



Mwangome & 5 others v Rea Vipingo Plantations Ltd & 3 others; Commission for Human Rights & Justice (Interested Party) (Environment & Land Case E030 of 2023) [2024] KEELC 5646 (KLR) (15 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5646 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E030 OF 2023**

**LL NAIKUNI, J
JULY 15, 2024**

BETWEEN

**WYCLIFFE TEMBO MWANGOME 1ST PLAINTIFF
NGUMBAO KENGA IHA 2ND PLAINTIFF
JOSEPH KARISA FONDO 3RD PLAINTIFF
ESTHER KACHE MWAYELE 4TH PLAINTIFF
GEOFFERY KAMAU NGOIYA AND 5TH PLAINTIFF
6. BAMBANI KILIO CBO 6TH PLAINTIFF**

AND

**REA VIPINGO PLANTATIONS LTD 1ST DEFENDANT
VIPINGO DEVELOPMENT PLC FORMELY VIPINGO DEVELOPMENT LTD 2ND DEFENDANT
CENTUM DEVELOPMENT PLC 3RD DEFENDANT
MOMBASA CEMENT LIMITED 4TH DEFENDANT**

AND

COMMISSION FOR HUMAN RIGHTS & JUSTICE INTERESTED PARTY



RULING

I. Introduction

1. This Honourable Court is caused with the task of making a determination of the Notice of Motion application dated 22nd June, 2023. It was moved by the Commission for Human Rights and Justice, the Applicant and intended Interested Party herein under a certificate of urgency. It was brought by the Applicant under the provisions of Order 1, Rule 3 of the Civil Procedure Rule, 2010 and Sections 3A, 6 and 7 of the *Civil Procedure Act*, Cap. 21 and all enabling provisions of the Law.
2. Upon service of the said application both the 2nd and 4th Defendants/Respondents filed their replies vide a 16 Paragraphed Replying Affidavit dated 12th June, 2024 and an 18 Paragraphed Replying Affidavit dated 11th June, 2024 respectively. Apparently, the 1st and 3rd Defendants opted not to file any response.

II. The Intended Interested/Applicant's case

3. The Intended Interested Party/Applicant sought for the following orders:-
 - a. Spent.
 - b. That Commission for Human Rights and Justice be enjoined as Interested Party and be given leave to file Defence and a Counter - Claim if any).
 - c. That there be a stay of proceedings in this matter pending hearing and determination of High court ELC Petition Number E004 and E008 both filed and pending in the Malindi High Court ELC Division.
 - d. That cost of this application be provided for.
4. The application by the Applicant is premised on the grounds, facts and testimony on the face of the application and further supported by the 15 paragraphed annexed affidavit of Julius Odogoha Human Rights Activist herein with three (3) annexures marked as "Jo- 001 to - 003" annexed hereto. The Applicant averred that:
 - a. Sometime on the 28th March 2023, through the Commission for Human Rights & Justice filed a High Court ELC Petition in Malindi being HCELC Petition No. E008 of 2023 seeking among other order cancellation of Lease of parcel of Land comprising of Land Reference Number 663/IV/MN (Hereinafter referred to as "The Suit Land"), annexed in the affidavit and marked as "JO – 001" were copies of the Petition and supporting affidavit.
 - b. Reasons for filing the aforesaid Petition was to protect and conserve the aforementioned Land which was granted to Bambani Kilio C.B.O for the use and benefits of the members of the said community and contrary thereto the officials of the said C.B.O alienated it and are selling its subdivision to other parties who are not the intended beneficiaries.
 - c. Since the Petition was yet to be heard and determined.
 - d. He further filed a Constitutional Petition in the High Court at Malindi being Malindi HCC Petition No.E004 OF 2023, seeking amongst other orders the Asset Recovery Agency be directed to take action on the office bearers of Bambani Kilio C.B.O.The Plaintiffs herein so as preserve assets they are fraudulently acquiring with the proceeds of sale of Public Land at



the detriments of the intended beneficiaries annexed in the affidavit and marked as “J0 – 002” were the copies of Petition number HCC Petition No.E004 of 2023.

- e. On 12th April 2023 he learnt that the Plaintiffs herein had filed an Environment and Land Court case at the Chief Magistrate Court at Kilifi and obtained Ex - Parte injunctive orders annexed in the affidavit and marked as “J0 – 003” was a copy of the said order.
- f. The said matter was willfully and purposeful filed in the said Court which did not have the requisite jurisdiction to wind work investigative agencies that there existed a suit in Court and under any investigation in the impropriety of the activities of the Plaintiffs.
- g. The said orders were obtained through concealment and Non-disclosure of material facts even in the value of the Locus substratum.
- h. The intention the Plaintiff in filing the aforesaid suit was to hinder and tamper with any investigations into the illegal activities and in furtherance of the fraud being perpetrated at Bambani Kilio C.B.O.
- i. It was from the foregoing reason that the Interested party was seeking leave to be enjoined, so as to be able to participate in the proceedings so as to bring to light the fraudulent Land dealings that were being perpetrated by the Plaintiffs.
- j. The Interested Party was also seeking for stay of proceedings hence pending hearing and determination of HCCELC Petition NoE008 OF 2023 and HCC Petition NoE004 of 2023 which were the matters in Court with jurisdiction and not the Chief Magistrate Court.
- k. Unless the Interested Party’s application was heard and the orders sought granted there would be a great miscarriage of justice and the Court shall be used as stamp for illegalities being committed by the Plaintiffs herein.
- l. The Plaintiffs stood to suffer no prejudice by staying of proceedings herein as they were also enjoined in the matter before the High Court Environment and Land Court Division.
- m. In the interest of Justice this application ought to be heard and the orders sought be granted.

