



Regeru & another (Both Suing as the Legal Representatives of Lawrence Regeru Wambaa) v Chief Land Registrar & 3 others (Environment & Land Case 130'B' of 2022) [2024] KEELC 6442 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 130'B' OF 2022
JG KEMEL, J
SEPTEMBER 30, 2024**

BETWEEN

**EDWIN WAMBAA REGERU 1ST PLAINTIFF
EMMA MUTHONI WAMBAA 2ND PLAINTIFF
BOTH SUING AS THE LEGAL REPRESENTATIVES OF LAWRENCE REGERU
WAMBAA**

AND

**THE CHIEF LAND REGISTRAR 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT
JEREMIAH MUTEGI KIBERA 3RD RESPONDENT
MICHAEL MWANGI WANJOHI 4TH RESPONDENT**

RULING

1. Before the Court are two applications dated the 23/5/2022 and 28/7/22 and the Preliminary Objection dated the 4/7/22. I shall start with the objection.

4th Respondent's Preliminary Objection dated the 4/7/2022

2. The Preliminary Objection is dated 4/7/2022. It is premised on grounds that; -
 - a. The suit is sub judice and pray for the same to be struck out.
 - b. There exists Thika ELC Suit No. E027 of 2022, by a beneficiary of the so-called estate of Lawrence Regeru Wambaa on the same property wherein the 4th Defendant is a second Defendant.



3. In his submissions, the 4th Defendant rehashed the statutory underpinning of sub judice in Section 6 of the *Civil Procedure Act*. He submitted that the subject matter and parties in both suits are essentially the same. That the Thika ELC Suit No. E027/2022 was filed in March 2022 whereas the instant one was filed in May 2022 and being the latter suit, the current one ought to be stayed. Reliance was placed on the case of Kitale ELC Suit No. 17 of 2020 *Daniel Kipkemoi Bett & Anor. v Joseph Rono* [2022] eKLR.
4. The 1st and 2nd Defendants through Senior State Counsel Amelia Chesinya filed written submissions dated 1/11/2022. Supporting the Preliminary Objection, it was submitted that indeed this suit offends the doctrine of sub judice as provided for under Section 6 of the *Civil Procedure Act*. That in both E027 of 2022 and E182 of 2022, the subject matter in contention is Ondiri Farm Scheme/2 and in the Plaintiff, Beth Wanjiru Chege, the Plaintiff claims that she is one of the beneficiaries of the suit properties of the late Lawrence. That in the instant suit and E027 of 2022 the 4th Defendant is a common party and both suits, running concurrently in Thika, seek restraining orders against the 4th respondent from interfering with Ondiri Farm Scheme/2. In clear contrast of their position, the 1st and 2nd Defendants relied on the case of *Margaret Wachu Karuri v John Waweru Ribiro* [2021] eKLR that dismissed a Preliminary Objection premised on sub judice as lacking a pure point of law to the extent that facts have to be ascertained. In the end, they beseeched the Court to find that the subject matter in the said suit is Ondiri Farm Scheme/2 and stay the present suit pending the outcome of E027 of 2022 as was held in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties)* [2020] eKLR.
5. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. At page 700 Law JA stated:

“ A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
6. At page 701 Sir Charles Newbold, P added:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion...”
7. For a Preliminary Objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid Preliminary Objection should, if successful, dispose of the suit.
8. The doctrine of sub judice is anchored in Section 6 of the *Civil Procedure Act* that;

“

“ 6. Stay of Suit



No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”

9. The Supreme Court in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties)* [2020] eKLR pronounced itself on the subject of sub judice as follows;

