out of suits before affording parties an opportunity to be heard was a draconian measure that a court ought to exercise sparingly and only in the rarest cases. The provision of Order 2 Rule 15 of the Civil Procedure Rules,



2010 provides for the instances where pleadings may be struck out. These were cases where; (a) it disclosed no reasonable cause of action or defence in law, (b) it was scandalous, frivolous, or vexatious, (c) it may prejudice embarrass or delay the fair trial of the action, (d) it was otherwise an abuse of court process. In the instant suit, the Respondent had not sited any of these grounds in its application. The Respondent had not demonstrated to this honorable court by way of evidence that this judicial review proceedings were not merited.

25. In the case of: “Samuel Ngigi v Boniface Karogo [2020] eKLR” the court while relying on the Court of Appeal case of “Ramji Megji Gudka Limited v Alfred Morfat Omundi Michira & 2 Others[2005] eKLR”, found

“Striking out of pleadings is a draconian measure which has to be exercised cautiously so as not to deny a party his Constitutional right to be heard. I am of the considered view that this matter should proceed to full trial to enable the court make a determination of the same on its merits.”

26. In conclusion, the Learned Counsel prayed that Respondents application dated 2nd November 2023 be dismissed with costs.

VII. Analysis & Determination.

27. I have carefully read and considered the applications being the Chamber summons dated 25th October, 2023, the Notice of Motion application dated 31st October, 2023 and the Notice of Motion application dated 2nd November, 2023, the submissions and the myriad of cases cited herein by the Applicant, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.

28. 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 Chamber summons dated 25th October, 2023 and the prayers sought are merited.
- b. Whether the orders for stay of proceedings in County Court Case no MCCGCRR/EO77/2023 R VS Harji Govind Ruda And Meshack Agosa the Notice of Motion dated 31st October, 2023 are sustainable?
- c. Whether the orders for setting aside and/ or reviewing the orders date 27th October, 2023 under Order 40 Rule 7 of the Civil Procedure Rules as per the Notice of Motion dated 2nd November, 2023 are merited
- d. Who will bear the Costs of applications being Chamber summons dated 25th October, 2023, the Notice of Motion application dated 31st October, 2023 and the Notice of Motion application dated 2nd November, 2023.

IssueNo. a). Whether the Chamber summons dated 25th October, 2023 and the prayers sought are merited

29. The main issues in this matter is one on whether or not to grant temporary injunction and the Judicial review application before this Court. Under this Sub - heading, the Honourable Court now wishes to the following:-

- a. Whether an order for temporary injunction under Order 40 Rule 1 can be granted restraining the Respondents whether by themselves, their servants or agents or howsoever otherwise from trespassing, evicting, leasing or in any way interfering with the Applicants quiet possession of**



plot no XXVI/187 Kizingo until the hearing of the application for judicial review or further orders.

30. On the first issue, the guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of “Giella v Cassman Brown [1973] EA 358”. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of “Nguruman Limited v 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”.

31. Consequently, the Plaintiff ought to, first, establish a prima facie case. The plaintiff/Applicant submitted that they have established a prima facie case and relied on the judicial decision of “Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR” in which the Court of Appeal gave a determination on a prima facie case. The court stated that:

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

32. In the instant case, in support of their application, the Applicants have attached copies of requisite occupational permits for the flats. The Court notes that the Respondents did not respond to this application therefore the claims by the Applicants are uncontested.

33. Secondly, the Applicant has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of “Pius Kipchirchir Kogo v 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.”

34. The Applicants have deposed that on 19th October 2023 the 1st Respondent acting on behalf of the 2nd Respondent issued with impunity what it purported to be a three-day notice to the 2nd Applicant ordering all the residents of Mombasa plot no. XXVI/187, Kizingo to vacate the premises over alleged power transformer faults. (annexed in the affidavit and marked D a copy of the notice). A property that the 2nd Applicant who is the registered owner and developer has long sold various apartments regarding the said land and issued several subleases for the individual apartments.(annexed in the affidavit and marked B a copy of the requisite occupational permits for the flats).



