



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2397 OF 1997

IN THE MATTER OF THE ESTATE OF JOSEPH NJOROGE MUIRURI (DECEASED)

JUDGMENT

1. The deceased herein died on 22nd January 1975. Representation to his estate was sought in this cause through a petition filed herein on 6th November 1997 by Samuel Njoroge Muiruri, Joseph Gikaru Muiruri and William Mwaura Muiruri in their purported capacities as sons of the deceased. They listed themselves as the sole survivors of the deceased, who died allegedly possessed of two assets, Sigona LR No. 631/215 and Sigona Plot No. 50/286/33. A grant of letters of administration intestate was duly made to them on 22nd December 1997. The grant was confirmed on 11th June 1999, on an application dated 24th March 1999, where the property was to be divided equally amongst the three sons of the deceased.

2. Shortly thereafter, an application was lodged herein dated 22nd July 1999, at the behest of Frederick Kithuku Muiruri for revocation of grant on grounds that the administrators had concealed from the court certain facts, to wit that the deceased had been survived by other persons quite apart from themselves. The administrators did not file any papers in opposition to the application, and the same was allowed on 27th September 1999. The grant made on 22nd December 1997 was revoked, the confirmation orders of 11th June 1999 were set aside and the certificate of confirmation of grant issued based on them annulled. Fresh administrators were appointed, being Raphael Njoroge Muiruri, Samuel Njoroge Muiruri and Peter Njoroge Muiruri. There were changes to representation effected by way of amendment on 4th March 2009, making Jemimah Njeri Njoroge, Alex Muiruri Njoroge, Douglas Gikaru Njoroge and Ruth Wanjiru Njoroge administrators of the estate.

3. The application that I am called upon to determine is a summons dated 2nd June 2004 for confirmation of the grant made on 27th September 1999. It was at the instance of Peter Muiruri Njoroge. He averred in his affidavit in support that the deceased had married three times, unfortunately the applicant has not listed the survivors of the deceased from each of his three houses. He has also not listed the assets that he proposes to be distributed, although he has attached a schedule of the proposed distribution, which is in the following terms:

- (a) Plot No 215 Kericho - equally between Raphael Njoroge Muiruri, Peter Njage Muiruri and a unnamed third person;
- (b) Plot No. 5 Kericho Swahili Village – equally between Raphael Njoroge Muiruri Peter Njage Muiruri and a unnamed third person;
- (c) Plot at Kipkelion Town - equally between Raphael Njoroge Muiruri, Peter Njage Muiruri and a unnamed third person;
- (d) 9 acre farm at Mangu Nakuru - equally between Raphael Njoroge Muiruri, Peter Njage Muiruri and a unnamed third person;
- (e) 16 acre farm at Sigona 33 Kikuyu Kiambu - equally between Raphael Njoroge Muiruri, Peter Njage Muiruri and a unnamed third person; and
- (f) Plot No. 74 Sigona Kikuyu Kiambu - equally between Raphael Njoroge Muiruri, Peter Njage Muiruri and an unnamed third person.

4. To that application, an affidavit of protest sworn on 22nd April 2009, was filed herein on 23rd April 2009 by Joseph Gikaru Muiruri (hereinafter referred to as the protestor). He avers that he is from the house of Eunice Wangari Muiruri (2nd house), and he allegedly swears the affidavit on behalf of the members of that house and that of Phyllis Nyambura Muiruri (1st house). He states that the deceased had three houses, the third being that of Jane Wanjiru Muiruri (3rd house). He avers that the whole family used to live in Kericho on Plot No. 41 Kericho (also known as Plot No. 5 Swahili Village Kericho) prior to 1960. In 1960, the deceased allegedly allocated Plot No. 50/286/33 and Plot No. 74 Sigona Kiambu to his wife Eunice Wangari Muiruri, and the said wife and her children were then moved from Kericho to that parcel of land. In 1975 he allegedly allocated parcel number 631/215 Kericho to his wife Phyllis Nyambura Muiruri and her children, and he thereafter moved that wife and her children from parcel number 41 Kericho. In the same year, the deceased allegedly allocated parcel number 41 Kericho to Jane Wanjiru Muiruri. He alleged that after the election-related violence of 1997 the children of Jane Wanjiru Muiruri sought refuge on Sigona Plot No. 50/286/33 but they have since refused to move out. There is a further affidavit by Joseph Gikaru Muiruri sworn on 12th May 2009 and filed herein on 15th May 2009. In it the deponent gives details of the survivors of the deceased from all the three houses.

