



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gilulu Investments Limited & 2 others v Gunga Properties Limited & 9 others (Civil Case E594 of 2021) [2021] KEHC 258 (KLR) (Commercial and Tax) (18 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 258 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E594 OF 2021  
WA OKWANY, J  
NOVEMBER 18, 2021**

**BETWEEN**

**GILULU INVESTMENTS LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
ACRES AND HOMES LIMITED ..... 2<sup>ND</sup> PLAINTIFF  
WILLIAM K. GITAU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**GUNGA PROPERTIES LIMITED ..... 1<sup>ST</sup> DEFENDANT  
KOFINAF COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT  
FUNDAMENTAL PROPERTY LIMITED ..... 3<sup>RD</sup> DEFENDANT  
CHRISTOPHER JOHN BARRON ..... 4<sup>TH</sup> DEFENDANT  
STEPHEN JENNINGS ..... 5<sup>TH</sup> DEFENDANT  
MARY CHEGE ..... 6<sup>TH</sup> DEFENDANT  
RENDEAVOUR SERVICES LIMITED ..... 7<sup>TH</sup> DEFENDANT  
REGISTRAR OF COMPANIES ..... 8<sup>TH</sup> DEFENDANT  
FAMILY BANK LIMITED ..... 9<sup>TH</sup> DEFENDANT  
ANTHONY WACHIRA NJOROGE ..... 10<sup>TH</sup> DEFENDANT**



## RULING

1. The plaintiffs herein sued the defendants seeking the following orders: -
  - a. A declaration be and is hereby issued that there is a valid and enforceable Agreement for Sale over Property LR No 11285, between the 1<sup>st</sup> Plaintiff and 3<sup>rd</sup> Defendant, emanating from the Term Sheet dated 29<sup>th</sup> March, 2016; Agreement for Sale dated 11<sup>th</sup> July, 2016 and Addendum Agreement dated 24<sup>th</sup> September, 2018.
  - b. A declaration be and is hereby issued that Gunga Properties Limited is the principal vendor transacting as such through Fundamental Property Limited, Stephen Jennings, Christopher Barron, Kofinaf Company Limited and Rendevour Services Limited whereas Acres and Homes Limited is the principal purchaser transacting as such through William Kabogo Gitau and Gilulu Investments Limited.
  - c. A permanent injunction be and is hereby issued restraining the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendants from acting in any manner to induce the breach of or purport to terminate the existing Agreement for Sale between the 1<sup>st</sup> Plaintiff and 3<sup>rd</sup> Defendant over property LR No 11285.
  - d. An Order of Specific Performance be and is hereby issued directing the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants transfer to the 1<sup>st</sup> Plaintiff the of land described as 100 Acre Precinct situate within the suit property, upon the lifting of the court orders and/or conclusion of the cases contemplated in the Agreement for Sale dated 11<sup>th</sup> July, 2016, whichever is earlier.
  - e. An Order be and is hereby issued directing the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> Defendants to deposit in an interest earning escrow account to be opened at Kenya Commercial Bank, the Kshs. 348,025,547.00 (together with the accrued interest to date at the rate 0 8% per annum transferred on 31<sup>st</sup> May, 2016 by the 2<sup>nd</sup> Plaintiff to account number 48000012537 held by Rendevour Services Limited, pending the conclusion and performance of the Agreement for Sale dated 11<sup>th</sup> July, 2016.
  - f. An Order be and is hereby issued directing the 8<sup>th</sup> Defendant to immediately release to the 3<sup>rd</sup> Plaintiff the entire file, notes, correspondences and all documentation concerning the negotiations, meetings and discussions held over the Agreement for Sale in respect of property LR No 11285 together with the original envelope containing the identities of the true senders of the purported termination letter dated 19<sup>th</sup> April, 2021.
2. Concurrently with the Plaint, the plaintiffs also filed the application dated 25<sup>th</sup> May 2021 (hereinafter “the 1<sup>st</sup> Application”) seeking the following orders: -
  - a. Spent.
  - b. Spent



- c. Pending the inter-partes hearing and determination suit filed herewith, an Order of injunction be and is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendants whether by themselves or their representatives, agents and/or employees from dealing with the property known as Land Reference Number 11285 in any manner whatsoever by either selling, transferring or charging the same to third parties.
- d. Pending the inter-partes hearing and determination of the Notice of Motion and/or the suit filed herewith, an Order be and is hereby issued for the lifting of the corporate veil of the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendants for purposes ascertaining the true beneficial owners of Property LR No 11285 and an Order be and is hereby issued declaring as inoperable and incapable of performance, the arbitration clause enumerated at clause 17 of the Agreement for Sale dated 11<sup>th</sup> July, 2016 between the 1<sup>st</sup> Plaintiff and the 3<sup>rd</sup> Defendant.
- e. Pending the inter-partes hearing and determination of the Notice of Motion and/or the suit filed herewith, an Order be and is hereby declaring that Gunga Properties Limited is the principal vendor transacting as such through Fundamental Property Limited, Stephen Jennings, Christopher Barron, Kofinaf Company Limited and Rendeavour Services Limited whereas Acres and Homes Limited is the principal purchaser transacting as such through William K. Gitau and Gilulu Investments Limited.
- f. Pending the inter-partes hearing and determination of the Notice of Motion and/or the suit filed herewith, an Order be and is hereby issued directing the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> Defendants to deposit in an interest earning escrow account to be opened at Kenya Commercial Bank, the Kshs. 348,025,547.00 (together with the accrued interest to date at the rate 0.8% per annum transferred on 31<sup>st</sup> May, 2016 by the 2<sup>nd</sup> Plaintiff to account number 48000012537 held by Rendeavour Services Limited.
- g. Pending the inter-Partes hearing and determination of the Notice of Motion and/or the suit filed herewith, an Order be issued directing the 4<sup>th</sup> and 5<sup>th</sup> Defendants herein, Christopher John Barron and Stephen Jennings, to immediately deposit their Passports in Court until such a time that Order number 5 hereinabove is complied with.
- h. Pending the inter-Partes hearing and determination of Motion and/or the suit filed herewith, an Order be and is hereby issued directing Family Bank Limited to produce before Court within seven (7) days, details of the account opening forms, a true statement of account, the account signatories and instructions furnished to the bank by the 4<sup>th</sup> and 5<sup>th</sup> Defendants for transactions held in account number 48000012537 held by Rendeavour Services Limited at Family Bank Limited, Westlands Branch for the period commencing 31<sup>st</sup> May, 2016 to date, in the event the Kshs. 348,025,547.00 was moved.
- i. Pending the inter-partes hearing and determination of the Notice of Motion and/or the suit filed herewith, the Registrar of Companies be directed to produce all requisite and necessary documentation relating to the directorship, shareholding and beneficial ownership of the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendants,