III. The Grounds of Opposition by the 1st Defendant/Respondent

5. Through the Grounds of Opposition dated 12th June, 2024, the 1st Defendant/Respondent partially opposed the Interested Party’s Notice of Motion application dated 22nd June 2023 on, inter alia, the following grounds:
 - a. The 1st Defendant was desirous of finalising this matter expeditiously.
 - b. This suit challenges the validity of Title L.R. No.663/W/MN in the names of the Plaintiff. ELC Petition No.E004 and E008 assume the title was valid. It was therefore only logical that the validity of the title be determined first before any dispositions under it could be discussed.
 - c. A stay of proceedings was a serious and fundamental interruption on the right of a party to conduct their litigation towards trial on the basis of the substantive merits of their case. Accordingly, it should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.
 - d. The Applicant had not met the threshold for the grant of the orders sought.
 - e. The application would prevent the just and expeditious disposal of this suit.



f. Accordingly, the application should be dismissed with costs.

VI. The Replying Affidavit by the 2nd Defendant/Respondent

6. While opposing the Notice of Motion application dated 22nd June, 2023 by the Interested Party herein, the 2nd Defendant/Respondent herein through Omweri Jairus Makora swore a 16 Paragraphed Replying Affidavit dated 12th June, 2024. He averred as follows:-
- a. He was an adult of sound mind and disposition, being an Advocate of the High Court of Kenya practicing with the Law firm of Messrs. Mukite Musangi & Company Advocates who were in conduct of this matter on behalf of the 2nd Defendant/Respondent hence competent to swear this affidavit.
 - b. He had read and understood the Application dated 22nd June, 2023 by the Intended Interested Party/Applicant as well as the Supporting Affidavit by Mr. Julius Ogot and wished to respond to the same.
 - c. The said Application primarily sought to have Commission for Human Rights & Justice joined in these proceedings as the 5th Defendant and that these proceedings be stayed pending hearing and determination of Petitions filed by the said entity in Malindi Environment and Land Court namely, Petition E004 & E008 of 2023.
 - d. A cursory glance of the application left a lot to be desired, and the orders sought could not issue. Preliminarily, it was evident the Applicant had not been authenticated by way of a registration certificate to enable the Court understand its legal nature and evaluate its potential stake in these proceedings. This Court could not give audience to a nondescript and amorphous entity with no known legal ancestry.
 - e. Secondly, even if this Court were to give the Applicant the benefit of the doubt, the 2nd Defendant/Respondent would still be confused by the relation that it had with the deponent of the Supporting Affidavit known as Julius Ogot.
 - f. The said Julius Ogot had introduced himself as a human rights activist. He neither exhibited his credentials as such, nor ever illustrated his relationship with the Applicant. His identity and locus were a mystery to the Deponent herein and his client at large. Will this Court descend to the arena of granting audience to unauthenticated and non-descript busy bodies? The legal position was in the negative.
 - g. Besides the shadowy nature of the party seeking joinder, the application as framed never disclosed sufficient grounds and basis for the grant of the orders sought.
 - h. First and foremost, the Applicant's alleged stake in the proceedings was that it was protecting the interest of the 6th Plaintiff herein in the following manner:
 - i). The 6th Plaintiff (Bambani Kilio CBO) ought to be the registered owner of the suit land.
 - ii). The 1st to 5th Plaintiffs usurped this process and had themselves registered as the proprietors of the said parcel.
 - iii). Therefore its joinder in these proceedings was to expose the fraudulent schemes of the 1st to 5th Plaintiffs as against the 6th Plaintiff.



- i). The above-demonstrated position was incompatible with the character of these proceedings: the main issue for determination in this suit was the question of ownership of the suit parcels as between the 1st to 5th Plaintiffs and the 2nd Defendant. The said Bambani-Kilio CBO had filed this case together with the other Plaintiffs to have this issue determined.
- j). It was then curious that the Applicant herein purported to represent the interest and stake of a party that was already impleaded as the 6th Plaintiff. This was a classical case of a busybody.
- k). In any case, the determination of ownership of the suit parcel as between the 1st to 5th Plaintiffs and the 2nd Defendant would be instructive of the direction that the Petitions E004 & E008 of 2023 before the Malindi Court would take. Should this Court find that the 2nd Defendant was the lawful proprietor of the suit parcels, then the said Petitions would die a natural death. Staying these proceedings would be counter-productive.
- l). In conclusion, the Applicant was on a mission to derail the just, effective and efficient disposition of this suit. The main protagonists in this land matter were ready to proceed to the substantive hearing of this matter on 18th July, 2024 yet a non-descript and unknown entity with no interest in the proceedings was keen on subverting that objective. Surely this Court cannot be party to such an injustice.
- m). Therefore the Applicant's application was a non-starter and its dismissal would not incur any prejudice to the concerned party, which was already part of the proceedings in any case.
- n). It was in the best interest of justice that the present application be dismissed with costs and the suit be allowed to proceed on merit so that the triable issues may be canvassed and settled once and for all.

