**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**MISC CIVIL APLICATION NO E 087 OF 2018**

**IN THE MATTER OF THE ARBITRATION ACT, 1995**

**AS AMENDED BY THE ARBITRAION (AMENDMENT) ACT, NO 11 OF 2009**

**AND**

**IN THE MATTER OF AN ARBITRATION BETWEEN**

**MARGARET GACIGI GECAGA..................................................................APPLICANT**

**VERSUS**

**UDI MAREKA GECAGA...................................................................1ST RESPONDENT**

**QUINVEST LIMITED.........................................................................2ND RESPONDENT**

**RULING**

1. The ruling relates to a notice of motion application dated 26th September 2018, brought under the provisions of; section 35 (2) (a) (iv), (v) & (b) (i) & (ii) and (3) of Arbitration Act, the Rules thereto and all enabling provisions of the law.

2. The Applicant is seeking for orders that;

> (a) *The Arbitral award dated 3rd August 2018, between the parties herein and all consequential orders thereof; be set aside and the applicant's claim as lodged before the Arbitrators be allowed with costs to the applicant;*
>
> *(b) Pending the hearing and final determination of prayer (a) above, a conservatory order to issue restraining the Respondents from interfering in whatsoever manner with the applicant's quiet and continued occupation and/or possession of the property known as; LR No. 214/721 situated in Old Muthaiga Estate Nairobi;*
>
> *(c) The Honourable court be at liberty to issue such other or further orders as it may deem just to grant in the circumstances of the matter; and*
>
> *(d) The cost of the application and fee of the Arbitration be granted to applicant.*

3. The application is premised on the grounds on the face of it and an affidavit of even date, sworn by the Applicant; Margaret Gacigi Gecaga. She avers that, the dispute before the Arbitral Tribunal (herein "the Tribunal), relates to; eight (8) properties; L.R No. 214/719 to 214/726, situate in Old Muthaiga Estate in Nairobi (herein "the suit properties"). Her matrimonial home where she resides, is situate on L.R No. 214/721.

4. The properties were initially registered in the name of her late husband, Dr. B.M Gecaga, but were subsequently systematically and fraudulently transferred into the 1st Respondent's name between the years; 2008 to 2011.

5. As a result of the fraudulent transfer, she instituted a suit *Margaret Gacigi Gecaga vs Quinvest Ltd & Another, Nairobi ELC. 547 of 2011,*

and by consent of the parties, the dispute was referred to Arbitration. The dispute was heard and the final award rendered on 3$^{rd}$ August, 2018, whereby her claim was dismissed wholly.

6. That, among the issues raised before the Tribunal was the fact that, her matrimonial home was not capable of being transferred without her knowledge or consent and/or the consent or authority of her late husband. Further the transfer of suit properties was null and void for inter alia; want of a sale agreement, consideration, transfer based on forged signatures or want of instructions by the deceased, lack of requisite supporting transfer documents and/or un-procedural removal of a caveat by the 2$^{nd}$ Respondent.

7. The Applicant avers that, she is aggrieved by the decision of the Tribunal on the ground that, the manner in which the Tribunal dealt with the issues raised, clearly shows a case of not only misapprehension of the law and/or failure to appreciate the legal issues and facts raised but selective evaluation of evidence before it.

8. That, the Tribunal misdirected itself on its findings, in relation to issues as to whether; the claimant had discharged the burden of proof on the account of the alleged fraud, the deceased's capacity to execute the disputed transfers, the validity of transfers, as to whether they were prepared by an independent and competent advocate and proof that she contributed in any way towards the acquisition of the subject properties.

9. The Applicant further avers that, the award goes against public policy, rule of law and fair administrative action, as the Tribunal based its decision primarily on inadmissible evidence of the deceased Caroline Wanjihia Advocate, which evidence had not been properly and procedurally presented and admitted, thus violating the provisions of; section 35 of the Evidence Act (cap 80) Laws of Kenya.

10. Further, the Tribunal misdirected itself on the issue of the deceased's capacity to execute the disputed transfers, and failed to consider the relevant applicable case law and very credible evidence, that showed the transfers were either executed by the deceased under influence or a mistaken belief, or deceitfully through misrepresentation and/or not by him at all.

