Muhia & 2 others (Legal Representatives of the Estate of Njiraini Muhia-Deceased) v Ngugi (Environment and Land Appeal E023 of 2022) [2023] KEELC 20800 (KLR) (19 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20800 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANGA

ENVIRONMENT AND LAND APPEAL E023 OF 2022

LN GACHERU, J

OCTOBER 19, 2023

BETWEEN

ALBERT NJIRAINI MUHIA .... 1ST APPELLANT

JOSEPH MUIRURI NJIRAINI .... 2ND APPELLANT

JOHN NJOROGE NJIRAINI .... 3RD APPELLANT

LEGAL REPRESENTATIVES OF THE ESTATE OF NJIRAINI MUHIA-DECEASED

AND

JOYCE WANJIKU NGUGI .... RESPONDENT

(Being an Appeal from the entire Judgement and Decree of the Hon. E M Nyagah – Senior Principal Magistrate delivered on 17th November 2022, in Murang'a MCELC No. 27 of 2019)

JUDGMENT

1. Vide a memorandum of appeal dated December 5, 2022, the appellants appealed against the judgment of the trial Court (Hon. E.M. Nyagah – SPM) in Murang'a CMCC ELC No. 27 of 2019. In the said suit, the Appellants had sued the Respondent herein vide a Plaint filed on 16th October 2019, claiming interest over Loc. 6/ Gikarangu/ 220, by transmission. It was their case that the Respondent herein had placed an illegal caution on the suit property claiming purchaser's interest where none existed. They prayed for removal of the caution and general damages for the illegal caution.
2. The Respondent filed her defence on December 2, 2019, wherein she admitted to lodging a caution over the suit property. It was her averments that her deceased husband and herself bought 1.7 acres of the suit property from the 2nd Appellant, who claimed to be selling his interest. She further averred that

her caution was registered due to her lien and proprietary interest thereon. She filed a Counter-claim, claiming 1.7 acres of the suit land or a sum of Kshs. 3,400,000/= payable by the 2nd Appellant.

3. The matter proceeded for hearing and a judgment was delivered on 17th November 2022, dismissing the Appellants' suit and allowing the Respondent's Counter-claim. Aggrieved by the said Judgment of the trial Court, the Appellants preferred this appeal citing NINE GROUNDS of Appeal as enumerated in the Memorandum of Appeal. The trial Court in entering judgment in favour of the Respondent herein found that the judgment of the Court in ELC No. 253 of 2017, determined the rights of the parties to the property. On the strength of the said Judgment, the trial Court awarded the Respondent herein Kshs. 1,400,000/= being the sum payable for 0.7 acres.

4. The Appellants appeal is anchored on the grounds inter alia that the trial Court erred in making a double compensation in light of the Judgment of the Court in ELC No. 253 of 2017, and that the Counter-claim was time barred and res judicata.

5. The appeal was admitted under the provisions of Section 79(B) of the *Civil Procedure Act* and the Court directed parties to canvass the said Appeal by way of written submissions.

6. The Appellants filed their submissions on 20th June, 2023, through J N Mbuthia & Co. Advocates outlining the background of the Appeal, before submitting on each ground set out in the Memorandum of Appeal.

7. On grounds 1, 2 and 9, the Appellants submitted that the transaction between the 2nd Appellant and the Respondent's husband had been determined to finality by the Court in ELC No. 253 of 2017, as such the trial Court ought to have dismissed the Counter-claim. They faulted the judgment of the trial Court for want of compliance with Order 21 Rule 4 of the Civil Procedures Rules.

8. On ground 4, it was their submissions that the Respondent ought to have sought leave to enforce the sale agreement entered into on 28th March, 2023. That the Counter-claim contravened the provisions of Sections 4(1)(a) and 7 of the *Limitation of Actions Act*. Reliance was placed on the case of Y HG Wholesalers Ltd vs Kenya Revenue Authority and Sohanlaldurgadass Rajput & Another vs Divisional Intergrated Development Programmes Co. Ltd{2021}

9. The Appellants further submitted that the Respondent's Counter-claim was res judicata and that there was no residual available for determination by the trial Court. That the trial Court ought not to have compensated the Respondent for the 0.7 acres, without a valuation for the Makuyu property. That doing so amounted to double compensation and was thus unjust.

