



**Igati & another v Igati & another (Civil Appeal E051 & E036 of 2021  
(Consolidated)) [2023] KEHC 24221 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24221 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E051 & E036 OF 2021 (CONSOLIDATED)**

**FN MUCHEMI, J**

**OCTOBER 25, 2023**

**IN THE MATTER OF THE ESTATE OF JAMES IGATI IKINYA (DECEASED)**

**BETWEEN**

**STANLEY IKINYA IGATI ..... 1<sup>ST</sup> APPELLANT**

**PENINAH WAKINI IGATI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ESTHER WAIRIMU IGATI ..... 1<sup>ST</sup> RESPONDENT**

**DIANAH NJERI IGATI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment of Hon. E. O. Wambo (PM) delivered  
on 6th May 2021 in Kerugoya CM Succession Cause No. 286 of 2018.)*

**JUDGMENT**

**Brief facts**

1. This appeal arises from the judgment of Kerugoya Chief Magistrate in CM Succession Cause No. 286 of 2018. The magistrate distributed the estate of the deceased in its judgement delivered on 6<sup>th</sup> May 2021 following full hearing of a protest by the 1<sup>st</sup> appellant. This appeal was consolidated with HCCA No. E036 of 2021 pursuant to orders on 24<sup>th</sup> April 2023 in Misc. Civil Application No. E020 of 2021 with the lead file being HCCA No. E051 of 2021.
2. Dissatisfied with the court's decision, the appellants lodged separate appeals citing several grounds.

**The 1<sup>st</sup> appellant's grounds are condensed as:- Grounds**

The 1st appellant stated that the learned magistrate erred as follows:-



- a. That the trial court erred in failing to distribute the estate equally between the beneficiaries in that the 1<sup>st</sup> respondent was solely given the following:-
    - i. Tea bonus funds held by Kenya Tea Development Authority (KTDA) for the years 2017-2018
    - ii. 2805 shares in Ndimba Tea Factory Company Limited
    - iii. 72 shares in Mununga Tea factory
    - iv. Shares in Muhigia Sacco Society & Fortune Sacco
  - b. That the court erred in distributing LR No. Inoi/Kaitheri/320 to the children of the 1<sup>st</sup> respondent and excluded the 1<sup>st</sup> appellant.
  - c. That LR No Mutira/Kirunda/2291 was registered in the joint names of the deceased as the 1<sup>st</sup> appellant and ought not to have been distributed in the deceased Succession cause  
 The 2<sup>nd</sup> appellant included grounds (b) and (c) of the 1<sup>st</sup> appellant in his appeal and added:-
    - i. That the learned magistrate transformed the succession cause into a matrimonial dispute.
3. Parties put in written submissions to dispose of the appeal. The respondents did not file any written submissions.

### **The 1<sup>st</sup> Appellant's Submissions**

4. The 1<sup>st</sup> appellant submits that the deceased was survived by two households. The deceased married Faith Mugo and they were blessed with two issues Stanley Igati Ikinya and Peninah Wakini Igati. The deceased later separated with Faith and married Esther Wairimu and their union was blessed with two issues Dianah Njeri Igati and Ann Salome Wanjiku Igati. The appellant submits that in analysing whether the deceased left two households, the trial magistrate held that the deceased left one household as the 1<sup>st</sup> respondent assumed parental responsibility over him and the 1<sup>st</sup> appellant. However, while distributing land parcel number Inoi/Kaitheri/320, the trial magistrate held that the 1<sup>st</sup> respondent would get a life interest and upon her demise, the parcel of land would go to her two daughters, the 2<sup>nd</sup> respondent and Ann Salome Wanjiku Igati. As such, the appellant argues that the decision by the trial magistrate is contradictory and inconsistent and urges this court to find that the deceased left two households. To support his contentions, the appellant relies on the case of *Re Estate of NKK (Deceased)* [2019] eKLR. (The decision was not attached and was unavailable in the Kenya Law Reports).
5. It is the 1<sup>st</sup> appellant's case that LR No. Mutira/Kirunda/2291 did not form part of the estate of the deceased as he was registered as a joint proprietor with the deceased. Therefore upon the deceased's death, by the doctrine of survivorship, he became the sole owner of all proprietary interests in the land. He further argues that the land register shows that the said land is registered in the names of the deceased, James Igati Ikinya who on 29<sup>th</sup> May 2012 transferred the land to him to be registered with him jointly. The appellant further contends that the intention of the deceased to be registered jointly and not in common with him is evidenced by land parcel number Mutira/Kirunda/2290 which indicated that the deceased and his brother Manasseh Mwangi Ikinya were registered jointly in common, each holding an equal share.



