



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO.113 OF 2011**

**IN THE MATTER OF THE LATE MOROGO A. MUGUN *alias* MOROKO MUKUMU (DECEASED)**

**VICTOR NGENO.....1<sup>ST</sup> PETITIONER**

**EZEKIEL KIPKOECH LELGO.....2<sup>ND</sup> PETITIONER**

**PEARSON LELGO.....3<sup>RD</sup> PETITIONER**

**JUDGMENT**

1. This matter relates to the estate of Morogo A. Mugun *alias* Moroko Mukumu who died intestate on 1<sup>st</sup> January 1997. The deceased was polygamous and had three houses. The beneficiaries of his estate are set out in form P&A 5, and there was no dispute on the said beneficiaries.

2. The deceased's estate comprised the following properties:

- i. Kericho/Kipkelion Block 4 Chepseon/520 measuring 2.04 hectares
- ii. Kericho/Kiptere/524 measuring 34.0 hectares
- iii. Kericho Soliat/350 measuring 1.1 hectares
- iv. For easy of reference, I will refer to the Chepseon land as Kericho/Chepseon/520 in this judgment.

4. Letters of administration intestate were issued to Victor Ngeno, Ezekiel Kipkoech Lelgo and Pearson Lelgo on 29<sup>th</sup> April 2013.

5. The 3<sup>rd</sup> petitioner, Pearson Lelgo, then filed two applications for confirmation of the grant issued to him and his step-brothers on 29<sup>th</sup> April 2013. One was dated 29<sup>th</sup> February 2016, and the other 11<sup>th</sup> July 2016. A protest in response to the applications was filed by the 1<sup>st</sup> and 2<sup>nd</sup> petitioners, Victor Ngeno and Ezekiel Lelgo. In the course of the hearing of the protest, the 3<sup>rd</sup> petitioner withdrew the application dated 29<sup>th</sup> February 2016 and proceeded on the basis of the application dated 11<sup>th</sup> July 2016.

6. In his affidavit sworn on 11<sup>th</sup> July 2016 in support of the application, Pearson Lelgo sought that each of the three land parcels comprising the estate of the deceased should be distributed equally between the three houses of the deceased. The three administrators, Victor Ngeno, Ezekiel Kipkoech Lelgo and Pearson Lelgo, representing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> houses of the deceased respectively, would each hold an equal share of each of the land parcels in trust for their respective houses as follows:

- i. Kericho /Kiptere/524- 27.9933 acres
- ii. Kericho/Soliat/350-0.90566 acres
- iii. Kericho/Chepseon/520-1.6796 acres

7. However, in their affidavit of protest sworn on 11<sup>th</sup> July 2016 and filed on 12<sup>th</sup> August 2016, the 1<sup>st</sup> and 2<sup>nd</sup> petitioners objected to the mode of distribution proposed by the 3<sup>rd</sup> petitioner. They averred, first, that the deceased had, prior to his death, settled the three households on Kericho/Kiptere/524 by subdividing and erecting clear boundary marks separating the households. Each of the households was occupying and working on their portion. The protestors urged the court to adopt the deceased's wishes with respect to this parcel.