including the company registration forms, details of directors thereof inclusive of details of any change of directorship if any, shareholders and the nature of shares they hold including details of any change of shareholding if any.

3. The application is supported by the 3<sup>rd</sup> Plaintiff's affidavit and premised on the grounds listed on the face of the application.
4. When the matter first came up for mention ex parte, under certificate of urgency, the court granted interim orders (hereinafter "the impugned orders") as follows: -

"An interim injunctive order designed to preserve the subject matter of this suit from dissipation, being Property LR No 11285; an order directing Family Bank to produce account opening forms, details of signatories and bank statements for account number 48000012537 held by Rendevour Services Limited (the 6<sup>th</sup> respondent herein) and; an order directing the Registrar of Companies to produce documentation relating to directorship, shareholding and beneficial ownership of the companies subject to this dispute in order to preserve the substratum of the said application."
5. The defendants opposed the application through the 8<sup>th</sup> Defendants replying affidavit dated 9<sup>th</sup> July 2021. The defendants also filed Grounds of Opposition as follows: -
  - a. Grounds of Opposition dated 11<sup>th</sup> June, 2021 filed by the 1<sup>st</sup> Defendant;
  - b. Grounds of Opposition dated 11<sup>th</sup> June, 2021 filed by the 2<sup>nd</sup> Defendant;
  - c. Grounds of Opposition dated 15<sup>th</sup> June, 2021 filed by the 4<sup>th</sup> and 5<sup>th</sup> Defendants;
  - d. Grounds of Opposition dated 8<sup>th</sup> June, 2021 filed by the 6<sup>th</sup> Defendant and;
  - e. Grounds of Opposition dated 14<sup>th</sup> June, 2021 filed by the 8<sup>th</sup> Defendant.
6. The 1<sup>st</sup> - 7<sup>th</sup> Defendants filed an application dated 3<sup>rd</sup> June, 2021 seeking to set aside and/or discharge of the impugned orders of 26<sup>th</sup> May, 2021. The Plaintiffs opposed the application through the 3<sup>rd</sup> Plaintiff's Replying Affidavit sworn on 25<sup>th</sup> June, 2021.
7. The 3<sup>rd</sup> Defendant filed Chamber Summons dated 3<sup>rd</sup> June, 2021 (hereinafter "the arbitration application"). The application is supported by the affidavit of Maria Koutsou and is premised on the grounds listed on the face of the application.
8. On 15<sup>th</sup> June, 2021, the law firm of W.G Wambugu & Company Advocates who act for the 8<sup>th</sup> Defendant in these proceedings filed a Notice of Change of Advocates seeking take over the legal representation of the 1<sup>st</sup> Plaintiff (Gilulu Investments Limited) from M/S Otieno Ogola & Company Advocates. In addition to the Notice of Change of Advocates, W.G Wambugu & Company Advocates also filed Grounds in Support of the 3<sup>rd</sup> Defendant's application for arbitration together with a Replying Affidavit sworn by the 8<sup>th</sup> Defendant also supporting the 3<sup>rd</sup> Defendant's application for arbitration.
9. In a nutshell, the 8<sup>th</sup> Defendant does not oppose the 3<sup>rd</sup> Defendant's request for determination of the dispute herein through the Arbitration forum in London.



10. A preliminary issue therefore arose regarding the legal representation of the 1<sup>st</sup> Plaintiff. Directions were taken that the dispute over the 1<sup>st</sup> Plaintiff's legal representation and the arbitration application be considered first and that the same be canvassed by way of written submissions.
11. This ruling is therefore in respect to the dispute over the 1<sup>st</sup> Plaintiff's legal representation and the 3<sup>rd</sup> Defendant's arbitration application.

#### Legal Representation.

#### The plaintiffs' Submissions

12. The plaintiffs referred to the exhibits attached to the 3<sup>rd</sup> Plaintiff's Further Affidavit as annexures marked WKG-1, WKG-2 and WKG-3 and argued that the said exhibits confirm the 3<sup>rd</sup> Plaintiff's position that he is the ultimate beneficial owner of the 1<sup>st</sup> Plaintiff and that the 8<sup>th</sup> Defendant cannot purport to exercise control or authority over the said company. It was submitted that whilst acting as a director, the 8<sup>th</sup> Defendant was a fiduciary and held the said directorship in trust for the 3<sup>rd</sup> Plaintiff.
13. The plaintiffs submitted that there is ample evidence to demonstrate that the 3<sup>rd</sup> Plaintiff exercises control over the 1<sup>st</sup> Plaintiff and that any decisions affecting the 1<sup>st</sup> Plaintiff are made and authorized by the 3<sup>rd</sup> Plaintiff. It was submitted that the 8<sup>th</sup> Defendant's intention is to forcefully take over the 1<sup>st</sup> Plaintiff from the 3<sup>rd</sup> Plaintiff and permanently defeat the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff's case as against the Defendants herein.
14. It was the plaintiffs' case that it is not permissible, in law, for joint Plaintiffs to be represented by two different firms of Advocates, except with leave of the Court. The plaintiffs cited English decision in *Lewis vs Daily Telegraph 1964 (1) All E.R. 705* as cited in [\*Christopher Kipkorir Lebo & 331 Others V Kenya Power & Lighting Company Limited \[2008\] eKLR\*](#) where it was held that: -

