



**Ndegwa t/a Abeamso Enterprises v Equity Bank Ltd & 2 others (Civil Appeal E005 of 2024) [2024] KEHC 16292 (KLR) (Civ) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CIVIL  
CIVIL APPEAL E005 OF 2024  
CM KARIUKI, J  
DECEMBER 19, 2024**

**BETWEEN**

**STEPHEN GITHII NDEGWA T/A ABEAMSO ENTERPRISES ..... APPELLANT**

**AND**

**EQUITY BANK LTD ..... 1<sup>ST</sup> RESPONDENT**

**ROBERT WAWERU T/A ANTIQUE AUCTIONEERS LTD ... 2<sup>ND</sup> RESPONDENT**

**BLUE BELL INVESTMENT LTD ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Stephen Githii Ndegwa, the Appellant herein preferred this appeal against the judgement of the Honourable Stephen O. Mogute (PM) in Nyahururu CMCC No. 278 of 2019 delivered on 31 January 2024.
2. During the trial of this matter the Appellant pleaded that on or about 22nd June 2005, the Appellant approached the Equity Bank of Kenya (1 Respondent) seeking for a loan facility. Consequently, the 1<sup>st</sup> Respondent advanced a loan of Kshs. 250,000/= whereby he gave out his title deed for L.R. No. Nyandarua/Mawingu/433 as security. At the time, the said property was valued at Kshs. 2,100,000/= . Unfortunately, due to unavoidable circumstances, the Appellant soon fell into arrears.
3. Subsequently, on 10th November 2009 Antique Auctioneers Ltd (2nd Respondent) under the instructions of the Equity Bank Ltd issued the Appellant with a 45 days' notice to settle the outstanding loan balance. The Appellant alleged that the loan in question was valued at the exaggerated amount of Kshs. 1,800,000 which hampered his ability to raise the amount and thus the 2nd Defendant disposed of L.R. No. Nyandarua/Mawingu/433, the subject parcel of land to Blue Bell Investment Ltd (3rd Defendant).



4. The Appellant being dissatisfied with the judgement and the decree of the Honourable Stephen O. Mogute (Senior Principal Magistrate Nyahururu, brought the present appeal vide memorandum of Appeal dated 27 February 2024. The gravamen of the appeal is found in 13 grounds of appeal as follows:-
- I. That the learned Trial Magistrate erred in law and fact in dismissing the Appellant's suit in total disregard of clear and undisputed facts that the statutory, power of sale exercised by the 1<sup>st</sup> Respondent was tainted with deceit/fraud and that the purchase by the 3 Respondent was irregular, unlawful and therefore null and void.
  - II. That the learned Trial Magistrate erred in law and fact in relying in all the 1<sup>st</sup> Respondent documents written on "without prejudice" in the 1<sup>st</sup> Respondent's list of documents which documents were expunged from the court records in 25th November, 2021 by the Honourable Court on and therefore could not have been used as evidence in this matter.
  - III. That the learned Trial Magistrate erred in law and fact by indicating in the Bank to sell the collateral, which is not the correct position going by the court records, as the Appellant in his evidence denied ever being served with any notice of sale.
  - IV. That the learned Trial Magistrate erred in law and fact by finding that the Appellant was not entitled to the share of the suit land equivalent to the surplus owed to him from the sale and in the alterative damages for the under sale,
  - V. That the learned Trial Magistrate erred in law and fact by finding that the Appellant had been served with the Notice of Sale by the Respondents while it was very clear that the notice was made to one Lucy Njeri who was the 1st Respondent never expounded how she was related to this case.
  - VI. That the learned Trial Magistrate erred in law and fact by holding that the Notification of sale dated 14th May 2007 was issued by the 1st Respondent's Auctioneers which is erroneous since the two (2) affidavits sworn by Ronald Dwiga sworn on 17th May 2007 indicated clearly that the Notification of sale was served upon Lucy Njeri, who was a stranger and not a party to the loan and 1 Respondent's representative accepted as much during his evidence in court.
  - VII. That the learned Trial Magistrate erred in law and fact by not considering that the failure of the 2nd Respondent to serve the Appellant with a notification of sale was thus a clear contravention of Rule 15 (b) and (d) of the Auctioneers Rules.
  - VIII. That the learned Trial Magistrate erred in law and fact by failing to consider the provisions of the Auctioneers Act, and further to consider that failure if the 2nd Respondent to issue a notice of sale of the suit land to the Appellant at least 40 days prior to the sale amounted to an irregular and unlawful auction rendering the same null and void.
  - IX. That the learned Trial Magistrate erred in law and fact by failing to consider that there was mischief in the sale as the Respondents had valued the subject property at a forced value of Kshs. 1,800,000/= when they purported to issue a Notification of sale, a reserved price of Kshs. 1,100,000/ and they sold the property at the mere sum of Kshs. 700,000/- which evidently was about Kshs. 1,100,000/- was below the market place, this in itself was a gross undervalue of the property as interestingly, the said price equally went way below the alleged reserved price of Kshs. 1,100,000/=.