8. As regards Kericho/Soliat/350, the protestors stated that the deceased had settled the three households on the parcel equally.
9. The bone of contention was Kericho/Chepseon Block 4/520. The protestors averred that it belonged to the 2<sup>nd</sup> house entirely as it had been purchased from dowry from daughters of the 2<sup>nd</sup> house. They averred that the deceased had settled the 2<sup>nd</sup> petitioner, Ezekiel Lelgo, on the land in October of 1994.
10. It was their averment further that after the death of the deceased, a meeting had been held under the chairmanship of the area chief and it had been agreed that the wishes of the deceased be honoured. Minutes of the meeting held on 29<sup>th</sup> September 2011 were annexed to their affidavit. They urged the court to honour the wishes of the deceased and adopt the mode that they had proposed.
11. In his affidavit in response to the protest, Pearson Lelgo denied that the deceased had distributed his land as alleged. He argued that the mode of distribution proposed by the protestors had allocated a larger share of the estate of the deceased to his 2<sup>nd</sup> house. The 2<sup>nd</sup> house would get 13.71 hectares while the 1<sup>st</sup> and 3<sup>rd</sup> houses would get 11.67 hectares each.
12. He avers that the deceased had only allocated the 2<sup>nd</sup> house to a temporary area to cultivate on Kericho/Chepseon Block 4/520. Had he intended to effect final allocation, he would have completed the mutation and transfer. He contends that the minutes relied on by the protestors have no value as they were taken in his absence and that of his brothers, and were engineered to deprive them of their rightful share of the estate.
13. The protest was heard by way of oral evidence. The protestors called 3 witnesses, while the 3<sup>rd</sup> petitioner called 4.
15. PW1 was Joseah Kipkorir Mutai, a grandson of the deceased. His father, Samuel Lelgo Mutai (deceased) was a son of the deceased in this cause. His testimony was that his grandfather had 3 wives, and had 3 farms, one in Chepseon, the other at Kiptere and the third at Soliat. PW1 relied on his statement dated 15<sup>th</sup> May 2017. He contended that his grandfather, the deceased, had distributed his land before he died. He did not, however, distribute the land at Chepseon as the money for buying that land was the dowry from the second house. The land had been occupied by Ezekiel Lelgo, a child of the second house. The family had sat with clan members and had agreed on the mode of distribution.
16. In cross-examination by Mr. Kirui, Mr. Mutai stated that Ezekiel Lelgo, his uncle (father) from the 2<sup>nd</sup> house of the deceased, lived alone on land parcel number Kericho Chepseon/520. He had started living on the land in the early eighties. He asked the court to distribute the land as the deceased had distributed it.
16. In his statement dated 12<sup>th</sup> April 2017, Daniel Kimetto (PW2) stated that he was present when the deceased was marking out the boundaries of his land in 1994. He had settled his son, Ezekiel Lelgo and his family, on Kericho/Chepseon/520. The land had been purchased using dowry "*from the boy Jonah*". In cross-examination, he stated that the deceased was his neighbour. That he was present when the deceased's daughters were being married, but did not know how many cows were paid as dowry for his daughter, Esther. The deceased had sold some of the cows to buy land, but he did not know how many.
17. He did not go with the deceased to buy land at Chepseon, but it was his testimony that the deceased did buy land as he had said he was going to. He had bought the land from some Europeans, using money he had got from the cows brought as dowry for his daughter Esther. PW2 confirmed that Ezekiel (Lelgo) was from the 2<sup>nd</sup> house of the deceased, which had 8 children. The deceased had given the land in Chepseon to one child, though he had not seen the title for the land in Chepseon. He did not have land in Chepseon himself, nor did he know how big the deceased's land. He had also never gone to the land was.
18. PW3, Mabwai Arap Bor stated that he was an immediate neighbour of the deceased in Chepseon. He and the deceased had bought land together at Chepseon. He states in his statement dated 12<sup>th</sup> April 2017 that he had stayed with the deceased in Chepseon from 1970 when they both bought land in Chepseon. The deceased had settled the 2<sup>nd</sup> petitioner, Ezekiel Lelgo who was his son, at Chepseon in 1994. He had confided in PW3 that he had bought the Chepseon land using dowry from the 2<sup>nd</sup> house. He had not given Ezekiel any land at the ancestral home. It was his testimony on cross-examination that the deceased had bought the land in Chepseon when he had two houses, then he married the third wife in 1976. He had lived with the third wife in Chepseon for 5 years, then he brought his son from the 2<sup>nd</sup> house, Ezekiel Lelgo, to the land and took the 3<sup>rd</sup> wife to the 'reserve'. The 3<sup>rd</sup> house has never returned to the land at Chepseon since being moved to the 'reserve' by the deceased, and the only person who was staying on the land in Chepseon was Ezekiel Lelgo.
19. PW4, Ezekiel Kipkoech Lelgo (the 2<sup>nd</sup> petitioner) adopted his statement dated 12<sup>th</sup> April 2017. He states in the said statement that before the deceased died, he had settled all family members on their respective parcels of land. The deceased had settled the 2<sup>nd</sup> petitioner at Chepseon in October of 1994. He noted that no-one was complaining about the manner in which the deceased had settled his beneficiaries on their respective parcels except the 3<sup>rd</sup> petitioner. The land in Chepseon had been purchased from the dowry of his older sister, Esther Mutai.
20. His position was that his late father had subdivided his land, and everyone was residing on the portion that they were given by the deceased. According to Ezekiel, it was their father's wish that no-one should tamper with the arrangements he had made with respect to the land as he had done so with the elders.
21. In cross-examination, he stated that he could not propose how the land should be distributed as his father had already done so. He was living on land parcel number Kericho/Chepseon/520 which is 5 acres. Kericho/Soliat/350 is 1.1 acres, but he did not know the acreage of Kericho/Kiptere/524. He confirmed that his father was married to 3 wives, and that all the houses of the deceased lived on Kericho/Kiptere/524 on portions given to them by the deceased, but he did not know what area each of the houses was occupying. He confirmed that land title number Kericho/Chepseon/520 was not in his name but in the name of the deceased. He was opposed to the land