“In my view it was not regular and not in accordance with the proper practice that two firms of solicitors should be placed on the record as representing Mr. Lewis and the Plaintiff separately. The first move appears to have been by the solicitors for Mr. Lewis in putting themselves on the record as solicitors for him only. That was followed - not unnaturally – by a similar move by the Plaintiff Co's solicitors putting themselves on the record as the plaintiff Co's advocates only. But the question arises whether that is something which can properly be done or something which ought not be done except with leave of the Court. There is a Note on P. 1802 of the Annual Practice 1964 under heading “Change by some of several Plaintiffs”, and that note says: “It is not for the practice of the central office to receive a notice to change solicitors for some out of several plaintiffs. There can only be one solicitor for the Plaintiffs unless otherwise specially ordered”.
15. The plaintiffs argued that it is irregular for W. G. Wambugu & Company Advocates to purport to act for the 1<sup>st</sup> Plaintiff, yet the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are properly represented by Otieno Ogola & Company Advocates. They added that the situation is made worse as the 8<sup>th</sup> Defendant and W. G. Wambugu & Company Advocates purport to act for the 1<sup>st</sup> Plaintiff and have immediately upon filing the Notice of Change of Advocates taken a position in complete contradiction and conflict with the position taken by the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs.
16. The plaintiffs' case was that the intention of the 8<sup>th</sup> Defendant and W. G. Wambugu Advocates in purporting to take over the legal representation of the 1<sup>st</sup> Plaintiff is to concede to the 3<sup>rd</sup> Defendant's request for arbitration and thereby torpedo the Plaintiffs' suit against the Defendants. They urged the court to resist the 8<sup>th</sup> defendant's take-over and adopt the position that was taken in a related case where



the principle parties are the same as the parties herein being, *Tatu City Limited & 3 others vs Stephen Jennings & 6 others, Civil Case No 46 of 2015 [2016] eKLR* wherein Tuiyott J. declined to permit a Change of Advocates where the intention was to terminate a suit that was pending before the Court. In the said case, the Court held as follows over the endorsement of notice of appointment: -

“In my view to decline to endorse the appointment of Ahmednasir Abdikadir & Co. Advocates does not diminish or disregard the force of the holding by the Court of Appeal that from 16<sup>th</sup> September 2015, the said firm had instructions to represent the companies. All that this Court is saying is that the said firm cannot be permitted to enter these proceedings if the intention of that entry is to torpedo a Derivative Action which has been permitted by Court.

17. The plaintiffs emphasized that they have evidence to show that the 2<sup>nd</sup> Plaintiff paid Kshs. 348,025,547.00 to account number 48000012537 held by the 6<sup>th</sup> defendant (Rendeavour Services Limited) being part-payment for the purchase price for the for the suit property. They maintained that the 8<sup>th</sup> defendant did not make any contribution towards the said purchase price and cannot therefore claim that the sale Agreement between the 1<sup>st</sup> Plaintiff and the 3<sup>rd</sup> Defendant was for her benefit as the director and “owner” of the 1<sup>st</sup> Plaintiff.
18. The plaintiffs stated that one Peter W. Kariuki, swore an Affidavit to confirm the 3<sup>rd</sup> Plaintiff instructed him to sign the Term Sheet dated 29<sup>th</sup> March, 2016, Agreement for Sale dated 11<sup>th</sup> July, 2016 and Addendum Agreement dated 24<sup>th</sup> September, 2018 on behalf of the 1<sup>st</sup> Plaintiff and not the 8<sup>th</sup> Defendant.
19. The plaintiffs urged the Court to find that the law firm of M/S Otieno Ogola & Company Advocates is properly on record for the 1<sup>st</sup> Plaintiff and to strike out and/or expunge the Notice of Change of Advocates and Grounds in Support filed by W. G. Wambugu & Company Advocates, purportedly on behalf of the 1<sup>st</sup> Plaintiff.
20. On the 3<sup>rd</sup> defendant’s application dated 3<sup>rd</sup> June 2021 for an order to stay of proceedings relating to the 3<sup>rd</sup> defendant and to refer the dispute to arbitration, the Plaintiffs submitted that one of the orders that they seek in the 1<sup>st</sup> application is for a declaration that the arbitration clause contained at Clause 17 of the Sale Agreement dated 11<sup>th</sup> July, 2016 is inoperable and incapable of performance.
21. The plaintiff submitted that this suit transcends the parties to the agreement and is not merely a dispute between the 1<sup>st</sup> Plaintiff and 3<sup>rd</sup> Defendant, but involves additional proper and necessary parties. According to the plaintiffs, the Arbitration Clause of the Agreement is inoperative and the dispute properly falls for determination by this Honourable Court. Reference was made to the decision in *Martin Njuguna Ngugi vs Ahmed Noor Sheikh & Another [2018] eKLR*, where the Court considered the involvement of non-parties to an arbitration agreement as follows: -

“I do not think that the legal framework in the *Arbitration Act*, and indeed our prevailing jurisprudence, contemplates a scenario where a non-party to an arbitration agreement is to be compelled to submit to arbitration as a party to the arbitral proceedings. An arbitration agreement binds parties to the agreement, not nonparties.”



22. The plaintiffs also cited the decision in *Damaris Wanjiru Nganga vs Loise Naisiae Leiyen & another [2015] eKLR* where the court declined to refer a dispute to arbitration on the basis that the performance of an agreement was intimately tied to a third party. The court held that: -

“Given the presence of KCB in the dispute, and her central part in whether or not the property ought to be transferred to the plaintiff, I am of the opinion that the arbitral agreement cannot be performed. Clearly the arbitrator cannot make an order compelling KCB to discharge the charge, or to transfer the property to the plaintiff, which is what the plaintiff ultimately wants. It will therefore be futile to refer the matter to arbitration since a key issue will not be determined through the said proceedings. The dispute has morphed into one that renders the arbitral clause inoperative. The only avenue to have the dispute settled once and for all remains the court.