- X. That further the Trial Magistrate failed to consider the valuation report by the Appellant which was produced as an exhibit and which valued the property at Kshs. 3,200,000/ two years after the sale in 2011, the Valuation Report further stated that the forced sale value would be Kshs. 2,100,000/-.
- XI. That the learned Trial Magistrate erred in law and fact by not considering that the 1 Respondent representative was not able to explain how the sale was carried out, he failed to produce a certificate of sale, the loan statements of the Plaintiff at the date of the sale, he never produced anything to prove to the court the amount of monies owed to the Bank at the time of sale and further failed to account for surplus of the proceeds.
- XII. That the learned Trial Magistrate erred in law and in fact by finding that the Appellant had complied with the requirements of the law during the execution.
- XIII. That the learned Trial Magistrate erred in law and expressed total bias against the Appellant and disregarded his pleadings, evidence in court as well as the submissions filed on his behalf.
5. The Appellant further prayed that:-
- a. The learned Magistrate's judgement issued on the 30<sup>th</sup> day of January 2024 be set aside and the Appeal be allowed.
  - b. Costs of the appeal to the Appellant.
6. On the other hand, the 3<sup>rd</sup> Respondent herein filed its Notice of Cross Appeal dated 14<sup>th</sup> June 2024 raising one ground of appeal as follows:
- I. That the learned Magistrate erred in law by dismissing the Claimant's Counter Claim dated 26<sup>th</sup> of September 2021 on a technicality which it ought to have raised from the onset and secondly which had been cured by the Respondent having responded to the same vide its.
7. The 3<sup>rd</sup> Respondent further prayed that the Appeal be dismissed with costs to the Respondent and that its Cross Appeal be allowed with costs. That judgement of the lower court be reversed and varied to the extent that the 3<sup>rd</sup> Respondent's Counterclaim be allowed and orders sought therein be granted. Lastly, that the court award the 3<sup>rd</sup> Respondent costs and interest.
8. Appellant's Written Submissions
9. Issues for determination in the appeal and cross appeal
- i. Whether the learned trial Magistrate erred in law and in fact in finding that the statutory power of sale exercised by the 1<sup>st</sup> Respondent was not tainted with deceit and the purchase by the 3<sup>rd</sup> Respondent was irregular and/or null.
  - ii. Whether the learned trial Magistrate erred in law and in fact in relying in all the 1 Respondent's documents written on "without prejudice" as listed in the 1<sup>st</sup> Respondent's list of documents after being expunged from the court records.
  - iii. Whether the learned trial Magistrate erred in law and in fact by finding that the Appellant was not entitled to the share of the suit land equivalent to the surplus owed to him from the sale and in the alternative damages for the under sale.
  - iv. Whether the 3<sup>rd</sup> Respondent's Cross Appeal should be dismissed.