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

10. Turning to the instant case, the 4th Respondent avers that the instant is sub judice on account of the existence of Thika ELC No. E027/2022. Supporting the Preliminary Objection, the 1st and 2nd Respondents also introduced another suit, Thika E182/2022. For the Court to ascertain whether the Preliminary Objection on sub judice can stand, it has to analyze relevant facts namely the parties and subject matters in the aforesaid suits. That exercise alone ousts the Preliminary Objection from being a pure point of law. That notwithstanding, from the annexures in the Preliminary Objection, it is evident that the parties in Thika ELC E027/2022 are Beth Wanjiru Kageche v Edward Njuguna Kangethe & 6 Others. The instant suit has Edwin Wambaa Regeru & Anor. v The Chief Land Registrar & 3 Others. The Plaintiffs in both suits are the legal administrators and/or beneficiaries of the estate of Lawrence Regeru Wambaa and therefore the Plaintiffs are suing under the same estate of their family patriarch. The only common parties are Michael Mwangi Wanjohi who is the 4th Defendant herein and 2nd Defendant in Thika E027 of 2022 and Edward Njuguna Kangethe the intended Interested Party herein who is the 1st Defendant in Thika E027 of 2022.
11. Additionally, the cause of action in the present suit is in respect of land parcels described as Ondiri Farm Scheme/11 and LR No. Ondiri Farm Scheme/2 and the Plaintiffs inter alia seek declaration that the transfer of the said parcels of land to the 3rd and 4th Defendants are fraudulent, null and void. That the 3rd and 4th Defendants are thus holding the properties in trust for the Plaintiff.
12. On the other hand, the Plaintiffs in Thika E027 of 2022 claim LR No. Ondiri Farm Scheme/2 only as beneficiaries of the late Stephen Regeru son of the late Lawrence Regeru. They accuse the 1st and 2nd Defendants of illegally trespassing on the suit land and pray for an order staying proceedings in Kikuyu Court; an order compelling the 7th Defendants to register the Plaintiffs as owners of the suit land; compensation for damages properties and general damages for trespass. It is apparent therefore that the causes of action much as they trace a common parcel of land (Ondiri Farm Scheme/2), the



reliefs sought by the respective Plaintiffs are fundamentally similar to the extent that they are based on the right to title.

13. Notably the 1st and 2nd Defendants' counsel alluded to existence of Thika ELC E182 of 2022 in supporting the Preliminary Objection. The record herein shows that this suit was initially filed in Milimani ELC as Thika E182 of 2022 before it was transferred to this Court on 3/11/2022 (Order of Mbugua J) on account of geographical jurisdiction and renumbered Thika ELC 130'B' of 2022. As such there is no suit namely E182/2022.
14. It is important to also point out that Thika ELC E027 of 2022 was consolidated on 6/10/2022 with Thika ELC E020 of 2022 Andrew Moses Njehu v The Land Registrar, Kiambu & 3 Others. The Plaintiff therein Andrew Moses Njehu is not a party to the instant suit and therefore requirement for similar parties is not surmounted.
15. The upshot of the forgoing is that the Preliminary Objection is unmerited to the extent that it calls for ascertainment of facts. However it is clear to the Court that there are multiplicity of suits touching on the subject suit lands and the Court directs that the files be placed for mention before the Court so that the parties may address the Court on consolidation or otherwise to save the Courts precious time and avoid conflicting decisions from the Court.

The Plaintiffs' Application dated 23/5/2022

16. The Plaintiffs filed the instant Notice of Motion dated 23/5/2022 seeking Orders that;
 - a. Spent.
 - b. Spent.
 - c. The 3rd Defendant be restrained whether by himself, his servants or agents from entering or and being on Ondiri Farm Scheme/11, until further orders of this Honorable Court.
 - d. The 3rd Defendant be restrained whether by himself, his servants or agents from entering Ondiri Farm Scheme/11, pending the hearing and determination of this suit.
 - e. The 4th Defendant be restrained whether by himself, his servants or agents from entering Ondiri Farm Scheme/2, ploughing, planting crops or cultivating any portion of the suit property or being on the same until further orders of this Honorable Court.
 - f. The 4th Defendant be restrained whether by himself, his servants or agents from entering Ondiri Farm Scheme/2, or any portion of the suit property or being on the same pending hearing and determination of this suit.
 - g. A mandatory injunction do issue forthwith requiring the 4th Defendant to demolish or remove from Ondiri Farm Scheme/2 all the structure he has constructed since February 2022.
 - h. Costs of this Application be provided for.
17. The Application is premised on the grounds on the face of it that the Plaintiffs were the legal representatives of the late Lawrence Regeru Wambaa upon whose trust the Republic of Kenya holds Ondiri Farm, Scheme/2 and Ondiri Farm Scheme/11; are the owners entitled to exclusive possession of the suit properties. That the said Lawrence Regeru was one of the 72 people who bought three farms from a Company owned by European shareholders and subdivided them among themselves. That when the formal subdivision took place in the 1980s, the 72 purchasers agreed with the Government that they would surrender the three farms to it and would in turn be registered as the trustee of the



owners and would issue title deeds to the 72 owners upon submissions by them of transfers of their respective subdivisions.

