



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

HIGH COURT CIVIL CASE NO. 69 OF 2017

JUJA COFFEE EXPORTERS LIMITED..... PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LIMITED.....DEFENDANT

RULING

Outline of facts.

1. The court is called upon to determine two applications dated 24/7/2019 and 29/4/2019. The first application seeks leave to amend the plaint while the second seek an order of injunction pending appeal and an extension of time to file and serve a notice of appeal against the ruling dated 12/4/2019.

2. Even though the court did direct that the two be heard together, by their nature the two must seek and attract different decisions even if embodied in one ruling. I will thus seek to handle the two applications serially and in the order of their dates for filing.

Notice of Motion Dated 24/7/2019

3. The application seeks leave to amend the plaint and the reasons advanced by the plaintiff to ground the application and disclosed on the face of the application and the affidavit of TAUHIDA TAHIR SHEIKH SAID are that at the instructions of the suit, the counsel was instructed to dispute the debt and that the plaintiff all along held the belief that the debt had been disputed till there was a change of advocates when the new advocate made the revelation that the debt was in fact admitted and only time sought to negotiate payment. The plaintiff faults that state on counsel and pleads for leave to amend so that it pleads and challenges what it calls massive fraud which had been and continues to be unearthed, so that all the issues in controversy are brought before the court for an effective resolution. The affidavit in support then exhibited and annexed a draft amended plant whose purport, in my appreciation, is to overhaul the entire claim in terms of content and remedies sought. The foundation of the suit in the draft amended plaint is now firmly upon fraud, forgery and illegality who particulars are set out in some 14 items.

4. On such proposed pleadings the plaintiff then seeks to be granted orders of declaration of illegality and breach of statutory and contractual obligations and that the debt be declared as not owed, an order for rectification of the register to correct the charges and release of the documents of title together with a permanent injunction against the 1st defendant from selling, transferring or in any other way alienating the suit property on the basis of the registered securities.

5. The application was opposed by the first defendant by an affidavit sworn by one Eustace Nyaga, the head of Credit, Remedial and collection and recoveries department of that defendant. The gist of that opposition is that the application is an abuse of the court process in that the affidavit in support is made up of contradictory position from those in the initial plant and the verifying affidavit. It is further contended that the plaintiff is in law, not entitled to an amendment as of right but upon the discretion of the court and that to allow the amendment would be to seek to allow inconsistent and contradictory positive in the affidavit to negate the admitted facts to the plaint on record. In summary the opposition is that to allow the amendment would be to allow a plaint that is self -contradictory when looked at in terms of paragraph 3, 4 and 12 as against paragraph 6,7,9 and 14 of the same draft.

6. I have had the benefit of reading the submissions filed by the parties. The plaintiff filed two sets of submissions both of which address the two pertinent applications. The two sets of submissions on plaintiff's behalf are dated 27/01/2020 and 15/6/2020. In the initial submissions the plaintiff reiterates the position of law that amendment to pleadings before hearing should be allowed freely except when the same is shown to portend an injustice to the opposite party which cannot be compensated by way of costs, that an amendment is allowable even where the effect is to recant an earlier admission and that the purpose and effect of an amended pleadings is to supersede and replace the original pleading with the amended one. The counsel then relied on the provision of order 8 rule 3 (5) as well as the decisions in **Stephen Boro Githua vs Family Finance Building Society Ltd. (2015) eKLR, Pruting Industries Ltd VS Bank of Broda (2017) eKLR, Regina Kavenya Mutuku vs United Insurance (2002) eKLR and Robert M Muga Vs – Muchangi Kiunga (2007) eKLR** on the principle as applicable on amendment and the gravity with which an allegation of fraud is regarded.

7. The further submissions, which I consider on response to the defendant submissions, concentrates only on the application for injunction and seeks to counter the defendant's submissions and underscore being made to the effect that the need to alter one's position in the pleadings is the primary object of amendment for that position. The decision on **Julius Nzioki Wambwa Vs Mohamed Salim Khamis (2020) eKLR** was then cited.