11. Similarly, the Tribunal erred in law in holding that, the Respondents had proved that, the transfers were prepared by an independent and competent Advocate with instructions from the deceased and that, the handwriting expert had proved that, the signatures on the transfer were from the same hand as many other documents he examined.

12. The Tribunal erred in dismissing her claim on the basis that she had failed to demonstrate that she contributed in any way towards acquisition of the properties yet the issue was not on the level of her contribution, but an issue of marriage and ensuing rights to a co-spouse, thus her rights under the succession Act (cap. 160) laws of Kenya.

13. The Tribunal erred in law by holding that, the issue of lack of consideration would form part of the estate, thus relinquishing the issue to the "Probate and Administrative Court" yet in that case the Tribunal should have by equal measure referred all other issues before it, including the issue of the suit properties to the same court. Therefore, Tribunal abdicated its' role by avoiding to deal with the issue in order to favour the 2$^{nd}$ Respondent, who had otherwise failed to prove payment of consideration as alleged in the sum of; Kshs. 105,000,000.

14. Further, the Tribunal erred in law, while dealing with the issue of fraud on basis that, the Claimant had not pleaded it, contrary to the pleadings before it and the legal position that pleadings cannot by themselves be detailed to constitute evidence as evidenced is otherwise left for witness statements.

15. The Applicant averred that, unknown to her, some of the Arbitrators were in constant communication with the 1$^{st}$ Respondent during the course of the proceedings a fact that obviously influenced the rather biased decision against her.

16. That, Article 10 (2) of the Constitution implores upon the Tribunal to render justice to in accordance with the principles of national values and principles of good governance and any decision devoid of justice and incapable of explanation in any rational manner, is in conflict with the public policy of; "*justice to all irrespective of sex, colour or race*".

17. Further, "it is illogical to explain how the Tribunal arrived at the decision it did, which sends the message that, spouses in a marriage have no rights and/or control over the assets registered in the spouse's name''. That, if the final award is allowed to stand, it would lead to not only anarchy in marriages but panic and fear to widows who are left vulnerable and unable to protect matrimonial property. That in a nutshell, the Tribunal did not act in an impartial manner in its analysis of the law and facts before it.

18. However, the Respondents opposed the application on the grounds of opposition which states that: -

> *a) The application is vexatious; bad in law; frivolous and an abuse of the court process and is without merit. It is an appeal disguised as an application to set aside the award;*
>
> *b) The application is misconceived on the basis that, under the Arbitration Act, the court has no jurisdiction to review the decision of the Arbitration for the purposes of substituting its own views or conclusions with that of the Arbitral Tribunal. The court cannot therefore; allow the Applicant's claim as lodged before the Arbitral Tribunal as sought for in prayer 2 of the application.*
>
> *c) This is a court-mandated arbitration, and the applicant has not met the principles for setting aside an award under; Order 46 of the Civil Procedure Rules, 2010;*
>
> *d) The applicant has not shown sufficient cause or grounds to warrant the setting aside of the award;*

*e) The award does not offend the principles of public policy in any way. The application is based on alleged errors of fact and mixed fact and law, which cannot be said to be inconsistent with the public policy of Kenya;*

*f) The Applicant is inviting the court to hear the dispute afresh and consequently sit on appeal on the decision by the Arbitral Tribunal which action is not within the jurisdiction of the court;*

*g) Property acquired before marriage does not form part of matrimonial property. The suit properties are not matrimonial properties and the Arbitral tribunal properly held it so.*

19. The Respondents further relied on a replying affidavit dated 30th November 2018; sworn by the 1st Respondent Udi Mareka Gecaga. He averred that, he is a director of the 2nd Respondent herein, and deposes to the facts herein on his own and on behalf of the 2nd Respondent.

20. That, the crux of the dispute is the transfer of eight (8) Muthaiga properties; LR No. 214/719, LR No. 214/720, LR No. 214/721, LR No. 214/722, LR No. 214/723, LR No. 214/724, LR No. 214/725 and LR No. 214/726, wholly and beneficially owned by the late; Dr. B. M Gecega and the 2nd Respondent; Quinvest Limited.