35. According to the Applicants further on 23rd October, 2023 the 1st Respondent acting on behalf of the 2nd Respondent again issued what it purported to be an enforcement notice in relation to a power transformer structure. This time the letter was addressed to the 1st Applicant. (annexed herewith and marked E a copy of the notice). It was clear from the said notices that the Respondents intend to move with speed to evict and or substantially interfere with the residents quiet and exclusive possession of the said property with a view to harassing the 1st Applicant herein for a collateral purpose.
36. The collateral purpose of the Respondents is demonstrated through the harassment, arrest and subsequent charging of the 2nd Applicants employee with the offence of failing to seek permits for repair and painting works while the said employee is not an employee for the sub-contractor who was carrying out the impugned painting and repair works. In view of the same, the above discussed is sufficient demonstration of irreparable loss being occasioned to the Applicants.
37. Thirdly, the Applicants must and have to demonstrate that the balance of convenience tilts in their favour. In the case of “Pius Kipchirchir Kogo v Frank Kimeli Tenai (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”.

38. In the case of “Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 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.”



39. The Applicants contend that the balance of convenience tilts in their favour as the owners of the suit property. The decision of “Amir Suleiman v 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.”

40. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to this current suit and the squabbles amongst the parties in this suit. I have also not had the opportunity to interrogate the Respondents’ claim herein.

41. In the case of:- “Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another [2019] eKLR” where the court in deciding on an injunction application stated;

“circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

42. I am convinced that if orders of temporary injunction are not granted in this suit, the properties in dispute might be in danger of being dealt in the manner set out in the application and apprehended by the Applicants. Thus, in view of the foregoing, I find that the Applicants have met the criteria for grant of orders of temporary injunction. Therefore the injunctive prayers in the Chamber summons dated 25th October, 2023 are merited.

Issue No. b). Whether the orders for stay of proceedings in County Court Case no MCCGCRR/EO77/2023 R v Harji Govind Ruda And Meshack Agosa the Notice of Motion dated 31st October, 2023 are sustainable

43. Under this sub – title the Honourable Court is tasked with the examination of whether or not it has the jurisdiction to grant stay orders in a County Court Case no MCCGCRR/EO77/2023 R v Harji Govind Ruda And Meshack Agosa. The stating point would be Section 193A of the Criminal Procedure Code Cap 75 Laws of Kenya provides for concurrent civil and criminal proceedings. The Section reads:

“193A. Concurrent criminal and civil proceedings

Notwithstanding the provisions of any other law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings”

44. The law guiding stay of criminal proceedings in our jurisdiction can now be said to be well settled. Of relevance to the matter at hand is the holding in “Joram Mwenda Guantai v The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170”, where the Court of Appeal held that:

“...the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the



prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”

45. However, the decision whether or not to arrest proceedings is discretionary and being discretionary the stage at which the application is made is a crucial factor to be considered. This must be so because as was held in “Goddy Mwakio & Another v Republic [2011] eKLR” wherein the Court of Appeal stated that:

“An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances.”

46. In the case of:- “Republic v Inspector General of the National Police Service & another Ex parte Beatrice Hilda Omunia; Peter Nganga Chege & 2 others (Interested Parties) [2019] eKLR”, Justice John Mativo J. while commenting on the above provision held as follows at paragraph 30 of his Judgement:

“30. Even though it is not for this court to consider the defense of the accused persons, which is basically a function of the trial court, the core issue raised by the ex parte applicant is that the dispute is purely civil. Section 193A of the Criminal Procedure Code permits parallel civil and criminal proceedings, hence, even if there was a civil suit in court, the existence of a parallel civil case is not bar to criminal proceedings. [14] The offence being investigated is known to the law, hence, the cited provision. The conduct under investigation can attract a criminal sanction if proved.”

47. The rationale for this, as appreciated by Gikonyo, J opinion in the case of “Kenya Wildlife Service v James Mutembei [2019] eKLR” where the court (Gikonyo, J) is that: -

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

48. The question that arises is whether in this case there exist exceptional circumstances warranting the arrest of the proceedings at the tail end of the criminal process. The quest to stay concurrent proceedings ought to first be premised on the fact that there were in existence two or more active cases of civil and criminal nature in respect of the same entity or person. The Office of the Director of Public Prosecutions is an independent constitutional office. However, that office is subject to the control of the court in appropriate instances where illegality, irrationality and procedural impropriety was demonstrated.