8. For the defendant, the position taken in that intended amendment being evidently intended to recant and introduce contradictions to the plaint on record is not allowable on the strength of the provisions of order 2 Rule 6(1) then proceeds to demonstrate that to allow the sought amendment would be to allow a clear contradiction between paragraph 3, 4 and 12 of the initial plaint and paragraph 6,7, 9 and 14 of the draft amended plaint. There was then an attempt to distinguish the authorities cited by the plaintiff while emphasizing the fact that contradictions upon pleadings are frowned upon by the court disallowing pleadings which disclose same. The defendant cited to court the decision in Susan **Wangui Gakula Vs Stephen Mwangi Gakula (2016) eKLR** where the court defined what contradictory evidence is.

Analysis and determination

9. With the summary of facts and submissions in mind, the only issue that isolates itself for determination is whether a case has been made out for leave to amend the plaint.

10. I understand the law, in both statute, the rules and *stare decisis* to indicate that an application to amend a pleading before evidence is led should be allowed freely, at any time including on appeal provided the intention is to bring all facts and issues in controversy between the parties to the suit for effective and just determination of the issues in controversy, provided that no prejudice or injustice is seen to be visited upon the respondent to such an application. With such established principles in mind, a respondent is expected and in deed obligated to demonstrate to court that the intended amended would visit upon it a prejudice or injustice that cannot be compensated by costs like taking away an accrued defense to the claim grounded upon limitation of time. The other scenario is where such prejudice to the other side or the course of justice is evidently inevitable and obvious to court.

11. In this matter no prejudice or injustice has been alleged leave alone being demonstrated. In such circumstances, the court discretion is indeed guided by the principles that request to amend ought to be freely given. I am guided by the decision by the court of appeal in **Stephen Boro Githua Vs Family Finance Building Society (Supra)** where the court said -;

"We reiterate that where the intended amendments are geared to place full and clear case before the court so that it is effectively and finally determined on its merits, it ought to be allowed for that is the way justice is done"

12. In coming to such conclusion, I have noted that the respondent does not fear of any prejudice or injustice to be visited upon it by the intended amendment. On the same note I have not, of self, discerned any prejudice of injustice that await visiting the respondent.

13. The upshot is that I do allow the notice of motion dated 24/7/2019 on terms that the plaintiff shall file and serve an amended plaint within 7 days from the date of the delivery of this ruling. On costs, the same shall abide the outcome of the suit.

Application for injunction pending appeal and extension of time to file a notice of appeal.

14. The motion dated 29/4/2019 urges as follows-;

1. spent

2. Spent

3. There be a temporary injunction pending the lodging, hearing and determination of an intended appeal to the court of appeal, or for such other period as the court may deem fit, restraining the defendant, its agents (including Garam investment auctioneers), employees or servants from advertising, selling, transferring or in any other way interfering with the plaintiff's ownership of any of the five (5) parcels of land known as Title Number Mombasa/Block 1/146, Mombasa/Block 1/167, Mombasa Block 1/190, Mombasa/Block 1/198 all situate in Shimanzi industrial area and MN/1/5208 situate in new Nyali area of Mombasa County.

4. The time for filing a notice of appeal against the ruling and orders of 12th April 2019 be extended by seven (7) days and the notice of appeal dated 29th April 2019 be deemed as having been properly filed within the extended time.

5. Costs.

15. The application is founded upon the grounds that the plaintiff did seek a temporary injunction pending suit by an application dated 9/10/2017 which application was heard and dismissed by this court on the 12/4/2019 on the sole basis that fraud, forgery and illegality had not been pleaded in the plaint. That order aggrieved the plaintiff who then filed a notice of appeal dated 29/4/2019 evidently out of time but the applicant believes that the intended appeal is not frivolous regard being had to be prevalence of fraud, forgery and illegality which would extinguish any claim to the debt thereby incurred and that the court erred in failing to apply the exception to the rule that parties are bound by their pleadings and by placing over-reliance on procedural technicalities. It was then contended additionally that unless the injunction is granted, the appeal would have been rendered nugatory and the plaintiff left to suffer irreparable injury in that the sale would have proceeded and a successful purchaser would be free to further alienate the property, which are prime properties, to third parties and beyond the reach of the plaintiff. Further, it was urged that there was greater prudence in granting the injunction in that the doctrine of *lis-pendens* dictates that the suit property be preserved while the suit continued because the debt is adequately secured and that the court need to secure the right to access justice even by way of an appeal. The court was urged to note that the respondent's position is shaky going by the annual loss it has been recording.