21. That, on 11th October 2011, the Applicant filed a suit; *Nairobi ELC Number 547 of 2011: Margaret GacigiGecaga v Quinvest Ltd & 2 Others,* alleging illegality and impropriety in the transfer of the suit properties on the part of the 1st and the 2nd Respondents. Pursuant to a consent letter of consent dated 2nd April 2014, the court referred the matter to Arbitration, by agreement of the parties.

22. The parties agreed as part of the rules of arbitration that, section 39 of the Arbitration Act, would apply on points of law to the High Court after delivery of the final ward. Thereafter, the Tribunal delivered its final award on 3rd August 2018, dismissing the Applicant's claim in its entirety.

23. That, the main issue of determination by the Tribunal was whether; the Applicant discharged her burden of proof, in establishing fraud; misrepresentation; undue influence in the transfers of the suit properties to the 2nd Respondent. It is therefore, not correct to aver that, the issue before the Tribunal, was an issue of marriage and ensuing rights to a co-spouse as alleged by the Applicant. The Applicant expanded the scope of the dispute in the course of the proceedings to include issues of; succession and matrimonial rights.

24. The Respondents argued that, the issue as to what assets belong to the estate of the deceased and whether the Applicant has any rights or interests therein, should be comprehensively determined in the succession cause. That, the Tribunal found that, the Applicant had failed to discharge the burden in establishing; fraud, undue influence and misrepresentation in the transfer of the suit properties and upheld the transfers.

25. The Respondent refuted the allegations that, the Tribunal improperly admitted the evidence of Caroline Wanjihia, who died before testifying, in that the evidence was contained in affidavits and witness statements executed and filed during her lifetime and was therefore properly admitted under section 35 of the Evidence Act.

26. It was averred that, the Applicant has not given any particulars or evidence to demonstrate the allegations of; bias and impartiality on the part of the Tribunal and has not provided the names of the Arbitrators alleged to have been in contact with the 1st Respondent.

27. It was argued that, an arbitral award is binding on the parties only and therefore cannot be of great public interest nor does it involve issues of public good and particularly; the rights of the spouse in the management of spousal interests. Therefore, the reference to; Article 10 of the Constitution, 2010 is without basis and no particulars of breach have been provided. Further the award does not offend the principles of public policy, and if it is based on alleged errors of facts and law, it cannot be said to be inconsistent with public policy of Kenya. That, the Tribunal dealt with all issues and evidence before it and did not apply the evidence selectively and/or ignored the Applicant's evidence. That there are no baseless theories made by the Tribunal at paragraph 247 as alleged and neither did the Tribunal abdicate its role, as alleged.

28. Finally, the Respondent averred that, the application is an abuse of the court process in that, the court order referring the matter to arbitration was made in; *HCCC ELC 547 of 2011; Margaret Gacigi Gecaga vs Quinvest Ltd & 2 Others* and therefore any application to set aside ought to be made in that suit. That, in effect, there are two suits on the same subject matter.

29. The parties disposed of the application by filing submissions. The Applicant's submissions dated 25th July 2019 were filed 31st July 2019. The Respondent filed two sets of submissions dated 18th July 2019 and supplementary submissions dated 13th November 2019. I have considered the arguments advanced by the parties alongside the submissions tendered and l find that the following issues have arisen for consideration: -

*a) whether the application has been properly brought under section 35(2) of the Arbitration Act or whether it should have been brought under Order 46 of the Civil Procedure Rules 2010;*

*b) whether the application is in essence an appeal;*

*c) whether the applicant has met the threshold of grant of the orders sought and /or should be granted the orders sought; and*

*d) who should bear the costs of the application*

30. However, before I delve into these issue, I wish to make a general observation that, from the averments in the affidavit in support of this

application, it is evident that, the Applicant has delved deeply into the factual matters that were a subject of dispute in the arbitral proceedings. The application herein seeks for an order to set aside the final award and therefore the court will restrict itself to the same.