49. There were instances where a court ought to exercise its discretion and stop a prosecution. Such instances included where it was demonstrated that:
- a. The institution/continuance of criminal proceedings against an accused could amount to the abuse of the process of the court;
 - b. Where the quashing of the impugned proceedings would secure the ends of justice;
 - c. Where it manifestly appeared that there was a legal bar against the institution or continuance of the proceedings, e.g., want of sanction;
 - d. Where the allegations in the First Information Report or the complaints taken at their face value and accepted in their entirety, did not constitute the offence alleged;
 - e. Where the allegations constituted an offence alleged but there was either no legal evidence adduced or the evidence adduced clearly or manifestly failed to prove the charge;
 - f. The prosecution was not in public interest;
 - g. The prosecution was not in the interests of the administration of justice;
 - h. The prosecution was oppressive, vexatious and an abuse of the court process;
 - i. The prosecution amounted to a breach of rights and fundamental freedoms;
 - j. The investigation and prosecution amounted to abuse of power and discretion and was aimed at achieving an ulterior or improper motive;
 - k. The investigation and the prosecution were tainted with illegality, irrationality and procedural impropriety; and,
 - l. The investigation and prosecution were in gross contravention of *the Constitution* and the law.
50. The Applicants allege that on 25th October 2023 he instructed his advocate on record Mr. Borona to file Judicial Review proceedings under certificate of urgency application wherein this honorable court granted orders issued on 27th October, 2023. (annexed in the affidavit and marked as “B” was a copy of the court order). On 27th October 2023 despite being notified of the court orders that had been issued by this Honorable court the Respondents issued summons on him indicating that they had instituted charges against him at the County Court in relation to MCCGCR/EO77/23. (Annexed in the affidavit marked as “C” and “D” respectively were copies of the summons and charge sheet). The said charges raised live legal and factual issues which are already being considered by this honorable court especially in relation to the power transformer structure alluded to in the charge sheet. If the lower court county proceedings are allowed to continue then the same would render this judicial review proceedings nugatory and of mere academic nature. In the premises, the Applicants respectfully asked for this Honorable court to stay the proceedings in MCCGCR/EO77/23 pending the hearing and determination of ELC JR. No. 4 of 2023.
51. In response to the Application, the Respondents argued all powers of prosecution are conferred upon the Director of Public Prosecution as per Article 157 of *the Constitution* of Kenya 2010 and the Respondents do not prosecute any matters before the County Court thus the orders being sought by the Applicant could not be granted in the absence of the Director of Public Prosecutions being a party to this suit and/or the instant Application. According to the Respondents the County Court is a judicial function vested as per the provision of Articles 159 and 160 of *the Constitution* of Kenya 2010 and once more the Respondents did not have any judicial functions, thus in the absence of the



- Honourable Attorney or the judiciary as a party the orders being sought cannot be granted in their absence as those orders cannot apply on the Respondents.
52. The Respondents went further to state that the Applicant herein contravened the provision of Section 57 of the *Physical and Land Use Planning Act* 2019 and Section 57 (2) of the said Act creates an offence for which the Applicant has since been charged vide “County Court Case No. MCCGCRR/E077/2023 Republic v Harji Govind Ruda and Meshak Agosa”. The Applicant should not be protected through the back door means in contravening the law as captioned above and this Honourable Court should shy away from according the Applicant with any “protection” and to allow the due process of the law to take its course. Further, to the above, this Application and suit is inconsistent with the provision of Order 53 of the Civil Procedure Rules, 2010 as neither has the Applicant filed the substantive motion nor sought formally for an extension of time to file the substantive motion out of time.
53. Under the provision of Article 157 (1) of *the Constitution*, the ODPP was enjoined in exercising the powers conferred by the provision to have regard to public interest, the interest of the administration of justice and the need to prevent and avoid abuse of the legal process. Interest of the administration of justice dictated that only those whom the DPP believed to have a prosecutable case against them be arraigned in court and those who DPP believed to have no prosecutable case against them be let free. That was why the provision of Article 159 (2) of *the Constitution* provided that justice should be done to all, irrespective of status. Justice demanded that it should not be one way for some people and another for others, but one way for all.
54. With regard to concurrent civil and criminal proceedings, the provision of Section 193A of the Criminal Procedure Code, Cap. 75, Laws of Kenya (the CPC Act) provided that any matter in issue in any criminal proceedings which was also directly or substantially in issue in any pending civil proceedings could not be a ground for any stay, prohibition or delay of the criminal proceedings. Concurrent proceedings meant independent, simultaneous investigations and prosecutions involving substantially the same matter and parties.
55. A court could only block parallel proceedings in special circumstances. An Applicant could move for a stay to block parallel proceedings, which would be granted only if the Applicant could prove either that the government was acting in bad faith and using malicious tactics to circumvent the strict criminal discovery rules, or that there was a due process violation. Even if an Applicant met one of those requirements, a stay might not be guaranteed. The court took as many other factors into account in deciding whether a stay was appropriate in a specific situation. Those factors included; the commonality of the transaction or issues, the timing of the motion, judicial efficiency, the public interest, and whether or not a Petitioner was intentionally creating an impediment.
56. The rule of the thumb with respect to concurrent criminal and civil proceedings based on a similar set of facts and circumstances was that the criminal case ought to proceed unless it could be demonstrated that the prosecution of the criminal case would either result to infringement of the rights and fundamental freedoms of the accused persons or would lead to the contravention of *the Constitution*. The criminal case and the judicial review suit were based on similar facts and background. On one hand, one of the hotly contested issues in the civil case were the acts of the Respondents issuing a notice ordering all the residents of Mombasa plot no. XXVI/187, Kizingo to vacate the premises over alleged power transformer faults. (annexed in the affidavit and marked as “D” a copy of the notice). There was also the issuance of an enforcement notice in relation to a power transformer structure.
57. According to the Respondents the Applicants contravened the provision of Section 57 of the *Physical and Land Use Planning Act* 2019. That the provision of Section 57 (2) of the said Act creates an