16. For the prayer for extension of time, the reason for delay was advanced to have been due to the absence of the plaintiff director from Kenya till the 28/4/2019 before the notice was filed on the 29/4/2019. The applicant contends that the delay was not inordinate nor intended to delay the fair and speedy disposal of the matter and that it was ready not willing to file a record of appeal and prosecute the appeal as soon as the court diary would allow.

17. Same facts were reiterated in the affidavit of support sworn by TAUHIDA SHEIKH SAID which additionally exhibited the advertisement for sale as well as travel documents showing her entry back into Kenya on 28/4/2019.

18. The application was opposed by the defendant/applicant on the basis of the affidavit sworn by one EUSTACE NYAGA who takes the stance that the application adduces no evidence to ground the orders sought just like it fails to meet the prerequisite of grant of the prayers sought. In particular, the respondent opposes the application on the basis that there is no ruling dated 12/4/2019 to attract an appeal or extension of time to lodge a notice of appeal, which was in any event, filed out of time without leave prayers sought and obtained beforehand.

19. It was then contended that the jurisdiction to extend time for appealing to the court of appeal is exclusive to the court of appeal and that there being no valid notice of appeal, there is no appeal to found an application for injunction pending appeal.

20. It was then contended that the dispute is over a loan advanced to the plaintiff which currently stands at over 4 billion which has been aggravated owing to the fact since filing of the current suit, the plaintiff had made no payment at all and therefore to grant the injunction sought would result in more hardship than good and would appear to grant the plaintiff the right to keep both the money advanced and the security given.

21. To the defendant/ respondent the plaintiff was out to reopen the earlier application for injunction which was dismissed by the court through the back door. It was then contended that no irreparable loss or injury awaits to befall the plaintiff because even in the event of sale of the property, the plaintiff's remedy remained in damages which the bank is capable of paying and that the doctrine of *lis-pendens* is not available to the plaintiff to stop the bank from exercising its statutory power of sale. For those reasons, the defendant took the position that the plaintiff had not met the prerequisite for grant of an injunction pending appeal and urged that the prayer for injunction be dismissed.

22. For the prayer of extension of time, the defendant contended that as early as 11/4/2019, the plaintiff had indicated to court its intention to appeal and therefore it cannot be argued that it could not file a notice of appeal merely because the director was out of Kenya and that the absence of the director from Kenya was not a sufficient reason to extend time.

23. As said before, both sides filed composite submissions to cover and address the application.

Submissions by the plaintiffs

24. The plaintiff in the written submissions filed starts by urging the prayer for extension of time and commences that by submitting on the question of jurisdiction of the court to grant extension of time.

25. The applicant contends that section 7 of the appellate jurisdiction Act, expressly grants jurisdiction upon the High Court to grant extension of time to file an appeal and cites the decision in **Kanyotta Holdings Ltd Vs Kenya Shell Limited (2012) eKLR** in which the decision of the court of appeal in **D.T Dobie and Co (K) LTD VS Alfred Mayocho (2005) eKLR** was cited for the proposition that the High court has jurisdiction to extend time for giving a notice of appeal. The same decision was also cited for preposition of law that once a notice of appeal is filed, it is not for the High court but the court of appeal to interrogate the validity thereof. In addition, the plaintiff pointed out that the delay was only short and not inordinate but there had also been proffered a reason for such delay which had not been controverted.

26. Emphasis was then laid on the fact that the appeal so preferred is not a frivolous one and cited to court the decision in **Billa Mideva vs Evelyn Kanyere as well as Isolax Ingeniera S.A Vs Kenya Electricity transmission Co. Ltd (2018) eKLR** for the proposition that a court considering an application for injunction pending appeal, need not go deeply into the appeal itself but must note that the appeal awaits hearing but must also not second-guess the court of appeal by summarily dismissing the application.

27. On the appeal being rendered nugatory the submissions put reliance on the decision in **Bhutt vs Rent Restriction Tribunal (1979)Eklr, Otieno Vs Ougo (No. 2) 1987) Eklr** as well as **TSS Investment Vs Juja Coffee Exporters Ltd (2018) eklr** on what consideration go into the question of an appeal being rendered nugatory.