The protestor filed a further affidavit on 13th May 2009, sworn on 12th May 2009, to list the children of the deceased according to the three houses.

5. There is on record another affidavit by the protestor sworn on 21st September 2010. In it he proposes his preferred mode of distribution. He avers that the deceased died before the Law of Succession Act, Cap 160, Laws of Kenya, came into force in 1981, and submits that distribution should be in accordance with Kikuyu Customary Law by virtue of section 2(2) of the Act. He states that under that law the estate is distributed equally amongst the houses, although the man may also make an oral will. He asserts that in the instant case the deceased had divided his property during his lifetime, and that that allocation could not be altered according to Kikuyu customary law. He states that the 2nd house, of Eunice Wangari Muiruri, to which he belonged, had been allocated and settled on 50/286/33 and 74 Sigona, Kiambu, in 1960. In 1975, the first widow, Phyllis Nyambura Muiruri, was allocated Plot Number 631/215 Kericho and another piece of land at Mau Summit. The said family moved into the said property. He states that the 3rd house was left at the ancestral land at Kericho, being Plot No. 41, where they remained until the tribal clashes of 1997 which forced them to seek shelter with the 2nd house at Sigona 33. The said family did not relocate to Kericho thereafter. He further states that the 3rd house had also been allocated another parcel of land at Njoro, Nakuru, which the sons refused to occupy. He asserts that each of the houses should be contented with what they were allocated.

6. Various other affidavits were sworn and filed by various parties. These include those filed by Grace Wangui Muiruri sworn on 8th November 2010, Peter Njoroge Muiruri sworn on 8th September 2010, Jackson Kairori Njoroge sworn on 8th November 2010, Ruth Wanjiru Njoroge sworn on 4th October 2011, Eunice Wangari Muiruri sworn on 13th July 2012, Raphael Njoroge Muiruri sworn on 12th August 2012 and William Mwaura Muiruri sworn on 10th March 2016.

7. Grace Wangui Muiruri is from the 3rd house, and the first born child from that house. She avers that her mother pre-deceased the deceased and at the time the deceased died in 1975, the children in the 3rd house were still minors. She complains that the children in the other houses, who were by then adults, did not proffer any sort of support to them for education, shelter, medication and clothing, and they had to struggle through life. She asserts that the deceased had not subdivided his property prior to his death. She states that the third house was forced in 1991 to demand their share of the estate of their father from the other houses, and that was when it became clear to them that the deceased had not distributed his estate prior to his death, and that what the other houses were doing is to try to disinherit the third house. Peter Njoroge Muiruri is a son of the deceased from the 3rd house. He states that his mother predeceased the deceased, for she died in 1973, while he died in 1975. The 3rd house lived at Kericho and that was where the deceased died. He alleges that although the deceased had directed the other houses to take care of the younger members of the 3rd house that was not done, and they were therefore neglected. During the tribal clashes of 1991 the 3rd house was affected and was forced to seek refuge in Sigona, where the first born son in the 2nd house, the late Samuel Njoroge Muiruri, informed them the estate had not been distributed for the deceased had wanted all his children to be of age before distribution. He allegedly told them the estate was intact save for motor vehicles that had been sold by the protestor. He has attached several documents in support of his case.