18. That the suit properties have been home to the late Lawrence Regeru and family for a period of 56 years and upon their demise in 2007 and 2009 respectively, the late Lawrence and his wife were buried on Ondiri Farm Scheme/11, currently the home of their son, George Waiyaki Regeru and the 1st Plaintiff. That the 1st and 2nd Defendants have fraudulently issued the suit land title deeds to the 3rd and 4th Defendants, and the 4th Defendant has entered Ondiri Farm scheme/2 and committed trespass.
19. The Application is supported by the Affidavit of even date of Edwin Wambaa Regeru where he relied on the filed pleadings and reiterating the above grounds. Further the motion is accompanied by the Plaintiff's supporting affidavit No. 2 (sic) sworn by Peter Gathuru Ndeani on 23/5/2023.
20. Opposing the application, the 4th Defendant raised a Preliminary Objection dated 4/7/2022. Contemporaneously he filed his Replying Affidavit dated 26/9/2022. He averred that this suit is sub judice in light of Thika ELC Case No. E27 of 2022 wherein Beth Wanjiru Kageche has sued him as the 2nd Defendant. See copy of plaint annexed as MMW1. That he purchased the suit land from the 3rd Defendant after conducting due diligence and a transfer in his favor was registered in 1997. Copies of the sale agreement and transfer are marked as MMW2 & MMW3. That he recently attempted to develop the land but the said Beth Wanjiru Kageche sought to restrain and the deponent in turn sued Beth in Limuru Court. Assailing the Applicants' abstract of title at page 59 of the Application, he stated that the alleged trust is not supported by any search. That it is not plausible that Lawrence Regeru Wambaa could have title for Ondiri Farm Scheme/297 measuring 2.11 hectares but leave behind a larger parcel of land measuring 3.245 hectares now being claimed. That it is questionable why the Applicants have not challenged the title to David Mutura Nganga the transferor to Jeremia Mutegi Kibera. He urged the Court to uphold his Preliminary Objection.
21. The Plaintiffs through the firm of Kamau Kuria & Co. Advocates filed submissions dated 2/9/2022. They submitted that the save for the 4th Defendant who filed a Preliminary Objection against the suit, there is no opposition to their Application. That the Preliminary Objection raised is not a pure point of law since it based on disputed facts and calls for exercise of judicial discretion. That in light of the provisions of Section 6 of the *Civil Procedure Act*, the Plaintiff in ELC E027/2022 is a stranger and not a legal representative of the Estate of the late Lawrence Regeru. That the instant Plaintiffs have locus standi to institute the case on the strength of the grant of representation issued to them on 28/7/2008 and confirmed on 23/10/2013.
22. Regarding temporary injunction, the Applicants submitted that Order 40 of the *Civil Procedure Rules* empowers this Court to grant such orders to prevent wasting, damaging, alienation or disposition of the property pending hearing and determination of the suit. They termed the Respondents transfers as fraudulent under Section 26 of the *Land Registration Act* and that the 4th Respondent now holds the suit properties in trust hence the necessity to preserve the properties. Further that the Applicants have demonstrated a prima facie case in their favor by showing that the suit properties belonged to the late Lawrence Regeru, facts which have not been controverted by the Respondents. They urged the Court to allow the application with costs.
23. The 4th Defendant through the firm of L. Maina Irungu Advocates filed undated submissions in objection to the motion. He impugned the alleged list of 'members' whose names appear with ID numbers but for the alleged Lawrence Regeru Wambaa casting doubt on the authenticity of the list. That the challenge against the proprietorship of the 3rd and 4th Defendants cannot stand without interrogating the registration of David Muturi Nganga (on 14/10/96). He pointed out that whereas the Court had asked the 4th Defendant to avail evidence of the 3rd Defendant's demise, the 4th Defendant



in his Replying Affidavit explained the difficulty he has had in obtaining a death certificate or burial permit from the 3rd Defendant's relatives in vain.