VII. The Replying Affidavit by the 4th Defendant/Respondent.

- 7. While supporting the Notice of Motion application dated 22nd June 2023 by the Interested Party, Kirtan. H. Patel swore an 18 Paragraphed Replying Affidavit dated 11th June, 2024. He averred that:
 - a. He was the Director of the 4th Defendant/Respondent herein and thus duly authorized and competent to swear this Affidavit on behalf of the 4th Defendant.
 - b. Save as stated otherwise, the contents of this affidavit are based on facts within his own knowledge and on information contained in various documents referred to herein and or on advice given to him by the advocates for the 4th Defendant, Messrs. Onyony & Company Advocates. To the extent that the said contents were based on his own knowledge, they were true and so far, as they are based on information and advice as aforesaid, he verily believed the same to be true.
 - c. He had read and understood the contents of both, the Notice of Motion application dated 22nd June 2023 together with the Supporting Affidavit of Julius Ogogoh of even date sworn in support of the application.
 - d. The background facts in this matter may be summarized as follows:
 - i. On the 28th of March 2023, the Interested Party/Applicant, filed a suit in the High Court ELC Division at Malindi, in, seeking amongst other orders, orders for the cancellation of the Lease in "HCELC Petition No. E008 of 2023:Commission for Human Rights & Justice v the Director Land Administration and the County Land Registrar, Kilifi and 8 others" of the parcel of land comprising of Land Reference No. 663 / IV / MN, CR No. 79015, on the basis that the same



was fraudulently registered jointly in the name of the 1st to the 5th Plaintiffs, as opposed to the name of Bambani Kilio Community Based Organized (C.B.O).

- ii. Furthermore, following the fraudulent registration of the suit land, in the names of the 1st to the 5th Plaintiffs in the instant suit, the later had proceeded to alienate this parcel for their own personal use and was in the process of selling and transferring the same contrary to the express terms of the lease.
- iii. In addition to the above Petition, the Interested Party also filed a Constitutional Petition in the High Court at Malindi being “HCC Petition (Malindi) No. e004 of 2023: Julius Ogotoh v Bambani Community Based Organization and Kilifi County Social Development Officer and 3 others”, seeking amongst others orders, for an order that the Asset Recovery Agency be directed to take action on the office bearers of the Bambani Kilio (C.B.O) group - the 1st to the 5th Plaintiffs herein.
- iv. It's the Interested Party's contention, that it lodged the above Petitions so as to protect and conserve the aforementioned land which was granted to Bambani Kilio (C.B.O) group, for the use and benefit of the members of the said community and contrary thereto the officials of the said C.B.O (the 1st to the 5th Plaintiffs herein - alienated it and were selling its subdivision to other parties who were not the intended beneficiaries.
- v. It was for the above reasons that the Interested Party now sought to be enjoined in the instant matter and be granted leave to file the necessary pleadings herein to bring light to this court of the matters the officials of the said C.B.O had conveniently chosen to conceal.vi. The Interested Party being a human rights organization/ watchdog, was interested in the proceedings and outcome of this matter, due to its mandate as a human rights organization whose main objective was to investigate and provide redress for human rights violations and given its active role in the protection of the rights and interests of the members of the Bambani Kilio C.B.O group.
- vii. The Interested Party further contended that unless stay is granted of the proceedings of the instant suit, pending the hearing and determination of the above Petitions, the beneficiaries of the Bambani Kilio C.B.O group would suffer immense damage.
- e. All the averments set out in the Application shall be addressed and challenged in turn.
- f. It was apparent from the face of the pleadings in the instant suit, that the dispute at stake was one touching on the question of ownership over the suit land.
- g. The 2nd Defendant had made an allegation to the effect that the parent titles forming part of the suit land, currently existed in their original form and are duly registered in the name of the 2nd Defendant and the same had never been alienated, sold and or transferred in any lawful manner to the 1st to the 5th Plaintiffs herein, who claim to be the registered owners of a non - existent parcel of land.
- h. That the 2nd Defendant even went to the extent of issuing a restriction over the duplicate fraudulent title and a cancellation of title notice was also issued against this title by the Registrar of Coast land titles. (See annexed and marked as “MCL – 1”, “MCL – 2”, and “MCL – 3”, the Certificate of Postal Search as on 14th April 2023, the letter by the Ministry of lands dated 22nd March 2023 and the 2nd Defendant's Notice of Restriction)