8. Eunice Wangari Muiruri is a widow of the deceased, having been the deceased's second wife. She states that the deceased had settled his family before he died as follows: the first wife at Plot No. 631/215 Kericho and the children were bought for land at Mau Summit, the second wife at Sigona 33, and the third wife at Kericho Plot No 5 Swahili village and a parcel land at Njoro, Nakuru. She states that Sigona 33 ought to be allocated to her family. She has referred to a list and bundle of documents filed herein on 13th July 2012. There are documents from the Settlement Fund Trustees (SFT) dating after the deceased's death showing the loan that the deceased had left outstanding following his death in 1975. There are also copies of letters from SFT allocating the Sigona property to the deceased and giving eviction notice for non-repayment of the loan. There is also correspondence dating to 1980 and 1981 between the Public Trustee and the District Commissioner (DC) Kericho on the distribution of the estate of the deceased. William Mwaura Muiruri is from the 2nd house of the deceased. He states in his affidavit that the 2nd house moved out of the ancestral home at Kericho in 1962 and was settled by the deceased on Sigona 33. The 1st house, according to him, was settled on Plot No. 631/215 Kericho and was allocated another parcel of land at Mau Summit. The 3rd house was settled at Swahili village, Plot No. 5 Kericho, which was largely a commercial property, but they were also allocated property at Njoro, Nakuru. He states that Sigona 33 was acquired by the deceased from the SFT. He says that the deceased was unable to repay the loan and members of the 2nd house repaid the same after the SFT issued threats to repossess the property. He adds that the 2nd house remained in exclusive possession of the said property from 1960 until 1992 when the 3rd house was forced to seek refuge there on account of election related violence. He holds the view that the deceased desired that the 2nd house inherits Sigona 33 exclusively.

9. Raphael Njoroge is from the 1st house. He states that the deceased died intestate. He asserts that the 1st house was not contented with the distribution proposed by the 2nd house. He states that he was unaware that the 2nd house had taken Plot No. 631/215 Kericho. He asserts that the deceased's property was intact awaiting distribution by the court. Ruth Wanjiru Njoroge is from the 2nd house. She is a widow of one of the sons from that house. She claims four acres of Sigona 33 where her late husband, Samuel Njoroge Muiruri, had invested by putting up the Muguga High School. She proposes that the Sigona 33 be shared out amongst the three houses at proportions that she has set out in her affidavit. She proposes that Sigona 74 should be given to Margaret Mwiwaki Muiruri, who has always resided there, while Kericho Plot No. 41 and LR No. 631/215 should be sold and the proceeds therefrom be shared out equally amongst all the beneficiaries.

10. Jackson Kairori Njoroge is a step or half-brother of the deceased. He confirms, in his affidavit, that the deceased had three wives. He states that the deceased died intestate leaving a vast estate. He says that he is conversant with Kikuyu customary law, and says that he knows for a fact that the deceased had not distributed his estate.

11. Directions were given on 17th July 2012 for filing of agreed issues and lists of witnesses. Further directions were given on 16th October 2012 that the said application be disposed of by way of written submissions, to be highlighted. The directions of 16th October 2013 were subsequently reviewed on 19th March 2013 when they were substituted with directions that the said application be disposed of by way of *viva voce* evidence, founded on the statements of issues filed by the parties.

12. There are two sets of statements of issues filed herein in compliance with the directions of 17th July 2012. There is a set filed by the 1st

and 2nd houses dated 24th September 2012, and another set by third house, dated 1st October 2012.

13. According to the first two houses the issues that I ought to determine are-

- (a) Whether the deceased divided his property among his three houses before his death;
- (b) Whether the deceased was entitled under Kikuyu customary law to divide his property amongst his three houses;
- (c) Whether the deceased's division of his property to his houses during his lifetime should be altered;
- (d) Whether the 2nd house paid the loan in respect of Plot No. 33 Sigona alone; and
- (e) Whether the 1st and 3rd houses are entitled to Plot No. 33 Sigona.

14. In the 3rd house's view, the issues for trial ought to be –

- (a) Whether the deceased left a will or died intestate;
- (b) Whether the administration of the deceased person's estate shall be in accordance to the Law of Succession Act, Cap 160, Laws of Kenya or Kikuyu customary law;
- (c) Whether Plot No. 33 Sigona forms part of the estate of the deceased person's estate;
- (d) Whether Plot No. 33 Sigona and the entire estate should be divided among the deceased persons three (3) wives or houses equally; and
- (e) Whether the deceased person's estate serviced the loan in relation to Plot No. 33 Sigona.

15. The oral hearing commenced on 19th March 2014. The first on the stand was Eunice Wangari Muiruri, the second wife and the only surviving widow of the deceased. The second person to testify was Frederick Kithuku Muiruri, a son of the deceased from the 3rd house. The next on the stand was Raphael Njoroge Muiruri, a son of the deceased from the 1st house. Grace Wangui Kariuki, a daughter of the deceased from the 3rd house, came next. Ruth Wanjiru Njoroge came next, and the last witness was William Mwaura Muiruri. The witnesses gave vent to the averments made in their respective affidavits. They were cross-examined. Their testimonies are captured by the record in the court file, and I shall therefore not recite the same.