6. The 1<sup>st</sup> appellant further states that the respondents acknowledged that he and the deceased were jointly registered as proprietors of land parcel Mutira/Kirunda/2291 in their plaint filed in the Environment and Land Court at Kerugoya ELC Case No. 31 of 2018. Further the 2<sup>nd</sup> respondent confirmed during the hearing of the protest that the doctrine of survivorship applied as he and the deceased were joint proprietors of the subject land.
7. Further the trial magistrate erred in his judgment by apportioning him half the portion of the suit premises after making a finding that the 1<sup>st</sup> appellant and the deceased were joint owners. He further directed that parties ought to ventilate the issue of the other half portion in the ELC Court.
8. The 1<sup>st</sup> appellant relies on Section 60 & 91 of the Land Registration Act and the cases of Re Estate of Dorica Lumire Mapesa (Deceased) [2018] eKLR and Re Estate of Johnson Njogu Gichobi (Deceased) [2018] eKLR and submits that pursuant to the doctrine of survivorship, the suit land belonged to him and therefore did not form part of the deceased's estate.
9. According to the 1<sup>st</sup> appellant, the estate ought to be distributed as per Section 40 of the Law of Succession Act as the deceased was polygamous and was survived by his two children of the first house and a wife and two children of the 2<sup>nd</sup> house. Therefore, the 1<sup>st</sup> appellant argues that the estate ought to be shared amongst 5 units.
10. The 1<sup>st</sup> appellant states that he disputes the distribution of the following:-
  - a. Bonus held in KTDA for year 2017 – 2018
  - b. 2805 shares in Ndima Tea Factory Company Ltd
  - c. 72 shares in Mununga Tea Factory Company Limited
  - d. Proceeds of Muhigia Sacco Society
  - e. Proceeds in Fortune Sacco Society Limited A/c No. 10xxxxxxxxxxxxxx
  - f. Land parcel number Inoi/Kaitheri/320
11. The 1<sup>st</sup> appellant states that the 1<sup>st</sup> respondent deposed that the aforementioned properties should be given to her as she acquired the shares with the help of her husband and as for land parcel number Inoi/Kaitheri/320 it was developed jointly between her and the deceased. However in her reply to the Affidavit of Protest, the 1<sup>st</sup> respondent deposed that the said land parcel should be sold and the proceeds shared among the beneficiaries.
12. The trial magistrate in distributing the said land parcel held that the 1<sup>st</sup> respondent will have life interest and upon her demise, the property will devolve upon her daughters, the 2<sup>nd</sup> respondent and Ann Salome Wanjiku Igati. In holding so, the appellant argues that the learned magistrate discriminated against him and the 3<sup>rd</sup> respondent by declining to give them a portion of the said land parcel whereas he held that the 1<sup>st</sup> respondent had assumed parental responsibility over him and his sister. As such, the appellant submits that land parcel number Inoi/Kaitheri/320 ought to be shared equally amongst the children of the deceased with the 1<sup>st</sup> respondent getting a life interest.
13. For bonus held in KTDA for the year 2017 – 2018 of Kshs. 1,600,000/- 2805 shares in Ndima Tea Factory Company Ltd and 72 shares in Mununga Tea Factory Company Limited, the court below in granting the 1<sup>st</sup> respondent considered her contribution. The 1<sup>st</sup> appellant submits that the 1<sup>st</sup> respondent did not adduce any evidence of her contribution. Furthermore, she did not file a matrimonial cause for declaration of her matrimonial interest.