24. The main issue for determination is whether the application is merited.
25. The guiding law in an application of this nature is contained under Order 40 rule 1 of the [Civil Procedure Rules](#) that;

“ 1. Cases in which temporary injunction may be granted [Order 40, rule 1.]

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

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

26. It is now well settled law that the granting of injunctive reliefs is a discretionary exercise predicated upon three sequential limbs to wit: that the claimant has established a prima facie case with a probability of success; once established, the claimant ought to prove that an award of damages would be insufficient to alleviate any damage caused and finally, when in doubt, the Court would decide the application on a balance of convenience. See the celebrated cases of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR.

27. The starting point is to establish whether the Applicant has demonstrated a prima facie case to grant the orders sought. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 123, defined a prima facie case as:

“ A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

28. In *Nguruman case* (*supra*) the Court of Appeal went on to further state that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the Applicant's case is more likely than not to ultimately succeed.

29. Have the Applicants demonstrated a prima facie case in their favor? Their claim of the land is advanced as legal representatives of the estate of the late Lawrence Regeru. EWR2 is the bundle of



annexures attached to the Supporting Affidavit in support of the averments therein. A cursory look of the Grant of administration issued on 28/7/2008 filed in Court confirms that the Plaintiffs are the legal representatives of the estate of Lawrence Regeru Wambaa who died intestate on 4/2/2007. Subsequently a certificate of confirmation of grant issued on 1/10/2009 and among the various properties listed therein, Ondiri Scheme/11 belongs to the 1st Plaintiff and George Waiyaki. Likewise, Ondiri Farm Scheme/2 wholly belongs to Stephen Kageche.

30. The Applicants have annexed the list of the original buyers of Ondiri Farm dated March 1982 in which the name of the deceased, Lawrence Regeru Wambaa appears. The totality of these observation in my view do constitute a prima facie case in favor of the Applicants to grant temporary injunction as prayed.
31. On irreparable harm, it was submitted by the Plaintiffs that the 3rd and 4th Respondents have acquired the suit lands fraudulently which lands have been in their family for a period in excess of 50 years. I agree with the Applicants as propositioned in the case of *Hassan Zubeid v Patrick Mwangangi Kibaiya & Anor* (2014)eKLR that in the circumstances of a case where allegations of breach of the law are made irreparable loss is probable.
32. Is there doubt in the mind of the Court? The last limb in the case of *Giella (supra)* dictates that if there is any doubt, the Court decides the application on a balance of convenience. Further the proviso of Order 40 rule 1 of the *Civil Procedure Rules* empowers this Court to make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.
33. In the end it is the view of the Court that to preserve the stratum of the suit, status quo be and is hereby granted in terms that there shall be a restriction barring any dealings on the suit land pending the hearing and determination of the suit.
34. The costs shall be in favour of the Applicants.

Interested Party's Application dated 28/7/2022

35. Vide this Motion, Edward Njuguna Kangethe seeks joinder in the suit as an Interested Party. In his Supporting Affidavit of even date, he avowed that he is in possession of the suit property having bought it from the 4th Defendant. That the 4th Defendant has failed to perform the contract of purchase compelling the Applicant to sue the 4th Defendant in CMELC 72 of 2021. That he obtained orders annexed as ENK1 therein on 11/2/2022. That the Applicant is also a Defendant in Thika ELC Case No. E27 of 2022 as shown by copy of his Replying Affidavit marked ENK2. That due to multiplicity of suits touching on Ondiri Farm Scheme/2, it is necessary to have all affected parties participate in proceedings for just determination of all issues.
36. Opposing the application, the 1st Plaintiff swore his Replying Affidavit on 27/9/2022 on his behalf as well the 2nd Plaintiff's. Recounting the facts of the suit land as stated in their motion for injunction, he accused the 1st and 2nd Defendants for breach of the obligations by fraudulently issuing the suit land title deeds to the 3rd and 4th Defendants. That accordingly since the 4th Defendant holds a bad title, he cannot transfer any land to the intended Interested Party. That the only recourse available to the Interested Party is to seek refund of the purchase price from the 4th Defendant, if at all. That the Interested Party has no identifiable stake in these proceedings; the Plaintiffs herein are not parties in *Kikuyu MCL&E No. 72 of 2021; Edward Njuguna Kangethe v Michael Mwangi Wanjohi & Anor*. That the Interested Party has not attached the sale agreement between him and the 4th Defendant upon which he claims to own part of the suit land. He beseeched the Court to dismiss the Application.
37. The application was canvassed by way of written submissions which I have read and considered.