offence for which the Applicant has since been charged vide “County Court Case No. MCCGCRR/EO77/2023 Republic v Harji Govind Ruda and Meshak Agosa.

58. In the event that the instant court allows the judicial review proceedings and make a final determination in favour of the Applicants, then the same effectively terminates the criminal case which is pegged on the orders sought in the judicial review application. The judicial review application will proceed. One of the possibilities is that if for instant the Environment and Land Court sitting as the Judicial Review Court does not find for the Applicants and finds that they were in contravention of the Physical and Land Use Planning Act 2019 and Section 57 (2) of the said Act then the matter is likely to be taken up by the Respondents in conjunction with the police for further dealing. In that case, a criminal case similar to the impugned one would again be instituted against the Applicants. In other words, after all was said and done, the parties would find themselves in the same situation.
59. There is logic in the general position that where there were concurrent criminal and civil cases based on similar facts and circumstances, the criminal case ought to be allowed to first be heard and determined. The foregoing general position was, however, subject to exceptions including whether the criminal case infringed the rights and fundamental freedoms of the accused or it was in contravention of the Constitution. Accordingly, a court could not terminate a criminal case solely on the basis of a pending civil case based on similar facts and circumstances.
60. Going by the foregoing in this instant case, the circumstances of this case are not clearly exceptional and compelling. For these reasons, therefore, I strongly find that the Applicants have not made out a case to be granted a stay in “the County Court Case no. MCCGCRR/EO77/2023 - R v Harji Govind Ruda and Meshack Agosa”, consequently the Notice of Motion application dated 31st October, 2023 is unmeritorious and hence cannot stand.

Issue No. c). Whether the orders for setting aside and/ or reviewing the orders date 27th October, 2023 under Order 40 Rule 7 of the Civil Procedure Rules as per the Notice of Motion dated 2nd November, 2023 are merited.

61. Under this sub - heading, the Honourable Court shall examine if it can set aside or discharge its orders of 27th October, 2023. The prayer to discharge the said injunctive orders is premised on Order 40 rule 7 of the Civil Procedure Rules, 2010 which states as follows:

“7 Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”
62. The interlocutory injunction sought to be discharged was issued on 27th October, 2023 pending the determination of the application. Further the orders granted by this honorable court on 27th October 2023 were as set out above. In the case of:- “Kirema M’arimba v Joseph Kajuki [2014] eKLR” when the court was considering an appeal filed prior to filing an application to set aside ex parte Orders under Order 12 Rule 7 held as follows:-

“It should be noted that after a party has had his application seeking to set aside ex parte judgment is heard and determined, that is when a party has right of appeal; otherwise before then a party who is aggrieved by an ex parte judgment has no right of Appeal.”
63. In the case of:- “Primrose Management Limited – Versus - Chairman of the Business Premises Rent Tribunal, Nairobi & another [2015] eKLR” the Court was called upon to issue judicial review Orders on the premise of an ex parte application filed in the trial Court. The Court held as follows;