being shared equally as he wished to have the land distributed as had been done by the deceased. Each house has its own land and boundary, the deceased having planted trees to mark the boundaries five months before his death.

22. The case of the 3<sup>rd</sup> petitioner/respondent was presented through three witnesses. DW1, Pearson Kiplagat Jelgo, was a son of the deceased from his 3<sup>rd</sup> house. He relied on his statement dated 30<sup>th</sup> May 2017 and an affidavit in response to the protest sworn on 28<sup>th</sup> September 2016. His evidence was that he was living in Kiptere. He wished that the property of the deceased should be distributed equally. He confirmed that the deceased, had three properties, Kericho/Chepseon/520 which is 2.04 ha; Kericho/Soliat/350 which is 1.1 ha and Kericho/Kiptere/524 measuring 34 ha. He asserted that under the law, all children should inherit equally, yet the 2<sup>nd</sup> house was occupying a larger share.

23. In cross-examination, he stated that while he had not said in his statement that the children of the deceased should share the land equally, he now wished that to be the case. He further stated that the houses of the deceased should get an equal share; and that the property should be distributed equally between the houses, not in accordance with the number of children. He confirmed that all the three houses of the deceased resided on Kericho/Kiptere/524. Each of the children of the deceased farms on a portion which he has also fenced. That the 1<sup>st</sup> house farms on the right, the second on the left and the third in the middle. That none of the children from the three houses was farming on a piece of land occupied by children from the other house. That this arrangement had been made in the lifetime of the deceased.

24. He further stated that the 2<sup>nd</sup> house resides on Kericho/Soliat/350, while the 1<sup>st</sup> protestor, Ezekiel Jelgo, a child from the 2<sup>nd</sup> house, resided on Kericho/Chepseon/520, where he had been residing for 25 years, from 1992. He confirmed that the 2<sup>nd</sup> protestor had been residing on the Chepseon land before the demise of the deceased in 1997. He further confirmed that the 2<sup>nd</sup> protestor did not have a house on Kericho/Kiptere/524 or Kericho/Soliat/350, nor does he farm on those parcels of land.

25. The 3<sup>rd</sup> petitioner denied that the deceased had met with the family prior to his death, or that he had put any boundaries on the respective shares of the houses. He confirmed that they had met after the death of the deceased, but did not agree on anything.

26. The 3<sup>rd</sup> petitioner further stated that the 2<sup>nd</sup> petitioner used to live on Kericho/Kiptere/524 and had a home and family there. He had exchanged (homes) with his brother William, who left Kericho/Chepseon/520 and the 2<sup>nd</sup> petitioner went there. He confirmed that the deceased, who was alive then, did not complain when this happened, nor did anyone else.

27. DW2, Andrew Kimutai Langat, was the Senior Assistant Chief, Iraa sub-location. He adopted his statement dated 22<sup>nd</sup> May 2017. He says in the said statement that he knew that the deceased did not distribute his estate prior to his death. He further stated that the deceased, who was resident in his location, had two children by his 1<sup>st</sup> wife, eight by his 2<sup>nd</sup> wife, and seven by his 3<sup>rd</sup> wife. The deceased's land, Kericho/Kiptere/524 was occupied by the three houses which had temporarily demarcated it. Kericho Soliat/350 was occupied by children of the 2<sup>nd</sup> house, while Ezekiel Jelgo occupied Kericho/Chepseon 520. A clan meeting had been held following a boundary dispute between the families, but no agreement had been reached. He was of the view that the properties of the deceased should be distributed equally between his three houses.