38. On behalf of the intended Interested Party, W.J Ithondeka & Co. Advocates filed submissions dated 30/3/2023. Relying on Order 10 Rule 2 of the Civil Procedure Rules and the Supreme Court decision in *Trusted Society of Human Rights v Mumo Matemu & 5 Others* [2014] eKLR that an Interested Party is one who has a stake in the proceedings, it was submitted that the Interested Party through his Supporting Affidavit, has produced a Court order issued on 11/2/2022 in Kikuyu SPMCC MCL&E No. 72 of 2021 in his favor in respect of the suit land. That he is also Defendant in E027 of 2022 and that there are numerous suits touching on the suit land. That his application is made in the capacity of a purchaser in possession of the suit property necessitating his joinder in the proceedings.
39. On the other hand, the Plaintiffs filed skeleton submissions dated 28/9/2022. They submitted that the Interested Party holds a bad title having bought a portion of the suit property from the 4th Defendant. That since the 4th Defendant held a bad title as well, he could not purport to have passed any better title to the Interested Party thus the Interested Party has no identifiable stake in the proceedings. That the Interested Party has not adduced any documentary evidence to show how he obtained his title and therefore his application is for dismissal with costs.
40. The singular issue for determination is whether the Application is merited.
41. The legal provision governing joinder of parties is anchored in Order 1 Rule 10 (2) of the *Civil Procedure Rules* that;
- “ 10. Substitution and addition of parties [Order 1, rule 10.]
- (1)
- (2) 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.”
42. Additionally, the *Constitution of Kenya (Protection of Rights and Fundamental freedoms practice and Procedure Rules) 2013* Rule 2 defines Interested Party as: “a person or entity that has an identifiable stake or legal interest in the proceedings before the Court but is not a party to the proceeding or may not be directly involved in the litigations.”
43. The Supreme Court in the case of *Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR defined an Interested Party as one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. That he/she is the 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 interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.
44. The same Court in the case of *Francis Kariuki Muruatetu Ltd & Another v Republic & 5 Others* in Petition No. 15/16 of 2016 eKLR laid down the following parameters in determining an application for such joinder;
- “(1) 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.



- (2) 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.
- (3) 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.”

45. The Applicant avers that he is in possession of L.R No. Ondiri Farm Scheme/2 which he bought from the 4th Defendant. He has exhibited a copy of interim injunction orders he obtained in Kikuyu SPM MCL&E Case No. E72 of 2021. That he filed the said suit to compel the 4th Defendant to perform his contractual obligation regarding the suit property.

46. In rebuttal, the Plaintiffs contend that the Interested Party has no identifiable stake in these proceedings; that the 4th Defendant held no good title to pass to the Interested Party. The instant suit is yet to be determined to conclusively say the 4th Defendant holds a good title or otherwise. In the case of *Royal Media (supra)*, the Supreme Court was categorical that an Interested Party is the one who will be affected by the decision of the Court when it is made either way. It follows therefore that once this suit is determined, the outcome will have a bearing on the Interested Party who is claiming against the 4th Defendant herein. The Plaintiffs have not demonstrated any prejudice they stand to suffer if the Interested Party is so enjoined.

47. The upshot of the forgoing is that the Application dated 28/7/2022 is allowed in terms of prayer 2.

48. Final orders for disposal

- a. The Preliminary Objection dated 4/7/2022 is dismissed.
- b. The Plaintiffs’ Application dated 23/5/22 is allowed in terms of status quo restricting all dealings on the suit lands pending the hearing and determination of the suit.
- c. The Application dated the 28/7/2022 filed by the Interested Party be and is allowed as prayed.
- d. To avoid multiplicity of suits and the attendant conflicting decisions of the Court, Parties are directed to address the Court on consolidation or otherwise of the ELC No 130B of 2022 and ELC E027 of 2022. I direct that both files be mentioned for that purpose.
- e. Each party to bear its own costs.

49. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF SEPTEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Munyari for 1st and 2nd Plaintiffs

1st, 2nd, 3rd and 4th Defendants – Absent

Interested Party - Absent



