



REPUBLIC OF KENYA



**Kanyoro v Madowo & 4 others (Civil Appeal E192 of 2023)  
[2024] KEHC 12253 (KLR) (Civ) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12253 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E192 OF 2023**

**MA OTIENO, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**BEATRICE NYAMBURA KANYORO ..... APPELLANT**

**AND**

**CHARLES LIEWA MADOWO ..... 1<sup>ST</sup> RESPONDENT**

**NEWTON KIMATHI KIRIMI ..... 2<sup>ND</sup> RESPONDENT**

**NEWTON'S PREMIUM AUTOS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**KHENHKHENG MOTORS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**FRANCIS THEURI ALIAS FRANCIS TUMUTI NJOGU ..... 5<sup>TH</sup> RESPONDENT**

*(Being an Appeal from the Judgment of Hon. S. A. Opande – PM  
delivered on 14th March 2023 in Milimani CMCC No. E332 of 2022)*

**JUDGMENT**

**Introduction**

1. This is an Appeal from the lower court's judgment of 14<sup>th</sup> March 2023 in the Nairobi CMCC No. E332 of 2022 in which the trial magistrate entered judgment in favour of the 1<sup>st</sup> Respondent as against the Appellant herein.
2. The genesis of the matter is that by an Amended Plaintiff dated 26<sup>th</sup> July 2022, the 1<sup>st</sup> Respondent (then a Plaintiff) sued the Appellant (then a 4<sup>th</sup> Defendant) and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents (then 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants respectively) seeking an order of permanent injunction against the all the Defendants and/or their agents from interfering with the 1<sup>st</sup> Respondent's possession and use of motor



vehicle registration No. KCQ 591F, Toyota Land Cruiser Prado, which the 1<sup>st</sup> Respondent alleged to have purchased from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein. In the Plaintiff, the 1<sup>st</sup> Respondent also sought for an order of the court declaring him the bonafide legal and beneficial owner of the subject motor vehicle.

3. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents herein (then 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants) failed to enter appearance and file any defence in the matter despite having been served. A default judgment was therefore entered against them. The Appellant, who was then the 4<sup>th</sup> Defendant, filed her defence denying the 1<sup>st</sup> Respondents allegations, seeking instead that the subject motor vehicle be released to her since she was at material time, the registered owner of the motor vehicle.
4. On 13<sup>th</sup> March 2023, the trial court after hearing the Plaintiff (1<sup>st</sup> Respondent herein) and the 4<sup>th</sup> Defendant (Appellant herein), delivered its judgment allowing the Plaintiff's claim as against the 4<sup>th</sup> Defendant. The court in its judgment established that the 1<sup>st</sup> Respondent had proved his case on a balance of probability against all the defendants jointly and severally. Consequently, the court issued the following orders in favour of the 1<sup>st</sup> Respondent herein; -
  - a. An order declaring Plaintiff to be the bona fide legal and beneficial owner of motor vehicle registration number KCQ 591F, Toyota Land Cruiser Prado.
  - b. An order of Permanent Injunction directed at the Defendants whether by themselves, their agents, assigns, employees, disclosed and undisclosed principals, police officers or any other persons acting on their behalf from taking possession, encumbering, advertising for the sale, transferring, pledging, disassembling, or removing therefrom any parts, driving, manipulating or in any way interfering with the Plaintiff's possession and use of motor vehicle registration number KCQ 591F, Toyota Land Cruiser Prado.
  - c. An order of Mandatory Injunction directed at the 4<sup>th</sup> Defendant to effect the transfer of the motor vehicle to the Plaintiff within 7 days from the date of the judgment failure to which the Plaintiff be at liberty to effect a forced transfer.
  - d. Costs of the suit and interests from the judgment date till payment in full.

### **The Appeal**

5. Aggrieved by the trial court's judgment allowing the 1<sup>st</sup> Respondent's claim, the Appellant vide her memorandum of appeal dated 6<sup>th</sup> April 2023 lodged an appeal to this court raising nineteen (19) grounds of appeal which I need not reproduce here due to their repetitive and argumentative nature. Suffice to say that the Appeal is essentially against the trial court's finding that the 1<sup>st</sup> Respondent had acquired good title in respect of the subject motor vehicle and the consequent injunctive reliefs granted by the court in favour of the 1<sup>st</sup> Respondent.