- i. Thus, it followed, that even the alleged lease granted over suit land, which was intended for the benefit of the members of the Bambani Kilio (C.B.O) group, was also in question because the lease was issued over an alleged duplicate title.
- j. It was the 4th Defendant's contention therefore, that unless the question regarding the validity of the title issued over the suit land and the question regarding ownership over the parent titles forming part of the suit land was resolved, all other proceedings before other courts touching on the same property shall be rendered moot.
- k. Furthermore, it was trite law that a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.
- l. From the foregoing, its only logical to conclude that the issues in dispute in the instant suit ought to be dispensed first, owing to the fact that the question regarding ownership over the suit land by the members of the Bambani Kilio (C.B.O)group, will be canvassed and determined conclusively in the instant suit.
- m). That all the suits cited by the Interested Party had been filed before courts of similar levels or concurrent jurisdiction as this court hence there was nothing that stopped this court from proceeding with this suit, this suit having been filed before the other suits.
- n). The 5th Interested Party together with the members of the Bambani Kilio (C.B.O)group would suffer no prejudice if the instant suit was conclusively heard and determined on its merits.
- o). In response to the Interested Party's prayer to be enjoined as an interested party, the 4th Defendant averred that the former being a human rights organization/watch dog championing for the rights and interests of the members of the Bambani Kilio (C.B.O) group, had a stake in the instant suit, and was thus entitled to participate in the proceedings as an interested party.
- p). The 4th Defendant submitted that unless the Interested Party was allowed to champion its cause in the matter after being enjoined, justice and fairness shall not be done and attained, for the benefit of the members of the Bambani Kilio (C.B.O) group.
- q). Furthermore, whichever evidence the Interested Party sought to adduce in order to demonstrate ownership over the suit property by the members of the Bambani Kilio (C.B.O) group, needed to be ventilated before the court to facilitate the conclusive dispensation of this matter.
- r). It was in the interest of justice and fairness for this Honourable court to allow the Commission for Human Rights and Justice to enjoined as the 5th Defendant herein.

VIII. Submissions

- 8. On 25th July, 2023 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 22nd June, 2023 be disposed of by way of written submissions and 24th July, 2024. Pursuant to that the Interested Party, the 2nd Defendant/Respondent and the 4th Respondent obliged and on 4th June, 2024 a ruling date was reserved on 10th July, 2024 by Court accordingly.



A. The Written Submission by the Intended Interested Party.

9. Through the Law firm of Messrs. Shabaan Associates Advocates LLP, the Intended Interested Party filed their written submissions dated 10th June, 2024. M/s. Amugune Advocate holding brief for Mr. Masaka Advocate commenced the submissions by stating that the submission were on the captioned application. The said Application sought for the above stated reliefs. The Application was founded on the grounds cited on the face of the application and supported by the affidavit of Julius Ogot.
10. According to the Learned Counsel, the Black's law dictionary defines an interested party as "a party who has a recognizable stake and therefore standing in the matter." Judicially, an Interested Party had been defined as "one who has a stake in the proceeding though he or she was not party to the cause abintio. He or she is one who will be affected by the decision when it is made either way."
11. With regard to the current case; would the Applicant be affected by the outcome of the case? The Learned Counsel submitted that the Applicant being a human rights activist and acted on public interest shall be greatly affected by the court if the case was determined either way, thus they were entitled to participate to the proceedings as an interested party. They shall be able to give evidence and produce documents which the parties were not willing to disclose to the court thereby enabling the court to reach an informed determination on the matter. To buttress on this point, the Learned Counsel referred Court to the Supreme Court the case of "Trusted Society of Human Rights Alliances v Mumo Matemo and 5 others Application no. 12 of 2013 [2014] EKLK stated as follows:-

"Consequently, an interested party is one who has a stake in the proceedings though he or she was not party to the cause abintio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his or her interest will not be well articulated unless he or she herself appears in the proceedings and champions his or her cause".
12. The Applicant averred that unless they were allowed to champion their cause in the matter after being enjoined, any justice and fairness shall not be done and attained. Their evidence that it was the legal owner of the suit property which needed not be ventilated before the court make its finding in the matter.
13. On prayer of the Application, it was the Applicant's submission that the same be stayed as the other matter pending in Malindi relates to the same substation and revolves on the proprietary rights and interest therein. Once stayed, this would save the court the danger of giving contradictory findings leaving the parties in limbo as to which of the jurisdiction was binding and be executed. Thus it was prudent that the matter be stayed until those matters which were already pending for Judgement in the month of October 2024 be finalized. The parties shall not suffer any prejudice if the proceedings herein were stayed pending the determination in those cases as they were also parties to those cases.
14. In conclusion, the Intended Interested Party had demonstrated that it was entitled to the orders sought therein and urge the court to proceed to grant as prayed.

B. The Written Submission by the 1st Defendant/Respondent

15. The Law firm of Messrs. Kaplan & Stratton Advocates for the 1st Defendant/Respondent filed their written Submissions dated 12th June, 2024. Mr. Kahora Advocate submitted as follows in opposition to the Interested Party's Notice of Motion application dated 22nd June 2023. The Learned Counsel commenced by providing a brief introduction of the matter. He held that the application before the Court sought for joinder as well as a stay of proceedings. Although the 1st Defendant/Respondent



never opposed the prayer for joinder, but opposed the application to stay these proceedings. The Applicant sought to stay these proceedings until its two Petitions filed in Kilifi were determined. For the reasons set out below, he submitted that the application never met the threshold for grant of the orders sought.

16. According to the Learned Counsel, a stay of proceedings is a grave judicial action which interferes with the right of a litigant to conduct his litigation. It impinged on the right of access to justice and the right to be heard without delay. To support this point, the Learned Counsel held that this was outlined the case of “Kenya Wildlife Service v James Mutembei [2019] eKLR” as follows (citing Halsbury’s):-

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“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.”