28. In cross-examination, he stated that he knew the family of the deceased well, and had been to the home of the deceased twice. The home was in Iraa sub-location within his jurisdiction. He had gone there twice, in 2013 and then in 2015. While the deceased had died in 1997, he had gone there in 2013 as there was a dispute over land. A complaint had been brought to his office by the 3<sup>rd</sup> petitioner, Pearson Jelgo and Geoffrey Jelgo, that they had been beaten. He had gone to the home a second time when there was a clan meeting, though he did not have the minutes of the meeting. He had gone to the home in 2015 when there was a dispute over trees which had been cut near the home of the 3<sup>rd</sup> house.

29. He stated that he had seen how the houses of the deceased lived on the land, Kericho/Kiptere/524. The 1<sup>st</sup> house is on the north, the 3<sup>rd</sup> in the middle and the second to the south. That there are boundaries between the three portions occupied by the respective houses. He confirmed that Ezekiel Jelgo lives on Kericho/Chepseon/520, and was the only one who lives there and had no house on Kericho/Kiptere/524 or Kericho Soliat/350. There was also no house on Kericho/Soliat/350. DW2 confirmed that he did not know when Ezekiel Jelgo moved to Kericho/Chepseon Block 4/520.

30. In re-examination, his testimony was that there was a temporary boundary between the three houses on Kericho/Kiptere/524, made of trees and bushes. The 2<sup>nd</sup> house was farming the Soliat land, while Ezekiel Jelgo lives on Kericho/Chepseon/520 on which the 3<sup>rd</sup> wife used to live.

31. DW3, Eric Kiprono Tanui, was a nephew of the deceased, his father, Kiptonui arap Mugun, and the deceased having been brothers. He relied on his statement dated 30<sup>th</sup> May 2017 in which he gives what appears to be a history of the purchase of the land, Kericho /Chepseon/520, by the deceased. He stated that the deceased's son, William, had been living on the land in Chepseon, but was transferred back to Kiptere by the deceased in 1992/1993. The 3<sup>rd</sup> wife of the deceased had also been living at Chepseon, but she developed chest complications as it was cold and needed a warm place. The 2<sup>nd</sup> petitioner was then moved to the land at Chepseon to take care of the farm. He denied that the land had been bought with the dowry from the 2<sup>nd</sup> house, alleging that the 2<sup>nd</sup> petitioner's sister was married in 1960 while the land was bought in 1971.

32. In cross-examination, DW3 stated that the deceased was his father's younger brother. DW3 lived in Chepsir, about 4 km from Chepseon. He confirmed that the protestor, Ezekiel Jelgo, was living on Kericho/Chepseon/520, where he had been moved by the deceased between 1992-1994. He had been living there with his family for about 20 years. He further confirmed that the deceased was alive when the 2<sup>nd</sup> petitioner moved to Chepseon, where he had been living peacefully. The 2<sup>nd</sup> petitioner's brother, William Jelgo, and the mother of the 3<sup>rd</sup> petitioner, Pearson Jelgo, were moved by the deceased from Kericho/Chepseon/520 to Kericho.Kiptere/524 in 1994.

33. It was his testimony that with the exception of the 2<sup>nd</sup> petitioner, all the members of the three houses of the deceased live on the Kiptere land. The first house is on the left, the 3<sup>rd</sup> house in the middle and the second house on the right. He also confirmed that there are live boundaries between the three houses, which were planted by the deceased before his death to prevent others from encroaching. He conceded that the deceased was apportioning his land to the beneficiaries as he did not want a dispute. He further confirmed that Ezekiel Lelgo does not have a house on Kericho/Kiptere/524.

34. DW3 stated in re-examination that the deceased had put a fence separating the three houses, but did not call a surveyor. There was no dispute when the deceased was alive. He confirmed that William Lelgo was the first to live in Chepseon, and that the mother of Pearson Lelgo also lived in Chepseon before she was moved to Kiptere.