31. In the same vein, I wish to first deal with prayer (2) of the application, whereby the Applicant is seeking for an order that, the court do allow her claim as lodged before the Tribunal. In my considered opinion, that prayer cannot be allowed, as the court does not have jurisdiction to determine matters that are a subject of arbitral proceedings. The intervention of the court in arbitral matters is subject to provisions of; Section 10 of the Arbitration Act of 1995, which states; "except as provided in this Act, no court shall intervene in matters governed by this Act".

32. Similarly, prayer (3) of the application that was seeking for conservatory order to issue restraining the Respondents from interfering in whatsoever manner with the applicant's quiet and continued occupation and/or possession of the property known as; LR No. 214/721 situated in Old Muthaiga Estate Nairobi; is already spent, having been sought for at an interim stage pending the hearing and determination of the main prayer of setting aside the arbitral award dated 3rd August 2018. Therefore, the only prayer remaining; is the prayer to set aside the final arbitral award and costs.

33. However, I shall first deal with the issue as to whether the application is properly brought before the court and/or whether it should have been filed in *HCCC ELC 547 of 2011; Margaret Gacigi Gecaga vs Quinvest Ltd & 2 Others*. I have considered the arguments advanced by the Respondents and I find that, when the parties consented to refer the dispute to Arbitration, they basically ousted the jurisdiction of the court to hear and determine the same. Therefore, the suit *Nairobi ELC No. 547 of 2011; Margaret Gacigi Gecaga versus Quinvest Ltd & 2 Others*, was overtaken by the Arbitral process. It basically stands concluded and no further orders can be made therein. As such the filing of the application herein does not offend any provision of the law. That even if it did, the provision of; Article 159 (2) (d) of the Constitution of Kenya, states that, in exercising judicial authority, the courts and tribunals shall be guided by the principles inter alia that; justice shall be administered without undue regard to technicalities.

34. The next issue to consider is whether the application herein is an appeal or an application to set aside the final award. In considering the same, I note that at page 3 of the arbitral proceedings that, the parties agreed during the preliminary meeting held on 15th July, 2014, that the Arbitration Act, No. 11 of 2009 as amended from time to time and Arbitration rules would apply. It was further agreed that section 39 of the Arbitration Act, would apply on points of law to the High Court after delivery of the award.

35.

36.

37. The provisions of section 39 of the Act states as follows: -

"*Where in the case of a domestic arbitration, the parties have agreed that—*

> *(a) an application by any party may be made to a court to determine any question of law arising in the course of the arbitration; or*
>
> *(b) an appeal by any party may be made to a court on any question of law arising out of the award;*
>
> *such application or appeal, as the case may be, may be made to the High Court.*
>
> *(2) On an application or appeal being made to it under section (1) the High Court may, as appropriate-*
>
> *(a) determine the question of law arising:*
>
> *(b) confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal, for re-consideration or, where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration.*

38. The Respondent's counsel submitted that there is a distinction between an appeal and an application to set aside. An appeal only lies by the agreement of the parties and can only be brought under section 39 of the Act in relation to any questions of law arising out of the award. Whereas, an application to set aside an award can only be brought under section 35 of the Arbitration Act, and is restricted to the grounds thereunder. The Respondent referred to the case of; *National Cereals and Produce Board v Erad Suppliers & General Contracts Limited (2014),eKLR* . However, the Applicant did not respond to this issue in her affidavit and/or submission.

39. Be that as it were, although the parties agreed to be bound by section 39 of the Arbitration Act, the application herein has been brought purely under the provision of section 35(2) and (3) of the Act. The section 39 provides that, upon hearing the appeal the court may, inter alia; set aside the final arbitral award. In my considered opinion, even when considering an appeal under that section, the court will still have to fall back to the provisions of section 35 of the Act, which provides grounds for setting aside an arbitral award. But it is noteworthy that, the Applicant did not invoke the provisions of section 39, which in any case would have restricted her to issues of law only.