10. The Respondent filed her submissions on 30th June 2023, through Kirubi, Mwangi Ben & Co. Advocates and rehearsed the facts resulting in the disputes. It was her submissions that the evidence on record were sufficient to support her registration of the caution. That the issue of caution had also been addressed by the Court in ELC No. 253 of 2017, and was thus caught up by the doctrine of res judicata. That the issue of caution and breach of agreement were never raised in the trial and cannot now be raised on appeal.

11. She further submitted that the Appellants did not avail any evidence to demonstrate that the Counter-claim was res judicata. That the Respondent was not compensated twice since the award granted by the trial Court was for the remainder 0.7 acres.

12. Having analysed the Memo and Record of Appeal and the rival written submissions and the cited authorities and the relevant provisions of law, the Court finds as follows; -

    As per the Certificate of Official Search contained in page 16 of the Record of Appeal, the registered proprietor of the suit land is Njiraini Muhia, who was a registered proprietor on 18th November, 1977. As per the Death Certificate on page 13 of the Record of Appeal, the said Njiraini Muhia died on 13th February, 1983. His estate vested to his Personal Representatives, the Appellants herein, as per the Grant contained in page 14 of the Record. There is attached a copy of Form P & A 54, which shows that the suit property devolved to the beneficiaries of his estate.

13. Within the provisions of Section 66 of the *Land Registration Act*, the effect of the said transmission conferred on the Appellants rights over the suit property. However, this Court has perused a copy of a Sale Agreement dated 28th March 1989, between the 2nd Appellant and Ngugi Muiruri Kimuhu, whom this Court gathers is the Respondent's husband. The agreement is for purchase of 1.7 acres of Loc. 6/ Gikarangu/ 220, which is the suit property. It is evident from the Court's record that the Respondent had placed a caution on the suit land claiming beneficial interest, and which was subject to the proceedings of the impugned judgment.

14. The 2nd Appellant and the Respondent had litigated against each other in Murang'a ELC No. 253 of 2017, wherein the 2nd Appellant had sought for injunctive orders against the Respondent over Makuyu/ Makuyu Block.1/ 9081. A judgment was rendered on 15th July 2021, in favour of the Respondent. It was during the pendency of the foregoing suit that the instant suit was filed.

15. The trial Court in its judgment found in favour of the Respondent's Counter-claim which sought that; -

    a. A declaration do issue that the Defendant is entitled and should get 1.7 acres, out of land parcel number Loc. 6/ Gikarangu/ 220, to be registered in her name

    b. In the alternative, the 2nd Plaintiff be ordered to pay to the Defendant a sum of Kshs. 3, 400,000/= being the fair and current market value of the portion purchased.

    c. The costs and interest of the suit

    d. Any other or better relief this Honourable Court may deem fit to grant.

16. The Appellants were dissatisfied with the said judgment having filed the suit, hence this appeal. Having read through the Record of Appeal, alive to the grounds set out in the Memorandum of Appeal and having considered the written rival submissions by the parties and guided by the authorities cited the issues for determination by this Court are; -

    i. Whether the Appellants were entitled to the prayers sought in the Plaint

    ii. Whether the Respondent was entitled to the prayers sought in the Counter-claim

    iii. Whether the trial Court erred in entering judgment as it did

    iv. Whether the issue of Limitation of Actions and Res Judicata can be entertained by this Court

    v. Who should bear the costs of this appeal.

17. Before determining the issues as enumerated above, it is important to point out that this Court has been moved on appeal. It did not have the benefit of examining witnesses, and it will still not have the benefit

at this point. The role of this Court is laid out in Section 78 of the *Civil Procedure Act*, which is to re-evaluate, re-assess and re-analyze the evidence as contained in the Record of Appeal. This was echoed by the Court in the case of Peter M. Kariuki v Attorney General [2014] eKLR, where the Court held:

> We have also, as we are duty bound to do as a first appellate court, reconsidered the evidence adduced before the trial court and re-evaluated it to draw our own independent conclusions, and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence."