28. On the consideration and requirement that there be demonstrated irreparable loss incapable of compensation by award of damages, the plaintiff cited to court the decision in **Thomson Smith Aikwan, Alan Malloy Vs Muchoki (1982) Eklr** where the court of appeal held that it is not right to allow a wrongdoer to keep a benefit improperly obtained merely because he can pay for the wrongdoing.

Submissions by the defendant/Respondent

29. For the defendant the position was taken that the threshold for grant of injunction pending appeal had not been met and the principles not satisfied. The defendant cited to court its own decision in **Kron (U)LTD vs Kerilee investments Ltd and 2 others, Mombasa HCC No. 118 of 2018 (unreported)** on the principles to be considered and for the proposition that where the appeal is viewed as frivolous and not arguable and if damage would be an adequate compensation then there cannot be any justification to grant injunction pending appeal. Applying that decision to the facts of this case, the defendant submitted that there had been failure to demonstrate arguability of the appeal and inadequacy of damages hence an indication that the application ought to fail. It was stressed that there having been a decision that no prima facie case had been made out, it was clear that the appeal itself was not arguable but frivolous with no prospects of success.

30. On the consideration whether a grant of injunction would inflict more harm than it would avoid, the defendant once again relied on the decision in **Krone (supra)** and submitted that there having been a lending by the defendant to the plaintiff, secured by the suit property, there would be more harm visited by grant of injunction that would outweigh the benefits to be derived because the application of interest would continue to erode the value of the securities. It was further contended that the market prices for the five properties was well known and would be a good basis for measure and an award of damages.

31. On whether the appeal would be rendered nugatory by refusal to grant the injunction sought, it was submitted that if the appeal is not arguable then it is moot to consider whether or not it would be rendered nugatory and once again resorted to the decision of **KRONE (Supra)**. It was urged therefore that the application for injunction pending appeal lacks merit and need to be dismissed with costs.

32. On the application for extension of time counsel faulted the application for lack of merit as the absence of the director could not forestall the filing of the notice. The decision by the court of appeal in **Bi-mach engineering Ltd vs James Kahoro (2011 Eklr)** was cited for the position that filling of a notice of appeal is a mechanical task that need not take a lot of time. The counsel took the view that the plaintiff having been represented by counsel on the date the ruling was delivered, it was aware of the ruling immediately and nothing stopped it from filing the notice of appeal expeditious within the stipulated time and that the absence of one director was not plausible reason to explain the delay. Even that prayer was deemed meritless, deserving dismissal with costs.

33. To the defendant's submissions, the plaintiff filed a response and called same further submission. In them, the plaintiff seeks to distinguish the authorities cited by the defendant as inappropriate and far-removed for application to the fact at hand. The decision in **Mombasa water products vs Kenya Commercial Bank Ltd (2016) EKLr** was said to be difficult to follow and that Kron's case (supra) was said to capture the principles better. **Bi-mach's case (supra)** was said to be distinguishable on account of unexplained delay in filing the notice after the knowledge of the decision had been acquired.

34. Having studied the facts pleaded perused the decisions cited and the arguments offered in the written submissions, I appreciate that the following issues do isolate themselves for determination-;

- I. Whether the court has the jurisdiction to extend time to appeal to the court of appeal.
- II. Whether the applicant has made out a case for extension of time.
- III. Whether the court is entitled to interrogate the validity of the notice of appeal filed.
- IV. Whether there has been made out a case for injunction pending appeal.

Extension of time

35. Whether or not to extend time to do anything outside the time stipulated by law is purely a matter at the discretion of the court. The court employs judicial discretion to come to a conclusion. In exercising such discretion the court must have reasons in reaching the ultimate decision and is expected to apply and observe the settled principles in that regard.

36. However, in this matter I cannot go straight to the merit consideration of the matter because, in its opposition to the application, the defendant/respondent has taken the very firm position that the duty and power to extend time to file a notice of appeal under the appellate jurisdiction Act is an exclusive preserve of the court of appeal and relies on the provisions of rule 4 of the rules of that court. That rule stipulates -:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

37. I consider, construe and understand the rule to be the general power of the court to extend or enlarge time where the time circumscribed has passed. However, in its wording, it is not capable of being understood to exclude all else from extending time and in particular the superior court whose decision is to be challenged on an appeal. Further that rule cannot be construed and interpreted to overweigh the other provisions of the statute. I have in mind as pointed out by the plaintiff, section 7 of Cap 9. That section provides-;

The high court may extend the time for giving notice of intention to appeal from a judgment of the high court and application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.