40. However, I shall consider the application based on the relevant provisions that deal with the setting aside an award. In that regard, the Applicant has cited the provisions of; section 35 (2) (a) (iv) and (v) and (b) (i) and (ii) which state that an award will be set aside if: -

> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that, if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters*

*not referred to arbitration may be recognized and enforced; or*

*(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate or, failing such agreement, was not in accordance with this Act; or*

*(a) If the High Court finds that-*

*(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or*

*(ii) the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.*

41. However, despite all the above provisions, the Applicant relies mainly on the provisions of section 35(2) (b) (ii) of the Act, and submitted that, an award will be set aside under those provisions, if it is shown that either it was;

*a) Inconsistent with the constitution of Kenya, whether written or unwritten;*

*b) Inimical to the national interest of Kenya; and*

*c) Contrary to justice and morality*

42. The Applicant relied on several authorities inter alia; *Christ for All Nations versus Apollo Insurance Co. Limited (2002) EA 366* to support the above arguments. It was further submitted that, conflict with public policy under section 35 (2) of the Arbitration Act is akin to "contrary to public policy" or "against public policy" which terms have no precise meaning, but connotes an element of illegality and that which is; injurious to the public, offensive, unacceptable, and that violates the basic norms of society, as held in *Rwama Farmers' Co-operative Society versus Thika Coffee Mills Ltd HCC No. 836 of 2003.*

43. The Applicant further submitted that, the court has wide discretion to decide what would be deemed to be against public policy, by considering the facts pleaded and the evidence offered in support of the case, and where there is adequate proof that the award offends public policy, then the court has to set it aside the award.

44. However, the Respondent submitted that an Applicant who challenges an award on the ground of public policy bears the burden to prove the same as held in the case of; *Movies for you Limited versus Commercial Development Corporation (2017), eKLR.* The Applicant must produce cogent evidence as held in the case of; *National Oil Corporation of Kenya Ltd versus Prisko Petroleum Network Ltd (2014)eKLR*. That, the Applicant herein has not made reference to any section of the law that has been breached by the award and no particulars of breach has been provided.

45. The Respondents reiterated that, the Applicant cannot rely on allegation of errors of fact and law to argue the ground of public policy. The alleged errors cannot be a ground to set aside the award as held in the case of; *DB Shapriya and Co. Ltd versus Bish International BV (2), (2003), 2 EA 404.*

46. Further the parties by a consent agreed to be bound by the final decision of the Tribunal. That the order of consent reads inter alia "that the arbitrators' award will be final and binding on the parties". Thus, being an order by consent, it is binding to the parties unless otherwise set aside. Therefore, the court should uphold the concept of finality of arbitration.

47. I have considered the rival submissions and I find that, as rightfully argued that, the ground of public policy relied upon herein has been described as "problematic, not capable of absolute or precise definition". To reconcile whether the decision of the Tribunal offends the concept of public policy, I have considered the subject decision in the final award.

48. I find that, the Tribunal at the beginning of the arbitral proceedings identified the following issues for determination: -

*a) Whether the Muthaiga properties are to be considered as matrimonial property; and*

*b) Whether the transfer of the properties was unlawfully done and if not whether the transfer should be nullified.*

49. At the conclusion of the hearing the Tribunal raised the following issues for determination:

*a) Whether the claimant has the locus standi to sue;*

*b) Whether the Muthaiga properties are to be considered as matrimonial property;*

*c) Whether the claimant has discharged the burden of proofing fraud, misrepresentation, undue influence, irregularities and breaches in the transfer of the eight (8) properties on the part of the respondents;*

*d) Whether the claimant is entitled to the reliefs sought;*

*e) Costs.*

50. On the issue of locus standi, the Tribunal held at paragraphs 162 and 163 that it was not a contested issue and therefore it was held that the claimant had *locus standi* to use. On the second issue whether Muthaiga properties were to be considered to be matrimonial property, the Tribunal made its findings under the following paragraph 164 – 200. In particular, the tribunal found at paragraph 169 that the properties were purchased in the 1960s and 1970s when the deceased was married to his late wife. That the claimant's own evidence was that she was living as the deceased as husband and wife since 1993. They became estranged for two years and reunited in 2007. There was no evidence that she had cohabited with the deceased prior to their marriage. Neither did she adduce evidence that she had contributed to the purchase and development of the properties or involved in their subdivision before marriage. After analysing the law on spousal property, the tribunal concluded at paragraph 187, 190 and 194 that for one to claim a beneficial interest in matrimonial property, a spouse must have proved contribution towards the acquisition and improvement of the property and that the applicant herein had not adduced any evidence to prove that the Muthaiga properties were jointly owned or that it was acquired during the subsistence of the marriage. And finally concluded at paragraphs 199 and 200 that the subject Muthaiga properties are not to be considered as matrimonial properties. Having analysed the findings of the tribunal on the subject issue, I did not find any evidence that it violates or is contrary to public policy.