18. This Court must thus do what was set out in the case of Selle and Another V Associated Motor Boat Co. Ltd [1968] E.A. 123, where it was held:

> An appeal to this Court from a trial by the High Court is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses, and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif v Ali Mhamed Sholan, (1955) E.A.C.A. 270)".

19. Therefore, this Court cannot simply interfere with the judgment of the trial Court. Also, the trial Court when rendering its judgment was exercising its discretionary powers, which this Court cannot just interfere with, without being satisfied on the requisite principles which shall be demonstrated in this judgment.

20. The Supreme Court in the case of Francis Wambugu Mureithi vs Owino Paul Ongili Babu & 2 others [2019] eKLR, extensively discussed the issue of discretion and it had this to say on interfering with the powers:

> (76) In determining therefore an issue based on the exercise of a discretion, as has been observed, a Court can only be faulted if the use of the discretionary power was based on a whim, and that it can be established that the Court did not consider the prevailing circumstances and took into account what needed to be considered, or considered what ought not to have been considered. To infringe upon this discretionary power, would be tantamount to a judicial review of the decision of another Court's decision. This is an exercise which this Court, and indeed every other Court, should refrain from engaging in as it would be considered, or indeed viewed as, an interference in another Court's judicial independence and exercise of discretion."

It further held:

> (77) We must in addition state that in Deynes Muriithi & 4 others v. Law Society of Kenya & Another; SC Application No. 12 of 2015; [2016] eKLR, this Court affirmed the position that interference in the discretionary powers of one Court by another Court is to be frowned upon, and this Court would only interfere with such decision(s) if the same were on the face of it, an affront to justice or an infringement of fundamental freedoms, such as the right to a fair hearing, as has been alleged in the instant appeal by the Petitioner. Also, in Daniel Kimani Njihia v. Francis Mwangi Kimani & Another, SC Application No. 3 of 2014; [2015] eKLR, this Court restated the principle that it would not interfere with the discretionary powers of a Superior Court if it is deemed that the orders issued in the exercise of the discretionary powers

were neither whimsical, capricious nor made to the detriment and infringement of either of the parties' fundamental freedoms."

21. This Court is sufficiently guided and will proceed to determine whether the Appellants have discharged their burden of persuading this Court to find that the discretion of the trial Court meets the aforementioned principles.

I. Whether the Appellants were entitled to the prayers sought in the Plaint?

22. The Appellants had filed a suit against the Respondent for:

    1. An Order for the Defendant to remove the caution over the land parcel no Loc. 6/Gikarangu/220, within a time to be fixed by the Court, failing which the executive officer of this Court be authorized to sign all necessary documents, for the purpose of removing the caution in place instead of the Defendant.

    2. General damages for illegal caution

    3. Costs

    4. Interests

23. It is undisputed that the Appellants were the Personal Representatives of the registered proprietor. It is also clear from the record that the Respondent had placed the caution over the suit property, which this Court deduces was registered on 18th March, 2016, claiming purchaser's interest.

24. Section 71 of the *Land Registration Act* makes provisions for registration of caution. It provides

    (1) A person who—

        (a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under this Act;

        (b) is entitled to a licence; or

        (c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge, may lodge a caution with the Registrar, forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the land lease or charge

25. It is evident from the Court's record that the Respondent had bought a portion of the suit property which measures 1.7 acres from the 2nd Appellant, who had beneficial interest of the suit property by dint of being a beneficiary. The Appellants were also in the process of causing transmission, but could not do so because of the registered caution. PW1 testified before the trial Court that the Respondent had once occupied the suit land, but he did not know how she gained ingress therein.