14. Without prejudice to the foregoing, even though the 1<sup>st</sup> respondent contributed to the acquisition, Section 40 of the Law of Succession Act is couched in mandatory terms as stipulated in the case of Succession Cause No. 110 of 2010 In the Matter of the Estate of Samwel Miriti (Deceased) M. M. M. v A. I. M where the court held that Section 40 of the Law of Succession Act clearly provides that the estate be divided between the houses despite the fact that the 1<sup>st</sup> widow's contribution to the acquisition of the deceased's properties.
15. For the proceeds in Muhigia Sacco society and proceeds in Fortune Sacco Society Limited Account No. 10xxxxxxxxxxxxx the trial magistrate in giving the shares and savings to the 1<sup>st</sup> respondent held that it appears that the deceased had nominated his wife during his lifetime. The 1<sup>st</sup> appellant submits that no evidence was adduced to establish that the deceased nominated the 1<sup>st</sup> respondent. The 1<sup>st</sup> appellant thus submits that the properties should be shared as free net estate of the deceased as there is no nominee.

### **The 2<sup>nd</sup> Appellant's Submissions**

16. Pursuant to Section 29(a) of the Law of Succession Act, the 2<sup>nd</sup> appellant submits that there is no dispute that the parties are beneficiaries of the estate of the deceased. It is therefore odd that the trial court took it upon itself to make a determination that the 1<sup>st</sup> respondent had acquired parental responsibility over the 1<sup>st</sup> appellant and herself. The court having determined that the family was one household contradicted itself when it distributed land parcels numbers Mutira/Kaguyu/1758 and Inoi/Kaitheri/320 to the 2<sup>nd</sup> house with a directive that the 1<sup>st</sup> respondent will have a life interest over the said properties. In distributing part of the estate to the 1<sup>st</sup> respondent for the benefit of her biological children, the court erred as it in effect favoured some of the children of the deceased to the detriment of the other children, the 1<sup>st</sup> respondent's step children. The deceased herein was the biological father of the appellants and the 2<sup>nd</sup> respondent and as such, they ought to be treated as equals.
17. The 2<sup>nd</sup> appellant further submits that it is not in dispute that land parcel number Mutira/Kirunda/2291 is registered in the names of the deceased and the 1<sup>st</sup> appellant jointly as indicated in the green card. There is no entry of the land being held in defined shares and there is no disclosure of the shares held by each proprietor, pursuant to Section 101 (1) & 102 of the Registered Land Act. The 2<sup>nd</sup> appellant contends that the respondents had sued the 1<sup>st</sup> appellant over the same land in Kerugoya ELC Case No. 31 of 2018. As such, the 2<sup>nd</sup> appellant submits that the said land parcel did not form part of the estate and as such the trial court erred in purporting to award a half portion to the appellant despite evidence that the land was not available for distribution. To support her contentions, the 2<sup>nd</sup> appellant relies on the case of In Re Estate of Johnson Njogu Gichobi (Deceased) [2018] eKLR.
18. The 2<sup>nd</sup> appellant further contends that the trial court erred by holding that by virtue of being a widow, the 1<sup>st</sup> respondent contributed to the acquisition of land parcels Mutira/Kaguyu/1758 and Inoi/Kaitheri/320 and therefore she was entitled to inherit the assets on a life interest basis and upon her demise the parcels would be distributed to her biological children. The 2<sup>nd</sup> appellant argues that the matter being a succession cause, the issue of spousal contribution was not up for determination. And in any event, the deceased himself also contributed. Therefore it was improper for the trial court to make a determination based on contribution in favour of the 1<sup>st</sup> respondent and her biological children to the exclusion of the other children of the deceased. The 2<sup>nd</sup> appellant submits that the issue of spousal contribution can only arise during dissolution of a marriage and not in the distribution of a deceased's estate. Further, pursuant to Article 45 (3) in the Constitution, the issue of spousal contribution can only be between the parties to the marriage and not between the widow and step children in a succession matter. The death of one spouse does not amount to dissolution of marriage and as such the properties



in the name of the deceased spouse are subject to succession proceedings and such proceedings cannot be conducted in a manner that the same are seen to amount to division of matrimonial property. Going by this narrative, the 2<sup>nd</sup> appellant contends that she and the 1<sup>st</sup> appellant ought to have benefited from their father's contribution to the properties too.

