



**Ngunjiri v Gachiri & another (Civil Appeal E068 of 2023)
[2024] KEHC 12401 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E068 OF 2023
DKN MAGARE, J
SEPTEMBER 26, 2024**

BETWEEN

STEPHEN MAINA NGUNJIRI APPELLANT

AND

NEPHAT MAINA GACHIRI 1ST RESPONDENT

HANNAH WOTHAYA MAINA 2ND RESPONDENT

Claims of money had and received were distinct from the underlying validity of contracts

The appeal arose from the judgment and decree of the Small Claims Court which was for money had and received. The court held that the nature of claim pleaded was money had and received and thus it could not navigate outside that. Further, there was no basis for finding breach of contract having not been pleaded. The court found that money had and received were claims which were pure from the underlying validity of contracts. In money had and received claims the underlying contract was irrelevant. The court further held that parties wishing to enforce contracts must plead so.

Reported by Kakai Toili

Contract Law - restitution – unjust enrichment – money had and received – nature of money had and received claims - whether the underlying contract had an effect on such claims.

Civil Practice and Procedure - pleadings - matters not pleaded – determination of matters not pleaded by courts - whether courts could determine matters which were not pleaded.

Brief facts

The appeal arose from the judgment and decree of the Small Claims Court which was for money had and received. The respondents had filed a suit at the Small Claims Court seeking judgment for Kshs. 715,000 being money had and received of Kshs. 550,000 together with 30% interest as per the agreement, with costs and interest at court rates. The 1st respondent claimed that he entered into a sale agreement with the appellant for the sale of the appellant’s parcel of land for which the 1st respondent paid Kshs. 550,000. The 2nd respondent was said to be daughter of the 1st respondent to whom the land was to be transferred.



The respondents stated that they entered into an agreement. However, after the transfer was executed, they discovered there was a caution registered by a third party who also claimed purchaser's interest in the suit premises and as such the transfer could not go through. The respondents thus sought refund of the purchase price and damages. The Small Claims Court found that the 1st respondent was entitled to the refund of the purchase price of Kshs. 550,000 together with 30% totaling to Kshs. 715,000. Aggrieved, the appellant filed the instant appeal.

Issues

- i. What was the nature of money had and received claims and whether the underlying contract had an effect on such claims.
- ii. Whether courts could determine matters which were not pleaded.

Held

1. There was no basis for the claim from the 2nd respondent. That was because there was no privity of contract and or estate. There was no money that had and received from her.
2. Being an appeal from the Small Claims Court, the duty of the court was circumscribed under section 38 of the Small Claims Court Act. The duty of the court was to defer to the findings of fact of the adjudicator and analyse the matter for issues of law. The issues of law were either due to the subject matter or the finding of law by the court. An appeal of the instant nature was on points of law. It could be pure points of law or mixed points of law. The court could not delve into issues of fact. An appeal on points of law was akin to a second appeal to the Court of Appeal.
3. The instant matter was a claim for money had and received. It was not in respect of breach of contract. The amount received was Ksh. 550,000. Sections 12 and 13 of the Small Claims Court Act covered that kind of issues. Section 12 was the jurisdiction clause. On the other hand, section 13 was the exclusion of jurisdiction clause. The question of caution went to the realm of land law and not the Small Claims Court. The court could not thus award interest without breaching section 13. The issue of breach of contract did not arise from the pleadings. Parties were bound by their pleadings; they must plead their cases fully.
4. The nature of claim pleaded was money had and received. The court could not navigate outside that. Particulars of breach were not pleaded and proved. Before proof they must be pleaded. A sum of Kshs. 165,000 or costs of 48,500 did not fall under the claim of money had and received. The respondents' claim was for money had and received on or about September 22, 2020. There was no basis for finding breach of contract having not been pleaded.
5. There was no pleading on the time the contract was terminated and by what event. The postulations that the appellant did not remove a caution placed by a third party could not be attributed by implication from pleadings.
6. The court made an error of law by awarding amounts over and above Ksh 550,000 being money had and received. If the claim was for breach of contract, nothing could have been easier than to plead as such. Special damages in addition to being pleaded, must be strictly proved.
7. There was no basis in law, having elected to claim for money had and received, the court could proceed to breach of contract. Money had and received were claims which were pure from the underlying validity of contracts. In money had and received claims the underlying contract was irrelevant. Parties wishing to enforce contracts must plead so. In the circumstances only Ksh 550,000 was payable as money had and received.
8. There were competing claim for which neither party was to blame. No blame was attached and there was no termination of the underlying contract. That meant that there was no party successful in the claim. There was no breach of contract pleaded and proved. In any case the underlying contract had not been terminated. Effectively there was no successful party.
9. The respondents were not entitled to costs having sued without determining the contract and as such they were not successful parties. The court erred in awarding them costs.