23. The plaintiffs observed that even though the 1<sup>st</sup> defendant is not party to the Sale Agreement between the 1<sup>st</sup> Plaintiff and 3<sup>rd</sup> Defendant, it is intricately and intimately tied to the dispute as it is the registered owner of the suit property. They added that the 1<sup>st</sup> defendant is therefore the Principal Vendor who transacted through the 3<sup>rd</sup> defendant as the Nominated Vendor.

24. The plaintiffs further noted that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs are also, not parties to the Agreement for Sale but are intricately and intimately tied to the dispute as the 2<sup>nd</sup> Plaintiff paid a huge deposit sum of Kshs. 348,025,547.00 being ten (10%) deposit for the transaction. It was the plaintiffs’ case that the 2<sup>nd</sup> plaintiff’s participation in this suit is therefore extremely critical for the reason that it made the said payment as the Principal Purchaser and that it must therefore be heard on the dispute. They noted that similar position obtains in respect to the 6<sup>th</sup> and 10<sup>th</sup> defendants who received the Kshs. 348,025,547.00 deposit from the 2<sup>nd</sup> plaintiff. They added that the participation of the 2<sup>nd</sup> plaintiff, the 6<sup>th</sup> and 10<sup>th</sup> defendants is not merely peripheral and that the dispute herein has morphed into one that renders the arbitration clause inoperative thereby leaving the court as the only avenue for settling the dispute.

25. The plaintiffs further submitted that since the Agreement for Sale in question was in respect to property situate in Kenya where both the Vendor and Purchaser reside and further, the deposit having been paid to the 6<sup>th</sup> Defendant who is also is resident in Kenya through the 10<sup>th</sup> defendant which is a Kenyan bank and, that further the agreement indicates that the applicable law is Kenyan laws, it will be pointless to refer the dispute to arbitration in a foreign jurisdiction.

26. The plaintiffs’ case was that the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs have a constitutional right to access justice pursuant to Article 48 of the Constitution which right will be violated should the matter be referred to arbitration where they will not be able to participate and present their cases. It was submitted that the effect of locking out the eleven additional necessary parties from participating in the Arbitral proceedings is that the suit property and the deposit sum of Kshs. 348,025,547.00 would be permanently kept away from the reach of the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs.

27. The Plaintiffs maintained that the request for arbitration is also, not genuine and that the 8<sup>th</sup> Defendant’s attempt to take over the 1<sup>st</sup> Plaintiff is proof of complete lack of bonafides in the prayer for arbitration. They accused the 8<sup>th</sup> Defendant of colluding with the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants herein to concede to the Arbitration by first purporting to irregularly change legal representation of the 1<sup>st</sup> Plaintiff in order to accede to the 3<sup>rd</sup> Defendant’s request for Arbitration and thereafter conduct Arbitral proceedings in London strictly between the “1<sup>st</sup> Plaintiff and 3<sup>rd</sup> Plaintiff” in total exclusion of the proper and necessary parties. The plaintiffs cited the decision of the Court of Appeal decision in *United India Insurance Company Ltd, Kenindia Insurance Company Ltd & Oriental Fire & General*



*Insurance Company Ltd vs East African Underwriters (Kenya) Ltd [1985] eKLR* wherein it was held that: -

“The courts of this country have a discretion to assume jurisdiction over an agreement which is made to be performed in Kenya notwithstanding a clause therein conferring jurisdiction.”

The Court proceeded to state that: -

The two plaintiffs give a clear idea of the issues likely to arise at the trial. The starting point is that Kenya is a natural forum for the dispute where all breaches are alleged to have taken place; therefore, the evidence of the issues of fact is both wholly situated and more readily available in Kenya as also are all essential witnesses. There ought to be no witnesses directly connected with the dispute in Bombay. The relative convenience is centred in Kenya. If the stay is not refused numerous witnesses, some big, some small may have to travel from Kenya to Bombay at enormous expense. Some may even refuse to travel. They will not be compellable. The expense of the trial in Bombay would be staggering. The documentary evidence should be in the possession of Kenindia, or easily procurable by it, as the assignee or successor to the United India and Oriental. The evidence could be comfortably evaluated in Kenya. The two agreements embody tables and set out the method for calculating the plaintiff's remuneration as the Chief Agent. We have qualified professional accountants and auditors operating in Kenya who could carry out the task satisfactorily.

28. The plaintiffs submitted that the above holding applies to this case as the suit property is situate in Kenya, the deposit towards the purchase price was paid in Kenya and to a Kenyan Bank (Family Bank) and a Kenyan Company (Rendevour Services Limited). They added that parties to the dispute are in Kenya, competent and compellable witnesses are readily available in Kenya and that it is Kenyan law that applies in the Agreement for Sale. they argued that Kenya is therefore, the natural forum for determination of the dispute.

#### The 3rd Defendant's Submissions

29. The 3rd defendant submitted that in determining the proper person to control the affairs of the 1<sup>st</sup> plaintiff, the court ought to be guided by the principles of the conflict of laws. Counsel submitted that the instant dispute had a foreign component thus requiring the parties to show what the law in the foreign country stipulates with regard to the dispute. Counsel referred to the case of *Export Import Bank of America vs Royal Media Services limited & 4 others [2020] eKLR* where the court held as follows; -

“... it is important to note that although that is what is provided in those documents the same was not pleaded nor was it proved. Instead both the learned counsels in this matter submitted in their written submissions that are the law in the state of New York which this court should apply to this matter. Even in that there was a discordance in what the law provides.

According to the learned counsel for the defendants Dr. Kamau Kuria Senior Counsel (SC) the court should apply both the foreign and Kenyan Law. The learned counsel for Ex-Imp Bank Ms. Raore submitted that Kenyan Law applied and in the alternative the law of New York State applied.