26. PW2, the 2nd Appellant admitted in his testimony that he had sold 1.7 acres of the suit land to the Respondent's husband, even though he denied that the Respondent has never been in occupation. He also told the trial Court that the Respondent was allocated 1 acre by the ELC Court, and that she had registered the caution to protect her interest. It was his testimony that the caution was never removed by the ELC Court.

27. The Respondent on the other hand testified that the caution was to secure her remaining 0.7 acres which she was not given by the ELC Court. It was her testimony therein that she occupied the property

for over five years before she was chased away. Interestingly, she told the trial Court that she was willing to remove the caution once she's given her entitlement.

28. It is the provisions of Section 73 of the *Land Registration Act* that a caution may be removed by either the cautioner, by an Order of Court or by the Registrar. It is the onus of the cautioner to persuade the Court why a caution should not be removed. In this case, the onus was on the Respondent to lead evidence. This does not mean that the burden of proof anticipated by Section 107 of the *Evidence Act* is taken away.

29. The Appellants had the duty of leading evidence as to their ownership of the suit property and demonstrate to the trial Court that the Respondent was responsible for registering the caution. Once this was done, the evidentiary burden provided for under Sections 109 and 112 of the *Evidence Act*, shifted to the Respondent. The Respondent had the burden of leading evidence as to why the caution should remain in force.

30. In finding in favour of the Respondent, the trial Court found that the Respondent was eligible to 0.7 acres, of the suit land, and noted that the testimony of the 2nd Appellant; that he was not aware of the remaining 0.7 acres. The Appellant now challenge this analogy on the premise that the judgment of the Court in ELC No. 253 of 2017, did not provide for a residual for determination.

31. This Court has perused the judgment of the Court in ELC No. 253 of 2017, where the 2nd Appellant had sued the Respondent herein for injunctive orders over Makuyu/ Makuyu Block.1/ 9081. This was a different parcel of land from the suit property. It is evident from the said ruling and the record herein that the 2nd Appellant had given the aforementioned parcel to the Respondent after she was chased away from the suit property. The property measures 0.398Ha, which parties say is equivalent to 1 acre.

32. The learned Judge held in paragraph 38 of the Judgment that "Up to this far, the evidence before the Court is that the agreement of 1987 was settled by the alternative land which is the suit land herein" The meaning of the above is that the Respondent was fully settled. It is not clear to this Court why the Respondent never sought to appeal, set aside or review the said order. The same had a sense of finality of the Respondent's claim.

33. Residual jurisdiction as invoked by the Appellants is available to a Court that passed the judgment. The Court in Kamau James Gitutho & 3 others v Multiple Icd (K) Limited & another [2019] eKLR, set down the principles that this jurisdiction can be invoked.

34. It follows therefore, that this residual jurisdiction can only be set in motion once the established threshold is met. In other words, the following must be demonstrated:

    1) The decision in issue has occasioned injustice or a miscarriage of justice; and

    2) The said injustice or miscarriage of justice has eroded public confidence in the administration of justice; and

    3) No appeal lies against in the decision in issue.

35. While it is apparent that indeed the Respondent got 1 acre in place of the 1.7 acres, which she was entitled to, the trial Court was barred from adjudicating on the 0.7 acres in light of the pronouncement of the Court in ELC No. 253 of 2017. Even if this residual jurisdiction was to be exercised, it could only be done by the Court in ELC No. 253 of 2017.

36. On the issue of general damages, the Appellants had sought for an Order for General damages for wrongful caution. Section 75 of the *Land Registration Act* stipulates: -

> 75. Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has sustained damage, to pay compensation to such person."

37. This Court has expressed above that the Respondent had an interest that she was protecting. The 2nd Appellant had sold a portion of the suit land to the Respondent being 0.7 acres. The caution was registered in 2016, that was before the judgment of the Court in ELC No. 253 of 2017. Therefore, it is evident that the registration of the caution was not illegal.

38. The caution having not been illegal, no award of damages can issue. In the case of Annah Wairimu Mwangi v David Kamau Kimani [2020] eKLR, the Court of Appeal found that the Respondent therein did not err in registering the caution, since there was breach of a sale agreement. The upshot of the foregoing is that the Appellants were not entitled to general damages.