Appeal allowed.

Orders

- i. *Judgment for 1st respondent for a sum of Ksh 715,000 was set aside. In lieu thereof, the court entered judgment for the 1st respondent for a sum of Ksh. 550,000, with no interest if paid within 45 days. If payment was not made for the judgment sum or part thereof, there shall be interest on the remainder from the date of judgment in the court.*
- ii. *For avoidance of doubt the court erred in law in awarding interest for alleged breach of contract in a claim for money had and received.*
- iii. *The order of costs against the 2nd respondent in the lower court, remained as there was no appeal against the same.*
- iv. *The 2nd respondent was an unnecessary party in the appeal. She shall bear her own costs.*
- v. *Each party to bear their own costs.*

Citations

Cases

Kenya

1. *Bagine, David v Martin Bundi* Civil Appeal 283 of 1996; [1997] KECA 54 (KLR) - (Explained)
2. *Masoni, John Kisaka v Nzoia Sugar Co Limited* Cause 148 of 2015; [2016] KEELRC 483 (KLR) - (Explained)
3. *Migore, Daniel Otieno v South Nyanza Sugar Co Ltd* Civil Appeal 52 of 2017; [2018] KEHC 5465 (KLR) - (Explained)
4. *Mohamed, Twaber Abdulkarim v Independent Electoral and Boundaries Commission (IEBC) & 2 others* Civil Appeal 154 of 2013; [2014] KEHC 6867 (KLR) - (Explained)
5. *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* Miscellaneous Civil Application 120 of 2016; [2020] KEHC 3164 (KLR) - (Explained)
6. *Peter Gichuki King'ara v Independent Electoral and Boundaries Commission & 2 others* Civil Appeal 31 of 2013; [2014] KECA 886 (KLR) - (Explained)
7. *Root Capital Incorporated v Tekangu Farmers Co-operative Society Ltd & Co-operative Bank of Kenya Limited* Civil Case 11 of 2016; [2016] KEHC 3735 (KLR) - (Explained)

United Kingdom

Smith v Morrison [1974] All ER 954 - (Followed)

Regional Court

Mbogo & another v Shah [1968] EA 93 - (Explained)

Statutes

Kenya

Small Claims Court Act (cap 10A) sections 12, 13, 33, 38 - (Interpreted)

Advocates

Mr Njuguna h/b for *Kiminda* for the respondents



JUDGMENT

1. This appeal arises from the Judgment and decree of lower court delivered on September 29, 2023 by Hon BW Gaithuma, in Nyeri SCCC No E035 of 2023, which was for money had and received. The Appellant filed this appeal and set forth the following grounds of appeal:
 - a. The learned magistrate erred in law and fact in finding that the appellant had breached the sale agreement.
 - b. The learned magistrate erred in law and fact in failing to find no cause of action.
 - c. The learned magistrate erred in law and fact in making a finding that was not supported by evidence.
 - d. The learned magistrate erred in law and fact in proceeding without jurisdiction.
2. The court shall ignore the questions of errors of fact as they have no basis in this type of cases. The court shall only consider questions and points of law. The appeal is essentially between the appellant and the 1st respondent.