In my view and in view of the fact the Ex-Imp Bank failed to plead and to prove the law that is applicable, it follows that it is the Kenyan Law that will apply. I find support on this



from a Canadian case JP Morgan Chase Bank v. Lanner (The), 2008 FCA 399 (CanL11), [2009] 4 FCR 109, thus:

"Per Richard C.J. (Ryer J.A. concurring): Whenever a Canadian court is asked to apply the substantive law of a foreign jurisdiction, it must apply a "choice of law" analysis using Canadian conflict of laws rules. Absent a statutory and/or treaty provision directing the forum to apply a particular choice of law rule, Canadian common law conflict of laws rules will apply in a proceeding where a court is asked to apply foreign law. The first step in a choice of law analysis is the determination of the legal nature of the questions or issues to be adjudicated. The court must then determine what choice of law rule applies to that particular category and finally apply the appropriate jurisdiction's law to the issue. In general, foreign law must be specifically pleaded and proved to the satisfaction of the court. Otherwise the court will apply the law of the forum." (emphasis mine.)

8. That stand is also what is stated by the learned authors Dicey, Morris and Collins in their book. "The conflict of laws". I shall quote passages from that book at pages 319 to 326 that speak to this as follows:

"Foreign law must be pleaded. The general rule is that if a party wishes to rely on a foreign law he must plead it in the same way as any other facts.

The court may decide a question of foreign law without proof if it is requested to do so by both parties....

It is now well settled that foreign law must, in general, be proved by expert evidence. Foreign law cannot be proved merely by putting the text of a foreign enactment before the court, nor merely by citing foreign decisions or books of authority. Such materials can only be brought before the court as part of the evidence of an expert witness. Since without his assistance the court cannot evaluate or interpret them. This may be especially important (even if the ultimate task of the judge is made little easier) when the foreign law in quest is found in a number of sources whose relationship to each other is not easily understood or explained, or in cases in which the essence of the foreign law is that a local judge will inform himself as to what the material principles of religious law require in circumstances in which he is not bound to follow previous decisions, even his own, and there is no tradition of textbook writing. No precise or comprehensive answer can be given to the question who, for this purpose, is a competent expert. A judge or legal practitioner from the foreign country is always competent.

(ii) Use of foreign sources. An English court will not conduct its own researches into foreign law, in the common law system, the trial is not an inquisition into the content of relevant foreign law any more than it is an inquisition into other factual issues that the parties tender for decision by the court". But if an expert witness refers to foreign statutes, decisions or books the court is entitled to look at them as part of his evidence."

30. The 3<sup>rd</sup> defendant submitted that the court should apply Kenya's Company law in respect to the passing of a Board resolution and the power of the directors to appoint an advocate since the parties failed to prove the standard set by court on foreign company law. Counsel submitted that there is need to apply sections 140 and 142 of the Companies Act which provide for the scope and the nature of the



directors' duties to make decisions in the company. Reference was made to the decision in *Bugerere Coffee Limited vs the Seraduka & Anor. (1970) EA 147* where it was held as follows: -

"When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board of Directors' meeting and recorded in the minutes, but no resolution had been passed authorizing the proceedings in this case. The Court held further that where an advocate has brought legal proceedings without authority of the purported plaintiff the applicant becomes personally liable to the defendants for the costs of the action."

31. Reference was also made to the case of *East African Safari Air Ltd vs Anthony Kegode & Another* in which Emukule J. observed that:

"When an Advocate is however instructed to file a suit, particularly against current or sitting directors or immediate former directors of the company, special care is required on the part of the Advocate or his firm that necessary authorizations by way of clear resolutions of the Board had been taken to institute the suit."

32. Counsel submitted that the 3<sup>rd</sup> plaintiff was neither a director nor a shareholder of the 1<sup>st</sup> defendant company and that the 8<sup>th</sup> defendant should be allowed to run the company as she is the director of the 1<sup>st</sup> plaintiff.

33. On the arbitration application, counsel submitted that the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant executed an agreement which, at Clause 17.2 provided for an elaborate arbitration process in London. The 3<sup>rd</sup> defendant maintained that only parties to the agreement should go for arbitration. It was submitted that the parties to the agreement are foreign companies that voluntarily made a choice regarding the forum for their future dispute resolution.

#### The 8<sup>th</sup> Defendant's Submissions

34. The 8<sup>th</sup> defendant submitted that the law firm of W. G. Wambugu and Company Advocates is properly on record as they act on the instructions of the director of the Company.

35. On the arbitration application, counsel submitted that the parties are bound by the terms of their agreement in view of the fact that they made a choice on the forum for dispute resolution. Reference was made to the decision in [\*Union Technology Kenya Ltd vs County Government of Nakuru 2017 eKLR\*](#) where the court held that: -

"Parties in an agreement/contract are bound by the mutually agreed and the express terms of their agreement. It is not the duty of the court to re-write the agreement of the parties. The dispute having arisen and the matter having been referred to arbitration under the provisions of section 6(1) and (b) off the Act. It is our humble submission that suit ought to be stayed"

#### Analysis and Determination

36. I have carefully considered the pleadings filed herein, the submissions made by the parties over the twin issues of the 1<sup>st</sup> Plaintiff's legal representation and whether the dispute should be referred to Arbitration. I have also considered the law and the authorities that the parties cited.

#### Arbitration



37. It was not disputed that the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant executed an agreement on 11<sup>th</sup> July 2016 which provided for the dispute resolution forum and the applicable law. Clause 17.2 of the said agreement provides that; -

“In the case of any dispute, claim, controversy or disagreement arising out of or in connecting with this Agreement (including as to the interpretation, validity, enforceability or termination of this Agreement) Between The Parties (any such dispute, claim or controversy or disagreement hereinafter referred to as a Dispute) then prior to commencement of arbitration in accordance with the provisions below in this clause 17.2 each party shall use its best effort to resolve the dispute by negotiation within a period of thirty (30) days.”

