Gitundu v Wathuku (Civil Appeal 19 of 2020)
[2024] KEHC 17066 (KLR) (18 December 2024) (Judgment)

Neutral citation: [2024] KEHC 17066 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CIVIL APPEAL 19 OF 2020

AB MWAMUYE, J

DECEMBER 18, 2024

BETWEEN

CHARLES MWANGI GITUNDU ..... APPELLANT

AND

CHARLES WANJOHI WATHUKU ..... RESPONDENT

(An appeal from the judgment and decree of the Chief Magistrate's Court at Nyeri (Hon. W. Kagendo) delivered on 18th May 2020 in Nyeri CMCC No. 102 of 2014)

JUDGMENT

Introduction

1. This is a first appeal from the judgment and decree of the Chief Magistrate's Court at Nyeri (Hon. W. Kagendo) delivered on 18th May 2020 in Nyeri CMCC No. 102 of 2014. In that suit, the Respondent (original plaintiff) had sued the Appellant and a co-defendant (since deceased) seeking damages for loss of use of two motor vehicles, among other reliefs. The trial court found in favor of the Respondent and entered judgment against the defendants jointly and severally for Kshs. 984,213.50, plus costs and interest from the date of filing.

2. The Appellant, being aggrieved by that outcome, filed the present appeal on 27th May 2020. The Memorandum of Appeal raises eleven grounds impugning the trial court's decision on both factual and legal fronts. The Appellant's core complaints are that the trial magistrate erred in failing to uphold a plea of res judicata and issue estoppel arising from a prior consent order, misinterpreted the effect of that consent (particularly a payment of Kshs. 400,000 made thereunder), and proceeded to award loss of use damages that were not strictly proven. The Appellant also faults the trial court's award of interest from the suit's filing date and its failure to recognize that the suit against the second defendant had abated upon his death. The Respondent, opposes the appeal and supports the trial court's judgment.

Background

3. The genesis of the dispute can be traced back over two decades and intertwines with a protracted family succession battle. The Respondent, Charles Wanjohi Wathuku, an aspiring beneficiary of the estate of his late father, one Wathuku Ngure, who died in 1997. In Nyeri High Court Succession Cause No. 60 of 1997, the Respondent obtained a grant of letters of administration which was confirmed on 4th July 1997 naming him as sole heir of the deceased's estate. Among the assets of the estate were two motor vehicles, registration numbers KAE 625Y and KVW 690 . On 22nd October 2001, the High Court (Juma, J.) in the succession cause ordered two relatives of the deceased – namely the Appellant (Charles Mwangi Gitundu) and one Githinji Ngure (now deceased and who was the 2nd defendant in the trial) – to hand over the two motor vehicles to the Respondent forthwith.

4. The suit proceeded to a full trial in the magistrate's court. The Respondent testified and called a witness from the Ministry of Public Works (PW2) who produced a valuation report purporting to estimate the commercial loss of user of the vehicles. The Appellant in turn testified in his defense. Notably, during the trial the Respondent conceded that the 2nd defendant, Githinji Ngure, had passed away and that no substitution had been done effectively admitting that the case against the 2nd defendant was not being prosecuted by any legal representative. After evaluating the evidence, the learned Magistrate (Hon. Wendy Kagendo) delivered her judgment on 18th May 2020.

5. In her judgment, the Magistrate framed key issues including (i) whether the suit was res judicata (or barred by the consent/estoppel), and (ii) if not, whether the claim for loss of use had been proved to the required standard. On the first issue, the court answered in the negative it held that the suit was not res judicata and was not fully settled by the 2009 consent. The court reasoned, in summary, that the consent order of 26th March 2009 did not expressly mention "loss of use" and only dealt with contempt and return of the vehicles; that the sum of Kshs. 400,000 paid under the consent was "damages awarded due to the contempt... as a punishment, and not special damages" for the loss of use. The Magistrate thus found that the Respondent's claim for loss of user being a distinct cause of action for consequential loss – had not been litigated before, and therefore proceeding with it would not offend res judicata or estoppel.