Pleadings

3. The respondents instituted Small Claims Case No E035 of 2023 seeking judgment for Kshs 715,000 being money had and received of Kshs 550,000 together with 30% interest as per the agreement, with costs and interest at court rates.
4. The 1st respondent claimed that on September 20, 2020, he entered into a sale agreement with the appellant for the sale of the appellant's parcel of land LR No Nyeri/Ngarengiro/2234 for which the 1st respondent paid Kshs 550,000 on September 22, 2020. The 2nd respondent was said to be daughter of the 1st respondent to whom the land was to be transferred. There is no basis for the claim from the 2nd respondent. This is because there is no privity of contract and or estate. There was no money had and received from her.
5. The respondents stated in their statement of claim dated February 15, 2023 that they entered into an agreement. However, after the transfer was executed, the respondents discovered there was a caution registered by a third party who also claimed purchaser's interest in the suit premises and as such the transfer could not go through. The respondents thus sought refund of the purchase price and damages.
6. The appellant filed a defence dated March 13, 2023 stating that there was a sale agreement which the appellant was ready and willing to comply with but that one John Mugwe Kinunu placed a caution after the claimant had discharged his obligation under contract. He was not party to the matter.

Evidence

7. The 1st respondent testified and relied on his witness statement and bundle of documents filed in court. It was his case that he executed the agreement and paid full purchase price. That the transfer was intended to be in favour of the 2nd respondent who was his daughter but failed due to a caution registered after the parties started the land sale process. It was his further testimony on cross examination that he wanted a refund of the purchase price and even wrote to the appellant to claim.



8. On the part of the 2nd respondent, it was her case that she signed the sale agreement as witness. On cross examination, it was her case that the contract was not revoked as they only asked for refund.
9. The appellant also testified in court and relied on his witness statement. He admitted selling the land and signing the transfer forms. On cross examination, he testified that the parties did not agree on the completion date. It was his further case that he had initially sold the suit premises to one Joseph Mugure who placed the caution but that the sale was revoked owing to the failure to pay the purchase price. It was his case that he was in process of removing the caution. That he had earlier sold the land for Ksh350,000 to John Mugure who had not paid a balance of Ksh 37,000.
10. The court considered the case and rendered its finding that the 1st respondent was entitled to the refund of the purchase price of Kshs 550,000 together with 30% totaling to Kshs 715,000. Aggrieved, the appellant lodged a memorandum of appeal hence this appeal.

Submissions

11. The appellant submitted that the 1st respondent had no right of action as the agreement was still active. They cited *Smith v Morrison* [1974] All ER 954 to submit that the appellant had good title to pass.
12. On the part of the respondents, it was submitted that the appellant failed to take measures to have the caution removed and so the respondents were correct in seeking the refund of purchase price and transfer could not be effected.

Analysis

13. This being an appeal from the Small Claims Court, the duty of the court is circumscribed under section 38 of the *Small Claims Court Act* which provides as doth:
 1. A person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law.
 2. An appeal from any decision or order referred to in subsection (1) shall be final.
14. The duty of the court is to defer to the findings of fact of the adjudicator and analyse the matter for issues of law. The issues of law are either due to the subject matter or the finding of law by the court. In the case of *Mbogo and Another v Shah* [1968] EA 93, the Court of Appeal stated as doth:

“...that this court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
15. However, an appeal of this nature is on points of law. It can be pure points of law or mixed points of law but points of law it is. The court cannot delve into issues of fact. An appeal on points of law is akin to a second appeal to the Court of Appeal. The duty of a second appeal was set out in the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR: -

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire



decision, it is perverse. (See: *Stanley N Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).”

16. Then what constitutes a point of law? In *Twaber Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others*, (2014) eKLR, the court stated as doth: -

“4. Although the phrase ‘a matter of law’ has not been defined by the Elections Act, it has been held in *Timamy Issa Abdalla v Swaleh Salim Swaleh Imu & 3 others*, Malindi Civil Appeal No 39 of 2013 (Court Of Appeal), (Okwengu, Makhandia & Sichale, JJA) of 13.01.2014 that a decision is erroneous in law if it is one to which no court could reasonably come to, citing *Bracegirdle v Oxney* [1947] 1 All ER 126. See also *Khatib Abdalla Mwasbetani v Gedion Mwangangi Wambua & 3 others*, Malindi Civil Appeal No 39 of 2013 (Court of Appeal), (Okwengu, M’inoti & Sichale, JJA) of 23.01.2014 following *AG vs David Marakaru* [1960] EA 484.”

17. In *Peter Gichuki King'ara v Iebc & 2 others*, Nyeri Civil Appeal No 31 of 2013 (Court Of Appeal) (Visram, Koome & Odek, JJA) of 13.02.2014, the Court of Appeal held as follows: -

“It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanour – is an issue of law.”