10. Whether the learned trial magistrate erred in law and in fact in finding that the statutory power of sale exercised by the 1<sup>st</sup> Respondent was not tainted with deceit and the purchase by the 3<sup>rd</sup> Respondent was irregular and/or null (grounds no. 1, 3, 5,6, 7, 8 9,10,11,12,13)
11. It was stated that from the evidence of the 1<sup>st</sup> Respondent, the Appellant's arrears stood at Kshs. 358, 685 by 2008. By 20<sup>th</sup> April 2009, the amount stood at Kshs. 362,359.81/=.The 1<sup>st</sup> Respondent alleges to have served a notice upon the Appellant following the default. Interestingly, the Schedule of Immovable Property allegedly served was upon the unknown Lucy Njeri on 16<sup>th</sup> May 2007. That the 1<sup>st</sup> Respondent's witness even confirmed that he was not aware whether the said Lucy Njeri was in any way related to the Appellant. Further, from his evidence, the 1<sup>st</sup> Respondent's witness was not certain whether the suit property was sold in the year 2007 or 2009. As such, while he claimed that the property was sold in 2007, he also noted that auctioneers issued a notice on 30/11/2009.
12. The Appellant submitted that the Schedule in question noted the date of Auction as 13<sup>th</sup> July 2007 at 11.00 a.m. at Matopeni Trading Centre claimed for a Kshs. 308,489.16/ debt. At the time of the irregular sale, the 1<sup>st</sup> Respondent acknowledged that the balance of the loan was Kshs. 358,685. As a result, the 1<sup>st</sup> Respondent sought to exercise its statutory right of setting in motion the current dilemma. However, the Appellant averred that it is also crystal clear at the 1<sup>st</sup> and 2<sup>nd</sup> Respondents elected to treat the Appellant in a tyrannous and unacceptable manner during the whole process of sale particularly failing to notify and serve him with a Notice of Sale, failing to clearly inform the Appellant of the exact debt owed, undervaluing the property and subsequently grossly underselling it. That no certificate of posting or any documentary evidence was ever adduced by the 1<sup>st</sup> Respondent to show that the Statutory Notice was indeed served upon the Appellant. These acts were clear illustrations of the breach of the Bank's duty to act with care and in good faith during the process.
13. On whether the acts of the 1<sup>st</sup> Respondent in seeking to exercise the chargees' statutory power of sale was unlawful, the Appellant quoted Section 90 & 92 (2) of the *Land Act*, 2012
14. The Appellant asserted that it was upon the Respondent to show that they complied with the law by servicing it. Unfortunately, in this case the 1<sup>st</sup> Respondent never proved service of the Notice to Sale to the Appellant by both itself and the 2<sup>nd</sup> Respondent. Its witness further failed to adduce any accounts and statements of showcasing how much the Appellant was alleged to have owed the Bank. They postulated that the failure to serve the Statutory Notice by the Bank rendered the resultant transfer null and void. Reliance was placed on Nyangilo Ochieng & Obel Omuom v Fanuel B. Ochieng, Gladys Oluoch & Kenya Commercial Bank Ltd, Civil Appeal 148 of 1995, Rule 15 (b) and (d) of the Auctioneers Rules
15. It was contended that the failure of the 2<sup>nd</sup> Respondent to serve the Plaintiff with a notification of sale was thus a clear contravention of Rule 15 (b) and (d) of the Auctioneers Rules. Notably, the purpose of such a notification is to afford an opportunity to the debtor to pay the debt in exercise of their equity of redemption in the case of a charge property. Evidently, this failure defeated the Plaintiff's right of redemption making the sale process irregular and defective.
16. It was argued that the anomalies highlighted above directly contradicted the 1<sup>st</sup> Respondent's duty as charge to act in good faith in exercising its statutory power of sale and to consider the interests of the Appellant as charger. However, the 1<sup>st</sup> Respondent completely failed to discharge this obligation and was rather complicit in covering up the irregularities. As such, the purported exercise of the statutory power of sale by the 1<sup>st</sup> Respondent (Bank) is void and the 1<sup>st</sup> Respondent is thus liable to the Appellant for selling the suit land. reliance was placed on Marteve Guest Limited u Njenga & 3 others (Civil Appeal 400 of 2018) [2022] KECA 539 (KLR)