### **Submissions**

6. At the hearing of the appeal, the parties took directions to have the same canvassed by way of written submissions. The Appellant filed her submissions dated 12<sup>th</sup> March 2024 whilst the 1<sup>st</sup> Respondents filed his dated 22<sup>nd</sup> May 2024.
7. In support of the Appeal, the Appellant submitted that the trial court erred in law and in fact by failing to protect the Appellant's title over ownership of the Motor vehicle Registration Number KCQ 591F despite the Appellant's evidence that she was at all time relevant to the suit, the legal and beneficial owner of the subject motor vehicle. Relying on section 8 of the Traffic Act Cap. 405 laws of Kenya



- and the case of Benard Muia Kilovoo vs Kenya Fresh Produce Exporters [2020] eKLR, the Appellant asserted that being the person in whose name the motor vehicle is registered, she is deemed to be the owner of the subject motor vehicle.
8. It was further the Appellant's submissions that the trial magistrate in its judgment, erred, both in law and in fact by finding that the nature of the relationship between the Appellant and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents was that of principal and agent. According to the Appellant, the trial court in reaching that conclusion, ignored the Appellant's evidence that she had actually sold the subject motor vehicle for a sum of Kshs. 3,200,000/= to the 3<sup>rd</sup> Respondent, a fact which was also supported by the sale agreement dated 3<sup>rd</sup> January 2021 between the Appellant and the 3<sup>rd</sup> Respondent. The Appellant submitted that the 3<sup>rd</sup> Respondent was yet to pay to her the purchase price and therefore she had not transferred ownership to the 3<sup>rd</sup> Respondent.
  9. The Appellant concluded her submissions by stating that the learned magistrate erred in law and in fact by failing to consider and appreciate the fact that the Appellant could not transfer the Motor vehicle to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents without payment of the consideration of Kshs. 3,200,000/= in line with the Sale Agreement dated 3<sup>rd</sup> January, 2021. Citing Section 23 of the Sales of Goods Act, Cap. 31 Laws of Kenya, the Appellant submitted that the subject motor vehicle registration No. KCQ 591F still being registered in her name as at the time of the alleged transaction between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, no valid title could be passed to the parties to the 1<sup>st</sup> Respondent.
  10. The Appellant therefore prayed that: -
    - a. The Appeal be allowed
    - b. The entire Judgment of the Judgment of the Hon. S. A. Opande Principal Magistrate delivered on the 14<sup>th</sup> March, 2023 and the entire Four (4) orders therein be set aside as against the Appellant.
    - c. The Appellant be held to be the Legal and Bonafide owner of the Motor Vehicle Registration No. KCQ 591F.
    - d. The Appellant be granted costs of the Appeal
  11. On his part, the 1<sup>st</sup> Respondent supported the trial court's findings and reiterated their submissions at the lower court. According to the Respondent, he bought the subject motor vehicle registration No. KCQ 591F from 2<sup>nd</sup> to 4<sup>th</sup> Respondents for a sum of Kshs. 3,400,000/= and paid the purchase price in full. That at the time of purchase, it had been represented to him by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents that the logbook for the vehicle was still registered in the name of the Appellant who was holding the same in trust for them pending the transfer.
  12. It was the Appellant's submissions that the trial court was right in its finding that that while the vehicle was at the time registered in the name of the Appellant, the Appellant had by her conduct given the 2<sup>nd</sup> to 4<sup>th</sup> Respondents ostensible authority to sell the subject motor vehicle to third parties, the 1<sup>st</sup> Respondent included and that by purchasing the motor vehicle from the 2<sup>nd</sup> to 4<sup>th</sup> Respondents, the 1<sup>st</sup> Respondent acquired a good title over the subject motor vehicle.
  13. The 1<sup>st</sup> Respondent asserted in his submissions in this appeal that he was an innocent purchaser for value without notice having paid the purchase price to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in good faith. That he relied on the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's apparent authority to execute the sale. It was his case that he was not privy to any arrangements that may have existed between the Appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.



14. Consequently, the Respondent therefore invited this court to reach the same conclusion as the trial court did by finding that the 1<sup>st</sup> Respondent acquired a good title in respect of motor vehicle registration No. KCQ 591F. His prayer is that the appeal be dismissed with costs in his favour.