6. On the second issue, the trial court found that the Respondent had proved some loss of use but not to the full extent claimed. The court noted that loss of use is a form of special damage requiring strict proof. It observed that the Respondent's evidence of loss of user was primarily the valuation report by PW2 (which had been used earlier in the High Court proceedings). The Magistrate decided to "borrow the wisdom" of the High Court's earlier approach in the contempt application: since in a related ruling the High Court Judge (Makhandia, J.) had awarded half of a claimed loss of user on an analogous claim (involving a different asset, a tractor/earthmover), the Magistrate likewise awarded half of the Respondent's claimed amount as reasonable compensation. Accordingly, the court entered judgment for the Respondent for Kshs. 984,213.50, being half of Kshs. 1,968,427 (the slight discrepancy in figures is presumably a minor arithmetic/typographical issue in the judgment). The court also awarded interest on that sum at court rates from the date of filing suit and costs to the Respondent.

7. The Appellant was dissatisfied with the entire decision. In his Memorandum of Appeal, the Appellant contends that the learned Magistrate erred in fact and law by: failing to find the suit res judicata (Ground 1); failing to find it barred by issue estoppel (Ground 2); misinterpreting the effect of the consent order of 26th March 2009, especially the payment of Kshs. 400,000 (Grounds 3, 4 and 5); awarding Kshs. 984,213.50 for loss of use which was allegedly not proved at all (Grounds 6, 7, 8 and 9); awarding interest from the date of filing without justification (Ground 10); and failing to hold that the suit against the 2nd defendant had abated upon his death (Ground 11). The Appellant's

submissions on appeal amplify these points. In addition, the Appellant brought to this Court's attention a significant development in the family dispute: the Court of Appeal's decision in Civil Appeal Nos. 259 & 337 of 2002 (consolidated), delivered on 24th July 2020, which nullified the Respondent's grant of representation and his status as sole heir of the estate of Wathuku Ngure. In that judgment, the Court of Appeal set aside the High Court's 2001 finding that the Respondent was the biological son of the deceased, and also set aside the grant that had been issued to the Respondent on 4th July 1997 (including the certificate of confirmation of that grant). The succession matter was remitted to the High Court for re-determination of the rightful beneficiaries.

8. The Appellant argues that in light of this, the Respondent lacked legal capacity to maintain the suit ab initio, and the suit ought to have been dismissed on that ground alone. The Respondent, for his part, maintains that the trial court's judgment was sound. He submits that the consent order of 2009 did not cover the loss of use claim and thus did not bar the suit; that the Kshs. 400,000 was correctly treated as a penalty for contempt, not as general compensation; that the award of Kshs. 984,213.50 was justified on the evidence and in line with legal principles; and that interest from filing and the treatment of the 2nd defendant's position were proper in the circumstances.

9. In view of the foregoing, the issues that arise for determination are as follows:

    a. Whether the Respondent's suit was barred by the doctrine of res judicata or the related principle of issue estoppel, on account of the prior consent order recorded on 26th March 2009 in HCSC No. 60 of 1997, which the Appellant contends fully compromised the dispute regarding the two vehicles. (Grounds 1, 2 and 5 of the Memorandum of Appeal)

    b. Whether the trial court erred in its interpretation of the 26th March 2009 consent, particularly in holding that the Kshs. 400,000 paid to the Respondent was merely punitive "contempt damages" and not in satisfaction of the Respondent's claim for loss of use. (Grounds 3 and 4)

    c. Whether the Respondent proved his claim for loss of user of the vehicles to the required legal standard, and whether the award of Kshs. 984,213.50 (half the claimed amount) was founded on evidence and the law. (Grounds 6, 7, 8 and 9)

    d. Whether the suit against the 2nd defendant had abated by operation of law upon his death, and if so, whether the trial court erred in not formally recognizing that and in purporting to enter judgment against a deceased person's estate without substitution. (Ground 11)

Analysis

Whether the suit was Res Judicata or barred by Issue Estoppel (Effect of the 26th March 2009 Consent)

10. The first two grounds of appeal fault the trial court for failing to uphold the plea of res judicata and issue estoppel. The Appellant contends that the Respondent's claim for loss of use was conclusively settled or barred by the consent order of 26th March 2009 in the High Court Succession Cause, and that by bringing a fresh suit the Respondent was essentially re-litigating a matter that had already been decided. The trial court took the opposite view, holding that the consent did not preclude the claim for loss of user.