### Issues for determination

19. The main issues for determination are:-
- a. Whether land parcel number Mutira/Kirunda/2291 forms part of the estate of the deceased;
  - b. Whether the trial magistrate erred in distributing the estate vide Section 35 of the Law of Succession Act;
  - c. Whether it was within the law to distribute LR No. Inoi/Katheri/320 to the 1<sup>st</sup> respondent solely.
  - d. Whether the proceeds from Muhigia Sacco Society Ltd and Fortune Sacco Limited formed part of the estate available for distribution.
  - e. Whether the shares held in Muhigia and Fortune Saccos ought to have been distributed by the court.

### The Law

20. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“... this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

21. It was also held in *Mwangi v Wambugu* [1984] KLR 453 that an appellate court will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence; or where the court has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence.

22. Dealing with the same point, the Court of Appeal in *Kiruga v Kiruga & Another* [1988] KLR 348, observed that:-

“An appeal court cannot properly substitute its own actual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand.”

23. Therefore this Court is under a duty to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same, evaluate it and arrive at its own independent conclusions, but always remembering and giving allowance for it, that the trial court had the advantage of hearing the parties.



**Whether land parcel number Mutira/Kirunda/2291 forms part of the estate of the deceased.**

24. According to the appellants LR No. Mutira/Kirunda/2291 is not part of the estate as the 1<sup>st</sup> appellant and the deceased are registered as joint proprietors of the said property and under the doctrine of survivorship the land parcel automatically goes to him.
25. It is not in dispute that the said land is registered in the names of the deceased and the 1<sup>st</sup> appellant. The beneficiaries were in agreement that the respondents filed ELC Case No. 21 of 2019 against the appellants seeking a declaration of trust in the title which is still pending in court. The magistrate proceeded to consider whether there was a gift *intervivos* and it found such a gift existed under Section 42 of the Law of Succession Act. He then distributed ½ share to the 1<sup>st</sup> appellant and left half share to await the decision of the ELC court.
26. The land LR Mutira/Kirunda/2291 is registered as one parcel with one certificate of title. In my view, the magistrate erred in sharing out half share to the 1<sup>st</sup> appellant. The case is still pending in court and ought to be concluded first and the issue of trust if any, be determined. Succession of the land will be determined by the decision of the ELC court. It is my considered view that the land LR Mutira/Kirunda/2291 was not available for distribution at the time the court distributed it in its judgment. The said asset will be left in suspense pending the determination of the ELC Case.

**Whether the trial court erred by distributing the estate *vide* Section 35 of the Law of Succession Act**

27. The appellants fault the magistrate for distributing the estate in accordance to Section 35 of the Law of Succession Act. According to them, the deceased was polygamous and therefore Section 40 of the Act should apply.
28. It is not in dispute that the deceased was married initially to Faith Mugo, the mother of the appellants. It is said that the couple later separated. It is further not disputed that the 1<sup>st</sup> respondent was the wife of the deceased and that they were blessed with two children. There was no evidence adduced by any of the parties as to what system of marriage if any, the deceased and Faith were married. Section 40 of the Act states that

“where an intestate has married more than once under any system of law permitting polygamy...”

This provision calls for evidence to be adduced to the effect that the deceased was married under a system of law that permitted polygamy. The appellants did not adduce evidence to that effect during the hearing of the protest. In that case this court is of the view that the deceased had one wife and four children. Section 35 of the Law of succession Act was therefore applicable in the distribution of the estate of the deceased. The magistrate cannot be faulted in the application of Section 35 to the distribution of the deceased’s estate.