17. At the heart of the dispute in this suit is Title for the Suit Property currently in the name of the Plaintiffs. The Plaintiffs were seeking, inter alia, a declaration that they were the rightful owners of the suit property. The Defendants in their counterclaim are seeking a cancellation of the title in the Plaintiffs’ names. All the Defendants averred that the title was fraudulently obtained.
18. By contrast, the suits in Kilifi presume that the title is valid and proceed on this basis. It was therefore necessary that this suit proceed first so that the validity of the title can be established. Only then could the litigation in Kilifi continue. Therefore, he urged the Court to dismiss the Notice of Motion application dated 22nd June 2023.

C. The Written Submissions by the 2nd Defendant/Respondent

19. The Law firm of Messrs. Mukite Musangi & Company on behalf of the 2nd Defendant/Respondent filed their written submissions dated 19th June, 2024. Mr. Makora Advocate holding brief for Mr. Musangi Advocate commenced his submission by stating that the Intended interested party via the Application dated 22nd June, 2023 seeks for order of joinder in the suit herein, be granted leave to file defence and Counter – Claim and that there be stay of proceedings in this matter pending the hearing and determination of the ELC NOs.E004and E008 both of 2023 filed and pending in the Malindi ELC Court.
20. While opposing the said application. the Learned Counsel submitted that the entire application herein lacked merit and should be struck out and/or dismissed with costs by raising the following two issues. Firstly, whether the request for joinder should be granted. He averred that the Applicant herein could not be termed as an interested party at all. At best, this entity was a busy - body. To buttress on that



point, he relied on the Supreme Court in the case of “Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014]eKLR opined as follows:-

“[A]n interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause”.

21. The Learned Counsel asserted that a cursory glance of the application left a lot to be desired, and the orders sought could not issue. Preliminarily, it was evident the Applicant had not been authenticated by way of a registration certificate to enable the Court understand its legal nature and evaluate its potential stake in these proceedings. As such, the Counsel submitted that this Court could not give audience to a nondescript and amorphous entity with no known legal ancestry.
22. He further submitted that besides the shadowy nature of the party seeking joinder, the application as framed never disclosed sufficient grounds and basis for the grant of the orders sought. Notably, the Applicant’s alleged stake in the proceedings was that it was protecting the interest of the 6th Plaintiff herein in the following manner:
 - a) The 6th Plaintiff (Bambani Kilio CBO) ought to be the registered owner of land parcel reference no. 663/IV/MN;
 - b) That the 1st to 5th Plaintiffs usurped this process and had themselves registered as the proprietors of the said parcel.
 - c) That therefore its joinder in these proceedings is to expose the fraudulent schemes of the 1st to 5th Plaintiffs as against the 6th Plaintiff.
23. Thus, it was clear that the Intended Interested Party desired joinder for the sole reason of representing, not its own interest, but the interest of an already impleaded party. This was nothing short of abuse of court process. The Applicant was rightly christened as a busy - body.
24. Secondly, whether stay of proceedings could be granted. The Learned Counsel opined that this suit primarily sought to determine the rightful owner of the suit property between the 1st to 5th Plaintiffs and the 2nd Defendant. He submitted that the determination of ownership of the suit parcel as between the said parties would be instructive of the direction that the Petitions E004 & E008 of 2023 before the Malindi Court would take. Should this Court find that the 2nd Defendant is the lawful proprietor of the suit parcels, then the said Petitions would die a natural death, and as such, submitted that, staying these proceedings would be Counter - productive.
25. Furthermore, the Applicant had not demonstrated the basis and/or reasons upon which the proceedings in this matter should be stayed. He submitted that a stay of proceeding order was a grave judicial action which directly interferes with the right of a litigant to conduct litigation. The said order impinges on the right of access to justice and the right to be heard without delay and/or unnecessary interruptions. As stated in the case of: “Kenya Wildlife Service v Lames Mutembei [2019] eKLR”

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be Imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”



"This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases."

26. Based on the above aforesaid, he submitted that the Applicant was on a mission to derail the just, effective and efficient disposition of this suit. The main protagonists in this land matter were ready to proceed to the substantive hearing of this matter on 18th July, 2024 yet a non-descript and unknown entity with no interest in the proceedings is keen on subverting that objective. This Court could not be party to such an Injustice.
27. In conclusion he implore upon this Honorable Court to exercise its discretion and dismiss with costs the instant application dated 22nd June, 2023 for reasons aforementioned, to allow this suit to proceed to its logical conclusion, which would in turn affect the out come of the other related suits filed in Malindi.

C.The Written Submissions by the 4th Defendant/Respondent.

28. The Law firm of Messrs. Onyony & Company Advocates acting on behalf of the 4th Defendant filed their written submissions dated 14th June, 2024. Mr. Onyony Advocate commenced by stating that he was relying on the averments founded under the 18 Paragraphed Replying Affidavit dated 11th June 2023. He provided Court a brief background by stating that the prayers sought by the Applicant through the instant motion and seeking the above stated reliefs.
29. In response to the said Application, the 4th Defendant lodged a Replying Affidavit sworn on the 11th of June 2024, stating inter alia that: the Applicant has a stake in the instant suit, the Applicant herein being a human rights organization championing for the rights and interests of the members of the Bambani Kilio Community Based Organization (C.B.O) group; and that the issues in dispute in the instant suit ought to be dispensed first, owing to the fact that the question regarding ownership over the suit land by the members of the Bambani Kilio Community Based Organization, would be canvassed and determined conclusively in the instant suit, thus rendering all other proceedings before other courts touching on the same property moot.
30. The Learned Counsel from the above brief facts, he opined that the following two (2) issues arose for determination by the Honounrable Court. Firstly, whether the Applicant ought to be joined in these proceedings as the 5th Interested Party. The Learned Counsel held that the starting point for the discourse alluded to in the preceding paragraphs was the provision of Order 1Rule 10 of the Civil Procedure Rules of 2010 which provides that:

"The court may at any stage of the proceedings, either upon or without the application of either party...order 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 to adjudicate upon and settle all questions involved in the suit, be added."