### **The Submissions**

35. In his submissions dated 5<sup>th</sup> April 2018, Learned Counsel for the protestor, Mr. Miruka, argues that the deceased had already distributed his estate prior to his death. He had sub-divided land parcel number Kericho/Kiptere/ 524 into three portions, marked the boundaries with live fences, and settled the three houses on their respective parcels. This had been confirmed by all the witnesses who had testified. He had settled the protestor on land parcel number Kericho/Chepseon/520 in 1992, a fact that had also been confirmed by all the witnesses. The fact that he did not formally transfer the land to the protestor did not invalidate the gift to him. The protestor therefore urged the court to give effect to the wishes of the deceased.

36. Mr. Kirui, Learned Counsel for the 3<sup>rd</sup> petitioner filed submissions in reply dated 11<sup>th</sup> June 2018. The 3<sup>rd</sup> petitioner argues that the deceased had not distributed his land parcels among the beneficiaries of his estate. His estate should therefore be distributed equally among his three houses. He submits that the 1<sup>st</sup> and 2<sup>nd</sup> petitioners did not furnish the court with any documents to show that the deceased had distributed his estate in his lifetime. The court should therefore distribute the estate as proposed by the 3<sup>rd</sup> petitioner. He urged the court to be guided by the decision in **Mati Kairanya v Festus Mutegi Kairanya ((2015)eKLR**.

### **Analysis and Determination**

37. I believe that the sole issue for determination in this matter is whether the deceased had distributed his land between his three houses prior to his death. If he had, then the court should respect his wishes, and direct that the estate should be distributed in accordance with the mode of distribution that is set out in the affidavit of protest by the 1<sup>st</sup> and 2<sup>nd</sup> petitioners. If he had not, then the estate should be distributed in accordance with section 40 of the Law of Succession Act, in accordance with the number of children in each house, and including the surviving spouse as a unit.

38. The evidence before me shows that the point of disagreement relates to title number Kericho/Chepseon Block 4/520. This land parcel was previously occupied by one William Lelgo, a brother of the 2<sup>nd</sup> petitioner/protestor. It was also occupied by the 3<sup>rd</sup> wife of the deceased, the mother of the 3<sup>rd</sup> petitioner/respondent, at some point. However, in 1993 or 1994, the deceased moved his son, William, from the parcel of land. He had also moved his 3<sup>rd</sup> wife, the mother of the 3<sup>rd</sup> petitioner, from the said parcel of land. He moved the 2<sup>nd</sup> petitioner, Ezekiel Lelgo, to the said parcel of land in 1992-1994 or thereabouts. There is therefore no dispute that the 2<sup>nd</sup> petitioner/protestor has been on the land in Kericho/Chepseon Block 4/520 for the last 25-27 years. He was on the said land prior to the demise of the deceased, and from the evidence of the protestor's and the 3<sup>rd</sup> petitioner's witnesses, it was the deceased who moved him to the said land.

39. It is also not in dispute that the rest of the family of the deceased occupies Kericho/Kiptere/524. The evidence, again from both the witnesses of the protestors and the 3<sup>rd</sup> petitioner, show that in his lifetime, the deceased had demarcated his land on the ground, and had set live fences to indicate the portions which each of his houses is to occupy. This was done in 1994, three years prior to his death. From the evidence, there was no complaint during his lifetime about the manner in which the deceased had settled the three houses.

40. I note from the minutes annexed to the affidavit of protest that a meeting had been held involving the beneficiaries of the deceased and elders on 29<sup>th</sup> September 2011 at which it had been agreed that the deceased's land should be distributed in accordance with his wishes. The 3<sup>rd</sup> petitioner alleges that the meeting was held in his absence. However, I note from the list attached to the minutes, which was not challenged during the hearing, that he was present at the meeting. I am therefore inclined to the view that the 3<sup>rd</sup> petitioner is not being forthright with the court.

41. The question is whether the evidence before me is sufficient to indicate that the deceased had distributed his land in his lifetime, and that the court should respect his wishes with regard to the distribution. The protestors' Counsel did not adequately address the court on the law on this point. He referred the court to sections 8 and 9 of the Law of Succession Act, which relate to the making of an oral will. The two sections provide as follows:

#### **8. Form of wills**

***A will may be made either orally or in writing.***

#### **9. Oral wills**

***(1) No oral will shall be valid unless—***

***(a) it is made before two or more competent witnesses; and***

***(b) the testator dies within a period of three months from the date of making the will:...***

42. In this case, however, if the actions of the deceased in sub-dividing his land and settling the 2<sup>nd</sup> petitioner/protestor on Kericho/Chepseon /520 were effected in 1994 while he died in 1997, then they cannot properly fall under the definition of an oral will under section 9 of the Law of Succession Act.