    11. Res Judicata is codified in Section 7 of the *Civil Procedure Act*. It provides that "no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties... and has been heard and finally decided by such court." The doctrine aims to bring finality to litigation –

a person should not be vexed twice with the same matter once it has been determined by a court of competent jurisdiction. The classic case of the elements of res judicata was given in Uhuru Highway Development Ltd. v Central Bank of Kenya [1996] eKLR and reaffirmed by the Court of Appeal in Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR. In Maina Kiai, the Court of Appeal held that for res judicata to apply, the following conjunctive elements must be satisfied: (a) the suit or issue in question was directly and substantially in issue in the prior suit; (b) the prior suit was between the same parties or their privies; (c) the parties were litigating under the same title in the prior suit; (d) the issue was heard and finally determined in the prior suit; and (e) the court that formerly heard and determined the issue was competent to try the subsequent suit. If all these elements are present, the subsequent action is barred. Furthermore, explanation 4 of Section 7 provides that res judicata extends to any matter which might or ought to have been made a ground of defense or attack in the former suit.

12. Turning to the facts here: Was the question of the Appellant's liability to the Respondent for the period during which the vehicles were withheld and any compensation owed for that already settled by the 2009 consent? Did the Respondent, by entering that consent and accepting the returns/payments, either litigate and resolve his claim for loss of use or at least waive or abandon any further claims arising from the same grievance? The Appellant emphatically argues yes, that the consent amounted to a full and final compromise of "the entire dispute regarding non-delivery of the vehicles". The Respondent's position, which the trial court accepted, is that the consent dealt only with purging contempt and effecting the immediate return of assets, but did not touch the claim for consequential loss (loss of use), leaving him free to pursue it later.

13. It is not in dispute that the parties in the two proceedings are essentially the same or privies. The Respondent (plaintiff) and Appellant (defendant) here were also parties to the succession cause and the consent order, even if the procedural postures differ (in the succession cause, the Respondent was applicant and the Appellant a respondent/contemnor). The High Court in the succession matter was a court of competent jurisdiction (indeed of higher jurisdiction than the magistrate's court). The crucial questions are whether the matter in issue in the present suit was also in issue and finally determined (by consent) in that earlier proceeding, or whether it is so closely related that it ought to have been raised then.

14. I have scrutinized the terms of the consent order of 26th March 2009 as evidenced in the record. Although the actual consent order document was not reproduced verbatim in the trial judgment, its effect is ascertainable from the uncontested facts: The Respondent agreed to accept and did accept certain consideration (delivery of one vehicle and payments totaling Kshs. 550,000) from the Appellant and his co-defendant. This was done in order to settle the contempt and execution proceedings that had arisen from the Appellant's breach of the 2001 order. The consent did not explicitly carve out or reserve any further claims by the Respondent. In fact, the defense pleaded that the Respondent accepted the vehicles and money "unreservedly" with no further claims. The Respondent has not suggested that he inserted any reservation of rights in that consent. In essence, the consent was a compromise of the dispute.

15. Order 25 Rule 5 of the Civil Procedure Rules recognizes that where a suit is adjusted wholly or in part by a lawful agreement or compromise, the court shall record it and "enter judgment in accordance therewith". A consent order in those terms has the effect of a final judgment on the matters it addresses. As the Court of Appeal observed in Brooke Bond Liebig (T) Ltd v Mallya [1975] EA 266, a consent judgment has contractual effect and can only be set aside on grounds

that would justify setting aside a contract. Unless and until set aside, a consent order is binding on the parties and "cannot be varied or discharged" except by consent or on such grounds.

16. Therefore, the consent of 26th March 2009 fully resolved the controversy over the two vehicles, including any claims the Respondent had arising from the delay or non-delivery up to that point. The backdrop was that the Respondent was executing the 2001 order to get the vehicles or their value. By the consent: he got one vehicle back, he got a replacement compensation for the other (Kshs. 150,000 presumably being its assessed value), and in addition he got Kshs. 400,000 more. The nature of that extra Kshs. 400,000 is telling. The trial Magistrate speculated that it was "damages to purge contempt" (essentially a fine), but that reasoning is flawed. If it were a fine or purely punitive damage, it would not have been paid to the Respondent; it would have been paid to the court or state.