31. The Learned Counsel averred that a clear reading of the above provision, suggests that in order to be joined as an interested party, such a party had to establish before the court, that their participation was pivotal to the determination of the main dispute at hand. To buttress on this point, he relied on the case of "Francis Karioki Muruatetu & another v Republic & 5 others Petition No.15 as consolidated with No 16 of 2013 [2016] eKLR cited with approval in the case of Hopf v Director of Survey & 2 others; Sakaja & 2 others (Interested Parties)[2022]KEELC 6 (KLR),the Supreme Court set out guidance on



the requirements for successful application for joinder as an Interested Party. In it the Court gave three principles to be followed. At paragraph 37 the Court stated that the Applicant(s) must show:

“(i)The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral; (ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote;(iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

32. From the face of the Application, it is evident that allegations of the illegal acquisition of a lease over the suit land have been raised by the Applicant against the officials of the Bambani Kilio (C.B.O) group (the 1st to the 5th Plaintiffs herein). It was the Applicant's contention that the said lease was fraudulently registered and wrongfully issued in the name of the 1st to the 5th Plaintiffs as opposed to the name of the Bambani Kilio (C.B.O) group. Furthermore, following the fraudulent registration of the suit land, in the names of the 1st to the 5th Plaintiff in the instant suit, the later has proceeded to alienate this parcel for their own personal use and are in the process of selling and transferring the same contrary to the express terms of the lease.
33. In order to protect and preserve the interests of the members of the Bambani Kilio (C.B.O)group, the Applicant in furtherance of its mandate as a human rights organization whose main objective is to investigate and provide redress for human rights violations, filed two Petitions before the Malindi High Court in “HCELC Petition No. E008 of 2023: Commission for Human Rights & Justice v the Director Land Administration and the County Land Registrar, Kilifi and 8 others and Malindi HCC Petition no. E004 of 2023: Julius Ogogoh v Bambani Community Based organization and kilifi county social development officer and 3 others”, seeking for orders of the cancellation of the lease granted over Land Reference No. 663/IV/MN,CR No. 79015 in the name of the 1st to the 5th Plaintiffs and for orders that the Asset recovery agency be directed to take action against the 1st to the 5th Plaintiffs.
34. From the facts enumerated above, it is apparent that the Applicant has a stake in the above matter given that they are the representatives of the members of the Bambani Kilio (C.B.O)group. Furthermore, it is also clear that the members of the Bambani Kilio (C.B.O) group have a stake in the suit property, from the facts pleaded in the preceding paragraphs. It thus follows that the Applicant herein, in line with its mandate and given its active role in the protection and preservation of the rights of the members of Bambani Kilio (C.B.O) group, has a stake in the instant suit and is thus entitled to participate in these proceedings as an interested party.
35. It was the Applicant's further contention, that in the event that leave is granted for the Applicant to be enjoined as an interested party, then it would file all the necessary pleadings and documents to bring light to this court of the matters the 1st to the 5th Plaintiffs, have conveniently chosen to conceal before this Honourable Court. The Applicant has also alleged that it has evidence to show that members of the Bambani Kilio (C.B.O) group are the legal owners of the suit property, and this issue needs to be ventilated before this court and a finding made in the matter. From the foregoing, it is apparent that the Applicant is a necessary party for all intents and purposes to these proceedings, considering that they have met the threshold set in the case of “Francis Muruatetu case (Supra)”, in line with the provisions of Order 1 Rule 10.



36. Secondly, whether the Applicant should be granted orders for the stay of proceedings? On this prayer of the application, it is the 4th Defendant's submission that unless the question regarding the validity of the title issued over suit land and the question regarding the ownership over the parent titles forming part of the suit land was resolved, all other proceedings before other courts touching on the same property shall be rendered moot. The 2nd Defendant had also made an allegation to the effect that the parent titles forming part of the suit land, currently exist in their original form and are duly registered in the name of the 2nd Defendant, and the same has never been alienated, sold and or transferred in any lawful manner to the 1st to the 5th Plaintiff herein, who claim to be the registered owners of a non - existent parcel of land. Furthermore, the 2nd Defendant even went to the extent of issuing a restriction over he duplicate fraudulent title and a cancellation of title notice was also issued against this title by the Registrar of coast land titles. Thus, it follows, that even the alleged lease granted over the suit land, which was intended for the benefit of the members of the Bambani Kilio (C.B.O) group, was also in question because the lease was issued over an alleged duplicate title.

37. The court had to conduct its investigations to discover which title ought to be upheld. In the case of "Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR", the court while faced with a similar circumstance held that:

"A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder."

38. Furthermore, in the case of "Funzi Development Limited & Others v County Council of Kwale, Mombasa Civil Appeal No.252 of 2005 [2014] eKLR the Court of Appeal, stated that:

".....a registered proprietor acquires an absolute and indefeasible tile if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title."