39. However, there was no reason why the caution had to continue being in force, yet the Respondent had been given an alternate land. Also, she had the option of claiming from the 2nd Appellant, upon successful transmission. After all, as per the Rectified Grant in page 13, he was eligible to a share thereof.

II. Whether the Respondent was entitled to the prayers sought in the Counter-claim?

40. The Respondent had sought that a declaration be issued that she was entitled to 1.7 acres, of the suit land or be compensated Kshs. 3,400,000/= being the sum payable for the current market value. While it is true that she was entitled to the said acreage as per the sale agreement, it should be remembered that the Court in ELC No. 253 of 2017, had already made pronouncement on the Respondent's entitlements. Notably, the learned judge had noted in paragraph 36 of the Judgment that the agreement dated 28th March 1987, did not make provisions for refund. This Court agrees with the verdicts.

41. It is curious that the trial Court went ahead and allowed the Counter-claim without taking note of the judgment of the Court. It first held that the Respondent was entitled to Kshs. 1,400,000/= for the remaining one acre, then went ahead to allow the Counterclaim. The Sale Agreement alluded to was between the 2nd Appellant and the Respondent. The trial Court proceeded as though all the Appellants were party to the Sale Agreement. The Court of Appeal in the case of Agricultural Finance Corporation Vs Lengetia Limited & Jack Mwangi [1985] eKLR placed reliance on the Halsbury's Laws of England, 3rd Edition, Volume 8 at paragraph 110:

42. As a general rule, a contract affects only the parties to it, and cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract."

43. Further, the doctrine of privity of Contract bars a Court from enforcing rights and obligations that arise from a contract on parties who were not parties of the contract, unless it is established that the parties intended that the contract would serve third parties. In this case, the Court noted that the 2nd Plaintiff admitted he was selling 1.7 acres out of his own share.

44. A look at the Sale Agreement, the 1st and 3rd Appellants were not parties to it. The 2nd Appellant was not even selling the suit land as a legal representative. Compelling the Appellants to pay monies to a contract that they were not part of, is a triviality that cannot be let to pass.

45. The Appellants had raised the issue of statutory limitation to the effect that the Respondent's Counter-claim was time barred within the meaning of Section 7 of the *Limitation of Actions Act*. The trial Court did not consider this in its judgment. The Respondent's Counter-claim arose from a contract for sale of land.

46. Section 4(1)(a) of the Limitation of Action Act requires that suits founded on contract cannot be brought at the end of six years. However, action for recovery of land cannot be brought after the expiry of 12 years as provided for by Section 6 of the foregoing Act. It provides:

> An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

47. The Sale Agreement was entered into in 1987, which means the right crystalized in 1999, and a suit filed after this was a nullity. Even if a claim for adverse possession was to issue, the same was never raised. Even so, for such a claim to issue, a party must establish that he became adverse. The Court in the case of Nairobi Civ No. 283 of 1990 Gabriel Mbui v Mukindia Maranya [1993] eKLR, held:

> Time does not begin to run unless there is some person in adverse possession of the land. It does not run merely because the land is vacant.......... The rule that his entry must be followed by possession and appropriation to his use is founded on the reason that a right of action cannot accrue unless there is somebody against whom it is enforceable"

48. There is evidence that the Respondent was chased away from the suit property and was occupying elsewhere. So this doctrine could not favour her interest.

49. In the case of Danson Muniu Njeru Vs William Kiptarbei Korir & 6 others [2014] eKLR, the facts therein were similar. The Court dismissed the Defendant's Counter-claim that was statutory barred. In the case of Alice Adhiambo Ochieng & another v Enos Odhiambo Agaya & another [2021] eKLR, the Court faulted the trial Court for not determining an issue of limitation of time, which would have resulted in dismissal of the suit.