16. At the close of the oral hearing, I directed the parties to file written submissions. There has been compliance, for the three sides have filed their respective written submissions, complete with the authorities that they rely on to advance their respective cases.

17. The deceased died in 1975, that was before the Law of Succession Act came into force on 1st July 1981. According to section 2 of the said Act, its substantive provisions apply only to estates of persons dying after it came into force. It does not apply to estates of persons dying before then, with the estates of such persons being subject the law that was in force prior to coming into force of the Act. For avoidance of doubt the said provision states as follows-

'(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of testamentary succession to estates of deceased persons dying after the commencement of this Act and to the administration of estates of such persons.

(2) the estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.'

18. From the above it is plain that the estate of the deceased herein, so far as distribution of the assets is concerned, is subject to the law that prevailed prior to 1st July 1981. However, with regard to administration, the provisions of the Law of Succession Act apply.

19. One issue that I am called upon to determine is whether the deceased died testate or intestate. I do not quite understand why the 3rd house has identified this as an issue for determination as none of the houses has made any allegation at all that the deceased had made a will, whether written or oral. I have read and reread the affidavits on record, and the minutes of the testimonies that I recorded but I have not come across any allegation by any of the two houses about the deceased having died testate. It is not an issue emerging from the affidavits or the allegations made by the parties in their respect papers, but one that the third house is raising through their statement of issues. From the material before me there is not dispute at all that the deceased had died intestate. He left no written or oral will. This is clearly a non-issue.

20. Probably the 3rd house picked this from the argument by the 2nd house that the deceased had distributed his property before he died. To support this, the 2nd house claimed that the deceased had settled each house on some of his assets, and it was in these assets that he left them when he died, and they remained settled in those properties without any problems until 1991/1992 when some members of the 3rd house moved into a property occupied by the 2nd house. I did not, from the 2nd house's narrative, understand them to say that the deceased had

made a will. what they meant, in my humble view, is that he had settled his property *inter vivos* before he died, by allocating each of the houses particular property and he settled each one of the three houses in those properties. He had distributed his property during lifetime, so they say. Such distribution is not through the instrument of a will.

21. If the deceased had left a written will, the validity of such a will would have been dependent on the provisions of the law which then governed written wills and testaments. He was an African and therefore the African Wills Act, then Cap 169, applied, as read with the Indian Succession Act of India, Act X of 1865. If it was alleged that he had not written a will, but had made one in accordance with the customs of his tribe, the Kikuyu customary law on oral wills would apply. The courts have had occasion to deal with the prerequisites for such wills in such cases as *Koinange and thirteen others vs. Koinange* (1986) KLR 23, *Re Rufus Munyua (deceased) Public Trustee vs. Wambui* (1977) KLR 137 and *Wambui and another vs. Gikonyo and others* (188) KLR 445. The will maker would summon a meeting of close relatives, friends and clansmen, and pronounce orally before them on how the property would be distributed between them. He could also appoint an administrator or administrators, *muramati* or *aramati*, at that session. Cotran, in his *Restatement of African Law; 2 Kenya II The Law of Succession*, London, Sweet and Maxwell, 1969, has also dealt with these prerequisites.

22. As the deceased died intestate, his estate ought to be subjected to Kikuyu customary intestacy rules, if indeed it is found there had been no *inter vivos* distribution.

23. Could a person dispose of his property during his lifetime *inter vivos* under customary law in the manner suggested by the 2nd house? Available literature indicates that that was a permissible practice under customary law. It was widely practiced. The write-up by Cotran, and even Jomo Kenyatta in *Facing Mount Kenya*, London. Mercury Books, 1961, deal with these matters. There is also case law thereon represented in such cases as *Karanja Kariuki vs. Kariuki* (1983) KLR 209. A father could begin the process by allocating land to each of his sons as and when they got married. It could also happen when the man settles each of his several wives in separate property to avoid petty squabbles when they are all hurdled together within one compound or property. Such distribution would be honoured so that after the demise of the man his clan would confirm that distribution in the event of any dispute.