From the foregoing, its only logical to conclude that the issues in dispute in the instant suit ought to be dispensed first, owing to the fact that the question regarding ownership over the suit land by the members of the Bambani Kilio Community Based Organization, would be canvassed and determined conclusively in the instant suit.

39. That all the suits cited by the Interested Party had been filed before courts of similar levels or concurrent jurisdiction as this court hence there is nothing that stops this court from proceeding with this suit, this suit having been filed before the other suits.



VIII. Analysis and Determination

40. I have carefully read and considered the pleadings herein and the relevant provisions made by the Learned Counsel. In order to arrive at an informed decision, the Honorable Court has two (2) framed the following issues for determination.
- a. Whether the Application for joinder of interested party is merited.
 - b. Whether the Applicant should be granted the order for stay of proceedings in High court ELC Petition Number E004 and E008 both filed and pending in the Malindi High Court ELC Division
 - c. Who will bear the Costs of Notice of Motion application 22nd June, 2023.

IssueNo. a). Whether the Application for joinder of interested party is merited.

41. Under this sub – title the Honourable Court shall examine whether the Applicant should be joined as a party in the suit. It is instructive to note that before a party is enjoined in a matter, the court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the applicant must move the Court during the pendency of the proceedings in that matter. Again, besides the proceedings being pending there should be not bar to them going on, so much so that if there are orders staying the proceedings then the party cannot move the Court since the proceedings are ‘frozen’ until the orders are lifted, vacated or set aside.
42. For the proposition that the proceedings must be pending, this Court relies on the cases of “Florence Nafula Ayodi & 5 others v Jonathan Ayodi Ligure, John Tabalya Mukite & another; Benson Gireng Kidiavai & 67 others (applicants/intended interested parties) [2021] eKLR” and “Elizabeth Nabangala Wekesa v Erick Omwamba & 3 Others; Esther Momanyi Omwamba (applicant) [2021] eKLR”. In the first case, this Court held that in case a party wishes to be enjoined in a matter, the case must be either be at “the nascent or other stages but must be alive.” In the second case, it was held that in case a party moves the Court to be enjoined as a party, “there is no doubt anymore that if a party wishes to be joined in a matter he or she must move the Court during the pendency of the proceedings in that matter... the main point is that it (suit) is still alive.”
43. Similarly, in the case of:- “Leonard Kimeu Mwanthi v Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR”, Lady Justice Mbugua J stated, “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” From the facts of the instant case, this suit has neither been heard nor finalized. If anything, it is proceeding with applications at the interlocutory stage. Therefore, this stage is appropriate for the application of this nature.
44. It is worth noting that an application for joinder of an interested party may be made even at the appellate stage of the proceedings. The only condition to be met first is that the proceedings are still alive. The second point that the Court should take care of is that the proposed interested party should not use the procedure to institute a fresh suit, particularly if his application is made at the appellate stage.
45. On these two points I am guided by the holdings of the Court of Appeal and Supreme Court of Kenya respectively the following cases. The applicant in the case of:- “David Kiptugen v Commissioner of Lands, Nairobi & 4 others [2016] eKLR” filed an application before the Court of Appeal to be



enjoined as an interested party to the appeal and for remission of the matter back to the trial court for hearing de novo. The court allowed that application and held;

“We agree with Ms. Kirui that whatever the outcome of the appeal, if the applicant is not joined in this appeal, he will be deprived of an opportunity to be heard on his claim to the ownership of the suit land. That will of course be unconstitutional and against the rules of natural justice.”

46. Secondly, in the case of “Communications Commission of Kenya & 4 Others – Versus - Royal Media Services Limited”, the Supreme Court in declining a similar application for joinder of an interested party held:-

“The applicant now seeks to be enjoined in this matter, even though it was neither a party at the High Court nor at the Court of Appeal. The applicant has not demonstrated how the ends of justice would better be served by enjoining it in the appeal...

We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause.”

47. The provision of Order 1 Rule 1 of the Civil Procedure Rules, 2010 under which the application is brought provides as hereunder:

All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

48. Under the provision of Order 1 Rule 10 (2) of the said Rules provides that:

“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 to adjudicate upon and settle all questions involved in the suit, be added.”

49. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of “Kingori – Versus - Chege & 3 Others [2002] 2 KLR 243” where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.



50. In the case of:- “Deported Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55” it was held as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

51. Additionally, in the case of:- “Civicon Limited v Kivuwatt Limited and 2 Others [2015] eKLR” the court observed as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a Defendant in a suit based on the general principles set out in Order I Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the Plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

52. In this case, the intended interested party was seeking leave to be joined to be able to participate in the proceedings so as to bring to light the fraudulent Land dealings that were being perpetrated by the Plaintiffs. The argument has been that unless the Intended Interested Party’s application was heard and the orders sought granted there would be a great miscarriage of justice and the Court shall be used as stamp for illegalities being committed by the Plaintiffs herein. It is therefore clear that the intended Interested Party’s presence in these proceedings is not only necessary in order to enable this court effectually and completely adjudicate upon and settle all the questions involve in this cause, but the orders that this Court may issue in this Cause are likely to affect the interest of the said intended party. Further, taking into account the relationship between the parties herein as well as the intended party to the transaction, the subject of this suit, I find that it is desirable, for avoidance of multiplicity of suits, to have the said person joined so that he can be bound by the decision of this Court. In holding



that position, I rely on the case of: “Martin Kirima Baithambu v Jeremiah Miriti [2017] eKLR”, where the court pronounced itself as hereunder:

“The pragmatic reality has been for courts to add parties in a suit based on guarantee if it is desirable to add such party so that the court can resolve all the matters in controversy effectually and completely. Aptly here would be to invoke the procedure provided under Order 1 Rule 15 of the Civil Procedure Rules. I say these things for the sake of jurisprudence.”