### **Analysis and determination**

15. This being a first appeal, this court is obligated to re-assess, re-evaluate and re-examine the evidence which was adduced in the subordinate court both on points of law and on facts and come up with its own findings and conclusions. [See: Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424]. In so doing this court must take into account that it had no opportunity to hear and see witnesses testify first hand and therefore must make an allowance for that. (See: *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968 (E.A. 123)).
16. Having considered and analyzed the pleadings and the evidence adduced before the trial court by the parties herein, as well as parties' respective submissions in this appeal, it is the view of this court that the main issues for determination in this appeal are two, that is, whether the 1<sup>st</sup> Respondent acquired good title in relation to the motor vehicle registration No. KCQ 591F and whether the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were, in the circumstances of the case, capable of passing good title in respect of the subject motor vehicle to the 1<sup>st</sup> Respondent.
17. In his testimony before the trial court, the 1<sup>st</sup> Respondent adopted his witness statement of 27<sup>th</sup> January 2022 as his evidence in chief. It was his testimony that he bought the subject motor vehicle on or about 23<sup>rd</sup> December 2021 for a sum of Kshs. 3,400,000/= from the 3<sup>rd</sup> and 4<sup>th</sup> Respondent. That the 2<sup>nd</sup> Respondent who is the sole director in the two entities (3<sup>rd</sup> and 4<sup>th</sup> Respondents) represented to the 1<sup>st</sup> Respondent that he had been contracted by the registered owner of the subject motor vehicle (the Appellant herein) to sell the vehicle on her behalf and that he had authority to sell the same.
18. It was further his evidence that the subject vehicle was released to him on 23<sup>rd</sup> December 2021 upon payment of the full purchase price of Kshs. 3,400,000/- for the vehicle as follows; -
- a. The sum of Kshs 519,262 /= by way of MPESA to bank, to the 2<sup>nd</sup> Respondent's Standard Chartered Bank A/c No.010025383400 and partly in cash.
  - b. The sum of Kshs 860,000/= directly into the 2<sup>nd</sup> Respondent's account.
  - c. The sum of Kshs 2,020,738/= paid by the 1<sup>st</sup> Respondent's financier to the 3<sup>rd</sup> Respondent's bank account.
19. The 1<sup>st</sup> Respondent told the trial court that subsequent to the vehicle being released to him, the vehicle was on 20<sup>th</sup> January 2022 detained at the KICC police station following a complaint lodged thereat by the 5<sup>th</sup> Respondent. The complaint by the 5<sup>th</sup> Respondent to the police was to the effect that the subject vehicle had been sold to the 2<sup>nd</sup> Respondent by the Appellant (who is the 5<sup>th</sup> Respondent's wife and also the registered owner) but no monies had been received from the 2<sup>nd</sup> Respondent as per the agreement.
20. On her part, the Appellant testified as DW1 before the trial court and adopted her witness statements of 15<sup>th</sup> February 2022. She told court that vide a Sale Agreement dated 3<sup>rd</sup> January, 2021, she sold the subject motor vehicle to the 3<sup>rd</sup> Respondent, Newton's Premium Autos Limited for a sum of Kshs. 3,200,000/= and that the 3<sup>rd</sup> Respondent having failed to pay the purchase price as per the sale agreement, she had made no transfer to the 3<sup>rd</sup> Respondent.



21. It was therefore her case that having made no transfer of ownership of the subject motor vehicle to the 3<sup>rd</sup> Respondent, the 3<sup>rd</sup> Respondent could not in law pass any legitimate title in respect of the subject motor vehicle to the 1<sup>st</sup> Respondent as alleged.

22. It is a general principle of law that a person who does not have title or ownership of property or goods does not have the ability to transfer the ownership of that property to another person. This principle, commonly referred to as the *nemo dat* rule, is based upon the concept that a person cannot give a better title to a good or property to another person than the interest one holds. In Kenya, this principle has been legislated under section 23 of the Sales of Goods Act Cap. 31 which provides that; -

“ 23. . Sale by person not the owner

1. Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell”

23. In the case of *Daniel Kiprugut Maiywa v Rebecca Chepkurgat Maim* [2019] eKLR the ‘*nemo dat non-quod habet*’ principle was emphasized by the court when it stated as follows;

“The *nemo dat* principle means one cannot give what one does not have. This principle is intended to protect the title of the true owner. The rationale behind this principle is that whoever owns the legal title to property holds the title thereto until he or she decides to transfer it to someone else.”