24. The question then that I need to answer at this stage is whether the deceased in this particular case distributed his property *inter vivos* or during his lifetime. That is the case by the 2nd house. The 3rd house does not agree and asserts that the deceased died intestate, which should mean that the available assets ought to be distributed between the three houses in accordance with the law. Indeed, the papers filed by the 3rd house to suggest that the court ought to proceed to distribute the estate in accordance with the Law of Succession Act, rather than under customary law. The position of the 1st house is not very clear, but it appears to support the position taken by the 3rd house, ostensibly because the 2nd house appears to have ended up with the more valuable property should the alleged *inter vivos* distribution be upheld.

25. The 2nd house's case is that the deceased originally lived with all his wives at Kericho at Plot No. 41 Kericho, which is also known as Plot No. 5 Kericho. It could be said that that was their ancestral home. He then, on a date or dates that are not clear, decided to set them up or settle them at different places. The first wife and her children were settled at Plot No. 631/2015 Kericho, the second wife and her children were settled at LR Sigona 33, while the 3rd wife and her children were settled at Plot 5 Swahili Village, Kericho. The second family is said to have then moved out to the Sigona property in 1960 or 1962, and has been resident at Sigona 33 since then. The 2nd house argues that each of the houses lived separately thereafter at the places that had been allocated to them by the deceased. That arrangement was only disturbed after the deceased's demise, when, in the 1990s, members of the third house sought refuge in Sigona 33 following disturbances at Kericho.

26. To support their case, the second house produced documents relating to the purchase of the property from the SFT. The point to be made from these documents is that the deceased died before the full purchase price had been paid and it fell upon the second house to settle the debt. There is a letter dated 10th October 1967 addressed to the deceased urging him to clear the balances then outstanding, and generally advising him on how best to handle the debt. There is then an eviction notice dated 30th July 1976 from SFT on account of the uncleared debt. There is also a demand notice dated 1st October 1980 from SFT, again on account of the said debt. There is a bundle of statements of accounts dated 31st March 1979, 30th September 1979, 30th September 1989, 31st March 1989 and 30th September 1991. It would appear that the debt had not been cleared by the time the deceased died, and from the documents before me it is not clear whether the same was eventually settled in full.

27. Apart from that, the 2nd house also placed before the court documents exchanged between the Public Trustee and the DC for Kericho on the estate of the deceased. The letter dated 22nd February 1980, from the DC to the Public Trustee, is perhaps the most critical. It indicates that the deceased had three houses, and lists the widows and children who survived him. It also indicates that the 1st house lived on Plot No. 631/215 Kericho, while the 2nd house is said to have lived in the then Central Province at Muguga and the 3rd house occupied Plot No. 5 Swahili Village, Kericho. He expresses the view that the family did not appear to have a quarrel with the *status quo*. The thread that runs through all three letters is that the deceased had already settled each of the three families in their own plot, and that the law governing the matter was Kikuyu customary law.

28. The case by the 3rd house is that the deceased had not distributed his estate *inter vivos* and settled each of the houses in their respective plots as alleged by the 2nd house, and therefore the assets were open to distribution by the court intestate. They assert that they were unaware of the alleged distribution, and called a stepbrother of the deceased to give evidence in support of their case. He told the court that the deceased had not distributed his estate. The 1st house appears to go along with the 3rd house.

29. From the material before me, it is not disputed that the three families lived separately as at the date of the deceased's death. When Frederick Kithuku Muiruri and Grace Wangari Kariuki from the 3rd house and Raphael Njoroge from the 1st house testified they confirmed as much. The 1st house was on Plot No. 631/215 Kericho, the 2nd house at Sigona, Muguga and the third house on Plot No. 5 Swahili Village, Kericho. The third wife was living on Plot No. 5 Swahili Village, Kericho, with the deceased and her family, and after her demise in 1973, the deceased continued to live there with her children until he died in 1975. Even after the deceased's death, the 3rd house continued to live there until a section thereof moved to Sigona in the 1990s due to politically instigated violence. Looking at the totality of the testimonies

and the content of the letters from the DC it is clear to my mind that the deceased had already settled his three families in a particular plot each. They continued to live as such even after his death, with the situation only changing in the 1990s.