29. The appellants argue that they have been discriminated against in the distribution of land parcels numbers Mutira/Kaguyu/1758 and Inoi/Kaitheri/320. The trial magistrate in giving the said parcels to the 1<sup>st</sup> respondent took into account her contribution to their acquisition and gave her a life interest and stated that upon her demise, the land would devolve to the 2<sup>nd</sup> respondent and Ann Salome Wanjiku Igati.
30. I have perused the court record and noted that the 1<sup>st</sup> respondent testified that land parcel Mutira/Kaguyu/1758 is the parcel on which the matrimonial home sits. The appellants did not rebut the 1<sup>st</sup> respondent’s evidence to that effect. There being no evidence to the contrary, it follows that it is the



- 1<sup>st</sup> respondent who has brought up the appellants whose mother abandoned them. The magistrate considered giving the 1<sup>st</sup> respondent the parcel on which her matrimonial home sits which serves the interest of justice for the widow of the deceased and for all her four children. However, it is my considered view that it was not fair to deny the appellants inheritance of the land upon the demise of the 1<sup>st</sup> respondent. As such, LR No. Mutira/Kaguyu/1758 ought to be distributed to the 1<sup>st</sup> respondent on life interest and upon her demise it shall be shared equally amongst the four children of the deceased.
31. As for land parcel number Inoi/Kaitheri/320, the 1<sup>st</sup> respondent testified that the land parcel ought to go to her solely as she bought it together with the deceased in 1987. The property is a commercial property with rental income. It was further stated that it was the 1<sup>st</sup> respondent's only source of income. I have noted that although the 1<sup>st</sup> respondent stated that she acquired the land parcel with the deceased she did not tender any proof of financial contribution. The 1<sup>st</sup> appellant testified that the deceased acquired the land in 1988 as indicated in the Certificate of Title. Furthermore, the Certificate of Title shows that the suit land is registered in the name of the deceased. I am in agreement with the appellants that the magistrate erred in applying the provisions of the Matrimonial Property Act, 2013 without any factual or legal basis. Consequently, the said orders in regard to LR Inoi/Katheri/320 are hereby set aside.
32. It is important to consider the widow who has now aged in way of source of income to sustain herself in old age that comes with poor health and diminishing physical strength. It is important that the widow be provided for financially from the income of the estate of her late husband. However, this court would give the widow the property with a continuous income for a different reason from that of the magistrate herein. The Court of Appeal in *Stephen Gitonga M'Murithi v Faith Ngira Murithi*[2015]eKLR was dealing with the issue of life interest. The appellant challenged the judgement of the High Court where a widow had been given an absolute interest in the deceased's estate instead of life interest. The court held:-
- “ As for the issue of the widow having been given an outright tangible shareholding in the net estate of the deceased as opposed to a life interest, we find nothing in Section 40 of the *Law of Succession Act* that can prevent a court of law from looking at the peculiar circumstances of each case and then determine whether to apply strictly the rule of life interest or tamper with it in the interest of justice to all the affected parties. In the circumstance of this case, having found that the principle in Section 38 was the appropriate applicable principle, ordering life interest would have occasioned injustice to all the dependants as opting for such individual interests of all the other beneficiaries thereby making it impossible for all the beneficiaries to enjoy freely the resulting benefits from the deceased's estate. We find it was prudent for the learned judge to accord a direct unencumbered benefit to the widow Naomi as opposed to life interest.
33. I reach a conclusion that LR Inoi/Katheri/320 should be distributed to the 1<sup>st</sup> respondent on life interest and to devolve upon the four children of the deceased in equal shares upon her demise. I hereby so find and accordingly order.
34. As for the income from tea farms, the 1<sup>st</sup> respondent testified that after the death of the deceased, she was the sole manager of the tea farms and provided funds for the running of the tea farms. This evidence was not disputed by the appellants. I take judicial notice that the running of such farms require funds for paying workers cultivating the land, picking tea as well as purchasing farm inputs and work tools. The 1<sup>st</sup> respondent no doubt incurred such expenses in running and managing the tea estates. The funds she used must have been sourced from the tea income and bonuses because the widow had no other known source of income. In these practical circumstances that are generally applicable to



farming, I find it absurd for the 1<sup>st</sup> appellant to be demanding that the tea proceeds earned after the death of the deceased, be shared equally by all the beneficiaries. It is my finding that any income from the tea farms ought to be retained by the 1<sup>st</sup> respondent.