17. The fact that the Kshs. 400,000 was paid to the Respondent (and agreed upon by him) indicates it was part of the compensation package to appease the Respondent for the contempt effectively, consideration for him to forgive the contempt and not insist on imprisonment or sequestration of the contemnors. In other words, it was solatium or damages for the inconvenience/loss caused by the prolonged withholding of the vehicles. Indeed, paragraph 5 of the consent (as recounted in evidence) noted that the whereabouts of KVW 690 were unknown and it was being replaced by Kshs. 150,000; reading the consent holistically, the additional Kshs. 400,000 can only be understood as further compensation to the Respondent for having been kept out of his assets for all that time. The Respondent willingly accepted that payment. In doing so, he effectively settled his claim for that past wrong. He had his chance then to quantify all losses and press for a higher figure if he thought Kshs. 400,000 was inadequate; he cannot now claim that he withheld some part of his claim in 2009 to pursue later. Explanation 4 to Section 7 of the *Civil Procedure Act* would bar exactly that tactic – a party cannot split a single cause of action, nor exclude a portion of relief related to it, and then sue for the remainder later.

18. Moreover, by entering that consent, the Respondent effectively waived any further claims arising from the subject matter. The doctrine of accord and satisfaction would also come into play: a consensual settlement (accord) and its fulfillment (satisfaction) extinguish the original cause of action. The Respondent accorded with the Appellant and accepted the benefits; he cannot then revive the original claim for additional sums.

19. I also note that Civil Appeal No. 259 of 2002 (Simon Ngure & Another v Wathuku, supra) was an appeal against the very 2001 High Court order that had entitled the Respondent to the vehicles. The Court of Appeal in that matter set aside the finding that the Respondent was the deceased's son and nullified the grant, thereby undermining the very basis of the 2001 order. While that Court of Appeal decision came much later in 2020, it reinforces that the Respondent's claim of right was on shaky ground. But even independent of that, the consent itself was a final judgment of the High Court on the enforcement of the Respondent's rights to those vehicles as of 2009.

20. I find that the trial Magistrate erred in failing to appreciate the binding effect of the consent order. This suit was res judicata to the extent that the claim for loss of use (being part of the same cause of action regarding the withheld vehicles) had been adjusted and satisfied by a lawful agreement of the parties recorded in court. At the very least, the suit was barred by issue estoppel, since the entitlement to any damages for the delay in handing over the vehicles had been resolved by the consent. The Respondent was estopped from raising further claims in respect of the same dispute.

21. In reaching the above conclusion, I am fortified by the principle that when a matter has been compromised by consent, the parties are bound by that compromise unless it is set aside on grounds such as fraud, collusion, mistake or misrepresentation (none of which is alleged here). The Respondent neither challenged the consent at the time nor appealed against it; in fact, he enjoyed its fruits. He cannot approbate and reprobate by later suing for something that the consent implicitly covered. The submission by the Respondent's counsel that "loss of user was never claimed in the High Court" does not save the case; if it wasn't claimed, it ought to have been, as it arose from the same factual transaction, and Section 7 CPC bars claims that could have been made in the earlier proceeding.

22. In summary, this Court holds that the Respondent's suit was untenable in law due to res judicata/estoppel, and the trial court ought to have upheld the Appellant's plea in that regard. This finding provides a second, independent basis to allow the appeal.

Interpretation of the Consent – The Kshs. 400,000 Payment (Grounds 3 & 4)

23. The trial Magistrate characterized the Kshs. 400,000 paid to the Respondent under the 2009 consent as a form of punitive damages for contempt ("punishment") and not as compensation for loss. The Appellant argues that this was a misdirection because the consent itself did not specify such a limitation, and logically the payment was part of a negotiated settlement of the Respondent's claims. I have essentially addressed this point: I concur with the Appellant that the learned Magistrate's view of the Kshs. 400,000 was mistaken.

24. It defies logic to say that money paid by the defendants to the plaintiff was a "punishment" to the defendants if it were a fine, it would not be paid to the plaintiff. Rather, this sum was plainly compensatory in nature, intended to placate the Respondent for the trouble and delay. The consent order itself, as noted, does not delineate the 400k as a fine or court fee; it was part and parcel of what the defendants had to do to satisfy the Respondent. The trial court's importation of the word "punishment" appears to have been based on the court's own conjecture, not on any evidence or explicit term of the consent. In doing so, the court effectively re-wrote the parties' agreement, which is not permissible. A court should construe a consent order as it stands, not add terms to it. The consent said motor vehicle KAE 625Y to be handed over, KVW 690 unknown so Kshs. 150k in lieu, and additionally Kshs. 400,000 to be paid – and then the matter was settled. There is no indication that the 400k was reserved for any other purpose than settlement.