24. However, it is also an equally forceful principle of law that a purchaser in good faith, for value and without notice, should be able to defend an action brought by any other person in relation to ownership of the goods. In Kenya, the right of an innocent purchaser for value to defend his title is protected under Section 23 (2) of the Sales of Goods Act which among others, recognizes the right of an apparent owner of goods to dispose of them as if he were the true owner thereof.

25. In *Daniel Kiprugut Maiywa vs Rebecca Chepkurgat Maina* (2019) eKLR the Court stated as follows in relation to the *nemo dat* principle vis-à-vis- the right of an innocent purchaser for value without notice: -

“The *nemo dat* principle means one cannot give what he does not have. This principle is intended to protect the title of the true owner. The rationale behind this principle is that whoever owns the legal title to property holds the title thereto until he or she decides to transfer it to someone else. Accordingly, an unauthorized transfer of the title by any person other than the owner generally has no legal effect, which means the owner continues to hold the title to the property while the person who received the invalid title owns nothing. However, the law provides some exceptions to this rule in the following certain circumstances; For example where a person buys the property in good faith believing that the person who sold it to him was the owner or authorized agent of the owner; where the property is sold by a mercantile agent who is in possession of the goods or documents of title; sale by a joint owner who sells the property with the permission of the co-owner or sale by a person in possession of goods or property under a voidable contract. This principle was



applied in the case of Haul Mart Kenya limited vs Tata Africa Kenya Limited (2017) eKLR and Katana Kalume vs Municipal Council of Mombasa (2019) eKLR.”

26. Guided by the nemo dat principle and the exemptions thereunder, it is now the duty of this court to reexamine and reevaluate the evidence adduced by the parties at trial with a view of establishing whether or not the 1<sup>st</sup> Respondent proved in evidence, to the standards required in law, that he acquired good title over motor vehicle registration number No. KCQ 591F which is the subject of these proceedings.
27. The standard of proof in civil cases is on a balance of probability. Section 107 of the *Evidence Act*, Chapter 80 of the Laws of Kenya, is explicit that the burden of proof is on he who alleges. The provision states that: -
- “ 1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
28. Further, Section 108 of the *Evidence Act* provides that:
- “The onus of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side”
29. The burden and standard of proof in civil cases was discussed in the case of Ignatius Makau Mutisya Vs Reuben Musyoki Muli [2015] eKLR where the court, while quoting Lord Denning in Miller –vs.- Minister Of Pensions [1947]2 All ER 372, stated as follows; -
- “That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘we think it more probable than not’, the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally unconvincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”
30. Similarly, in Mbuthia Macharia vs Annah Mutua & Another [2017] eKLR the court stated as follows on the incidence of the legal and evidentiary burden of proof and the shifting thereof; -
- “The legal burden is discharged by way of evidence with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence.....”
31. From the above, it is evident that the 1<sup>st</sup> Respondent, being the plaintiff in the lower court, had the initial legal and evidentiary burden of proving his case on a balance of probability against the Appellant. That it was only after the 1<sup>st</sup> Respondent discharged that burden that the evidentiary burden was expected to shift to the Respondents to adduce evidence in rebuttal. In *Golden Cara Investments*



*Limited v Commissioner of Domestic Taxes (Tax Appeal E078 of 2023)* [2024] KEHC 5570 (KLR), Majanja J. stated that the burden of proof is like a pendulum and that the onus of proof may shift based on the stage of the proceedings and actions taken by the parties. He stated as

“This “pendulum of proof” swings at least twice and at most thrice; the first is when the Commissioner asserts its position and the tax payer is expected to disprove this position. Once the taxpayer states its position, the pendulum swings to the Commissioner who then reviews the position taken by the taxpayer. If it is determined that the position taken by the taxpayer is devoid of evidence or that the evidence is insufficient, incompetent and irrelevant, then the pendulum swings back to the taxpayer to prove that the Commissioner was wrong in its position and overall findings.”