50. Presently, the Respondent's claim for recovery of land or money was caught up by limitation of actions and no orders could be issued in that regard. Therefore, it follows that the Respondent was not entitled to the orders claimed in the Counterclaim.

III. Whether the trial Court erred in entering judgment as it did?

51. The Court allowed the Respondent's Counter-claim which in essence meant she was entitled to 1.7 acres or Kshs. 3,400,000/= as pleaded.

52. As conceded elsewhere in this judgment, the 2nd Appellant still owed the Respondent land to a tune of 0.7 acres. This means that the Respondent had a right to claim against the 2nd Appellant. However, in the ELC No. 253 of 2017, where the Respondent and the 2nd Appellant were a party to, the Court found that the Respondent's sale agreement had been adequately settled. The Judgement was delivered during the pendency of the suit and was brought to the attention of the Court. The trial Court ought to have taken this into consideration.

53. In choosing to award the Respondent 0.7 acres or Kshs. 1,400,000/= the trial Court seemingly usurped the powers of the Court in ELC No. 253 of 2017, which despite the suit properties being different had a close relationship in facts. To adequately get the 0.7 acres, the Respondent ought to have invoked the residual jurisdiction of the Court in ELC No. 253 of 2017.

54. The Appellants maintain that the Counter-claim was res judicata. To succeed in a claim for res judicata within the provisions of Section 7 of the *Civil Procedure Act*, a party must demonstrate that; -

i. The suit or issue raised was directly and substantially in issue in the former suit.

ii. That the former suit was between the same party or parties under whom they or any of them claim.

iii. That those parties were litigating under the same title.

iv. That the issue in question was heard and finally determined in the former suit.

v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.

55. These were echoed in the case of The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, Nairobi CA Civil Appeal No. 105 of 2017 ([2017] eKLR), where the Court of Appeal held that;-

Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

a) The suit or issue was directly and substantially in issue in the former suit.

b) That former suit was between the same parties or parties under whom they or any of them claim.

c) Those parties were litigating under the same title.

d) The issue was heard and finally determined in the former suit.

e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised."

56. Even though the Appellants have not sufficiently demonstrated this, the Court herein has the role to re-evaluate the evidence tendered at trial. Without going into details, the only issue that had already been determined by the Court is the Respondent's entitlement. While the same arose from a different suit over a different subject matter, the Counter-claims in both suits arose from the sale agreement of 1987. As a result, therefore, the Trial Court in determining the Respondent's Counter-claim ought to have been guided by the pronouncement of the Superior Court.

57. The Respondent had the option of moving the Superior Court to claim the 0.7 acres, in lieu of the Judgment of the Court that found that the giving of the Respondent an alternate land settled the sale agreement. As such the determination of the Counter-claim by the trial Court was an issue that was directly and substantially in issue in ELC No. 253 of 2017.

58. The upshot of the foregoing is that the trial Court erred in both law and fact by allowing the Respondent's Counter-claim. In the end the Appeal succeeds to the extent that the Caution lodged by the Respondent be and is hereby removed with no orders as to costs on general damages and the Respondents Counter-claim should be struck out.

IV. Who should bear the costs of this appeal?

59. Section 27 of the *Civil Procedure Act* requires that costs to follow event but the Court has the discretion to rule otherwise. (See Machakos ELC Pet No. 6 of 2013;- Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] eKLR). The Appellants are the successful parties, but

this Court remembers that the Respondent had lodged the caution to secure her interest. As such this Court directs that each party shall bear their own costs.

60. Having now carefully considered the instant appeal, the Court finds the said Appeal is merited and the same is allowed entirely with an order that each party to bear its own costs.

61. The caution as lodged by the Respondent be and is hereby removed with no orders as to costs on the general damages, and the Respondent's Counter-claim at the lower Court is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19TH DAY OF OCTOBER 2023.

L. GACHERU

JUDGE

<u>Delivered online in the presence of; -</u>

Mr J N Mbuthia for the Appellants

Respondent - Absent

Court Assistant - Joel Njonjo

L. GACHERU

JUDGE

19/10/2023