38. A simple reading of the above clause reveals that the parties to the agreement chose arbitration as their preferred method and forum for dispute resolution. The plaintiff’s case, however, was that the dispute herein is not one within the contemplation of the Arbitration clause as captured in the said clause as it involves other parties who were not privy to the agreement. According to the plaintiff, there are eleven other additional proper and necessary parties to the suit who were not privy to the agreement between the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant and who would be barred from participating in the arbitral proceedings should the matter be referred to arbitration.

39. The 3<sup>rd</sup> defendant, on the other hand, submitted that the orders to refer the dispute to arbitration are sought as between the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant only. According to the 3<sup>rd</sup> defendant the other parties to the suit can continue with the suit before the court.

40. Section 6(1) of the *Arbitration Act* provides an enforcement mechanism available to a party who wishes to compel an initiator of court proceedings, with respect to a matter that is the subject of an arbitration agreement, to refer the dispute to arbitration. The said section stipulates as follows: -

“A court before which proceedings are brought in a matter which is the subject of an arbitration shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay of proceedings and refer the parties to Arbitration unless it finds-

- a. that the arbitration agreement is null and void, inoperative or incapable of being performed; or
- b. that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration...”

41. In *Eunice Soko Mlagui vs Suresh Parmar & 4 others [2017] eKLR* the court observed that; -

“Section 6 of the *Arbitration Act* is a specific provision of a statute that provides for stay of proceedings and referral of a dispute to arbitration where parties to the dispute have entered into an arbitration agreement. The conditions under which the court can stay proceedings and refer a dispute to arbitration are prescribed by section 6 and in our view, the purpose of that provision is to regulate and facilitate the realization of the constitutional objective of promoting alternative dispute resolution. We do not therefore find anything in the provision that can be described as derogating or subverting the constitutional edict as regards alternative dispute resolution. The provisions, for example, of section 6 which require parties to make an application for referral of a dispute to arbitration at the earliest opportunity and before taking any other action, or those that require the court not to refer a dispute to arbitration if the arbitration agreement is null and void, or is incapable of



being performed, or if there is no dispute capable of being referred to arbitration, cannot be described as inconsistent with the constitutional principle of promoting alternative dispute resolution because the court is also obliged to take into account the equally important constitutional principle that justice shall not be delayed, by for example sending to arbitration a non-existent dispute, or allowing a party who has otherwise elected to pursue proceedings in the court, to belatedly purport to opt for arbitration.”

42. I have perused the prayers sought in the plaint and I note that they are against all the defendants jointly and severally. It is common ground that the arbitral clause is between the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant and can only be enforced on the said parties. I am guided by the decision in *Savings & Loan (K) Limited vs Kanyenje Karangaita Gakombe & Another [2015] eKLR* where it was held that: -

“...the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party.”

43. Guided by the above decision, the provisions of the arbitral clause of the parties’ contract and the privity of contract doctrine, I find that the rights and obligations under a contract are only conferred/ imposed on the parties to that contract and cannot be enforced on parties who did not participate in the contract in question. Strictly speaking, and as was correctly stated by the 3<sup>rd</sup> defendant, the subject agreement was executed between the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant who are the parties that should ideally subject their dispute to arbitration.

44. A perusal of the plaint and other pleadings however reveals that the plaintiffs have outlined the role played by each of the 11 other parties in the suit. The pleadings further reveal that the said 11 other parties acquired rights or obligations under the said agreement that any court or tribunal handling the dispute cannot ignore or wish away. The plaintiffs stated that that even though the 1<sup>st</sup> defendant is not party to the Sale Agreement between the 1<sup>st</sup> Plaintiff and 3<sup>rd</sup> Defendant, it is intricately and intimately connected to the dispute as it is the registered owner of the suit property.

45. The plaintiffs further explained that even though the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were not parties to the Agreement for Sale they are also intricately tied to the dispute as the 2<sup>nd</sup> Plaintiff paid the 10% deposit sum of Kshs. 348,025,547.00 for the purchase of suit land. It was the plaintiffs’ case that the 2<sup>nd</sup> plaintiff’s participation in this suit is therefore extremely critical for the reason that it made the said payment as the Principal Purchaser. They also noted that a similar position obtains in respect to the 6<sup>th</sup> and 10<sup>th</sup> defendants who received the Kshs. 348,025,547.00 deposit from the 2<sup>nd</sup> plaintiff.

46. Having regard to the position presented by the plaintiffs regarding the role played in the transaction by every party cited in the case, I find that whichever angle one considers the case, it will not be possible to conclusively resolve the it without the involvement of the eleven other parties. It is my finding that the situation would have been different if the dispute was only between the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant, in which case, this court would not hesitate but refer the dispute to arbitration in line with the initial intention of the parties to the agreement.

47. My finding is that referring the dispute as between the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant only to arbitration while the rest of the parties pursue their case before this court, as was suggested by the 3<sup>rd</sup> defendant, would create a scenario where there are parallel proceedings over the same subject matter in two different forums. This court is at a loss as to how the two forums will determine the dispute, in the absence of the 11 other parties who are reported to have played critical roles in the subject dispute under consideration. Most importantly, considering claim that the suit land belongs to the 1<sup>st</sup> defendant, who



was not a party to the sale agreement, one wonders how a decision will be made before the arbitral tribunal concerning the said land in the absence of the 1<sup>st</sup> defendant.

48. Article 159 (2) (c) of the Constitution mandates the courts to be guided, in the exercise of judicial authority, by the principles, inter alia, that justice shall not be delayed. The said Article also provides that alternative forms of dispute resolution including reconciliation mediation, arbitration and traditional dispute resolution mechanisms shall be promoted as long as they do not violate the bill of rights or repugnant to justice and morality or results in outcomes which are repugnant to justice and morality or inconsistent with the Constitution.
49. In the instant case, I am not persuaded that referring the matter to arbitration will promote the access to justice that is envisaged under Article 159 of the Constitution as it will have the effect of driving away other necessary parties from the seat of justice. It is my finding that the justice of this case will require that the suit be determined before this court which has the jurisdiction to hear and determine it. I therefore decline to grant the orders sought in the arbitration application. The costs of the said application shall abide the outcome of the main suit.