32. The 1<sup>st</sup> Respondent’s case in the lower court was that the Appellant had by her conduct bestowed upon the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents apparent authority to sell and dispose the motor vehicle in question.
33. It was the 1<sup>st</sup> Respondent’s case at trial that he was made aware by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents that the subject motor vehicle belonged to the Appellant and that the Respondents (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>) had the authority of the Appellant to sell the vehicle on her behalf.
34. The 1<sup>st</sup> Respondent stated that he believed that statement by the Respondents due to the fact that the Respondents had the actual possession of the vehicle backed by an agreement dated 3<sup>rd</sup> January 2021 between the Appellant and the 3<sup>rd</sup> Respondent.
35. In further proof of his case, the 1<sup>st</sup> Respondent produced in evidence an invoice for Kshs. 3,400,000 dated 20<sup>th</sup> December 2021 addressed to him from KHENGKHENG Motors, the 4<sup>th</sup> Respondent herein. The 1<sup>st</sup> Respondent also produced in evidence payment transaction details showing that the whole the Kshs. 3,400,000/- agreed between him and the 2<sup>nd</sup> – 4<sup>th</sup> Respondents has actually been paid in full to the 2<sup>nd</sup> – 4<sup>th</sup> Respondents.
36. Finally, the 1<sup>st</sup> Respondent produced a gate pass dated 23<sup>rd</sup> December 2021 showing that subsequent to the payment of the full purchase price of Kshs. 3,400,000 as per the agreement, the subject motor vehicle was released to him by the 3<sup>rd</sup> Respondent.
37. I note that in rebutting the 1<sup>st</sup> Respondent’s case, the Appellant in her evidence before the trial court, produced a sale agreement dated 3<sup>rd</sup> January 2021 between her and the 3<sup>rd</sup> Respondent as DExh. 1, showing that the purchase price of the subject motor vehicle was Kshs. 3,200,000/-. The Appellant further told the trial court that it was a term of the agreement that the purchase price was to be paid within three (3) days from the date of the agreement, a condition which was not met by the 3<sup>rd</sup> Respondent, hence her failure to transfer ownership to the 3<sup>rd</sup> Respondent. The Appellant produced a copy of motor vehicle records as at 26<sup>th</sup> January 2022 as DExh. 2 showing that the vehicle was still the registered in her name.
38. Having reviewed the respective parties’ evidence before the trial court, this court finds, as the trial court did, that the 1<sup>st</sup> Respondent proved by way of evidence, that he was an innocent purchaser for value without notice and therefore the transaction between him and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in relation to motor vehicle registration number KCQ 591F is protected under section 23 (2) of the Sales of Goods Act.
39. As correctly observed by the trial court, evidence on record as well as the Appellant’s conduct points to an agency relationship between the Appellant and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.



40. This court notes that it was the Appellant's evidence before the trial court that according to the sale agreement dated 3<sup>rd</sup> January 2021 between the Appellant and the 3<sup>rd</sup> Respondent, the alleged purchase price of Kshs. 3,200,000/= was to be paid by the Respondents within three (3) days from the date of the agreement. However, over one year later, there is no evidence adduced by the Appellant's of the efforts she had made to enforce payment of the monies.
41. It is more telling that even after realizing that the 1<sup>st</sup> Respondent had purchased the subject motor vehicle and paid a sum of Kshs. 3,400,000/- to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents who allegedly owed her a sum of Kshs. 3,200,000/= over the same vehicle, the Appellant failed to adduce any evidence at trial to the effect that she had commenced recovery proceedings against the 2<sup>nd</sup> -4<sup>th</sup> Respondents.
42. This in my humble view, appears to be a case of collusion between the Appellant and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein against the 1<sup>st</sup> Respondent. This view is reinforced by the fact that the 2<sup>nd</sup> – 4<sup>th</sup> Respondents decided not to participate in these proceedings despite having been served with the pleadings and that the Appellant chose not to make any claim against them in the same suit by way of counter-claim as would ordinarily be expected.
43. It is true that the nemo dat principle is primarily for the protection of property. However, the principle also recognizes that commercial transactions need to be protected, particularly in a case like this where the 1<sup>st</sup> Respondent has proven by way of evidence that he was an innocent purchaser for value without notice. See the case *Katana Kalume & another vs Municipal Council of Mombasa & another* (2019) eKLR where the court cited with approval the holding in *Bishopsgate Motor Finance Corporation Ltd vs Transport Brakes Ltd* (1949) 1 KB 322, at pp. 336337 and stated as follows:
- “In the development of our law, two principles have striven for mastery. The first is for the protection of property; no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”
44. From the foregoing and looking at the totality of the evidence in this matter, this court agrees upholds the trial court's judgment of 14<sup>th</sup> March 2023.
45. The Appeal is therefore found without merit is hereby dismissed with costs to the 1<sup>st</sup> Respondent which is hereby assessed at Kshs. 80,000/-
46. It so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024**

**ADO MOSES**

**JUDGE**

In the presence of: -

C/A – Moses

.....for Appellant

.....for Respondent.