43. More appropriate, perhaps, would be section 42 of the Law of Succession Act, which provides that:

**Where—**

***(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or***

***(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.***

44. The facts of this case, in my view, demonstrate that the deceased had, in his life, distributed his land to his beneficiaries. He had taken the trouble to move his son, William, and his third wife, the mother of the 3<sup>rd</sup> petitioner, from Kericho/Chepseon/529, and to move the 2<sup>nd</sup> petitioner, Ezekiel Lelgo, to the said property. All the witnesses, both for the protestors and the 3<sup>rd</sup> petitioner, confirm that the deceased had also, in his lifetime, demarcated the portions to be occupied by his three houses on Kericho/Kiptere/524 and Kericho/Soliat/350. He had planted live boundaries between the houses, in his lifetime, to demarcate the portions to be occupied by each house and stop members of respective houses from encroaching on each other's portions. With the exception of the 3<sup>rd</sup> petitioner, there is no-one else from the houses of the deceased who was disputing these arrangements made during the lifetime of the deceased.

45. On the particular facts and circumstances of this case, I am inclined to accept that the deceased did distribute his property between his three houses, and that he allocated land parcel number Kericho/Chepseon/520 to the 2<sup>nd</sup> petitioner, Ezekiel Lelgo, in his lifetime. He did not, as argued by the 3<sup>rd</sup> petitioner and his witnesses, call a surveyor and carry out the formal process of sub-division, but his intentions were manifestly clear: he moved his son William and his 3<sup>rd</sup> wife, the mother of the 3<sup>rd</sup> petitioner, from the land, and moved the 2<sup>nd</sup> petitioner to the land, long before he died.

46. The 3<sup>rd</sup> petitioner argues that the land should be shared in accordance with section 40 of the Law of Succession Act, and that to distribute the land in accordance with the way it had been shared out by the deceased in his lifetime would lead to unfairness. I do not find this to be the case. While the area of land that would end up with the beneficiaries of the 2<sup>nd</sup> house of the deceased is slightly larger than what would devolve to the 1<sup>st</sup> and 3<sup>rd</sup> houses of the deceased-according to the 3<sup>rd</sup> petitioner, the 2<sup>nd</sup> house would get 13.71 hectares while the 1<sup>st</sup> and 3<sup>rd</sup> would get 11.67 hectares each- it is my view that such disparity is minor and is not sufficient to require the court to depart from what emerges to have been the express wishes of the deceased. I agree in this regard with the decision of the Court of Appeal in **Scolastica Ndululu Suva vs Agnes Nthenya Suva (2019) eKLR** in which it cited the earlier decision in **Douglas Njuguna Muigai vs John Bosco Maina Kariuki & Another** in which the absurdity of a blind application of section 40 of the Law of Succession Act was noted and then observed as follows:

***[17] It is therefore evident, that, although section 40 of the Law of Succession Act provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate."***

47. In my view, the deceased in this case had, prior to his death, considered how he wished to have his properties distributed after his death. He had settled his three families on Kericho/Kiptere/524. He had moved his son, William Lelgo and his 3<sup>rd</sup> wife, the mother of the 3<sup>rd</sup> petitioner, from Kericho/Chepseon/520 to Kericho/Kiptere/524. He had moved the 2<sup>nd</sup> petitioner to Kericho/Chepseon /520, where he lived peacefully, alone with his family, during the lifetime of the deceased and for many years thereafter.

48. In the circumstances, I find that the protest is merited, and I accordingly allow it and direct that the estate of the deceased shall be distributed as proposed in the affidavit of protest sworn on 11<sup>th</sup> July 2016 and filed in court on 12<sup>th</sup> August 2016.

**Dated Delivered and Signed at Kericho this 27<sup>th</sup> day of February 2019**

**MUMBI NGUGI**

**JUDGE**