Provided that in the case of a sentence of death no extension of this shall be granted after the issue of the warrant for execution of that sentence.

38. It is clear that this provision must have escaped the defendant's counsel's attention. Its reading is clear that the jurisdiction to extend time for lodging a notice of appeal is primarily that of the High Court. I consider the rationale for this to be the fact that if notice of appeal is lodgeable in the High Court (or one of the other courts of equal status), then it is that court whose file receives the notice of appeal which is best suited to consider the reasons for failure to act in time. With that statutory underpinning and vesting of this court's jurisdiction, I find no difficulty in holding and finding that the challenge on jurisdiction was improperly taken and lacks merit. If I was wrong or be in doubt on this, I would still rely on the decision by Court Of Appeal in **DT Dobie and Co. (K) Ltd vs Fred Machayo (supra)** where the court held that the only power donated to the High Court, (now Superior Courts), is the power to extend time for giving the notice of intention to appeal. I therefore find that this court is properly clothed with the jurisdiction to consider an application for extension of time and that the

application in the regard is properly before court.

Has a case been made out for extension of time?

39. As said before, I am mandated to exercise a judicial discretion and determine whether the court needs to extend time for lodging the notice of appeal and to deem the notice of appeal lodged on the 29/4/2019 to have been duly lodged.

40. Every time a party is in default to take a step within the stipulated timeline, it behooves such a party to move the court at the promptest opportunity and then advance the reasons to plausibly explain the delay leading to default. In the case of **Nicholas Kiptoo Arap Korir Salat vs IEBC (2014) eKLR** the Supreme Court while underscoring the fact that the jurisdiction to extend time gets its roots from equity as a critical aspect of administration of justice cited with approval the court of appeal decision in **Paul Wanjohi Mathenge Vs Dancan Mathege (2013) eKLR** to the effect that the court has to consider, the following matter-;

- (i) Length of delay
- (ii) Reason for delay
- (iii) The prospect or chances of success of the intended appeal if time is extended and
- (iv) The degree of prejudice to the respondent once the application is granted.

41. Those matters remain these primary considerations, of course with other related and consequential matters. I am in this decision bound to consider the same matters as threshold issues and prerequisites so that the court observes the dictate that judicial discretion must not take the stature of a whim, caprice or just sympathy.

42. The decision sought to be challenged was given on the 11/4/2019 even though the plaintiff's application states that it was on the 12/4/2019. So that I go to the merits, I have read the court file and confirmed that in deed the date is 11/4/2019 not 12/4/2019. In addition, there is only one decision refusing injunction in this file hence I do not consider the date give to have misled the respondent in any way. I consider that to be a mere inadvertence that causes no prejudice to the respondent. In any event, the respondent has robustly responded to the application and made very substantive arguments in the submissions which ought not be disregarded on account of the erroneous date. I determine to go to the merits of the application with clear view that the subject ruling is dated 11/4/2019.

43. Now, in considering the length of delay, the ruling having been delivered on 11/4/2019, the plaintiff had, by dint of rule 75, up to the 25th of April to lodge the notice of appeal. It did not do so till the 29th April 2019. That action was clearly taken out of time and only done on the 4th day after time had lapsed. I must determine if that length of delay was inordinate or just unreasonable to be construed as a design to delay the progression of the intended appeal and just disposal of the dispute.

44. While it is true that filing of a notice of appeal is a straight forward and even a mechanical act, I take the learning that advocates are agents of the client and in every occasion need to be instructed in a particular way forward. In that regard, I do accept the explanation that the director who swore the affidavit in support was in deed out of Kenya and only came back on the 28/4/2019 a day before the notice was filed on the 29/4/2019. I do consider the period of four days not to constitute an inordinate or unreasonable delay and accept the explanation that there was need to get instructions from the client who was away from Kenya.

45. For those reasons I do determine that the period of delay is neither inordinate nor unreasonable and that the explanation offered is plausible. That determination however leaves me with the question of whether the intended appeal raises arguable grounds or if it is just but a frivolity.