17. The Appellant stated that the 3rd Respondent who allegedly purchased the suit property at a public auction carried out by the 2<sup>nd</sup> Respondent on the instruction the 1st Respondent (Bank), the purchaser was bound to inquire into the existence of the statutory notice. Reliance was placed on *Nyangilo Ochieng & Obel Omuom v Fanuel B. Ochieng, Gladys Oluoch & Kenya Commercial Bank Ltd* (supra)
18. Additionally, it was asserted that the 1<sup>st</sup> Respondent failed to adduce any proof of a professional valuation of the property at the time of sale and that they only claimed to have estimated the value of the property as Kshs. 1,800,000/= at the time of sale. Interestingly, this is the same amount that the property was alleged to have been valued at on 16th May 2007 vide the 1st Respondent's Schedule of Immovable Property attached to their List of Documents dated 11th January 2012. As such, they submitted that the Bank ought to have conducted another valuation at the time of the sale in question. It was submitted that the expert evidence by PW2 who had extensive expertise in the field of valuation was rational, well-constructed and uncontroverted in relation to the evidence adduced herein as to the true value of the property.
19. It was argued that the 2009 sale of the property allegedly undervalued as Kshs. 1,800,000/= at the time of the sale was considerably below the market price. That the sale which fell below the allowed 25% of the market purchase price also failed to take into considerations the improvements in the suit property. Furthermore, there was no evidence in the form of a resolution from Bluebell Investment Limited to indicate that Charles Gikunju its alleged Director was lawfully acting on behalf of the company at the time of the purchase. More interestingly, the 3<sup>rd</sup> Respondent had no proof of a Memorandum of Sale and Certificate of Sale further raising eyebrows on how the sale was conducted. It was stated that no document from the 1st Respondent ever addressed the Appellant on the value of the property in default of the Valuation Report. Reliance was placed on Section 90 & 97 (2) of the *Land Act* 2012 and *Nyanja Holdings Limited & Tripple Eight Investment (K) Limited v City Finance Bank Limited & 3 others; Ndung'u Njoroge & Kwach Advocates (Third Party)* [2022] eKLR
20. It was also submitted that the sale to the 3rd Appellant, by the 1st Respondent and as conducted by the 2nd Respondent ought to have been informed by the provisions of Rule 11 1 (b) of the Auctioneers Rules
21. Whether the learned trial magistrate erred in law and in fact in relying in all the 1<sup>st</sup> Respondent's documents written on "without prejudice" as listed in the 1st Respondent's list of documents after being expunged from the court records (ground no. 2)
22. The Appellant averred that the decision of the honourable trial court heavily relied on the 1<sup>st</sup> Respondent's documents that were previously expunged from the proceedings of the court vide a Ruling of the Honourable S.N. Mwangi (SRM) dated 25th November 2021 . Most of these documents bore "without prejudice". These documents included an alleged statutory notice dated 22/12/2006. Notably, this document was among the bundle of expunged documents per the trial court's Ruling dated 25th November 2021. It was stated that the Ruling having never been arrested, the expunged documents were redacted from all future court proceedings in this case. As such, those documents ought not to have been used as evidence in this case. Reliance was placed upon the case of *Mativo v KCB Bank Kenya Limited (Cause E001 of 2021)* [2023] KEELRC 1305 (KLR) (25 May 2023)
23. It was contended that the inclusion of expunged documents by the honourable trial court fundamentally compromised the fairness of the trial process to the Appellant violating the provisions of Article 50 (1) of *the Constitution*.