#### Legal Representation of the 1<sup>st</sup> Plaintiff

50. The next issue for determination is who between the law firms of Otieno Ogola & Company and M/s W. G. Wambugu & Company should represent the 1<sup>st</sup> plaintiff. The 3<sup>rd</sup> plaintiff submitted that the 8<sup>th</sup> defendant intentionally concealed, from the court, the fact that she had already ceased to actively participate in the 1<sup>st</sup> Plaintiff's activities as a director and that she had on numerous occasions requested the 3<sup>rd</sup> plaintiff to appoint other persons as directors of the 1<sup>st</sup> plaintiff. It was further submitted that the 3<sup>rd</sup> plaintiff exercises control over the 1<sup>st</sup> plaintiff and that the decisions made in respect to the 1<sup>st</sup> plaintiff were authorized by the 3<sup>rd</sup> plaintiff.
51. It was therefore the 3<sup>rd</sup> plaintiff's case that it was irregular for the law firm of W. G. Wambugu & Company Advocates to purport to act for the 1<sup>st</sup> plaintiff when all the plaintiffs are represented by Otieno Ogola & Co advocates.
52. The 3<sup>rd</sup> defendant, on the other hand, submitted that the court should apply the Kenya's Company law which stipulates that an advocates power to act in a suit is conferred through a board resolution. It was the 3<sup>rd</sup> defendant's Case that the 8<sup>th</sup> defendant, having presented the legal documents showing that she is the director and owner of the 1<sup>st</sup> plaintiff, should appoint the advocate to act in the suit. Counsel also stated that the 3<sup>rd</sup> plaintiff is a stranger to the suit as he did not adduce any documentary evidence from the Company registry to show its association with the 1<sup>st</sup> plaintiff.
53. It is trite that a Company is a separate legal entity from its members or shareholders and that the affairs of a Company are governed by Company Law. In the case of Assia Pharmaceuticals vs Nairobi Veterinary Centre Ltd HCCC No.391 of 2000, it was held that: -  

“It is settled law that where a suit is to be instituted for and on behalf of a company, there should be a company resolution to that effect..... As regards litigation by an incorporated company, the Directors are as a rule the persons who have authority to act for the company.....”
54. The parties herein seek this court's intervention in determining the law firm that rightfully represent the 1<sup>st</sup> plaintiff. I have perused the annexure marked MC-4 attached to the 8<sup>th</sup> respondent's further affidavit dated 9<sup>th</sup> July 2021 which the 8<sup>th</sup> respondent states, is the 1<sup>st</sup> Plaintiff's board resolution appointing M/S W. G. Wambugu and Co advocates to defend, prosecute and represent it in the



proceedings touching on the subject matter. I have also perused the 3<sup>rd</sup> plaintiff exhibits WKG-1 WKG-2 WKG-3. The said exhibits indicate that 3<sup>rd</sup> plaintiff and the 8<sup>th</sup> defendant had a prior advocate/client relationship concerning the agreement that is the subject matter of this suit. The 3<sup>rd</sup> plaintiff avers that the said relationship culminated in a consensus/arrangement over the running of the affairs of the 1<sup>st</sup> Plaintiff company.

55. I note that in the said further affidavit, the 3<sup>rd</sup> plaintiff made damning revelations/claims against the 8<sup>th</sup> defendant ranging from breach of advocate/client confidentiality and material non-disclosure. At paragraphs 4 to 7 of the further affidavit, the 3<sup>rd</sup> plaintiff states as follows; -

4. Initially, the 8<sup>th</sup> Defendant acted for me as my Advocate and even organized for the meeting between myself and the 5<sup>th</sup> Defendant, which the 8<sup>th</sup> Defendant christened in her correspondence as a meeting between the "the buyer and the seller" in respect to Property LIQ No 11285 measuring 1005 acres. The 8<sup>th</sup> Defendant has further acted for me in other transactions with Tatu City Limited and the 4<sup>th</sup> and 5<sup>th</sup> Defendants herein. Exhibited herewith and marked as WKG-I is correspondence in proof thereof.

5. I must state out at the outset, that the 8<sup>th</sup> Defendant has now turned to be a crooked and rogue Advocate who does underhand deals with the adversaries of her former client, myself. The 8<sup>th</sup> Defendant is now using information she received from me in her capacity as my Advocate against me. I will demonstrate

In this Affidavit, that there is a clear intention to permanently defeat my lawfully acquired purchaser's Interest In the suit property and keep the suit property away from my reach and this Honorable Court.

6. I am advised by the Plaintiffs' Advocates on record, which advise I verily believe to be sound, that it amounts to professional misconduct for an Advocate, like the 8<sup>th</sup> Defendant who initially acted for me, to now turn against me and act for the interest of my adversaries.

7. The 8<sup>th</sup> Defendant is now acting in concert with the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendants to fraudulently and unlawfully take over the conduct and legal representation of the 1<sup>st</sup> Plaintiff with an intention to torpedo the 1<sup>st</sup>, 2<sup>nd</sup> Plaintiffs' and my claim against the Defendants in this suit and concede to the 3<sup>rd</sup> Defendant's request for Arbitration in London as sought in the 3<sup>rd</sup> Defendant's Notice of Motion dated 10<sup>th</sup> June, 2021. The following flow of events and material facts suffice to demonstrate this conduct:-

a. The 8<sup>th</sup> Defendant has purported to file a Notice of Change of Advocates on behalf of the 1<sup>st</sup> Plaintiff, Gilulu Investments Limited;

b. The 8<sup>th</sup> Defendant has further, purported to swear and file a Replying Affidavit on behalf of the 1<sup>st</sup> Plaintiff, with an express intention to irregularly and unlawfully take over the legal representation of the 1<sup>st</sup> Plaintiff and concede to the 3<sup>rd</sup> Defendant's Notice of



Motion dated 10<sup>th</sup> June, 2021 for determination of the dispute herein in arbitration;