30. The 3rd house appears to me to be taking two different positions on exactly what happened in the 1990s leading to a section of that house moving into the Sigona property occupied by the second house. According to the applicant, in respect of the confirmation application, Peter Njoroge Muiruri, their move to Sigona was occasioned by the tribal clashes in Kericho in 1990/1991. He says so in his affidavit of 8th November 2010. However, when he took the witness stand, he appeared to change his position, insisting that they did not take that step because of the disturbances at Kericho, they were actually following up on their father's property. On her part, Grace Wangui Muiruri, in her affidavit of 8th November 2010, takes the position that the move was intended by the 3rd house to stake their claim to the Sigona property. I am persuaded that the 3rd house moved into the Sigona property at the height of the political troubles at Kericho in the 1990s and sought refuge with the 2nd house, who accommodated them. I note too that since then they have been living in temporary structures.

31. There is the issue as to whether the Sigona property has been fully paid for, and if it has, whether it was the 2nd house which was responsible therefor. There is no allegation by any of the parties that the said property had not been fully paid for; yet there is no evidence from the 2nd house that the property was fully paid for. I, however, have noted that a title document did issue in the name of the deceased and after the confirmation of grant, that was annulled, title deeds had been issued in the names of the persons named in the certificate of confirmation of grant issued as entitled to portions thereof. That to me is sufficient proof that the debt had been settled and the purchase price fully paid. What remains to be determined is whether the 2nd house paid any portion of the debt or the purchase price for the property.

32. I mentioned above that as at the time of the deceased's death, the purchase price had not been settled in full. There were demand and eviction notices issued after the deceased died. There is a bundle of statements of accounts in respect of the said property which indicates that payments were made to that account after the deceased died. The statements do not indicate who was making those payments, and no receipts were annexed or placed before me which would have evidenced who made the payments. The 2nd house says it was responsible for the payments, the 1st and 3rd houses concede that they made no payments at all to that account. That would mean that the house that stood to lose the most should eviction ensue must have settled the account. I make a finding, therefore, that it was the 2nd house that settled the balance of the purchase price or debt that was outstanding as at the date of the deceased's death. That would mean that that house contributed in the acquisition of the said property, and is, in certain respects, part owner thereof.

33. My final conclusion is that the deceased had settled his family in accordance with the customs of his community by the time he died in 1975, so that the 1st house occupied and lived on 631/215, the 2nd house occupied and lived on Sigona 33 and the 3rd house occupied and lived on Plot No 5, Swahili Village, Kericho. The action that the court should undertake at this stage is to merely confirm what the deceased had done, for to do otherwise would be to fundamentally disrupt the lives of the members of all three houses. There has been reference to other parcels of land, however not much documentation has been placed before me to prove their existence. Indeed no reference numbers were cited. I am talking about the lands at Mau Summit and Njoro Nakuru, and the plot at Kipkelion. I shall not distribute the three assets as their existence is uncertain. The administrators have not indicated whether any steps have been taken to ascertain whether they exist, and if they do whether they belonged to the deceased. The administrators shall be at liberty to move the court appropriately should they ascertain that the same are estate property.

34. Having taken everything into account, I shall resolve the application dated 4th June 2004 in the following terms-

(a) That I hereby confirm the administrators appointed by the court on 27th September 1999;

(b) That the estate of the deceased shall be distributed as follows –

(i) To the 1st house, of Phyllis Nyambura Muiruri – Plot No. 631/215 Kericho – to be shared equally amongst all the sons and unmarried daughters in that house;

(ii) To the 2nd house, of Eunice Wangari Muiruri – LR No. 50/286/33 and 74 Sigona, Muguga - to be shared equally amongst all the sons and unmarried daughters in that house; and

(iii) To the 3rd house, of Jane Wanjiru Muiruri – Plot No 41 (also known as Plot No. 5) Swahili Village, Kericho – to be shared equally amongst all the sons and unmarried daughters in that house;

(c) That actual distribution on the ground shall take into account the developments if any made by the persons entitled in each case;

(d) That a certificate of confirmation of grant to issue accordingly;

(e) That each party shall bear their own costs; and

(f) That any party aggrieved by the orders made in this judgment shall be at liberty to challenge the same at the Court of Appeal within twenty-eight (28) days hereof.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JUNE, 2018.

W. MUSYOKA

JUDGE