18. The pleadings filed by the respondent claimed a sum of Kshs 715,000 constituted as follows:

- a. Ksh 550,000 refund on the purchase price paid.
- b. 30% of the purchase price as compensation. There were also other costs of Ksh 48,500/=.

19. This was a claim for money had and received. It was not in respect of breach of contract. The amount received was Ksh 550,000. Sections 12 and 13 of the *Small Claims Court Act* cover this kind of issues. Section 12, of the *Small Claims Court Act* which is the jurisdiction clause provides as follows: -

1. Subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to-
 - a. a contract for sale and supply of goods or services;
 - b. a contract relating to money held and received;
 - c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
 - d. compensation for personal injuries; and
 - e. set-off and counterclaim under any contract.
2. Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law.



3. The pecuniary jurisdiction of the court shall be limited to one million shillings.
 4. Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the court as the Chief Justice thinks fit.
20. On the other hand, section 13 of the *Small Claims Court Act* is on exclusion of jurisdiction clause. It provides as follows: -
1. If a claim has been lodged with the court, no proceedings relating to the same course of action shall be brought before any other court except where the-
 - a. proceedings before that other court were commenced before the claim was lodged with the Small Claims Court; or
 - b. claim before the other court has been withdrawn
 2. A claim shall not be brought before the court if proceedings relating to that claim are pending in or have been heard and determined by any other court.
 3. Subject to section 12(3), a higher court may transfer a claim to a Small Claims Court.
 4. For the purposes of this section, a claim is deemed to have been lodged with the court in any case where section 23 has been complied with.
 5. A claim shall not be brought before the court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.
21. The appellant's position is that the trial court's finding was in error because the agreement was still alive and the caution was registered after the agreement was executed. This is essentially whether the appellant delayed in passing title. This also depends on determination of whether there was a duty to remove the caution. The court cannot engage in this unless, it delves on enforcement of sale agreements for sale of land.
22. The question of caution goes to the realm of land law and not the small claims court. The court cannot thus award interest without breaching section 13. Secondly, the issue of breach of contract does not arise from the pleadings. Parties are bound by their pleadings; they must plead their cases fully. In the case of *Daniel Otieno Migore v South Nyanza Sugar Co Ltd* [2018] eKLR, Justice A C Mrima stated as doth: -

“

- “ 11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of *Independent Electoral and Boundaries Commission & ano v Stephen Mutinda Mule & 3 others* (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria



in *Adetoun Oladeji (NIG) v Nigeria Breweries PLC* SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

“.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....

...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

In the case of *Malawi Railways Ltd vs Nyasulu* [1998] MWSC 3, Malawi Supreme Court of Appeal stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled “*The Present Importance of Pleadings*” published in [1960] Current Legal Problems at p 174 whereof the learned author posited that: -

As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadingsfor the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

12. in respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on inter alia scrutiny in the case of *Raila Amolo Odinga & another v IEBC & 2 others* [2017] eKLR found and held as follows in an election petition: -

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise



only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....”

23. The nature of claim pleaded is money had and received. The court cannot navigate outside that. Particulars of breach were not pleaded and proved. Before proof they must be pleaded. A sum of Kshs 165,000 or costs of 48,500 do not fall under the claim of money had and received.

24. The respondents’ claim was for money had and received on or about September 22, 2020. There was no basis for finding breach of contract having not been pleaded. In *John Kisaka Masoni v Nzoia Sugar Co Limited* [2016] eKLR the court stated as follows:

The claimant prayed for several remedies during the hearing including some that were not pleaded in the plaint. Obviously those prayers that were not contained in the plaint cannot be considered by the court. The only prayers in the plaint which the court has considered are for general damages for unlawful dismissal, costs and interest.

25. There is no pleading on the time the contract was terminated and by what event. The postulations that the appellant did not remove a caution placed by a third party cannot be attributed by implication from pleadings.