- c. The 8<sup>th</sup> Defendant has intentionally concealed from this Honourable Court the fact that I am the ultimate beneficial owner of the 1<sup>st</sup> plaintiff. The 8<sup>th</sup> defendant is guilty of material non-disclosure;
- d. The 8<sup>th</sup> Defendant has Intentionally concealed from this Honourable Court the fact that she had already actively ceased acting as a director of the 1<sup>st</sup> Plaintiff and requested me on numerous occasions to appoint other persons as director(s) of the 1<sup>st</sup> Plaintiff Exhibited herewith and collectively marked as WKG-2 are true extracts of correspondences between me and 8<sup>th</sup> Defendant in proof thereof;
- e. The 8<sup>th</sup> Defendant has Intentionally concealed from this Honourable Court the fact that she has indeed already surrendered to me the original registration documents of the 1<sup>st</sup> Plaintiff and she no longer acts for me in matters concerning the 1<sup>st</sup> Plaintiff. Exhibited herewith and collectively marked as WKG-3 is a forwarding letter signed by the 8<sup>th</sup> Defendant and true copies of all documents concerning the registration and ownership of the 1<sup>st</sup> Plaintiff;
- f. I having ceased acting as a director of the 1<sup>st</sup> Plaintiff, the 8<sup>th</sup> Defendant cannot now turn around and claim that she exercises authority over the 1<sup>st</sup> Plaintiff as to purport to swear an Affidavit on its behalf; and
- g. The 8<sup>th</sup> Defendant cannot now pretend to suffer from selective amnesia and intentionally conceal from this Honourable Court the above-stated material facts. In view of the 8<sup>th</sup> Defendant's demonstrated conduct hereinabove, this Honourable Court must disregard the averments made in Affidavits filed by her and treat those averments with utmost suspicion. The 8<sup>th</sup> Defendant has become a rogue lawyer.

56. I further note that the 8<sup>th</sup> defendant did not controvert the 3<sup>rd</sup> Plaintiff's averments and especially the claim that she had handed over the running of the 1<sup>st</sup> plaintiff's affairs to him. This court is of the view that the full import of the 3<sup>rd</sup> plaintiff's averments in the further affidavit can only be unpacked at the full hearing of the suit or through the cross examination of the 8<sup>th</sup> defendant as was requested by the 3<sup>rd</sup> plaintiff in his further affidavit. I further find that it is not within this court's mandate or place to dictate or determine how the internal affairs of the 1<sup>st</sup> plaintiff should be managed. The *Companies Act* spells out the procedure to be followed in the management of the affairs of companies. Indeed, courts



have taken the position that they should exercise restraint and be careful not to interfere with the affairs of the company. This position is supported by the decision in the case of *Foss v Harbottle (1843) 2 Hare 261* wherein it was held that: -

“..... an elementary principle is that a court does not interfere with the internal management of companies acting within their powers.... Courts will interfere only where the act complained of is ultra vires or is of a fraudulent character or not rectifiable by ordinary resolution. It is really very important to companies and to the economy of the country in general, that the court should not, unless a very strong case is made out on the facts pleaded and proved or admitted, take upon itself to interfere with the domestic forum which has been established for the management of the affairs of a company .....

57. Similarly, in *E.A Safari Air Ltd. vs Anthony Ambaka Kegode & Another* [2011] eKLR while quoting the decision in *Danish Mercantile Co. Ltd vs Beaumont & Another* [1951] 1 All ER 925 the Court of Appeal set out the principles to be considered in a situation where an action was commenced in the name of a company without authority and held that: -

“I find nothing in any of those cases to constrain me to hold that the issue of a writ and the commencing of an action without authority of the purported plaintiff is a matter which admits of no validation by subsequent ratification of the act of the solicitor concerned. So to hold would be to introduce, as I see it, an entirely novel doctrine into the ordinary law of principal and agent, and to make a new exception to the general rule that every ratification relates back, and is deemed equivalent, to an antecedent authority.’

“It is common practice in such cases to adjourn any motion brought to strike out the company’s name with a view to a meeting being called to see whether the company desires the action to be brought or not.’

‘I think that the true position is simply that a solicitor who starts proceedings in the name of a company without verifying he had proper authority to do so, or under an erroneous assumption as to the authority, does so as at his own peril, and, so long as the matter rests there the action is not properly constituted. In that sense it is a nullity and can be stayed at any time, provided the aggrieved party does not unduly delay his application, but it is open at any time to the purported plaintiff to ratify the act of the solicitor, who started the action, to adopt the proceedings, and say: ‘I approve of all that has been done in the past and instruct you to continue the action.’ When that has been done then in accordance with the ordinary law of principal and agent and the ordinary doctrine of ratification, the defect in the proceedings as originally constituted is cured, and it is no longer open to the defendant to object on the ground that the proceedings thus ratified and adopted were in the first instance brought without proper authority.”

58. Guided by the above cited authorities and bearing in mind the fact that the 8<sup>th</sup> defendant did not deny the 3<sup>rd</sup> plaintiff’s averment that she relinquished the management of the affairs of the 1<sup>st</sup> plaintiff company to him (the 3<sup>rd</sup> Plaintiff), I find that the issue of the 1<sup>st</sup> Plaintiff’s legal representation should be resolved through the forum set out by the *Companies Act* by resolution of the board of the said company. Consequently, I direct the parties to furnish this court with the board resolution indicating the advocate appointed to act for the 1<sup>st</sup> plaintiff in this matter. I further direct that the matter be mentioned on 14<sup>th</sup> February 2022 to confirm compliance.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 18<sup>TH</sup> DAY OF NOVEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING**



**COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17<sup>TH</sup> APRIL 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of: -**

Mr. Otieno Willis for Plaintiff.

Mr. Ahmednassir and Ms Hannan for 1<sup>st</sup> - 7<sup>th</sup> Defendants.

Ms Mutua for Onsare for 10<sup>th</sup> Defendant.

Mrs Wambugu for 8<sup>th</sup> Defendant/Respondent.

Court Assistant: Margaret

HCCC NO. E594 OF 2021	0
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