25. Therefore, I find the trial court erred in failing to appreciate the true nature of the Kshs. 400,000/= payment and the consent order. It erroneously concluded that the payment did not cover the Respondent's claim, whereas in fact it did. This misapprehension led the court to proceed to assess loss of use when it ought not to have. Grounds 3 and 4 of the appeal are thus merited. (In truth, these grounds are essentially subsumed in the res judicata issue already discussed – because mischaracterizing the consent was the reason the court refused to find the suit barred.)

Proof of Loss of Use and the Award of Kshs. 984,213.50 (Grounds 6–9)

26. The law on special damages is settled and was correctly recognized by the trial Magistrate: such damages must be specifically pleaded and strictly proved. The claimant must therefore lay a factual foundation and evidence to show the actual loss incurred. As the Court of Appeal emphasized in Capital Fish Kenya Ltd v Kenya Power & Lighting Co Ltd [2016] eKLR, "not

only must a claim for special damages be specifically pleaded, but the claimant must also prove it, failure to prove disentitles the claimant to the award sought."

27. In the present case, the Respondent pleaded a very specific figure: Kshs. 1,968,463.90 as loss of user for 7 years, 5 months, and 8 days. This level of precision suggests the Respondent had some basis or formula. Indeed, on record is a valuation report by the Ministry of Public Works (Mechanical & Transport Department) which was produced as an exhibit (by PW2). That report, it seems, estimated a daily or monthly loss of user for each vehicle and computed the total for the period.

28. However, a critical examination shows that this was essentially an opinion or theoretical assessment. The report's author did not demonstrate that the Respondent actually lost any business, income, or incurred any expense. The Respondent did not, for instance, show that he had to hire alternative vehicles, or that he had contracts or work that the vehicles would have been used for to generate the claimed income. In fact, given that these vehicles came from a succession estate, there was no evidence the deceased had been using them commercially or that the estate depended on them for income. The report from Public Works was likely premised on standard rates (perhaps for hiring similar vehicles or general machinery downtimes) but without concrete linkage to the Respondent's personal loss.

29. The high sum claimed for loss of use stands in stark contrast to the relatively modest value of the vehicles themselves (one of which was deemed compensated at 150k). It raises the question: if the vehicles' combined value wasn't extremely high, how did loss of use accumulate to over ten times one vehicle's value? This often happens when a plaintiff claims loss of use for many years without actually mitigating or replacing the asset – something that courts are generally cautious about awarding, because it can appear punitive. Indeed, there is authority that loss of use should ordinarily be allowed only for a reasonable period needed to repair or replace the vehicle, not indefinitely. For example, in Permuga Auto Spares & Another v Margaret Korir Tagi [2015] eKLR (cited in Raymond Muindi Simon v Takaful Insurance, supra), the court warned that where a vehicle is written off, a claim for loss of use beyond the replacement period may amount to double compensation. Here, the Respondent let 7+ years pass, then received compensation and vehicle, and then still claimed for all that time. That is quite unusual.

30. The trial Magistrate, recognizing some of these issues, did not award the full amount. However, instead of finding the claim not proved, she effectively arbitrated a middle ground by awarding half. He produced no business records, no contracts, no proof that he tried to mitigate or that he actually needed the vehicles for income generation. The Public Works report by itself is insufficient; it is akin to an expert giving a hypothetical loss rate, but an expert opinion is not proof of actual loss suffered unless anchored in facts. As Mumbi Ngugi, J. (as she then was) observed in Ndugu Transport Co Ltd & Another v Daniel Waithaka [2018] eKLR, a claim for loss of use "must not only be specifically pleaded, but it must be strictly proved by evidence". Similarly, Njoki Mwangi, J. in Raymond Muindi Simon v Takaful Insurance emphasized that without actual evidence such as receipts for hiring replacement vehicles or other proof of expenses incurred or income lost, a loss of user claim fails. In Raymond Muindi, the plaintiff claimed Kshs. 2,500 per day as loss of use of a vehicle but provided no proof of hiring an alternative or losing profit; the court denied the claim entirely.