46. A matter is said to be frivolous when it raises no bona fide and genuine dispute and is pursued regardless of any prospects of success purely to vex or and harass the defendant^[1].

47. Having made the decision now subjected to the intended appeal I may appear to sit on appeal of my own decision if I was to arrogate to myself the duty of assessing the prospects and chances of the success of the intended appeal. It would be easy for me if I was to sit as an appellate court to undertake such task as it happened in the Krone's case (supra). I decline to second-guess the appreciation by court of appeal in that regard and say that I may as well be reversed by the court above. In a nutshell, I am unable to find that the intended appeal is frivolous.

48. The last consideration is what harm, if any, would occur with a grant of injunction pending appeal than would be avoided by refusal of the order! While I am a believer in the right to access court, unhindered and to litigate with real prospects of acquiring substantive rights in the resulting decree, by preservation and sustenance of the subtraction of the litigation, I am also a firm defender of the principle that a court order should not be seen to visit an undue and avoidable hardship or injury.

49. In this matter, the dispute between the parties even if disclosed to be over the right to sell property given as security or just to dispute a charge, that dispute is clearly assessable in monetary terms. The plaintiff's position is that unless the orders are granted, the appeal shall be rendered nugatory and it shall suffer irreparable loss by asserting that the defendants loan, even if found to be payable is adequately secured by the five properties. I understand the plaintiff to acknowledge that in seeking injunction pending appeal, the value of the security offered, even if challenged, is a consideration for the court. That being the case it is important to juxtapose the value of the property as against the disclosed debt. No material in that regard has been availed by the plaintiff to court, but the defendant has provided valuation report disclosing the market and forced sale values of the five suit properties and places an aggregate forced sale value of Kshs. 332,000,000 as against the debt of about 4,000,000,000 as at 2017.

50. I consider that evidence to indicate that the debt has already outstripped the security provided and that every extra day the debt remain unpaid the security continues to shrink and diminish.

51. The obvious and natural consequence of that situation is that both sides are exposed to the danger of having their respective situation worsened. The plaintiff, as the debtor, continues to have its debt obligation bludgeon as the defendant also stara at its security get wiped out as the debt continues to grow.

52. In those circumstances I see it that to grant an injunction pending appeal will visit more harm and hardship on both sides more than it would avoid in the event that at the conclusion of the case the debt in adjudged as due and payable.

53. The flip side is that if the court declines the injunction and the sale proceeds and later on the debt is adjudged unrecoverable there has been provided the market value of the property which value the plaintiff would then be able to claim and recover from the defendant as a liquidated sum.

54. I take the view that, weighing the balance between the hardship to be visited as against that to be avoided by an order of injunction pending appeal, is and must remain practical test if justice is to remain equated with fairness.

55. I would, in the circumstances and facts disclosed in this case regarding the value of the suit property as security offered to the defendant, that it is inappropriate to grant an unconditional injunction pending appeal.

However, on the scale of the considerations to be taken into account, I have found that the plaintiff/applicant has surmounted three out of the four parameters. I have also given regard to the fact that the defendant asserts that to grant orders would be to allow the plaintiff keep both sums allegedly advanced and the security provided at the same time. On the other hand, the plaintiff contend that the defendant has been returning annual financial losses in its operation and cannot guarantee being there at the conclusion of the case so as to be sued and recoveries made. Taking everything into consideration, I do consider that this is a case where in order to protect the plaintiff's right to be heard on its appeal; and to protect both parties from the debt escalation so as to wipe out the security, I am minded to grant an injunction but on terms that the plaintiff provides security by way of an insurance bond or bank guarantee in the sum of Kshs. 3,000,000,000. Such security be provided within 30 days from the date of this decision.

56. For the avoidance of doubt, if the security ordered shall not have been furnished by the 22/02/2021, the injunction hereby granted shall stand discharged and the defendant shall be at liberty to proceed with its realization process.

57. On costs, I order that the same be in the cause and abide the outcome of the suit.

Dated, signed and delivered in open court this 22nd day of January 2021.

Patrick J.O. OTIENO

JUDGE

[\[1\]](#) (2) See Kiru tea factory co. ltd – vs Joseph Gioche Kuria (2016) Eklr