26. I am satisfied that the court made an error of law by awarding amounts over and above Ksh 550,000, being money had and received. If the claim was for breach of contract, nothing could have been easier than to plead as such. Special damages in addition to being pleaded, must be strictly proved as stated. In the case of *David Bagine v Martin Bundi* [1997] eKLR, the court of appeal stated as follows: -

“It has been held time and again by this court that special damages must be pleaded and strictly proved. We refer to the remarks by this court in the case of *Mariam Maghema Ali v Jackson M Nyambu t/a sisera store*, Civil Appeal No 5 of 1990 (unreported) and *Idi Ayub Sabbani v City Council of Nairobi* (1982-88) IKAR 681 at page 684: “....special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard CJ in *Bonham Carter v Hyde Park Hotel Limited* [1948] 64 TLR 177 thus:

“Plaintiffs must understand that if they bring actions for damages it is for them to prove damage, it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying, ‘this is what I have lost, I ask you to give me these damages.’ They have to prove it”

27. There was no basis in law, having elected to claim for money had and received, the court could proceed to breach of contract. Money had and received are claims which are pure from the underlying validity of contracts. In Nyeri High Court Civil Case No 11 of 2016 *Root Capital Incorporated versus Tekangu Farmers Co-operative Society Limited* 2016 eKLR, Ngah J posited as follows: -

The question that follows and which I think would be relevant to the applicant’s suit is, would money paid under an illegal contract be recoverable?

According to *Halsbury’s Laws of England* (supra) paragraph 883 a claim for the return of money paid over in these circumstances may take one of the four basic forms. It may be:

1. a personal action for a debt (for instance, on a loan);
2. a personal restitutionary claim for money had and received;



3. an action in tort for the return of identifiable coins or notes or their value; or
4. a proprietary claim in equity even where the money has been paid into a mixed fund. However, all the cases on recovery of money paid under illegal contracts concern actions in debt or for money had and received.

Most importantly and for purposes of determination of this application, it has long been held that where a plaintiff seeks to recover money paid under an illegal contract the rule is that he may not do so unless he can make out his cause of action without reliance on the illegal contract (see *Berg v Sadler and Moore* [1937] 2 KB 158).

28. The same rule applies herein. In money had and received claims the underlying contract is irrelevant. Parties wishing to enforce contracts must plead so. In the circumstances only Ksh 550,000/= was payable as money had and received.
29. The next question is costs. There were competing claim for which neither party was to blame. No blame was attached and there was no termination of the underlying contract. This means that there was no party successful in the claim. There was no breach of contract pleaded and proved. In any case the underlying contract had not been terminated. Effectively there was no successful party. Section 33 of the *Small Claims Act* provides as follows: -
 1. The court may award costs to the successful party in any proceedings.
 2. In any other case parties shall bear their respective costs of the proceedings.
 3. Without prejudice to subsections (1) and (2), the court may award to a successful party disbursements incurred on account of the proceedings. (4) Except as provided in subsection (2), costs other than disbursements, shall not be granted to or awarded against any party to any proceedings before a court.
30. The respondents are not entitled to costs having sued without determining the contract and as such they are not successful parties. The court erred in awarding them costs. The order that commends itself in the circumstances is that the sum of 550,000/= being money had and received was due and payable.
31. To discourage premature claims, the said amount shall be paid in 45 days without interest. Should the money be paid within that period, the claim shall be without interest. If payment or part of the payment is made after 45 days, there shall be interest on such remainder from the date of judgment in this court. Each part shall bear costs in this court and the court below.

Determination

32. In the upshot, I make the following orders:
 - a. The appeal is allowed in the following terms: -
 - i. Judgment for 1st respondent for a sum of Ksh 715,000/= is set aside. In lieu thereof, I enter judgment for 1st respondent for a sum of Ksh 550,000, with no interest if paid within 45 days. If payment is not made for the judgment sum or part thereof, there shall be interest on the remainder from the date of judgment in this court.
 - ii. For avoidance of doubt the court erred in law in awarding interest for alleged breach of contract in a claim for money had and received.



- iii. Further, the order of costs against the 2nd respondent in the lower court, remains as there was no appeal against the same.
 - iv. The 2nd respondent was an unnecessary party in the appeal. She shall bear her own costs.
- b. Each party to bear their own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26TH DAY OF SEPTEMBER, 2024.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

No appearance for the Appellant

Mr. Njuguna for Kiminda for the Respondents

Court Assistant – Jedidah