51. On the third issue on whether the claimant discharged the burden of proof for fraud, misrepresentation, undue influence, irregularities and breaches in transfer of the eight properties the Tribunals finding are at paragraphs 201 to 252. And after analysis of the several issues involved and law applicable in particular nullity of transfer on account of fraud at paragraphs 216, 227 the allegation that the signature on one transfer was forged at paragraph 228, paragraph 240 and the question of fraudulent misrepresentation at paragraphs 241 to 248, the tribunal made its final findings on these issues at paragraphs 252 to the effect that the applicant had failed to discharge the burden of proof for fraud misrepresentation undue influence, irregularities and breaches in transfer of the eight properties.

52. Having found inadequate evidence on the main issues in dispute, the tribunal concluded at paragraph 253, that the claimant was not entitled to reliefs in paragraphs 14 (a) to (e ) of the plaint dated 7$^{th}$ October 2011 and dismissed her claim with an order at paragraph 257 that each party meets its own costs.

53. In addition, the Tribunal considered the issue relating the evidence of; Caroline Wanjihia Advocate and at paragraph 21 the Tribunal makes an observation that, when Mr. Kiragu sought for admission of the witness statement under Section 35 of the Evidence Act, the Applicant's counsel did not raise any objection. The Tribunal then made its decision under paragraph 24 and admitted the statement accordingly. If the Applicant did not challenge the admission of the evidence then, she cannot raise it at this stage.

54. I note that the Applicant has raised and addressed other issue relating to; transfer of the property on the ground of; want of sale agreement and consideration, on account of fraud and submitted on them at pages 7 to 19 of her submissions, however I note that these issues and which were the subject of the arbitral proceedings and the Tribunal addressed the same. The role of the court is not to re-evaluate the evidence adduced before the Tribunal and replace it with its own decision, as held in the case of*; Evangelical Mission for Africa & Another vs Kimani Gachuhi 7 Anor (2015) eKLR*

55. In summation I find that a party challenging an award must prove one of the exclusively grounds listed in the Arbitration Act. The burden and standard of proof requires that, the party seeking the challenges furnishes proof of the particular ground invoked.

56. All in all, I find that the Applicant is challenging the award on the ground that, the Tribunal misdirected itself on both matters of facts and law and/or the application of the law. However, the examination of the same by the court will amount to exercising appellate jurisdiction over the decision of the Tribunal. The court has no jurisdiction to do so. As held in the case of; *DB Shapriya & Co. Ltd Vs Bish International BV ((2) (2003).2 EA 404,* cited by the Respondent, a mistake of fact or law is not a ground for setting aside or remitting an award for further consideration.

57. Finally, one of the fundamental features of Arbitration, is the final and binding determination of parties' rights and obligations. Thus as a chosen alternative to court process or litigation, the decision of the parties is for the Arbitrators to resolve the dispute finally. Therefore, the parties accept that not only will arbitration be the form of dispute settlement but also they will accept and give effect to the arbitration award, which is final and binding.

58. Thus implied with the agreement to arbitrate is the acceptance that the strict rules of procedure and rights of appeal or challenge are limited to essential protection. This is a contractual commitment of the parties and the law applicable.

59. It is against this background and in the absence of evidence that the award herein is contrary to public policy that I find and hold that, the Application has no merit and I dismiss it. In line with the reasons upon which the Tribunal did not condemn the Claimant to pay costs, I am inclined to be persuaded by the same and order each party meet its own costs.

60. It is ordered.

***Dated*** and ***delivered*** and ***signed*** on this ***14$^{th}$*** day of ***August*** 2020, virtually.

**GRACE L NZIOKA**

**JUDGE**

In the presence of: -

Ms Wambua for the Applicant

Mr Kiragu for the Respondent

Robert Court Assistant