24. Whether the learned trial magistrate erred in law and in fact by finding that the Appellant was not entitled to the share of the suit land equivalent to the surplus owed to him from the sale and in the alternative damages for the under sale (grounds no. 4)
25. The Appellant pointed out that having established that the sale by the 1<sup>st</sup> Respondent to the 3<sup>rd</sup> Respondent was irregular and void, he is entitled to damages for the under sale of the suit property. Reliance was placed on *Martev Guest Limited v Njenga & 3 others* (supra)
26. It was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein, in total disregard of their obligation to the Appellant, failed to fetch the best price obtainable at the time of sale by public auction. Essentially, the acts by the Respondents only acted to deprive the Appellant of his property. In consequence, it is only fair that the Appellant is entitled to damages following the under sale. Reliance was placed on *Criticos v National Bank of Kenya Limited* (as the successor in Business to Kenya National Capital Corporation Limited "KENYAC") & another (Civil Appeal 80 of 2017) (2022] KECA 541 (KLR) (28 April 2022) (Judgment)
27. The Appellant submitted that the fair value of the suit land as guided by the professional valuation report by PW2 as discounted 10% of Kshs. 3,200,000/= would give a working value of Kshs. 2,880,000/= in consideration of the damages payable to the Appellant. Even if the 1st Respondent referred to its erroneous value, per the testimony of its witness, its auctioneers had valued the suit property at Kshs. 1.8 million but put a reserved price at Kshs. 1.1 million. Notably, the loan was quoted as Kshs. 358,685/=. However, the 1st Respondent did not explain why the surplus was never forwarded to the Appellant. reliance was placed on the case of *Samuel Mwehia Gitau v Elijah Kipng'eno arap Bii & another* [2017] eKLR
28. It was also pleaded that as guided by Section 26 of the *Auctioneers Act*, failure of the 2nd Respondent to issue a notice of sale of the suit land to the Appellant at least 40 days prior to the sale amounted to an irregular auction. It is our humble submission that the improper exercise of power by the 2nd Respondent further caused the Appellant to suffer loss by denying him the right to redeem the property. Consequently, he is eligible for damages against the auctioneers. Reliance was placed on *Jacob Ochieng' Muganda v Finance Company of Kenya Limited* [2002] eKLR
29. The Appellant submitted that if ever there was a case in which damages are justifiably granted to protect the innocent and oppressed, this is the case.
30. Whether the 3rd Respondent's cross appeal should be dismissed
31. It was asserted that the 3<sup>rd</sup> Respondent's Cross Appeal should be dismissed with costs. Indeed, the cross appeal is premised on the facts that it filed its statement of defence and counter claim dated 19th April 2012 devoid a verifying affidavit. Further, the party amended its statement of defence and counter claim dated 20th September 2021 filed on 22nd September 2021 and similarly failed to accompany it with a verifying affidavit. That it was based on these facts that the learned trial magistrate as guided by the provisions of Order 4 Rule 1 of the Civil Procedure Rules dismissed the 3rd Respondent's Counter Claim.
32. It was also argued that a Counter Claim must be accompanied by a Verifying Affidavit as per Order 7 Rule 5 of the Civil Procedure Rules. As such, it was stated that a counter claim not accompanied by a verifying affidavit is misconceived and bad in law and should be struck out with costs. Reliance was placed on the case of *Tadi v Boru* (Environment and Land Appeal 008 of 2021) [2022] KEELC 14953 (KLR) (21 November 2022) (Judgment)



33. It was argued that the judgment in this matter was delivered on 31st January 2024, the cross-Appeal was filed on 29th June, 2024, six months after the judgement had been filed. If the applicant was desirous of filing a cross-appeal, he should have done so within reasonable time after he was served with the memorandum of appeal. If he fell outside the said timelines given to an applicant to file an appeal, he should have moved the court without inordinate delay to allow him to file a cross-appeal out of time. It was stated that the cross-Appeal was filed out of time, the cross Appellants did not seek for extension of time to enable them file the Appeal out of the time.
34. Lastly, it was asserted that costs follow the event. This has been made clear by the proviso to Section 27 of the *Civil Procedure Act*. They prayed that the Respondents be condemned to pay for costs of the suit and interest both jointly and severally on any award that the court may make in favour of the Appellant.
35. Parties were directed to canvass appeal via submissions ,however only petitioner filed the same by the time of the drafting of the instant judgement.
36. Issues.Analysis and Determination
37. This being a first appeal, my duty is to re-evaluate the evidence afresh and draw our own conclusions bearing in mind that unlike the trial court, I did not have the benefit of seeing the witnesses testify, therefore I should give due allowance for that. (See *Selle vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123).
38. Having analyzed the trial record, it is not in dispute that the Appellant herein received a loan of Kshs. 250,000/- secured by the suit land from the 1<sup>st</sup> Respondent in the year 2006. The Appellant was supposed to repay the loan within the period of 3 years. The Appellant failed to repay the loan as agreed and despite being issued with demand notices to repay the loan arrears, he failed to do so. The Appellant asserted that he was unable to repay the loan arrears because his business had gone under and requested the bank to give him more time to clear his loan.
39. Consequently, 3 years down the line in 2009, the 1<sup>st</sup> Respondent resorted to exercise its statutory power of sale by selling the suit land which was the security for the loan to recover the arrears owed to them. The Appellant confirmed that he received a letter from the 1<sup>st</sup> Respondent back in 2006 notifying him of their intention to sell the suit land but he was still unable to repay the loan despite requesting for more time to clear the loan arrears. It is evident that the Appellant had a period of at least 3 years before the suit land was sold to repay the loan but he failed to do so.
40. In the interim, it appears that the Appellant sought reprieve from court to estop the 1<sup>st</sup> Respondent from selling the suit land. He testified that he was issued with a court order in Embu CMCC No. 165 of 2017 which stopped the process but the said order was not produced in evidence to enable the trial court to confirm what the Appellant told the court.
41. I concur with the trial magistrate's holding that is unknown why he withdrew that case instead of pursuing his rights in the same case where he was granted the alleged injunctive orders. Additionally, the Appellant filed Nyahururu PMCC No. 54 of 2010 where he was granted temporary injunctive orders but once again he did not pursue his rights under that case.
42. It was the 1<sup>st</sup> Respondent asserted that in the year 2008 the loan balance was Kshs. 358,685/- as at 26<sup>th</sup> November 2008 and the same continued accruing interest at the rate of 24% per annum as per the loan facility letter until when the suit land was sold by auction on 18<sup>th</sup> December 2009. They stated that
43. The Appellant was served with the statutory notice dated 22<sup>nd</sup> December 2006 by the 1<sup>st</sup> Respondent and the same was acknowledged by his counsel. Further, the 1<sup>st</sup> Respondent through its auctioneers