35. The appellants faulted the magistrate in the distribution of the Sacco savings for Muhigia Sacco and Fortune Sacco. The magistrate distributed the said funds to the 1<sup>st</sup> respondent after she convinced the court that she was the nominee in the Saccos records having been nominated by the deceased during his lifetime. The regulations in Saccos is that the investor must nominate the next of kin and indicate the shares each is given, in case there is more than one next of kin. The appellant did not produce any evidence that the deceased had not nominated the 1<sup>st</sup> respondent as the next of kin. The position is that the regulations of Saccos are applicable to the management the savings of investors during their lifetime and upon death. It is my considered view that the Sacco funds for Muhigia and Fortune Sacco were not available for distribution in this cause. It was held in the case of *Re Estate of Caroline Achieng Wagali (Deceased)* 2015 eKLR the court stated:-

It is the law that funds subject of a nomination do not form part of the nominator's estate and therefore such funds cannot pass under the will of the deceased or vest in his personal representative, such funds are not subject to the succession process, and should be dealt with in accordance with the law governing the nomination. Nominations are statutory, in the sense of them being specifically provided for by a particular statute.

36. Similarly the court in *Benson Mukema Muriungi v C.E.O Kenya Police Sacco & Another* [2016] eKLR the court held as follows:-

Nomination under the *co-operative Societies Act* are statutory. Section 39(1) of the *Co-operatives Societies Act* provides that upon death of a member, a co-operative society may transfer the share or benefits of the deceased member to a person nominated in accordance with the Act or the rules made thereunder. The property which is subject of statutory nomination is not free property of a deceased member. It does not pass or vest in the personal representatives of the deceased members or to the estate, it passes directly to the nominee.

37. In view of the decisions cited herein which I totally agree with, I am of the considered view that the magistrate erred in finding that the savings and capital funds in Muhigia and Fortune Sacco were available for distribution.

38. Consequently, I find the appeal partly successful and make the following orders:-

A.

- (i) That LR No. Inoi/Katheri/320 is hereby bequeathed to the 1<sup>st</sup> respondent Esther Wairimu Igati on life interest basis and will devolve to her four (4) children in equal shares upon her demise.
- (ii) That the orders for distribution of shares and savings in Muhigia and Fortune Sacco made by the court below are hereby set aside.
- (iii) That any income from the tea farms as well as the KTDA bonus for the year 2007/2008 to date are hereby bequeathed to the 1<sup>st</sup> respondent.
- (iv) The following shares be shared equally between the four children of the deceased namely Stanley Ikinya Igati, Peninah Wakini Igati, Dianah Njeri Igati and Anne Salome Wanjiku Igati:-



Ndimba Tea Factory Company Limited – 2805 shares

Manunga Tea Factory Company Limited – 72 shares

National Bank of Kenya- 78 shares

Housing Finance Company Ltd –Certificate No. [particulars withheld]

Co-operative Bank of Kenya – Certificate No. [particulars withheld]

- B. The following funds be shared equally between all the five beneficiaries:- Esther Wairimu Igati, Diana Njeri Igati, Ann Salome Wanjiku Igati, Stanley Ikinya Igati, Peninah Wakini Igati:-
- I. Equity Bank of Kenya Kerugoya Branch A/C No. 01xxxxxxxx
  - II. Co-operative Bank of Kenya A/C No.01xxxxxxxx
  - III. Rental Income for LR No. Inoi/Katheri/320 since February 2018 to date.
  - IV. Proceeds for sale of vehicle Registration No. KUJ 983
- C. Toyota NZE Registration KBN 528Q and all personal & household effects to go to Esther Wairimu Igati
- D. The order distributing half share of LR Mutira/Kirunda/2291 is hereby set aside pending the determination of ELC case No. 31 of 2018 between some of the beneficiaries
- E. The orders made by the court below in regard to LR Mutira/Kirunda/2290 were not subject of this appeal and remain intact.

39. A certificate of confirmation of grant to issue in terms of the orders made in this appeal.

40. Each party to meet their own costs of this appeal.

41. It is hereby so ordered.

**DATED AND SIGNED AT KERUGOYA THIS 25<sup>TH</sup> DAY OF OCTOBER, 2023.**

**F. MUCHEMI**

**JUDGE**

**JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 25<sup>TH</sup> DAY OF OCTOBER, 2023**