31. Applying these principles, I find that the Respondent did not strictly prove his loss of use claim. He pleaded a lump sum but did not back it with concrete proof of actual loss. The valuation report was not corroborated by any evidence that the estate or the Respondent had been engaging those vehicles in revenue-generating activity. Additionally, by the time he got

the vehicles or compensation in 2009, the Respondent did not demonstrate that he made any attempt to use that money to mitigate loss (for example, to invest or acquire alternative transport) although mitigation is more relevant to general damages, it is worth noting in a fairness context.

32. Therefore, the trial court ought to have dismissed the claim for special damages for want of proof. By awarding half, the court essentially made a guess. That was a clear error of law. In the absence of strict proof, the claim should not have been awarded at all. The Appellant's grounds 6 through 9, which contend that the award was made without sufficient evidence and in disregard of binding precedents, are well-founded.

33. In conclusion on this issue, even if the suit were maintainable, the award of Kshs. 984,213.50 was not supported by the evidence and legal standards. The Respondent failed to strictly prove his loss, and the trial court's attempt at a compromise figure was unwarranted. The proper course would have been to dismiss the claim for special damages entirely, since unproven. This provides yet another ground to interfere with the trial court's judgment.

34. Given my findings that the entire claim was unsustainable, the issue of interest is largely academic. However, I note that had the claim been valid, there would be a reasonable argument either way on the interest date. The trial court's choice was therefore within the ambit of her discretion, absent an error in principle. Therefore, since I have found the special damage award should not stand, the question of interest on it becomes moot.

Status of the Second Defendant and Abatement (Ground 11)

35. The final ground concerns the second defendant, it was undisputed at trial that the 2nd defendant died at some point during the pendency of the suit. Order 24 Rule 4(1) of the Civil Procedure Rules requires that when one of multiple defendants dies and the cause of action survives, the plaintiff should apply to substitute the deceased with their legal representative within the time allowed. Rule 4(3) provides that if no such application is made within one year, the suit abates as against the deceased defendant. Abatement is by operation of law the suit ceases to exist in regard to that defendant after the one year period lapses.

36. In this case, it appears no substitution was ever done for the 2nd defendant. There is no indication on the record that the Respondent took out letters of administration for Githinji Ngure's estate or sought to continue the suit against his legal representative. By the time the suit was heard and judgment delivered (2020), clearly more than a year had passed since the 2nd defendant's death (the Respondent even referred to the 2nd defendant in past tense during his testimony). Accordingly, the suit had abated against the 2nd defendant by operation of Order 24 Rule 4(3) long before judgment.

37. The trial court ought not to have entered judgment "against the defendants" jointly and severally without addressing the fact that one of them was no longer a party to the suit in law. Essentially, the judgment as against the dead defendant was a nullity. The proper course would have been to mark the suit as abated in respect of the 2nd defendant, and proceed (if at all) only against the surviving defendant (Appellant). The Appellant's complaint that the magistrate failed to so hold is valid.

38. Ground 11 of the appeal therefore succeeds. The effect is that even if this appeal had not been allowed on other grounds, this Court would have had to modify the lower court's decree to exclude the 2nd defendant (deceased) in any event.

Conclusion

39. In summary, upon re-evaluation of the evidence and the applicable law, this Court finds as follows: The Respondent's suit was incompetent due to lack of locus standi on the Respondent's part following the nullification of his grant. Moreover, the suit was barred by res judicata/issue estoppel arising from the consent judgment of 26th March 2009 in the prior High Court proceedings, which fully settled the dispute over the motor vehicles and any attendant claims. The trial court erred in law in failing to uphold the Appellant's plea on this point. Even if the suit were maintainable, the Respondent did not prove the alleged loss of use to the requisite standard; hence the award of special damages was unwarranted. The trial court's decision to award half the claimed amount was speculative and not grounded on evidence, thereby amounting to a reversible error. In light of all these findings, the impugned judgment cannot stand.

40. Consequently, I allow the appeal as prayed in the Memorandum of appeal dated 27th may 2020, quash the impugned judgment and decree of the Chief Magistrate's Court at Nyeri delivered on 18th May 2020 in Nyeri CMCC No. 102 of 2014, and award costs of both the lower court and this Appeal to the Appellant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2024.

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BAHATI MWAMUYE

JUDGE