served the Appellant with the notification of sale dated 14<sup>th</sup> May 2007 giving the plaintiff 45 days to redeem the property. In my considered opinion, the Appellant cannot claim that he was not issued with these documents or was not aware of their existence as the same was done as per the Registered *Land Act* which was applicable at the time. The Appellant acknowledge receipt of the notice vide the letters dated 2/5/2006 and 6/2/2007.

44. Following the dismissal of the aforementioned suits, the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> Respondent sold the suit land through a public auction to the 3<sup>rd</sup> Respondent who was the highest bidder for a consideration of Kshs. 700,000/-.
45. I agree with the trial magistrate that 1<sup>st</sup> Respondent complied with the requirements of the law at the material time. Further, I agree with the trial magistrate that there was no fraud on the Respondents part in the conduct of the auction and that the Appellant having failed to redeem the property after service of statutory notice and notification of sale, his equity of redemption extinguished and he therefore cannot claim the suit land or part of it.
46. Moreover, I concur with the trial magistrate that the particulars of fraud, irregularity, illegality, carelessness, oppression and/or negligence were not proved to the required standard by way of evidence. Accordingly, I find that the Appellant's appeal lacks merit and it is therefore dismissed.
47. In regards to the 3<sup>rd</sup> Respondent's appeal, order 4 Rule (1) (2) of the Civil Procedure Rules provides that:-

- (2) " ... The plaintiff shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in rule 1(1) (f) above.
- (3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit on behalf of the others.
- (4) Where the plaintiff is a corporation the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.
- (5) The provisions of sub-rule (3) and (4) shall apply mutatis mutandis to counter-claims.
- (6) the court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule"

48. Further, Order 7 Rule 5(a) of the Civil Procedure Rules provides as follows:

- " 5. The defence and counter-claim filed under rule 1 and 2 shall be accompanied by -n affidavit under order 4 rule 1 (2) where there is a counter-claim."

49. In *Kenya Women Microfinance Ltd -vs- Martha Wangari Kamau* [2021] eKLR, the learned Judge Chacha Mwita upheld the decision of the Magistrate's Court striking out a Counter-claim on the basis that it was not accompanied by a verifying affidavit of the Defendant. The Judge stated that Article 159 is not the solution to all procedural faults that parties find themselves in. The Judge made reference to the decisions in the Court of Appeal in the cases of *Nicholas Kiptoo Arap Korir Salat -vs- IEBC & others* [2013] eKLR and *Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others*.



- 50. Just Like in the aforementioned case, the 3<sup>rd</sup> Respondent did not seek leave to filed the verifying affidavit. I am persuaded by the reasoning of the High Court in the above cited case and therefore uphold the trial court’s decision to strike out the 3<sup>rd</sup> Respondent’s amended counter claim.
- 51. In the end, I find and make the orders;
  - i. That both the appeal and cross appeal are devoid of merit and are therefore dismissed.
  - ii. Each party will bear its own costs.

**DATE AND DELIVERED AT NYANDARUA THIS 19<sup>th</sup> DAY OF DECEMBER 2024**

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**CHARLES KARIUKI**  
**JUDGE**