53. Accordingly, based on all the reasoning founded herein above, I do strongly find merit in the application for joinder. Thus, it is allowed as prayed.

IssueNo. b). Whether the Applicant should be granted the order for stay of proceedings in High court ELC Petition Number E004 and E008 both filed and pending in the Malindi High Court ELC Division

54. Under this Sub – heading the Honourable Court is called upon to cause the stay of proceedings of a matter pending in another Court to await the outcome of this case. In the case of “Kenya Wildlife Service v James Mutembei [2019] eKLR”, Gikonyo J held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. 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”.

55. Further, in the persuasive authority in the case of “Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000” Ringera J, (as he then was) stated that: -

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

56. Additionally, in the “Kenya Wildlife Case (Supra)”, Gikonyo J quoted Halsbury’s Law of England, 4th Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”



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”.

57. I am persuaded by the above authorities which lay down the clear principles that stay of proceedings is a grave matter to be entertained only in the most deserving cases as it impacts the right to expeditious trial. It is a discretionary power exercisable by the court upon consideration of the facts and circumstances of each case. As stated by the Court of Appeal in the case of “David Morton Silverstein v Atsango Chesoni [2002] eKLR”: -

“The Court is not laying down any principle that no order for stay of proceedings will ever be made; that would be contrary to the provisions of rule 5 (2) (b) of the Court's own rules. But as the court pointed out in the case we have already cited, each case must depend on its own facts and the facts of this particular case before us, as were the facts in the earlier case, do not show that the appeal will be rendered nugatory if we do not grant a stay”.

58. Being that the Applicant has explicitly put it out that they lodged High Court ELC Petition in Malindi being HCELC Petition No. E008 of 2023 seeking among other order cancellation of Lease of parcel of Land comprising of the suit land. Reasons for filing the aforesaid Petition was to protect and conserve the aforementioned Land which was granted to Bambani Kilio C.B.O for the use and benefits of the members of the said community and contrary thereto the officials of the said C.B.O alienated it and are selling its subdivision to other parties who are not the intended beneficiaries.
59. The Intended Interested Party further filed a Constitutional Petition in the High Court at Malindi being Malindi HCC Petition No.E004 OF 2023, seeking amongst other orders the Asset Recovery Agency be directed to take action on the office bearers of Bambani Kilio C.B.O. So as to preserve assets, the Plaintiffs herein are fraudulently acquiring with the proceeds of sale of Public Land at the detriments of the intended beneficiaries annexed in the affidavit and marked as “J0-002” the copies of Petition number HCC Petition No.E004 of 2023.
60. For this reason, therefore, I equally find that it will be appropriate to stay the said proceedings awaiting the outcome of this case before this Honourable Court.

Issue No. c). Who will bear the Costs of Notice of motion application dated 22nd June, 2023

61. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri v Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers v Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat v Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects not to award any costs.



Conclusion & Disposition

62. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
- a. That the Notice of Motion application dated 22nd June, 2023 by the Interested party be and is hereby found to be meritorious and allowed with no orders as to costs.
 - b. That an order be and is hereby issued joining the Commission for Human Rights and Justice as the 5th Defendant.
 - c. That the Plaintiff granted 7 days leave to file and serve an Amended Plaintiff having the Intended Interested party as the 5th Defendant.
 - d. That upon service, pursuant to the provision of Order 6, 7 and 11 of the Civil Procedure Rules, 2010, the 5th Defendant granted 14 days leave to file and serve Defence and a Counter - Claim if any and all the other relevant documents.
 - e. That subsequently, the Plaintiff granted 7 days to file and serve Reply to Defence and Defence to the Counter – Claim if there will be any filed, and for all parties to be at liberty to file and exchange any other relevant documents thereof.
 - f. That for convenience and expediency sake, the already scheduled hearing date of 18th July, 2024 be vacated until 26th November, 2024 thereof. There be a mention on 8th October, 2024 for purposes of conducting a final Pre – Trial Conference under Order 11 of the Civil Procedure Rules, 2010.
 - g. That in the meantime, there be an order do and is hereby issued for stay of proceedings in the High Court ELC Petition Number E004 and E008 both filed and pending in the Malindi High Court ELC Division awaiting the final determination of this case before this Honourable Court.
 - h. That there shall be no orders as to cost.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 15TH DAY OF JULY 2024.

.....

**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. Jairus Makora Advocate holding brief for Mr. Musengi for the 2nd Defendant.**
- c. Mr. Kahora Advocate for theDefendant.**
- d. Mr. C. Onyony Advocate for the 4th Defendant.**
- e. M/s. Amugwe Advocate holding brief for Mr. Maseka for the Interested Party/Applicant**



f. No appearance for the Plaintiffs.