28. Apart from attending the Tribunal and opposing the application, the applicant was entitled to apply for setting aside the said ex parte orders. In this case the Applicant have not shown the reason why the Court ought to exempt it from seeking to set aside the ex parte orders of injunction granted by the 1st Respondent or opposing the extension thereof at the inter partes hearing.
29. Judicial review it ought to be remembered is a remedy of last resort and ought not to be applied for where there exist appropriate remedies to redress the grievance complained of.
64. Additionally, in “Housing Finance Company of Kenya Limited v Brick & Mortar Holdings Limited [2020] eKLR” the trial Court had issued ex-parte Orders. The Appellant filed an appeal against the aforesaid Orders citing that the trial court did not have pecuniary jurisdiction. Upon hearing the appeal, the Court made the aforesaid determination:-
- “It is the firm belief of this Court that, it is the duty of every court, before entertaining any matter before it, and in particular ex - parte, to first satisfy itself that it has jurisdiction to handle the same. This will enable that court to save the parties the unnecessary costs in setting aside worthless proceedings and orders arising from unlawful exercise of jurisdiction.
16. Accordingly, this Court finds that the trial Court did not have the pecuniary jurisdiction to entertain the application before it and the suit generally.
17. Having found that the trial court lacked jurisdiction, I need not then delve to what the effect of the orders it gave was.
65. The ex - parte orders herein were issued on 27th October, 2023. The same were to last till the determination of the chamber summons application dated 25th October, 2023 on the injunctive orders which is have earlier elaboratively discussed and granted. Clearly, the said prayer has been overtaken by events. Thus, it is dismissed consequently with the Notice of Motion application dated 2nd November, 2023 which is hereby found to be unmerited and the same is dismissed.

Issue No. d). Who will bear the Costs of applications being Chamber summons dated 25th October, 2023, the Notice of Motion application dated 31st October, 2023 and the Notice of Motion application dated 2nd November, 2023.

66. It is now well established that the issue of costs is discretionary of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to means:-
- “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”
67. The proviso of Section 27 of the *Civil Procedure Act*, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 (1) provides as follows:-
- “(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for



the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

68. A careful reading of Section 27 indicates that it is considered trite law that costs follow the cause/event, as described by Sir Dinshah Fardunji Mulla in his book *The Code of Civil Procedure*, 18th Edition, 2011 reprint 2012 at 540, is that costs must follow the event unless the court, for some good reasons, orders otherwise. See the decisions of Supreme Court “*Jasbir Rai Singh v Tarchalan Singh*” eKLR [2014] and *Cecilia Karuru Ngayo v Barclays Bank of Kenya Limited*, eKLR [2014].
69. Additionally, the provision provides for ‘costs of and incidental to all suit or application’ which expression includes not only costs of suit but also costs of application in suit as described by Mulla (supra) at 536. Furthermore, Rtd. Justice Richard Kuloba in his book *Judicial Hints on Civil Procedure*, 2nd Edition, 2005 at 95 notes that the words ‘the event’ means the result of all the proceedings incidental to the litigation. Accordingly, the event means the result of the entire litigation. The order as to costs as provided for under section 27 remains at the discretion of the court.
70. The award of costs is therefore not cast in stone but courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the suit but also the circumstances of each case. In “*Morgan Air Cargo Limited v Evrest Enterprises Limited* [2014] eKLR” the court noted that;
- “The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”
71. In this case, as this Honourable Court has opined above, the costs of the three applications shall be in the cause.

VIII. Conclusion & Disposition

72. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus applications, this court arrives at the following decision and makes below order:-
- a. That the Chamber summons application dated 25th October, 2023 be and is hereby found to be merited on the prayers 4 and 5 of the application which can be granted on the interim.
 - b. That the Notice of Motion application dated 31st October, 2023 be and is hereby found to lack merit and the same is dismissed with the costs being in the cause.
 - c. That the Notice of Motion application dated 2nd November, 2023 be and is hereby found to lack merit and hence the same is dismissed with costs being in the cause.
 - d. That an order of temporary injunction do and is hereby issued restraining the Respondents whether by themselves, their servants or agents or howsoever otherwise from trespassing,



evicting, leasing or in any way interfering with the Applicant's quiet possession of plot no XXVI/187 Kizingo until the hearing of the application for judicial review or further orders

- e. That an order of temporary injunction do and is hereby issued restraining the Respondents whether by themselves, their servants or agents from harassing and/or intimidating the Applicants and/or their servants or agents in connection to activities around Plot No. XXVI/187 Kizingo until the hearing of the application for judicial review or further orders.
- f. That for expediency sake the parties to adhere to the suit to be disposed off within the next 180 days from this date hereof. There be a mention on 16th September, 2024 for compliance and further direction on how to dispose off the matter.
- g. That the Costs of applications being Chamber Summons dated 25th October, 2023, the Notice of Motion application dated 31st October, 2023 and the Notice of Motion application dated 2nd November, 2023 shall be in the cause.

It is so Ordered Accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 24TH DAY OF JUNE 2024.

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

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.**
- b. Mr. Borona Advocate for the Applicants**
- c. No appearance for the 1st and 2nd Respondents**

